

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

SELENA E. MOLINA
MASTER IN CHANCERY

LEONARD L. WILLIAMS JUSTICE CENTER
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

Final Report: March 29, 2022
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Timothy S. Ferry, Esquire
Ferry Joseph, P.A.
1521 Concord Pike, Ste. 202
Wilmington, DE 19803

Ruthena Napier
518 W. 3rd Street
Wilmington, DE 19801

Re: *IMO the Estate of Ruby L. Wiggins*,
Register of Wills Folio No. 171196

Dear Counsel and Ms. Napier:

Executors of Delaware estates “stand as fiduciaries and [t]he executor’s duty is to carry out the wishes of the decedent as expressed in the will. Executors also owe a duty of loyalty and care to the estate’s beneficiaries which is aimed at ensuring the proper administration of the decedent’s estate.”¹ Balancing these duties can be difficult for loved ones. Ignoring one’s understanding or belief of how the decedent would have wanted their affairs handled, in favor of the wishes expressed in the decedent’s testamentary documents is easier said than done. Mistakes in administration can—and often do—happen. But when an executor exceeds her

¹ *In re Chambers*, 2019 WL 4110674, at *2 (Del. Ch. Aug. 29, 2019), *adopted* (Del. Ch. 2019) (quotations and citations omitted).

authority and breaches the duties she owes to the estate and its beneficiaries, this Court must provide a remedy.

I attempt to do so here. Although I believe the executrix acted without malice, I find she breached her duties to the estate and its beneficiaries by renting out the decedent's real property and failing to account for the rental income or distribute to the beneficiaries their *pro rata* share. To remedy the harm from her unauthorized actions, I find the executrix should be surcharged as further explained herein. She should also be required to sell the remaining personal property, file a second and proposed final accounting, and work toward distributing and closing the estate. But, as she closes the estate, I find the executrix may deduct certain expenses from the distribution to her niece and nephew, to account for their *pro rata* share of homeowners insurance and property taxes, as explained further herein.

I. BACKGROUND²

The issues before me arise in the estate of Ruby L. Wiggins (the "Decedent") who passed on November 26, 2018.³ The Decedent was survived by two daughters,

² The facts in this report reflect my findings based on the record developed at an evidentiary hearing held on November 5, 2021. *See* Docket Item ("D.I.") 29. I grant the evidence the weight and credibility I find it deserves. Citations to the hearing transcript are in the form "Tr. #." The Executrix's exhibits are referred to as Ex. A. *See* D.I. 28 (appending Ex. A).

³ D.I. 3.

Ruthena Napier (the “Executrix”) and Denise James.⁴ She was predeceased by her son Leonard Wiggins, Sr., who was survived by two children Loretta Wiggins Mayo and Leonard Wiggins (together with Ms. Mayo, the “Exceptants”).⁵

The Decedent did not leave distribution of her estate to intestate succession. Rather, on November 3, 2016, the Decedent executed a last will and testament (the “Will”).⁶ In the Will, the Decedent nominated Executrix as fiduciary and devised all her property, including real property located at 102 Ryan Avenue in New Castle (“102 Ryan”) and real property located at 189 Ryan Avenue in New Castle (“189 Ryan”), in thirds to the Executrix, Ms. James, and the Exceptants (collectively, 17% each).⁷ The Will directed that the Decedent’s grandson Carl Napier be permitted to reside in 102 Ryan “for as long as he wishes” and made known the Decedent’s hope that 102 Ryan would remain within her family.⁸ The Decedent did not express the same hopes for 189 Ryan.⁹

⁴ See D.I. 1; D.I. 3.

⁵ D.I. 3.

⁶ D.I. 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

I endeavor now to walk through the administration of the Decedent's estate and concurrent litigation chronologically.

