

Cases of Interest in Fiduciary Administration

1. Life Tenant's Intentional Failure to Pay Property Taxes and Maintain Hazard Insurance Constituted Waste and Justified Extinguishing Life Estate.

In this case the life tenant refused to pay real property taxes on the real estate and the premiums on hazard insurance on the property. The remainder beneficiary had to pay the taxes and the premiums and then (a) sought recovery for those payments from the life tenant on the basis of unjust enrichment and (b) sought to extinguish the life estate which the life tenant had. The Appellate Division, Second Department, reversing the Supreme Court, held on a motion for Summary Judgment in favor of the remainder beneficiary. The court held that remainder beneficiary had demonstrated a *prima facie* for recovery of damages and in these circumstance equity warranted ending the life estate. *Mani Omni Realty Corp. v. Matus*, 124 A.D.3d 604, 1 N.Y.S.3d 319 (2d Dep't 2015).

2. Failure to Establish Due Execution of Will Justified Denial of Probate

In this case because the lawyer never met with the decedent, no one from the lawyer's office was present at the execution of the Will, the inability to produce notes, from which the Will was supposed to have been written, and the uncertainty surrounding the execution ceremony itself, the Appellate Division "declined to disturb" the Surrogate Court's decision to deny probate. *In re Walker*, 124 A.D.3d 970, 2 N.Y.S.3d 628 (3d Dep't 2015).

3. Interested Third Party Cannot Challenge the Amount of an Estate's Tax Liability

The Ninth Circuit Court of Appeals has held that an interested third party in the estate has no standing regarding tax liability of the estate, and that only the estate itself can contest the tax assessment. The Court further determined that the government sovereign immunity prohibits an interested third party from requesting re-consideration of tax liability and that the filing of the claim for a refund satisfies due process. *United States v. Cowles-Reed*, 114 A.F.T.F.2d 5612 (9th Cir. 2014).

4. Trust Statute of Limitations: The Limitations Period Does Not Begin to Run Even Though Trust Property Consists Only Of A Claim Against The Trustee

In this case the trustee of Trust 1 transferred all of the trust property to Trust 2, of which he was also the settlor and trustee. Seven years later the trustee died. The trustee's son, the sole beneficiary of Trust 1, brought an action alleging violation of fiduciary duty. The Supreme Court of New Hampshire reversing the Trial Court, and citing restatement (Third) of Trusts §2, comment I, and the Reporter's Notes, held that Trust 1 did not cease to exist when all of its property was transferred to Trust 2, because Trust 1 held a *chose in action* against the trustee. The Court remanded the case for trial on the remaining issues of both law and fact. *In re Theresa Houlahan Trust*, 101 A.3d 599 (N.H. 2014).