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**COMPROMISING OF CLAIM BY EXECUTOR OR
ADMINISTRATOR WITHOUT APPROVAL
OF ORPHANS' COURT**

*Blum v. Fox*¹

In this case substituted administrators excepted to the allowance of the administrator's account with reference to an item for the payment of a claim to a person for alleged services rendered to the intestate. The intestate, prior to her death, expressed her desire that all her property be given to said person, who had befriended her for a number of years, nursed her during illness, and provided her with shelter and home. Though no testimony was taken in the Orphans' Court, the inference may be made that the amount paid by the removed administrator was in compromise settlement of a larger demand. The exceptants base their objections to the claim on the ground that it was in payment of an unliquidated claim for alleged services to the decedent which was without merit and was not due and owing to the claimant. They further charge that

²⁴ 97 A. L. R. 617, 620.

²⁵ *Supra* note 1, 153 Md. 235, 241. The Court also considered an interesting point of pleading, *supra* note 1, 153 Md. 235, 244. Since the declaration referred to an instrument under seal "payable to Bertha D. Custis" rather than "payable to the order of Bertha D. Custis," it alleged a "non-negotiable single bill." According to the Court, the general issue pleas of *non assumpsit* and *nil debet* were inapplicable to this declaration and were demurrable; the correct plea should have been *non est factum*, i. e., the general issue plea suited to an action of debt upon a specialty. This is correct as a statement of the common law rules of pleading, but in 1918 the General Assembly amended Md. Code, Art. 75, Sec. 4, so as to abolish the action of debt and extend the action of assumpsit to cover all actions *ex contractu* on sealed as well as unsealed instruments; and further to make *non assumpsit* and *nil debet* the proper general issue pleas in all such actions. Apparently the Court overlooked this statute. See 1 Poe, Pleading and Practice (Tiffany's Ed.) 649, note.

¹ 197 Atl. 117 (Md. 1938).

the payment was made after the Orphans' Court had declined to approve the claim; and that the Orphans' Court did not authorize it, as would have been required by statute.² The Orphans' Court passed an order whereby the payment of the claim was disallowed, and the exception to its inclusion in the administration account was sustained, and the respondent was commanded to pay back to the estate the sum of \$3,000 and to state a new administration account and to pay over to the present administrators all assets belonging to the estate of the deceased. On appeal of the respondent from the order, *Held*: Affirmed.

The primary question in the case to be settled is the liability of an executor or administrator who pays off a claim against the estate of the decedent, which claim has neither been probated nor passed by the Orphans' Court. The point is also raised as to the power and authority of the personal representative to compromise a claim against the estate of the decedent.

Since the Orphans' Court has jurisdiction in the settlement of accounts of administrators and executors, the propriety of the credit claimed is a matter for its decision.³ The general rule is that no administrator may discharge any claim against his decedent, except at his own risk, unless the claim shall be first passed by the Orphans' Court which granted him letters of administration or proved according to the requirements prescribed.⁴

The object of the provision of the statutory sections cited above is to secure the estate from unjust and unfounded claims. An administration account containing allowances not complying with those sections may not be ratified without evidence of this validity. They do not apply to debts incurred by an executor in the course of an administration or in defense of a caveat but only to claims against the decedent. An executor is ordinarily not authorized to pay a claim against his decedent unless the statute^{4a} has been complied with, but if a creditor knows

² Md. Code, Art. 93, Sec. 270.

³ Md. Code, Art. 93, Sec. 256.

⁴ Md. Code, Art. 93, Sec. 86, provides for the proof of a judgment or decree; *Ibid*, Secs. 88, 90, 94, 95 for that of a specialty, bond, note, or protested bill of exchange and bill of exchange, respectively; *Ibid*, Secs. 91 and 92 for proof of a claim for rent and a preferred claim for rent in arrears, respectively; *Ibid*, Secs. 93, 94, 95 for that of any claim on open account; *Ibid*, Sec. 97, for proof of the claim of the administrator; *Ibid*, Sec. 87, for proof of the claim of more than one creditor; *Ibid*, Sec. 89, for that of the claim of an assignee; and *Ibid*, Sec. 86, for any affidavits or depositions taken out of the State.

^{4a} Md. Code, Art. 93, Sec. 85.

that his claim will be contested, or if he cannot procure the proof that is necessary in order to comply with the provisions of that section he may sue the executor at law or in equity as the nature of the claim may authorize, and if he secures a judgment or decree he may participate in the distribution of the estate in the executor's hands, although his claim was not established in the manner required by that section.⁵

When a claim is presented to the Orphans' Court for passage and is disallowed, the claimant is not thereby precluded from suing at law or equity; or, if the claim is allowed or exhibited after proper probate, such allowance or exhibition only operates to protect the executor if he pays the claim. He may still refuse payment.⁶ Where an executor pays a claim in part, an administrator d. b. n. subsequently appointed may dispute the balance of the claim.⁷

The mere passage of a claim by the Orphans' Court or its allowance in an ex parte administration account does not prevent proper parties in interest from contesting it before its payment. The claim's having been passed does not constitute even a prima facie case in its favor.⁸ The executor can sufficiently resist a claim by simply refusing to pay it. He need not contest it before the Orphans' Court.⁹ If a claim is duly passed by the Orphans' Court and the administrator has no reason to question its validity, he is protected in making payment without exacting proof as required by statute.¹⁰

