

TRUSTS AND ESTATES LAW

Expert Analysis

## Considerations in Choosing Fora For Disputes Over Decedents' Assets

Litigants facing disputes involving the assets of a decedent should carefully consider the forum they choose to initiate an action or proceeding. They should not allow assumptions to dictate their initial decisions in this regard. Common missteps based on faulty assumptions range from believing the Surrogate's Court is more limited in its subject matter jurisdiction than it is, to believing that the Surrogate's Court's jurisdiction is virtually limitless so long as a decedent is somehow involved. Similarly, litigants sometimes make faulty assumptions when deciding to bring an action in federal court versus New York state courts where parties reside in different states. This column is intended to illustrate a few examples of jurisdictional issues

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that involve disputes over a decedent's assets or affairs to demonstrate why a choice of forum is not always as obvious or simple as one might assume.

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Unlike in many sister states, the Surrogate's Court in New York is not merely an administrative court whose only function is to probate wills and appoint personal representatives of estates in non-contested matters—far from it. The Surrogate's Court has broad constitutional authority:

... to exercise full and complete general jurisdiction in law and

in equity to administer justice in all matters relating to estates and the affairs of decedents, and upon the return of any process to try and determine all questions, legal or equitable, arising between any or all of the parties to any action or proceeding, or between any party and any other person having any claim or interest therein, over whom jurisdiction has been obtained as to any and all matters necessary to be determined in order to make a full, equitable and complete disposition of the matter by such order or decree as justice requires.

SCPA §201(3); see also N.Y. Const. Art. VI, §12(d).

Indeed, although the Supreme Court technically has concurrent jurisdiction with the Surrogate's Court over decedents' estates, as a matter of policy, the Supreme Court will generally abstain from exercising jurisdiction over matters that are well within the purview of the Surrogate's Court, it being a well-established rule that

the Surrogate's Court is the most appropriate forum for disputes that concern the affairs of decedent or the administration of an estate and, as such, "are within [its] particular expertise." *Johnson v. Stafford*, 18 A.D.3d 324, 324 (1st Dep't 2005); see *In re Estate of Piccione*, 57 N.Y.2d 278, 290-91 (1982) (so holding, particularly where it would be "counter-productive" to fragment the "treatment of the affairs of a decedent's estate"); *Ruskin & Lippman P.C. v. Sable*, 85 Misc.2d 715, 717 (Civ. Ct. N.Y. Cty. 1976) (concluding that the Surrogate's Court should hear cases regarding a decedent's estate because of its "its expertise and specialized facilities ...").

This policy is so deeply rooted that there exists a statutory mechanism for transferring cases from Supreme Court to Surrogate's Court. See CPLR 325(e) (2013). Such transfers are particularly favored where the Surrogate's Court has already exercised jurisdiction over related claims. See, e.g., *Lawrence v. Miller*, 48 A.D.3d 1 (1st Dep't 2007), aff'd, 11 N.Y.3d 588 (2008) (affirming Supreme Court's transfer of an action for rescission of a retainer agreement between a widow and her attorneys for their representation of her in proceedings against the executor of her husband's estate where other proceedings relating to the decedent's estate were pending in the Surrogate's Court); see also *Birnbaum v. Central Trust Co.*, 156 A.D.2d 309, 310 (1st Dep't 1989) (providing that it is well established that,

"[w]herever possible, all litigation involving the property and funds of a decedent's estate should be disposed of in Surrogate's Court.").

However, the Surrogate's Court jurisdiction is not limitless. Its subject matter jurisdiction does not extend "to independent matters involving controversies between living persons." *Matter of Lainez*, 79 A.D.2d 78, 80 (2d Dep't 1981).

