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Special Administrator Not Liable for Estate's Unpaid Taxes

Nonetheless, a cautionary tale on prioritizing creditors.

Beth L. Fox | Dec 10, 2018

On Dec. 3, 2018, a U.S. District Court addressed whether, under Maryland law, a special administrator of a probate estate is a proper defendant in a lawsuit to collect a decedent's unpaid federal taxes.

In *United States of America v. Timothy O'Brien, et al.*, Case No. PWG-17-1007, the court found that a special administrator “lacks the authority to defend a lawsuit or litigate actions on behalf of an estate” under Maryland law and dismissed the government’s claim against the special administrator.

Lawsuit Against Special Administrator for Unpaid Taxes

Two months after the estate of Louis Pate was opened, a Maryland Orphan’s Court (known in other states as a probate court) removed the acting personal representative of the estate and appointed Timothy O’Brien as special administrator. In that capacity, O’Brien petitioned for authority to pay Pate’s outstanding income tax liabilities. The court “authorized and directed” O’Brien to pay \$7,243.69 in federal taxes and \$4,666.41 in state taxes on May 16, 2016 and closed the then insolvent estate on May 17, 2016. O’Brien made the tax payments on Nov. 21, 2016. The government brought suit for Pate’s allegedly unpaid income taxes (plus penalties and statutory interest) of \$229,974 against O’Brien as special administrator, as well as against the estate representative.

Relevant Statutes

The decision focused on interpreting the role of a special administrator under Maryland’s law of trusts and estates. Maryland law authorizes a court to appoint a special administrator “when necessary to protect property” before a personal representative is appointed or upon the termination of a personal representative and before a successor personal representative is appointed. (Md. Code Ann., Est. & Tr., Section 6-401(a).)

The statute provides that the special administrator’s duties are to “collect, manage and preserve property and account to the personal representative upon his appointment.” The special administrator “has all powers necessary to collect, manage, and preserve property,” as well as “the other powers designated from time to time by court order.” The statute further provides that the special administrator “shall assume all duties unperformed by a personal representative imposed under

Title 7, Subtitles 2, 3, & 5 of this article....” Subtitle 4 of Title 7, notably excluded from the list of a special administrator’s duties, lists many specific powers of a personal representative, including the power to “prosecute, defend or submit to arbitration actions, claims or proceedings ... for the protection or benefit of the estate....”

Court Order Needed for Lawsuit

Concluding that the statute is ambiguous as to whether a special administrator may defend an estate in litigation, the court turned to the decisions of Maryland’s state courts. Noting that the Court of Appeals (Maryland’s highest state court) hadn’t addressed the scope of the powers of a special administrator, the court found *in dicta* of the Court of Special Appeals (Maryland’s intermediate court) to be persuasive on the issue. In the relevant case, *Banashak v. Wittstadt*, 893 A.2d 1236 (Md. Ct. Spec. App. 2006), the Court addressed whether a special administrator could recover attorney fees for defending his position as special administrator where he wasn’t authorized by court order to engage in litigation. In *Banashak*, the Court noted that a special administrator replaces a personal representative when estate administration shifts from cooperative to combative. In such a situation, a special administrator may favor one party over another; therefore, his discretionary authority is statutorily curtailed, and the court will adopt a more active role in the administration of the estate. The Court based its reasoning, in part, on the statutory omission of the duties and powers of Subtitle 4 from the role of a special administrator and concluded that a special administrator may only sue or be sued when authorized to do so by court order.

Takeaways

For those practitioners in Maryland, the case involves an interesting (non-binding) interpretation of the statutes governing estate administration. For those practicing outside of the great state of Maryland, the case is essentially a cautionary tale on prioritizing creditors. Under 31 U.S.C. Section 3713, an executor of an insolvent estate is personally liable for payments made to creditors, other than the federal

government if an unpaid claim is due to the federal government. Assuming all assets of Pate's estate were distributed to creditors (and not improperly distributed to beneficiaries), the representative of his estate would then be personally liable for Pate's outstanding income tax bill to the extent payments were made to creditors other than Uncle Sam. For reasons not addressed in this decision, the government withdrew the claim against O'Brien individually and pursued the claim only in his representative capacity. However, the vast majority of clients acting for an estate with insufficient funds to compensate all creditors will be well-served by a reminder to prioritize outstanding federal taxes.

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