

TRUSTS AND ESTATES UPDATE

The Closing Months of the Year

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As 2023 came to an end, multiple decisions of interest were rendered by the Appellate and Surrogate's Courts throughout the state. Decisions addressed to such issues as the determination of a claim against the estate, the criteria for a stay of proceedings and summary judgment are discussed below.

Summary Judgment Sustaining Claim Against Estate Affirmed

In *Matter of Edelen*, the Appellate Division, Second Department, affirmed an order of the Surrogate's Court, Orange County, which granted petitioner summary judgment against the estate, determining that she was entitled to her claim for insurance proceeds pursuant to her separation agreement with the decedent.

The separation agreement at issue provided that the decedent would maintain three life insurance policies in specified amounts on his life, and name the petitioner as beneficiary in her capacity as trustee for the parties' children until both were emancipated. The agreement also required that the decedent provide the petitioner with proof that the policies were in effect, and that if the decedent

predeceased the petitioner without having maintained the policies, the decedent's estate would be liable for their face amount. The separation agreement was incorporated but not merged into a judgment of divorce.

Following the decedent's death, the petitioner received the proceeds of one of the three policies, but filed a claim against the estate as to the other two, which had not been maintained. After the executor failed to allow the claim, the petitioner filed a proceeding pursuant to SCPA 1809. Thereafter, the petitioner moved, and the executor cross-moved for summary judgment, and the petitioner's motion was granted.

On appeal, the executor argued that the decedent's obligation to maintain the policies terminated at his death, which was characterized as an emancipation event in the separation agreement, and in any event, one of the policies in issue did not have to be maintained once the mortgage on the marital home had been satisfied.



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The Appellate Division rejected the executor's arguments, opining that an agreement that states that an obligation to maintain life insurance terminates upon the death of the insured—just when the policy proceeds become payable—is meaningless. Further, the court found no provision in the separation agreement that made the obligation to maintain the policy contingent on the existence of a mortgage on the parties' home.

The court also rejected the executor's argument that the petitioner abandoned the decedent's commitment to maintain life insurance. While there was no evidence that the petitioner was provided with proof that the insurance policies remained in effect, it held that to establish abandonment of a contract, it must be found that the actions of the parties were mutual, positive, unequivocal and inconsistent with an intent to be bound.

To this extent, the court found that decedent and the petitioner did not engage in conduct that was entirely at odds with the separation agreement.

Finally, it held that the petitioner's claim was not time-barred, noting that where a contract involves a continuing obligation, a cause of action based upon breach of that obligation is not time-barred. Since maintenance of life insurance policies involves a continuing obligation, the final breach of that obligation and damages resulting therefrom does not accrue until the death of the insured.

The court found no evidence of waiver from petitioner's silence or inaction during the lifetime of the decedent, inasmuch as there was no admissible evidence that petitioner had been advised that the policies had lapsed, and in any event, the provisions of the agreement expressly stated that the failure to insist on compliance

with any of its terms would not constitute a waiver of any such terms, or be deemed a continuing waiver.

In re Edelen, 219 AD3d 931 (2d Dept 2023).

Stay of SCPA 2103 Proceeding Granted

Before the Surrogate's Court, Dutchess County, *in Matter of Ziv* was a motion to dismiss a discovery proceeding commenced by the trustee of an inter vivos trust seeking, inter alia, information and ultimately recovery of alleged trust assets constituting works of art and jewelry worth in the millions of dollars in the possession of the respondent, the trust beneficiary.

The Appellate Division rejected the executor's arguments, opining that an agreement that states that an obligation to maintain life insurance terminates upon the death of the insured is meaningless.

In particular, the petition sought an order directing the respondent to appear and to submit to an inquiry regarding the subject assets, and upon such inquiry, to deliver same to the trust, or to pay its fair value.

In response, the respondent moved to dismiss the proceeding on statute of limitations grounds, or alternatively for a stay pursuant to CPLR 2201, pending a determination of related proceedings before the Superior Court of the state of Washington, Kings County. More specifically, the record revealed that several proceedings had been instituted in Washington related to the trust and its assets, and that the respondent had commenced two such suits seeking a declaration

that the subject art and jewelry belonged to him, individually.