A. 2019

The Will was admitted to probate and letters were issued to the Executrix on January 8, 2019.¹⁰ The Executrix promptly filed (and then amended) her inventory of the estate reflecting the only probate asset as a 2002 Chrysler valued at \$1,500.00 (the "Vehicle").¹¹ The Executrix noted in her inventory how the real property passed and that the Decedent and the Executrix owned two bank accounts collectively valued at \$38,000.00, as joint tenants with right of survivorship.¹²

In June 2019, the Exceptants contacted the Executrix through counsel to express their interest in participating in all decisions related to 189 Ryan.¹³ Per counsel, the Exceptants "wanted to sell the property and get their money, or they wanted to be bought out if the other two owners were not interested in selling."¹⁴ The Executrix communicated with the Exceptants' counsel about the Exceptants' interests and countered that the Exceptants should pay their share of certain expenses

¹⁰ D.I. 3.

¹¹ D.I. 5; D.I. 6.

¹² D.I. 1.

¹³ Tr. 29:19-22.

¹⁴ Tr. 13:16-18.

related to 189 Ryan.¹⁵ Counsel invited the Executrix to send him documentation for the expenses, which he did not receive until much later in this litigation.¹⁶

Despite these communications, the Executrix acted unilaterally to rent 189 Ryan. The Executrix felt compelled and empowered to do so because she believed the Decedent wanted 189 Ryan to stay in the family and, if a family member needed a place to stay, the Executrix continues to believe firmly the Decedent would have wanted 189 Ryan made available to them.¹⁷ Acting in the spirit of her mother, in June 2019, the Executrix agreed to rent 189 Ryan to her niece and her niece's husband (the "Tenants") beginning in August 2019.¹⁸ The Executrix and the Tenants agreed to rent of \$800.00 per month and, in 2019, the Tenants paid, and the Executrix received, full rent for September, October, November, and December.¹⁹

B. 2020

In January 2020, the Executrix filed her first and proposed final accounting of the estate (the "Accounting").²⁰ The Accounting continued to list the Vehicle as the

¹⁵ Tr. 13:19-20.

¹⁶ Tr. 13:19-24. *See* Ex. A.

¹⁷ D.I. 28. *See also* Tr. 47:19-48:5.

¹⁸ Tr. 24:4-12.

¹⁹ Tr. 34:8-11

²⁰ D.I. 9. The Accounting was a revision of an earlier submission, which did not properly balance. *See* D.I. 8.

only estate asset. It reflected, however, that the Executrix contributed \$10,029.00 to the estate to cover the estate's expenses.²¹ Those expenses, as reflected on the Accounting were Register of Wills fees of \$189.00 and funeral expenses of \$11,340.00.²² Notably, the Accounting did not include any of the rental payments received in 2019, nor any information about the disposition of the Vehicle. Rather, the Accounting reflected a final balance of \$0.00.

On March 23, 2020, the Exceptants filed exceptions raising two concerns: (1) failure to list the rental income and (2) lack of clarity regarding the disposition of the Vehicle (the "Exceptions").²³ The Executrix filed a written response to the Exceptions dated May 19, 2020, representing: "No income was reflected [for 189 Ryan] because no income was received due to the condition of the home at 189 Ryan Avenue."²⁴ The Executrix made this statement despite having received \$800.00 each month from September 2019 through December 2019. Regarding the Vehicle, the Executrix represented that it would be sold.²⁵

²¹ The Executrix explained she paid for the expenses in full from the survivorship accounts, because her mother had verbally directed her to do so before she passed. *See* Tr. 44:11-17.

²² D.I. 9.

²³ D.I. 10.

²⁴ D.I. 13.

