

## TRUSTS AND ESTATES UPDATE

## Expert Analysis

# Appellate Review in the First Quarter

As the year 2020 concluded, and the year 2021 began, the Appellate Division was hard at work rendering decisions addressed to issues affecting trusts and estates practice. This month's column examines some of these opinions of interest.

**Enforcement of Stipulation of Settlement Affirmed by Second Department.** In *Matter of Roach*, 2021 NY Slip Op 00434 (2d Dep't), the Appellate Division, Second Department, affirmed an Order of the Surrogate's Court, Suffolk County (Czygier, S.), granting the petitioner's motion to enforce a stipulation of settlement.

The underlying proceeding before the court was a contested probate proceeding in which objections were filed to the appointment of the petitioner as executor of the decedent's estate. More specifically, the objections alleged, inter alia, that the petitioner was unfit to serve as executor because he failed to execute a deed

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transferring the decedent's home to the objectant. The objectant further alleged that the petitioner had caused the deed to be notarized without a signature, and failed to sign the deed on the decedent's behalf using his durable power of attorney.

Ultimately, the petitioner and the objectant entered into a stipulation in open court, wherein the objectant agreed to withdraw her objections and settle her claims against the estate. Several years later, the petitioner moved to enforce the stipulation, and the objectant cross-moved to set it aside, contending that the petitioner had induced her to enter the stipulation by falsely representing that the deed was never signed. The Surrogate's Court granted the petitioner's motion and denied the objectant's cross-motion, and the objectant appealed.

In affirming the Surrogate's Order, the Appellate Division noted that strict enforcement of open court stipulations "not only serves the interest of efficient dispute resolution but also is essential to the management of court calendars and integrity of the litigation process." As such, only where there is cause sufficient to invalidate a contract, such as, inter alia, fraud, will a party be relieved of the consequences of a stipulation made during litigation. Considering the elements of a cause of action for fraud, the court held that there was no evidence in the record that the deed was ever signed, as the petitioner had attested on multiple occasions that it was never signed by the decedent or by the petitioner on behalf of the decedent. In view thereof, the court concluded that the objectant had failed to establish that the petitioner's statement that the deed was not signed was a material misrepresentation requiring that the stipulation be set aside.

**Order Granting Summary Judgment Affirmed.** In *Matter of Denes*, 2020 NY Slip Op 08136 (3d Dep't), the Appellate Division, Third Department,

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affirmed an Order of the Surrogate's Court, Greene County (Wilhelm, S.), which granted petitioner's motion for summary judgment dismissing the objections to decedent's will and admitted the will to probate.

Approximately six months prior to the decedent's death, the petitioner, the decedent's daughter, contacted counsel and informed him that her mother was hospitalized and seriously ill, and wanted to prepare a will. Counsel spoke to the decedent by telephone regarding the provisions of the instrument, and drafted the will accordingly. Later that month, counsel and his associate witnessed the will's execution at the petitioner's home. The will left the decedent's estate to six of her eight children, and specifically made no provision for her remaining two children, the objectants.

In the contested probate proceeding that ensued, the objectants alleged that the propounded instrument was procured by the undue influence of the petitioner. Following SCPA 1404 examinations, petitioner moved for summary judgment, and objectants opposed. The Surrogate's Court granted the motion and objectants appealed.

The testimony of the draftsman and his associate revealed that prior to the execution of the instrument, the decedent was asked several general questions regarding the weather, and her ancestry, in order to determine whether she was competent to make a will. They described the decedent

as frail, but alert, and in possession of her faculties. Each paragraph of the will was then discussed with the decedent, who indicated that she understood its terms, and confirmed that she wanted it to serve as her will. The instrument was then signed in the presence of counsel and his associate, together with the self-proving affidavits. The court found that this evidence was more than sufficient to

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satisfy petitioner's prima facie case as to the validity of the will, and to shift the burden to the objectants to establish a triable issue of fact on their claim of undue influence.