Although the decisions appear to be uniform in laying down the general rule that a personal representative should not pay a claim without the proper decree of the Orphans' Court, there are decisions which hold that the executor may transfer property to the party whom the will directs in anticipation of a proper decree of distribution, such decree being subsequently made.¹¹ The majority of the jurisdictions state that the only way in which distribution can be safely made is in obedience to a decree of the court,

⁵ *Bradford v. Street*, 84 Md. 273, 35 Atl. 886 (1896); *Schnepfe v. Schnepfe*, 124 Md. 330, 335-336, 92 Atl. 891, Ann. Cas. 1916D 988 (1914).

⁶ *Houck v. Houck*, 112 Md. 122, 131, 76 Atl. 581 (1910). Md. Code, Art. 93, Secs. 101, 102, 119.

⁷ *Pole v. Simmons*, 49 Md. 14, 19 (1878).

⁸ *Badders v. O'Brien*, 114 Md. 451, 454, 79 Atl. 917 (1911); *Bantz, Exr. v. Bantz*, 52 Md. 686, 690 (1879); *Strasbaugh v. Dallam*, 93 Md. 712, 715, 50 Atl. 417 (1901).

⁹ *Beachley v. Estate of Bollinger*, 119 Md. 151, 157, 86 Atl. 135 (1912).

¹⁰ *Newcomer v. Beeler*, 116 Md. 647, 650, 82 Atl. 460 (1911); Md. Code, Art. 93, Sec. 87.

¹¹ *In re Peavey's Estate*, 144 Minn. 208, 175 N. W. 105 (1919).

or the audit of an account or statement filed in a manner prescribed by law.¹²

At common law an executor or administrator, having an absolute power of disposal over the whole of the personal effects of the testator or intestate, had authority to compromise or accept any composition or otherwise settle any debt, claim, or thing in regard thereto. This power, as a general rule, still persists as regards the compromising of claims against a decedent's estate. While statutes in some states have been enacted which somewhat restrict this common law power by subjecting the representative's action to court approval,¹³ yet the right of an executor or administrator to compromise a claim against his decedent's estate is still recognized.¹⁴

The Orphans' Court is given the power to authorize and direct any executor, administrator, or guardian to compromise any claim against or in favor of the estate of any decedent or ward, as the case may be, in such manner as the Court may approve. He has however no duty to seek to compel the creditor to accept less than is legally due.¹⁵ If the compromise is in bad faith, or is not for the best interests of the estate, the representative will be denied credit in his account for the expenditure, and the same is true in case of payment of a claim to which there is a valid defense.¹⁶

In *McClusky v. Kalben*,¹⁷ the Court said, quoting from *Badders v. O'Brien*:¹⁸

"This act¹⁹ does not confer upon the Orphans' Court the full powers, with which courts of law and equity are invested, of deciding upon the validity and determining the amount of a creditors claim against the estate of a decedent or ward, but merely the power to authorize and direct an executor or guardian to compromise the claim on such terms as merit the court's approval, without undertaking to determine its legal status or exact amount. The law looks with

¹² In re Kramer's Estate, 255 Pa. St. 595, 100 Atl. 447 (1917).

¹³ Md. Code, Art. 93, Sec. 270.

¹⁴ Atkinson, Wills 659.

¹⁵ In re Pillsbury's Estate, 175 Cal. 454, 166 Pac. 11, 3 A. L. R. 1396 (1917).

¹⁶ *Trevathan's Exr. v. Dee's Exr.*, 221 Ky. 396, 298 S. W. 975 (1927); *Marshall v. Coleman*, 187 Ill. 556, 58 N. E. 628 (1900). As to arbitration in such cases, see Md. Code, Art. 93, Secs. 266-287. See also *Wood v. Tunncliff*, 74 N. Y. 38 (1878).

¹⁷ 167 Md. 479, 175 Atl. 449 (1934).

¹⁸ *Supra* note 8.

¹⁹ Md. Code, Art. 93, Sec. 270.

favor upon the amicable settlement of controversies and the prevention of litigation, and a statute conferring power to effect compromise of claims threatening to involve estates in litigation upon a subordinate tribunal that is fully equipped to determine their precise legal merits is in harmony with the policy of the law, and the exercise of that power when fairly made should be upheld, in the absence of positive error or injustice.''

In *In re Baruth*²⁰ it was held that executors who compromise a claim in good faith, and from a reasonable fear that the litigation may go against them, or that their success therein may prove more costly than a partial surrender, are entitled to credit for the sum paid even though it be subsequently shown that the claim has no foundation.

However, a representative is not entitled, on settlement, to the sums paid out in compromise of a claim where the compromise was not in good faith and for the best interests of the estate, especially where the representative did not seek the court's approval. In the principal case the court said there should be a new accounting and, if the administrator could then show that the settlement was advantageous to the estate, it should be ratified.

²⁰ 62 Misc. 596, 116 N. Y. S. 1125 (1909).