²⁵ *Id.*

Even though she knew the Exceptants continued to have concerns about the rental agreement, the Executrix allowed the Tenants to remain in 189 Ryan throughout 2020.²⁶ But, in 2020, the Tenants did not pay, and the Executrix did not collect, any rent.²⁷

C. 2021

Payments resumed in January 2021.²⁸ That same month, on January 25, 2021, we had our first hearing on the Exceptions. After an hour or so of argument and testimony, the shine of a potential resolution burned bright. All parties agreed to adjourn the proceeding and explore mediation. To assist, I made a formal referral to mediation and ultimately selected and appointed a mediator.²⁹

While the parties attempted to resolve their disputes, the Tenants paid rent to the Executrix for January, February, March, April, May, June, and August of 2021.³⁰ The Executrix also decided, in March 2021, to begin sending the Exceptants their share of some of the rental proceeds. Altogether the Executrix paid the Exceptants

²⁶ See Tr. 34:20-35:4.

²⁷ Tr. 34:20-22.

²⁸ Tr. 36:9-14.

²⁹ See D.I. 18; D.I. 21; D.I. 22.

³⁰ Tr. 42:14-16.

\$1,866.66.³¹ But any hope those payments may have generated was snuffed, the Executrix failed to make any further payments, and mediation was unsuccessful.

We resumed for a final evidentiary hearing on November 5, 2021 (the “Hearing”). At the Hearing, the Executrix admitted to receiving a total of \$8,800.00 in rental proceeds.³² The Executrix also admitted that she failed to collect rent for seventeen (17) months.³³ The Executrix further reiterated that the Vehicle would be sold, but admitted she still had not taken any steps to sell it.³⁴ The Executrix explained she did not transfer title of the Vehicle out of the Decedent’s name “because it doesn’t have tags on it, it doesn’t have insurance. It’s just there.”³⁵ “There,” Ms. James clarified, is in the driveway of 102 Ryan.³⁶ As it sits there, per

³¹ The Executrix testified that she and her sister also gave the Exceptants each \$4,000.00. Tr. 24:24-25:3. But she confirmed the gifts had no connection to the rental income or pending claims. *Id.*

³² Tr. 42:1-22.

³³ *Id.*

³⁴ Tr. 50:1-16.

³⁵ Tr. 50:5-9.

³⁶ Tr. 65:1-4. Ms. James raised concerns about additional vehicles being purchased and titled in the name of the estate, after the Decedent passed. *See* Tr. 60:10-61:19. As I explained to Ms. James at the Hearing, those concerns are far outside the scope of the Exceptions.

the Executrix, it “is old, and it needs so much work on it” it should probably be junked.³⁷

At the end of the Hearing, I directed the parties to file written closing statements.³⁸ I took this matter under advisement upon the Executrix’s submission on November 29, 2021.³⁹ On February 24, 2022, I issued a draft report, to which no exceptions were taken, and this is my final report.⁴⁰

II. ANALYSIS

“[T]he Delaware Constitution provides that when exceptions are heard by the Court, ‘the account shall be adjusted and settled according to the right of the matter and the law of the land.’”⁴¹ Under Court of Chancery Rule 198, “the personal representative bears the initial burden of demonstrating that the account was properly prepared.”⁴² “That burden shifts, however, where the exceptant seeks a

³⁷ Tr. 50:19-21.

³⁸ Tr. 71:16-23.

³⁹ See D.I. 28. The Executrix’s submission attempted to inject additional facts into the record and addressed issues not subject to argument and testimony at the Hearing. I limit my report to the factual record developed, and requests for relief articulated, at the Hearing.

⁴⁰ This report makes the same substantive findings and recommendations as my draft report. See D.I. 30.

⁴¹ *In re Rich*, 2013 WL 5966273, at *1 (Del. Ch. Oct. 29, 2013) (quoting Del. Const. art. IV, § 32, ¶2, cls. 3 & 4).

