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TOPIC: Misguided Change to Estate Plan Leads to Family Fight

CITATION: *Castellotti v Free*, 2016 NY Slip Op 01625 (App. Div. March 8, 2016).

SUMMARY: The mother of two adult children, a son and a daughter, changed her estate plan to leave all wealth to her daughter alone. Her purpose was to protect any inheritance from her son's soon-to-be ex-wife. At about the same time, the two children allegedly negotiated an oral agreement under which the son would pay the estate taxes associated with the mother's assets at her death, and in return the daughter would share all the inherited assets she received from their mother with the son.

After the mother's subsequent death, the son paid the estate taxes. However, his sister refused to share the assets from their mother's estate. The son sued. The motion court dismissed the son's complaint, but in this decision the appellate court allowed his claims of unjust enrichment and equitable estoppel to continue.

RELEVANCE: Life insurance and financial professionals may have clients who are inclined to manipulate a beneficiary designation so it's just one child, *trusting* the named beneficiary to treat the other kids fairly. Even though the fight in this case is about a will change—not a beneficiary change—the modification between the children in the post-death plan ultimately led to the court fight.

In this case, the change in the estate plan was motivated by one of the prospective heirs' impending divorce. Clients can be tempted to try shortcut changes to beneficiary designations or estate plans in other situations as well. For example, assume the insured wants his minor child to be beneficiary of a life policy, but doesn't want to go to the trouble of creating a trust and naming a trustee to act as fiduciary. The insured might decide to name his sister as the direct beneficiary, whom he presumes will be the child's guardian and act in the child's interest. That strategy would expose life proceeds intended for the child to the beneficiary's personal creditors or other loss due to a lack of written fiduciary rules.

In the *Castellotti* case, the insured could likely have achieved her estate planning objectives by leaving assets to her son in trust. Instead, she apparently trusted her daughter to do "the right thing" without creating a complementary legal structure—but her children ended up in court asking strangers to decide what was intended.

It is up to a professional agent to be the voice of caution when a client insists on pursuing a course of action that has inherent risks that the client has overlooked.

FACTS: This action involves a family dispute between plaintiff Peter Castellotti and his sister, defendant Lisa Free. Before her death, the parties' late mother, Madeline Castellotti, removed Peter from her will, leaving Lisa as sole beneficiary.

Madeline was the sole shareholder of a successful business in Manhattan. In February 2003, prior to Madeline's death, Peter brought a divorce action against his then-wife, Rea. After the divorce action was filed, Madeline, who was seriously ill, decided to change her will to remove Peter as 50% beneficiary of her estate, and instead make his sister Lisa the sole beneficiary. Madeline made the change because she disliked Rea, and wanted to ensure that Rea would not benefit in the divorce action from any of Madeline's assets.

In June 2004, Madeline passed away and, pursuant to her will, Lisa received all of Madeline's probate assets, including the business interest.

In 2004, before Madeline's death, Peter and Lisa allegedly entered into an oral agreement whereby Peter agreed to pay Madeline's estate taxes with his share of Madeline's life insurance proceeds. In return, Lisa agreed to give Peter 50% of the inherited assets upon the finality of his divorce, and 50% of the income and proceeds generated from the assets before the divorce was final. Lisa also agreed to name Peter as sole beneficiary of a life insurance policy on her life valued at no less than $5 million, and to maintain that policy until the assets were physically transferred to Peter. The agreement was allegedly confirmed by Peter and Lisa after Madeline's death.

In February 2005, Peter paid Madeline's estate taxes with his share of proceeds from a life insurance policy on Madeline's life. After Peter's divorce became final in November 2008, Lisa failed to transfer 50% of the inherited assets to Peter. Lisa also stopped sharing the income from the business with Peter.

In 2005, Lisa applied for a $5 million insurance policy on her life, naming Peter as sole beneficiary. Peter paid the premiums for the policy. The policy was maintained until May 2012, when Lisa refused to sign the renewal documents and let the policy lapse.

The complaint contained two causes of action for breach of contract. In the first, Peter alleged that, although *he* fully complied with the oral agreement by paying Madeline's estate taxes, Lisa breached the contract by failing to transfer any of the assets to Peter or provide him with 50% of the income and proceeds generated from the assets. The second cause of action brought by Peter alleged that Lisa breached the agreement by failing to renew the $5 million life insurance policy.

The motion court properly dismissed these claims as being barred by the *statute of frauds*. The statute of frauds is a technical legal concept requiring certain kinds of contracts to be in writing in order to be enforceable in a court.

The appeals court ruled that although the breach of contract causes of action was barred by the statute of frauds, Peter's complaint sufficiently stated a claim under the doctrine of *promissory estoppel*. The elements of a promissory estoppel claim are:

- (i) a sufficiently clear and unambiguous promise,
- (ii) reasonable reliance on the promise, and
- (iii) injury caused by the reliance.

The appeals court said that the allegations of the complaint show an unambiguous promise by Lisa to provide Peter with half of the income generated by the assets during his divorce case, to transfer half of the assets upon the finality of the divorce, and to name Peter as sole beneficiary of a life insurance policy of at least $5 million.

Peter detrimentally relied on those promises by paying a substantial amount in taxes for Madeline's estate, and suffered resulting monetary damages.

Thus, the appeals court sent the case to trial to determine whether Peter could prove his claims.

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