The question as to whether the Surrogate's Court has jurisdiction over a matter that involves decedent's assets commonly arises where there are competing claims

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Just because a claim involves a decedent's assets, one should not assume that the Surrogate's Court will have jurisdiction where the core dispute is among living persons. On the other hand, just because the core dispute over a decedent's assets is among living persons does not automatically mean that the case must be brought in state Supreme Court instead of Surrogate's Court.

among living parties to a decedent's non-testamentary assets based on beneficiary designations. Based on some court rulings, the answer would seem to be clear at first blush. As one court put it, "[a] typical dispute between living persons is one involving designated beneficiaries of a decedent's non-testamentary assets, because resolving such a dis-

pute has no impact on the administration of the estate, which has no interest in the subject asset whatsoever." *Matter of Tong*, 2017 N.Y. Misc. LEXIS 2702 at \* 4 (Sur. Ct. New York Co. 2017). Along these lines, in *Matter of Brennan*, NYLJ, April 23, 2015, pg. 30, col. 4 (Sur. Ct. Suffolk Co. 2016), the Surrogate's Court dismissed a post-death proceeding involving a disputed change of beneficiary designation during decedent's lifetime as a dispute among living people. In so holding, the court reasoned that, whether the beneficiary designation was validly changed impacted only the living designated beneficiaries and "would not impact the administration of the estate." Id.

Cases like *Tong* and *Brennan* seem to reflect a bright line rule that the Surrogate's Court does not have jurisdiction over any dispute between claimed beneficiary-designees to non-testamentary assets. However, read carefully, the key factor that the courts cite that militate against Surrogate's jurisdiction is the lack of impact on the administration of a decedent's estate. The implication is that if there had been some demonstration of impact on the administration of an estate in *Tong* and *Brennan*, the Surrogate's Court would have had jurisdiction even though the essential dispute was between living parties. *Matter of London*, 90 Misc.2d 351 (Sur. Ct. Nassau Co. 1977) provides clarity here. There, decedent's spouse and children were in a dispute concerning the change of beneficiary on

decedent's life insurance policy. In retaining jurisdiction, the Nassau Surrogate's Court noted:

The question of title to the insurance proceeds is not solely a dispute between living persons—a decedent is involved. Her estate is involved as testamentary and nontestamentary assets may have estate tax consequences in which the fiduciary must play a role and the expeditious determination of ownership of a particular asset assists in the proper administration of an estate. This court has jurisdiction over the estate; proceedings were commenced here; motions were made here; pretrial proceedings were utilized here; the court is familiar with these proceedings. Only delay can be gained by this court's granting the motion and sending the parties to a common-law forum. Any abuse of bringing proceedings that ought not be brought here can be avoided by the Surrogate refusing to entertain proceedings as authorized by SCPA 2101.

*Id.* at \*352, \*353. Thus, for example, if the outcome of a dispute between a spouse and children would dictate whether or not the estate executor can claim the marital deduction on the estate's estate tax return, the dispute has an impact on the administration of an estate and the Surrogate's Court can assert jurisdiction.

There is a similar analysis that federal courts employ to decide

whether to assert diversity jurisdiction in matters relating to state law claims involving decedent's assets and estates. Under the "probate exception," a complaint will be dismissed for lack of subject matter jurisdiction if: (1) "the federal district court ... is being asked to directly probate a will or administer an estate" or (2) "entering the action would cause the federal district court to interfere with the probate proceedings or assume general jurisdiction of the probate or control of property in the custody of the state court." *Moser v. Pollin*, 294 F.3d 335 (2d Cir. 2002). As the U.S. Supreme Court stated, this exception to diversity jurisdiction "precludes federal courts from endeavoring to dispose of property that is in the custody [i.e., jurisdiction] of a state probate court." *Marshall v. Marshall*, 547 U.S. 293 (2006). The policy under this exception is buttressed by the New York State Constitution's provision granting the Surrogate's Courts with broad subject matter jurisdiction over "all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto ..." N.Y. Const. Art. VI, §12(d); see *Matter of Piccione*, 57 N.Y.2d 1030 (1982).

As such, if the subject matter of any claim is within the jurisdiction of the New York Surrogate's Court, under the probate exception, a fed-

eral court should dismiss any claim that would be properly before the Surrogate's Court.

The take away from the foregoing can be summed up this way: Just because a claim involves a decedent's assets, one should not assume that the Surrogate's Court will have jurisdiction where the core dispute is among living persons. On the other hand, just because the core dispute over a decedent's assets is among living persons does not automatically mean that the case must be brought in state Supreme Court instead of Surrogate's Court. Finally, one should not assume that federal district court will have jurisdiction to adjudicate a claim on the basis of diversity jurisdiction. A litigant should undertake a thorough analysis of jurisdiction based on the facts of each case and how an estate's administration may be impacted to be sure that the forum he or she selects is proper without making assumptions.