⁴² *Id.*

surcharge. In those instances, the exceptant ‘must demonstrate affirmatively that a surcharge is warranted.’⁴³ “A surcharge is, essentially, a sanction against a personal representative requiring the personal representative to fund (or refund) the estate because the personal representative improperly or poorly handled the estate, engaged in self-dealing, or improperly depleted estate assets.”⁴⁴

Administrators of Delaware estates serve in a fiduciary capacity and are “responsible for compiling the inventory of Decedent’s estate, managing the Decedent’s assets, and paying Decedent’s debts.”⁴⁵ Administrators further have “a duty of loyalty requiring [them] to act, at all times, in the best interests of the estate[.]”⁴⁶ But, the “duties and powers [of an] executor are limited to the administration of the *personal* estate, unless extended by the will to real estate.”⁴⁷ Real estate, instead, passes upon the owner’s death to the named beneficiaries or intestate heirs.⁴⁸

⁴³ *In re Marvel*, 2018 WL 4762379, at *2 (Del. Ch. Oct. 1, 2018) (quoting *In re Stepnowski*, 2000 WL 713769, at *1 n.1 (Del. Ch. May 2, 2000)).

⁴⁴ *In re Clark*, 2019 WL 3022904, at *7 (Del. Ch. July 9, 2019).

⁴⁵ *Dixon v. Joyner*, 2014 WL 3495904, at *3 (Del. Ch. July 14, 2014).

⁴⁶ *In re Rose*, 2019 WL 2996887, at *3 (Del. Ch. July 9, 2019).

⁴⁷ *Rambo v. Rumer*, 1866 WL 1051, at *4 (Del. Ch. Feb. 1866).

⁴⁸ *See Dixon*, 2014 WL 3495904, at *4 (“[T]itle to real property passes by operation of law upon an owner’s death”).

The Exceptants argue that the Executrix improperly asserted control over 189 Ryan and her share of the Decedent's estate should be surcharged \$5,333.34, which represents one-third of the twenty-seven (27) months of \$800.00 rent, which the Executrix did, or should have, received, less the \$1,866.66 already paid to the Exceptants. The Exceptants further request that legal fees and expenses be shifted, as an additional surcharge against the Executrix's interest in the estate, in the amount of \$6,302.00. The Exceptants also seek an order compelling the Executrix to sell the Vehicle and file a second and proposed final accounting disclosing the sale proceeds and the rental income she received.

The Executrix argues the Decedent would have wanted her to use her authority to rent 189 Ryan to the Tenants and otherwise make the property available to family members in need. But the Executrix seems to concede the Exceptants are entitled to their one-third share of the rental income. She argues, however, that the Exceptants' share should be reduced to reflect their *pro rata* contribution to the Decedent's funeral expenses, the Register of Wills fees, the Vehicle's insurance, and expenses for 189 Ryan.

I address these matters in turn.

A. The Rental Income

No matter how well intentioned the Executrix's actions, she did not have authority to rent 189 Ryan. The Decedent knew how to express her wishes for use and enjoyment of her property and did so in the Will, where she provided a life estate in 102 Ryan, and explained she wished for 102 Ryan to remain in her family. But those statements were expressly limited to 102 Ryan; the Decedent did not express any such wishes for 189 Ryan.⁴⁹ Further, even accepting the Executrix's argument that she had the authority to enter into the lease agreement on behalf of the estate, she abused that claimed authority by failing to account for the rental income on the Accounting. Viewed under either light, the Executrix breached her duties to the estate and its beneficiaries.

Because the Executrix purported to act on behalf of the estate, I find she should be required to pay the rental income into the estate.⁵⁰ That will create a pool of money, which would then be distributed to the estate's beneficiaries, including the Executrix. But I find the Executrix's share of the estate should be surcharged,

⁴⁹ To the extent the Executrix felt justified in leasing the property as a joint owner, she has now conceded "there's no reason for [her] to disagree with" the Exceptants being involved with rental agreements for 189 Ryan "because they're part owners[.]" Tr. 30:2-8.

⁵⁰ The Executrix testified she received the rent in cash and, at the Hearing, she "still ha[d] those funds[.]" Tr. 43:14-15. I expect—and hope—nothing has changed.

because she proceeded to rent 189 Ryan, on her own terms, and decide if and when to accept payments without consulting the Exceptants or seeking their consent. This is inappropriate not only because the Executrix did not have authority to make these decisions but also because she did so knowing the Exceptants were co-owners of the property and wanted to be involved in rental decisions. The Executrix should not be rewarded for acting against the known interests of her co-owners and the beneficiaries of the estate.

