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Decedents' Estates And Trusts—Residence Of Foreign Automobile Indemnity Carrier Deemed to Be County Where Policy Was Issued For Purposes Of Conferring Jurisdiction Upon Surrogate's Court

James P. Manak

of the promisee to the third party. This is the case here because of the relationship of father and daughters. *Seaver v. Ransom*[7] stated that the plaintiff could recover at law because the promisee had in substance bequeathed the promise to the plaintiff. Therefore, any release of all claims and rights under the terms, provisions, conditions, and trusts of the father's will would release the mother from any contractual obligation to convey the property to her daughters. There is some merit to the majority opinion; however, it is not difficult to see that the Appellate Division's decision could have reasonably been affirmed had the Court been so inclined.

B. D. K.

RESIDENCE OF FOREIGN AUTOMOBILE INDEMNITY CARRIER DEEMED TO BE COUNTY WHERE POLICY WAS ISSUED FOR PURPOSES OF CONFERRING JURISDICTION UPON SURROGATE'S COURT

This case concerns the issuance of ancillary papers of administration with will annexed to continue an automobile cause of action against the estate of decedent Riggle, a former resident of Illinois, commenced during his lifetime. The respondent is a resident of Nassau County, New York. She was a passenger in an automobile owned by her husband and driven by Riggle in the State of Wyoming when an accident occurred in which she was injured. The automobile was covered by a liability policy that had been issued in Nassau County to her husband. An "additional insured" provision obligated the insurer to defend the driver. While Riggle was alive respondent commenced a negligence action against him by personal service of summons and complaint in New York. Subsequently he died and the action could not be continued in personam against the Illinois executor of his estate due to the federal constitution.[1] It was necessary for an ancillary administrator with will annexed to be appointed and served in New York. This could only be done if Riggle had left some property in the State, and a judgment rendered against Riggle's estate would have to be executed against such property. It was claimed that the personal obligation of the indemnity insurance carrier to defend him as an additional insured under the policy was personal property in the nature of a debt left by him in New York State. The Surrogate's Court of Nassau County issued the letters,[2] and an appeal was taken to the Supreme Court, Appellate Division, which affirmed.[3] Upon appeal to the Court of Appeals, *held*: that the insurer, incorporated in Illinois, but authorized to do business in New York State, is to be considered

7. 224 N.Y. 233, 120 N.E. 639 (1918).

1. See McMaster v. Gould, 240 N.Y. 379, 388, 148 N.E. 556, 559 (1925): "[T]he constitutional requirement of due process of law precludes the legislature from providing generally for continuing actions for judgments in personam against the foreign executors or administrators of deceased defendants."

2. 18 Misc. 2d 988, 188 N.Y.S.2d 622 (1959).

3. 11 A.D.2d 51, 205 N.Y.S.2d 19 (2d Dep't 1960).

a resident of the State and county where the policy is issued, and where both the owner of the automobile and the injured plaintiff reside. This brings the policy of automobile insurance within the jurisdiction of the Surrogate's Court, where such facts are present. *In the Matter of Estate of Riggle*, 11 N.Y.2d 73, 181 N.E.2d 436, 226 N.Y.S.2d 416 (1962).

According to section 47 of the Surrogate's Court Act, jurisdiction may be conferred upon a Surrogate's Court if there is a "debt owing to a decedent by a resident of the state," and such debt is regarded as personal property situated within the county where the debtor resides. It was the respondent's contention that Riggle's debtor, the insurer, resides in Nassau County. On the other hand it was argued by the estate that the insurer, as a foreign corporation with its principal place of business in Illinois, could not be a "resident of the state" merely because it issued a policy of insurance in Nassau County, such that it could be served and its policy of insurance brought within the jurisdiction of the Surrogate's Court. It has long been the view held by the United States Supreme Court[4] and the New York Court of Appeals[5] that a life insurance policy is personal property within the state when it is issued by a foreign insurance company authorized to do business in the state. As such the residence of the debtor is the place of issuance of the policy. It is the rule in New York that the residence of the debtor is the place where the asset is situated, not where the creditor resides.

