

# Trust & Estate Litigation Advisory for 7/12/2011

## Accord and Satisfaction is Not Available to Trustees, Since They Cannot Seek Exoneration From Liability as a Condition of Making a Distribution

It is not uncommon for fiduciaries to seek an acknowledgment of **final distribution** and a release associated therewith. Obtaining such a release is permitted under Probate code section 16004.5 so long as it is given voluntarily by the beneficiary. However, a trustee cannot condition a distribution on receipt of such a **release**. Where a trustee seeks an accord and satisfaction, he could be held liable for requiring exoneration from liability.

In ***Bellows v. Bellows*** decided June 9, 2011 the First Appellate District, the court found that a claimed “**accord and satisfaction**” was invalid and not permitted under Probate Code **section 16004.5**. Following their mother’s death in 2008, beneficiary Donald Bellows demanded an accounting from his trustee brother, Frederick Bellows. The Superior Court of Mendocino County ordered that Frederick provide the accounting and pay one-half of the trust assets to his brother within ten days. Frederick did so, tendering a check in the amount of \$30,376. Donald refused the check after reviewing the accounting, claiming that Frederick had wrongfully deducted his attorneys’ fees before dividing the trust estate. Frederick re-tendered a check that included one-half of the attorneys fees previously deducted and enclosed a letter stating that Donald was authorized to negotiate the check if he “signed and returned the enclosed receipt of final distribution.” Donald cashed the check, but did not sign the receipt. Donald then moved to compel a further accounting of the trust during the time period Frederick acted as trustee during their mother’s lifetime. Frederick opposed, claiming the letter sent to Donald acted as an accord and satisfaction. The trial court agreed, but the Court of Appeal reversed.

The Court of Appeal held that Probate Code section 16004.5 supersedes the provisions of the Commercial Code relating to an accord and satisfaction, and precludes its use. Section 16004.5 enacted in 2003 is intended to protect beneficiaries from just this situation: “what the trustee may not do is extract from the beneficiary an agreement to accept a compromise concerning a disputed issue as a condition of receiving a distribution to which the beneficiary is unquestionable entitled. A trustee may not under any circumstances condition a required distribution on an involuntary release of liability.” Under section 16004.5 a trustee is permitted to seek a *voluntary* release from a beneficiary. Where there is a dispute as to whether a beneficiary is entitled to a distribution, the trustee’s remedy is *not* to force his decision on a beneficiary through an accord and satisfaction or a distribution conditioned on a release. Rather, the trustee’s remedy is a **petition for instructions** before the Court under section 17200.

Also in this decision, the Court of Appeal confirmed that an action may be **abated** under Probate Code section 854 only if the petition before the court relates to a transfer or conveyance of property under Part 19 of Division 2. In this case, Donald had petitioned the court for an accounting under section 17200 for an account of his mother’s trust during the time period she was alive. Donald also had a pending civil action against his brother Frederick for financial elder abuse alleging Frederick had diverted funds inherited by his mother into accounts naming him as beneficiary on death.

Frederick asked the court to abate the probate petition for accounting in light of the pending civil action. The trial court agreed. The court on appeal reversed, confirming that an action may be abated under section 854 only if it relates to a conveyance or transfer of property. Donald's petition under section 17200 for an accounting could not be abated.

**The Take Away:** Where a beneficiary is unquestionably entitled to a distribution, a trustee cannot extract a release from that beneficiary in exchange for the distribution. If a dispute exists as to the amount of the distribution, the trustee's remedy is to seek instruction from the court. Accord and satisfaction is not available to a trustee. Abatement of an action is only available with regard to petitions to **quiet title** under Part 19, section 850 et seq.

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