Setting the amount of the surcharge is difficult. “[S]urcharges are normally tailored to remedy the specific harm caused, rather than to punish the personal representative.”⁵¹ There appears to be no dispute that \$800.00 per month was reasonable rent. But the Executrix failed to collect that reasonable rent for seventeen (17) months. This provided no benefit to the estate and resulted, instead, in a loss of potential income of \$13,700.00. I find the Executrix should be surcharged one-third of the uncollected rent in the total amount of \$4,566.67, in favor of the Exceptants.

⁵¹ *In re Clark*, 2019 WL 3022904, at *7.

B. The Vehicle

The Executrix has been saying, since at least May of 2020, that the Vehicle will be sold.⁵² Yet she has failed to take any steps to sell it.⁵³ This is particularly concerning because the Decedent, through the Will, left all her property in three equal shares (to the Executrix, Ms. James, and the Exceptants, jointly). The Vehicle cannot be physically divided into three chunks and must be sold, and the proceeds divided to carry forth the Decedent's wishes.

Unlike real property, vehicles do not transfer upon a decedent's death. Rather, they become property of the estate and must be administered appropriately by the administrator. The Executrix failed to act with alacrity to convert the Vehicle into cash and cannot now seek to hold the Exceptants responsible for any portion of the insurance fees she incurred. Further, the Executrix should be required to sell the Vehicle within thirty (30) days of this becoming a final order of the Court. Any proceeds will be part of the pool available to the beneficiaries, subject to the surcharge and deductions explained herein.

⁵² D.I. 13.

⁵³ Tr. 16:12-16.

C. The Executrix's Requested Reimbursement

The Executrix asks that the Exceptants be required to contribute their one-third share of funeral and estate expenses and expenses for 189 Ryan. I find her request should be granted in part and denied in part.

First, the Exceptants will not be compelled to contribute to the funeral and estate expenses.⁵⁴ But I do find equity dictates a reduction in the Exceptants' share of the estate to cover certain expenses of 189 Ryan.⁵⁵ Specifically, the Executrix presented documentation and testimony that homeowners insurance for 2019, 2020,

⁵⁴ At best, the Executrix's request demonstrates her misunderstanding of the estate process. At worst, it is retaliatory and inappropriate. The Executrix paid the mortuary and cremation bill by certified check from the joint account she shared with the Decedent. Tr. 44:11-22. The Executrix explained although the funds in the joint bank account are now hers, the Decedent instructed her to use those funds to pay for the funeral expenses. Tr. 46:1-11. The Executrix followed those instructions, voluntarily paid the bill, reflected her payment as an estate contribution on the Accounting, and cannot now reverse course. This is particularly true because the time to assert claims against the estate lapsed years ago. *See* D.I. 4 (publication notice explaining demands were due by July 26, 2019).

The same is true for the Register of Wills filing fees. The Executrix paid the Register of Wills filing fee in cash on January 8, 2019, from her own funds. She did so willingly and voluntarily and reflected her payment as an estate contribution on the Accounting. D.I. 9.

⁵⁵ *See In re Holmes*, 2000 WL 1800127, at *4 (Del. Ch. Nov. 21, 2000), *aff'd*, 787 A.2d 100 (Del. 2001) ("A tenant in common who pays the debts or obligations for the benefit of joint property is entitled to contribution from the other tenant in common for his proportionate part of the amount paid."). *See also Mougianis v. Embassy Realty Co.*, 112 A.2d 844, 847 (Del. Ch. 1955) (finding one cotenant owed the other cotenant for rents received from third parties for use of a jointly owned lot less a credit for any taxes and necessary expenses).

and 2021 was \$1,318.36.⁵⁶ The Exceptants' *pro rata* share was \$439.45 and should be deducted from the Exceptants' share of the estate. The Executrix also presented sufficient evidence that property taxes were \$2,249.25.⁵⁷ The Exceptants' *pro rata* share was \$749.75 and should be deducted from their share of the estate.