In support of their contention, the objectants maintained that the decedent was elderly and frail, had recently been discharged from the hospital, and was still unwell when she executed her will. It was also alleged that petitioner was very controlling and protective of the decedent, and made it very difficult for the decedent to visit with one of the objectants alone. Further, objectants claimed that the petitioner was the decedent's primary caretaker, had the decedent's power of attorney, had

contacted the attorney to prepare the propounded will, who was a stranger to the decedent, and never met with the decedent alone, and was present during the will execution.

In reply to the foregoing, petitioner averred that she was not present when the decedent spoke with counsel regarding the provisions of her will, and counsel recalled that the petitioner was in another room when the instrument was executed, and that the decedent did not appear to be under any duress or reliant upon the petitioner at the time.

The court observed that even assuming that the objectants' proof was sufficient to establish that the petitioner had motive and opportunity to influence the decedent, in the absence of direct evidence of any such activity, neither the fact that the petitioner initially contacted counsel nor her presence when the will was signed gave rise to an issue of fact regarding undue influence. Further, as to the claim that the petitioner limited the decedent's access to one of the objectants, the court held that such circumstantial proof permitted conflicting inferences, as a result of which a conclusion of undue influence could not be made.

**Reformation of Testamentary Instrument Denied.** In *Matter of Dousmanis*, 136 N.Y.S.3d 713 (1st Dep't 2021), the Appellate Division, First Department, affirmed an Order of the Supreme Court, New York County (Kennedy, J.), which

confirmed the report and recommendation of the Judicial Hearing Officer and directed that the assets of the deceased incapacitated person (IP) held in trust for his benefit be used to satisfy a Medicaid lien.

The will of the IP's deceased brother appointed the petitioner as executor of his estate, and directed that he place the residue thereof into a general benefit trust for the lifetime benefit, maintenance, support, and education of the IP. The petitioner was named the trustee of the trust, as well as the trust remainderman.

The petitioner admitted that he failed to turn over trust assets to the IP's guardians for use during his lifetime, and failed to comply with a court order directing him to establish a special needs trust pursuant to EPTL 7-1.12, in order to permit the trust assets to be used to enhance the IP's quality of life without rendering him ineligible for public assistance or cause a reduction in those benefits.

Upon the IP's death, the respondent New York City Human Resources Administration, sought to impose a Medicaid lien on the funds that remained in the trust. The petitioner opposed arguing that the decedent intended to create a supplemental needs trust rather than a general benefit trust, and that, as such, the remaining trust assets should pass to him as the remainderman.

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unless the reformation effectuates the testator's intent. To this extent, the court concluded that nothing in the decedent's will indicated an intention to create a supplemental needs trust, and therefore, those assets were available to satisfy the subject lien.

**Agreement To Pay Maintenance Found Binding on Decedent's Estate.** In *Gardner v. Zammit*, 2021

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NY Slip Op 00707 (4th Dep't), the Appellate Division, Fourth Department, affirmed an Order of the Supreme Court, Erie County (Devlin, J.), which granted, in part, plaintiff's motion for partial summary judgment, finding that the decedent's lifetime agreement to pay plaintiff, her former spouse, monthly maintenance was binding on the decedent's estate.

The record revealed that the subject agreement was entered by the parties during their divorce, and provided, inter alia, that the decedent's obligation to pay would terminate only upon the death of the plaintiff. Further, the agreement provided that it was binding on the parties, their heirs, executors, legal representatives, administrators and assigns.

Following the decedent's death, her estate refused to continue the maintenance payments pursuant to the terms of the agreement, and an action was commenced seeking enforcement of its terms. The defendant answered, and plaintiff moved for partial summary judgment, which motion was granted by the Supreme Court.

In affirming the Supreme Court's Order, the Appellate Division opined that the settlement agreement was a contract, which was to be interpreted in accordance with its plain and ordinary meaning. To this extent, an intention to end maintenance payments upon the death of the payor must be clearly expressed. In this regard, and particularly in view of the plain language of the agreement, the court found that plaintiff had satisfied his initial burden of establishing that the maintenance payments were intended to survive decedent's death and become an obligation of her estate. The court further found that the defendant had failed to raise a triable issue of fact in opposition, and thus, plaintiff's motion was properly granted.