

Forcing the Hand of a Trustee: Interim Distributions

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In *Reznik v. Matty*, the petitioner sought an order compelling the executor and trustee to distribute about \$15,000-\$20,000 to each of the four residuary beneficiaries. The estate held a reasonable amount of assets, including approximately \$96,000 in cash and was the sole shareholder in a company which owned three vacant lots that had been listed for sale for approximately \$560,000. There had already been a previous interim distribution.

Why is the Case Important?

This case sets a precedent for beneficiaries that wish to compel the distribution of assets from the executor through court proceedings. While each case will turn on its facts (and the facts of this case were critical to the outcome), a court may have jurisdiction to compel an executor to make an interim distribution. If the executor does not demonstrate just cause for not making the distribution, he or she may be personally liable for costs of the proceeding.

The Court's Analysis

The petitioners took the position, and the Court agreed, that an assent of the estate may be compelled when it is withheld without just cause. An assent is an acknowledgment by a personal representative that an asset is no longer required for the payment of the debts of the estate.

In the circumstances of this case, where the administrator of the estate had already taken over a decade to distribute assets (apart from one other interim distribution to the beneficiaries) and there was significant value and liquidity, the executor's assent could be compelled. The executor was unable to demonstrate just cause for not making the interim distribution. Consequently, Funt J. ordered a distribution of \$40,000 (\$10,000 to each residuary beneficiary), finding that this was a small portion of the residue of the Estate. The Court also ordered costs of the proceeding against the executor personally.

The respondent argued that the Court lacked jurisdiction to make such an order.

On this point, the Court found it was a court of general jurisdiction, with "all of the powers that are necessary to do justice between the parties" and thus, could grant relief under common law and equity. The Court clarified that there is some confusion between the terms "inherent jurisdiction" and "general jurisdiction". The former is simply an aspect of a courts general jurisdiction. The Court was not subject to supervisory control by any other court except by due process of appeal, and it exercised the full plentitude of judicial power in all matters concerning the general administration of justice within its area.

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