D. Attorneys' Fees

The Exceptants seek to shift their attorneys' fees and expenses to the Executrix. The so-called American Rule dictates that each party is responsible for its own legal fees.⁵⁸ But this Court does recognize several exceptions allowing fee shifting, including the bad faith conduct of a party to the litigation⁵⁹ and where fees are authorized by statute or common law. Fees may also be shifted to an estate if the exceptions benefitted the estate.⁶⁰

Initially, I find the Executrix's conduct does not raise to the level of egregiousness necessary to shift fees under the bad faith exception. I further find

⁵⁶ See Ex. A.

⁵⁷ *Id.*

⁵⁸ *Arbitrium (Cayman Is.) Handels AG v. Johnston*, 705 A.2d 225, 231 (Del. Ch. 1997).

⁵⁹ *Id.*

⁶⁰ See, e.g., *In re Pusey*, 1997 WL 311503, at *4 (Del. Ch. May 23, 1997) (referencing a body of case law that permits exceptants to have their attorneys' fees and expenses covered by the estate if the exceptions benefitted the estate).

the Exceptants have failed to demonstrate that their fees should be shifted to the estate for a benefit conferred.

“Ordinarily the fees paid to an attorney representing one of the beneficiaries are paid by that individual, not the estate.”⁶¹ But when “challenges are made on good grounds, they potentially benefit the estate as a whole by ensuring that it will be administered in the manner intended by the testatrix, . . . and, therefore, the costs associated with the challenge ought to be borne by the estate.”⁶² And, if those challenges “significantly aided in bringing about a resolution to the conflicts regarding the estate to the overall benefit of the heirs, that attorney’s fees ought to be considered an expense of administering the estate.”⁶³

Shifting under this exception depends on whether the work of Exceptants’ counsel “was done to benefit their clients as individuals” and an assessment of “how much [the work] contributed to the resolution of the estate for the benefit of [all] heirs.”⁶⁴ I find the Exceptants’ challenge was primarily driven by their individual interests in 189 Ryan and the estate. The Exceptants’ filings and presentations

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

reflect an interest in receiving their fair share, not an overarching concern for proper or efficient administration. Thus, I recommend the request for fee shifting be denied.

E. Final Accounting and Distribution

Within sixty (60) days of this becoming a final order of the Court, the Executrix should be required to file a second and proposed final accounting reflecting the rental income and proceeds from the sale of the Vehicle. Once the accounting is approved, the Executrix should distribute the estate in thirds to the Executrix, Ms. James, and the Exceptants (collectively), with the surcharge and deductions explained herein. The Exceptants' share should be further reduced by \$1,866.66, the share of rental income they already received from the Executrix.⁶⁵

III. CONCLUSION

For the foregoing reasons, I find the Executrix should be surcharged, the Exceptants' share of the estate should be reduced, and the Executrix should be ordered to sell the Vehicle, pay the sale proceeds and all rental income into the estate, and file a second and proposed final accounting. The Exceptants' request for fee

⁶⁵ Assuming the Vehicle is sold for \$1,500.00, the estate should start at \$10,300.00. Equal thirds would be \$3,433.33. With the deductions recommended herein, the Exceptants' share would be reduced to \$377.48, and the remaining shares increased to \$4,961.26. The recommended surcharge would then reduce the Executrix's share to \$394.59 and increase the Exceptants' share to \$4,944.15. Ultimately, the estate would pass: \$394.59 to the Executrix, \$4,961.26 to Ms. James, and \$4,944.15 to the Exceptants.

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shifting should be denied. This is my final report and exceptions may be filed under

Court of Chancery Rule 144.

Respectfully,

/s/ Selena E. Molina

Master in Chancery