

TRUSTS AND ESTATES UPDATE

Expert Analysis

Be Wary How You Plead

Pleadings, the most fundamental part of trusts and estates practice, if not all practice areas, are often the subject of critical decisions addressed to their scope and sufficiency. While a defective pleading may sometimes be remedied by way of an amendment, courts are not always inclined to grant such relief, and even have gone so far as to dismiss pleadings for failure to state a cause of action. Consider the following:

Objections to Probate Dismissed for Failure to Properly Plead. Before the Surrogate's Court, New York County (Anderson, S.) in *In re Stylianou*, NYLJ, Dec. 12, 2018, at 27 (Sur. Ct. New York County), was a contested probate proceeding in which the petitioner moved to dismiss the objections filed by the decedent's four nieces. The decedent died

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with a modestly sized estate survived by her sister, and 10 nieces and nephews, who were children of three predeceased siblings. Pursuant to the pertinent provisions of the propounded instrument, she bequeathed her entire estate in equal shares per stirpes to her four siblings.

The objections to probate, filed, pro se, by the children of the decedent's predeceased sister, Maria, were grounded in fraud, duress, and undue influence. More specifically, the objectants alleged that the decedent and her surviving sister converted funds from their late mother, which funds became a part of the decedent's estate and were disposed of by her will. Hence, they reasoned that the will was fraudulent, and was procured

by coercion, duress, and undue influence.

In support of her motion to dismiss, the petitioner argued, inter alia, that the objectants' allegations of misconduct were not relevant to the validity of the propounded will. In opposition, the objectants simply expanded upon their claims, but provided no further details regarding the admissibility of the will to probate.

Upon review of the instrument, the court concluded that it was satisfied that the propounded will

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had been duly executed and that the decedent possessed the requisite testamentary capacity on the date of its execution. In reaching this result, the court noted that

the instrument contained an attestation clause, and an SCPA 1406 affidavit annexed, in which the witnesses attested that the decedent was of sound mind, memory, and understanding.

With regard to the petitioner's motion to dismiss, the court noted that an objection to probate based on fraud requires a showing that a knowingly false statement caused the decedent to execute a will significantly different from the will she would have executed had the statement not been made. Moreover, the court observed that any allegations of fraud must satisfy the requirements of CPLR 3016(b), requiring that the circumstances of the alleged fraud be particularized. Assessed within this context, the court held that the objections were devoid of any allegations giving rise to a claim of fraud.

The court further concluded that objectants' claims of undue influence and duress were equally deficient. Specifically, the court remarked that a claim of undue influence requires a showing that a relationship of trust was abused, causing the decedent to execute a will that was not of her own free volition. By contrast, a claim of duress requires a showing that the propounded instrument resulted from the imposition of physical force or threats. As in the case of fraud, the court noted that a

claim of undue influence had to be stated in detail. As such, the court concluded that the objectants had failed to satisfy the essential requirements of pleading the claim by identifying the person or persons who unduly influenced or coerced the decedent, much less the circumstances under which the influence was exercised.

Accordingly, petitioner's motion to dismiss was granted.

Differing Views on Motions to Amend. Although motions to amend pleadings are often liberally granted, the decision as to whether to grant such relief lies within the sound discretion of the court. The opinions in *Matter of Wennagel Family Trust* and *Matter of Eshaghian* provide insight as to when and under what circumstances the exercise of that discretion is appropriate.

Before the Surrogate's Court, Suffolk County, in *Matter of Wennagel Trust*, NYLJ, July 31, 2014, at 28, was a contested trust accounting proceeding in which the petitioner sought to amend her accounting. In support of her application, the petitioner claimed that she had recently discovered a guaranty signed by the decedent related to a mortgage on trust property that was satisfied by funds of the trust. According to the petitioner, the guaranty constituted a debt of the decedent required to be

reported on Schedule C of her account, and was reimbursable by the decedent's estate. Attached to petitioner's motion was a copy of the guaranty, the proposed amended account, as well as additional proposed changes to the account in order to update the schedules related to income and administrative expenses.

Objectant opposed the motion alleging, inter alia, that the proposed changes were devoid of merit, as the petitioner lacked authority to pay any debt of the decedent, absent the ability of the estate to do so, and that no request for such financial assistance was ever made. Objectant further argued that upon payment of the mortgage using trust funds, the principal obligor of the mortgage then became obligated to the trust and that the trust was entitled to an assignment of the collateral of the mortgage. Finally, objectant claimed that any amendment would be prejudicial, as the matter was ready for trial.

The court noted that in assessing a motion to amend, it was required to consider (1) how long the facts subject to the proposed amendment were known to the movant and whether a reasonable excuse was offered for the delay; (2) whether the amendment plainly lacks merit, and (3) whether the amendment would cause prejudice

to the other party.

Within this context, the court found that the record was devoid of any evidence that the Lender took any steps to trigger the guaranty upon the decedent's death. In fact, it appeared that the petitioner withdrew funds from the trust account in order to satisfy the mortgages outstanding on the property without being prompted to do so. As such, the court held the proposed amendment was palpably insufficient to state a cause of action against the decedent's estate. Further, in view of the fact that the matter was ready for trial, the court found that any amendment to the pleadings would be prejudicial. Accordingly, petitioner's motion to amend her pleading was denied.

In *Matter of Eshaghian*, 144 A.D.3d 1155 (2d Dep't 2016), the Appellate Division, in the exercise of discretion, modified an Order of the Surrogate's Court, Queens County, finding, inter alia, that the court improvidently exercised its discretion in denying the respondents/co-executors request to serve an amended pleading.

Before the Surrogate's Court was a proceeding instituted by the decedent's brother pursuant to SCPA 2102(1) to compel the co-executors of the estate to turnover information concerning estate assets. The co-executors

answered the petition and therein asserted counterclaims against the decedent's brother. Following motion practice, the Surrogate's Court dismissed the petition, and the co-executors sought leave to amend their pleading pursuant to CPLR 3025(b) in order to assert additional claims against the petitioner. The Surrogate's Court denied the motion on the

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ground that the proposed amended pleading, in which the co-executors denominated themselves as petitioners, changed their status from that of respondents, thereby requiring them to file a petition in order to obtain the relief they sought.

The Appellate Division disagreed, noting that in the absence of prejudice or surprise resulting directly from the delay in seeking leave, applications for leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit. In this latter regard, the court further observed that a party seeking leave to amend a pleading is not

required to make an evidentiary showing of merit.

Significantly, the court held that despite the dismissal of the underlying discovery petition by the Surrogate's Court, the co-executors' counterclaims remained viable. Moreover, the court found that in properly asserting their counterclaims, the co-executors were in substance petitioners. Indeed, since the Surrogate's Court had dismissed the petition, the co-executors were the only remaining "petitioners" in the proceeding. Labeling themselves as such in their proposed amended pleading was simply a recognition of this circumstance. Further, there was no indication that the pleading was devoid of merit or palpably improper, or that the decedent's brother would be unfairly prejudiced or surprised by the claims alleged.

Accordingly, the co-executors' motion to amend their pleading was granted.