The situation presented by automobile liability insurance has been a vexing one for the various states. The insurers are ordinarily authorized to do business in many states. When the residence of the insurer is considered to be the place where the asset is situated, it follows that most insurance companies would be considered as having residences in the various counties of several states—wherever the policy is issued and resides. This has not always been considered a wise or just stand, chiefly because of the sometimes alleged "unfairness" to the insurance companies. In situations similar to that presented by the instant case, ancillary letters have been refused by the courts of Colorado, Kansas, Michigan and New Jersey.[6] Other states, however, have issued ancillary letters in such cases.[7]

By regarding the residence of the debtor as the place where the asset is situated (Nassau County), instead of having its situs where the creditor resides (Illinois), the Court realized that it would be more convenient for a

4. New England Mut. Life Ins. Co. v. Woodworth, 111 U.S. 138 (1884).

5. Morgan v. Mutual Benefit Ins. Co., 189 N.Y. 447, 82 N.E. 438 (1907).

6. See Wheat v. Fidelity & Cas. Co., 128 Colo. 236, 261 P.2d 493 (1953); In the Matter of Rogers' Estate, 164 Kan. 492, 190 P.2d 857 (1948); see also Olson v. Preferred Auto Ins. Co., 259 Mich. 612, 244 N.W. 178 (1932); In the Matter of Roche's Estate, 16 N.J. 579, 109 A.2d 655 (1954).

7. See, e.g., Furst v. Brady, 375 Ill. 425, 31 N.E.2d 606 (1940); Gordon v. Shea, 300 Mass. 95, 14 N.E.2d 105 (1938); In the Matter of Vilas, 166 Or. 115, 110 P.2d 940 (1941); Davis v. Cayton, 214 S.W.2d 801 (Tex. Civ. App. 1948).

plaintiff with a worthy claim, and in a like situation to that of respondent, to bring his action. The primary objection of the minority opinion of Judge Fuld is that the statute refers to the debt of a *domestic corporation* as personal property within the county where the principal office of the corporation is situated. No mention is made of foreign corporations in section 47. It was argued by the minority and the appellant (essentially the real party in interest here is the insurer) that to decree jurisdiction for the Surrogate's Court with regard to foreign corporations on the facts of the instant case is an exception to the statute not warranted by its express terms. This would seem to be the inevitable conclusion if no more than a reading of the statute were undertaken. But there is case law to be considered as well, and it is firmly established precedent[8] that leads the Court to answer this objection by pointing out that "an exception appears to have been recognized for the purpose of issuing letters on estates of deceased persons in the case of insurance companies authorized to do business in this State even though incorporated elsewhere, at least where the policies have been issued in this State."[9]

It thus appears that the instant case is firmly grounded upon precedent and that this exception to the statutorily defined jurisdiction of the Surrogate's Court is a narrow one and serves a worthy purpose. It has been held in the past that a foreign corporation could not be considered a resident within the meaning of the statute, even though it was authorized to do business in the state.[10] But that case did not involve an insurance policy issued in the state and could not, therefore, have been brought within the established exception. So long as the case law exception to the statutory jurisdiction is confined to cases involving insurance companies and like facts as those presented by the instant case, as the Court has sought to so confine it, there seems no compelling objection to it. By taking the often repeated testimony of the insurance industry itself, as it is distributed through the various public communications media, it would appear that the primary function of the industry is to serve the public. Therefore it seems not unwise or unfair to facilitate such public service by rendering more convenient the means through which individual citizens can press their worthy claims and obtain the benefits that their premiums purchase. Thus the decision of the instant case serves both the public interest and at the same time does not deviate from established precedent.

J. P. M.

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8. Morgan v. Mutual Benefit Ins. Co., supra note 5.

9. In the Matter of Riggle's Estate, 11 N.Y.2d 73, 78, 181 N.E.2d 436, 439, 226 N.Y.S.2d 416, 419 (1962).

10. In the Matter of Cooper's Estate, 32 Misc. 2d 117, 50 N.Y.S.2d 905 (Surr. Ct. 1944).