The court held the motion to dismiss on statute of limitations grounds was premature on the grounds that dismissal of a SCPA 2103 proceeding at the inquiry stage should not be granted “unless there is no aspect of the situation which would permit a finding of estate interest in the property sought” (*Matter of Mendelson*, 15 Misc2d 837 (Sur. Ct. Nassau County)).

Indeed, the court noted that the inquisitorial stage anticipates that the pleadings will be non-specific and ultimately amended to state more definitive causes of action. Moreover, and in any event, the court found that even if the motion was not premature, it would be denied on the grounds that the respondent had failed to meet his initial burden of establishing, prima facie, when the statute of limitations accrued.

Accordingly, the motion to dismiss was denied, without prejudice, to filing such a motion after the inquiry stage was complete.

With respect to the respondent’s motion for a stay, the court observed that it had broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources. Nevertheless, because the issuance of a stay can be a drastic remedy, in all cases where a stay is requested good cause for the relief must be shown.

To this extent, the court set forth the following criteria: (1) which forum will offer a more complete disposition of the issues; (2) which forum has greater expertise in the type of matter; (3) which action was commenced first and the stage of the litigations; (4) whether there is a substantial overlap between the issues raised in each court; (5) whether a stay will avert duplication of effort; and (6) whether the petitioner

has demonstrated that it would be prejudiced by a stay.

Within this context, the court noted that there was a substantial identity of the parties and claims between the proceeding before it and the Washington actions. Moreover, it found the nexus between the state of Washington and the trust and its assets was significant, and that Washington law vested the Superior Court with jurisdiction over all matters relating to the trust and its administration.

Accordingly, upon balancing all the relevant factors, the court found that a stay of the proceeding

The court noted that neither attesting witness testified that they saw the decedent read the transcription of her words to confirm its accuracy, nor was there testimony that the decedent requested that they serve as witnesses.

was warranted, pending a determination of the Washington Superior Court.

In re Ziv, 80 Misc3d 973 (Sur. Ct. Dutchess County 2023).

Summary Judgment Denied in Contested Probate

In *In re Samaritan*, the Surrogate’s Court, Ulster County, denied motions for summary judgment made by both the proponent and the objectant to probate.

The propounded instrument was a handwritten document, which disposed only of the decedent’s real property, and her belongings, which were specifically bequeathed to the proponent. There was no residuary clause, and no named executor. The will made no provision for the decedent’s son, who filed objections to

probate, and following SCPA 1404 examinations moved for summary judgment. The proponent opposed the motion and cross-moved for summary judgment as well.

In support of their respective motions, the parties offered their own affidavits, as well as the Article 14 testimony of the attesting witnesses. Objectant also offered a billing summary of procedures and medications administered to the decedent during her hospitalization.

In his Article 14 testimony, the decedent's brother, who was one of the attesting witnesses to the propounded instrument, confirmed that the decedent had stated to him that she wanted to write her will. He stated that the decedent dictated its terms to her aunt, who transcribed it. The witness then confirmed the decedent's signature on the document, identified his signature on the instrument as well, and stated that he and the decedent's aunt signed the document after the decedent. The witness then testified that after the decedent signed the instrument, she identified it as her will.

On the other hand, the court noted that neither attesting witness testified that they saw the decedent read the transcription of her words to confirm its accuracy, nor was there testimony that the decedent requested that they serve as witnesses. Moreover, only one of the witnesses recalled that the decedent identified the instrument as her will.

Notably the second witness testified that she could not recall whether the decedent had made any statements to her other than her initial request to create a will. Nevertheless, her errata sheet substantially changed this testimony, without explanation. In view thereof, and based on the provisions of CPLR 3116(a), the court held that it would not consider this testimony in reaching its decision.

Further, the court observed that the will lacked an attestation clause, that its execution was not attorney-supervised, and that its validity was not aided by the presumption attendant to the existence of a self-proving affidavit.

Additionally, the court found that scant evidence in the record, combined with the failure of the attesting witnesses to address the decedent's mental state at the time she signed her will, particularly in view of the fact that she was being administered painkillers in the days before its execution, rendered it incapable of assessing whether the decedent possessed testamentary capacity.

Accordingly, based on the material issues of fact left unresolved by the parties' submissions, the respective motions for summary judgment were denied.

In re Samaritan, 2023 NYLJ LEXIS 3012 (Sur. Ct. Ulster County).