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Case Number 411,2016

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE:	:	
	:	
Estate of Bennie P. Farren	:	No. 411, 2016

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PATRICIA A. MCGLAUGHLIN,	:	
as Successor Trustee of the	:	
Hercules Living Trust and	:	
Beneficiary of the Hercules Living Trust,	:	
	:	
Petitioner Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
ANDREW P. FARREN,	:	
as Executor of the Estate of	:	
Bennie P. Farren under the Will of	:	
Bennie P. Farren, and in his individual	:	
capacity,	:	
	:	
Respondent Below,	:	
Appellee.	:	

APPELLANT'S AMENDED OPENING BRIEF

TUNNELL & RAYSOR, P. A.

/s/ A. Dean Betts, Jr.

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Date: October 17, 2016

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NATURE OF PROCEEDINGS

This litigation began on July 10, 2013 when Andrew Farren ("Andrew"), Executor of the Estate of Bennie Farren, filed a Petition to Sell Land to Pay Debts of the Estate ("Petition to Sell Land") in Chancery Court. On August 19, 2013, Patricia McGlaughlin ("Pat"), devisee and holder of a life estate in possession of the subject land, filed an Answer and Objection to the Petition to Sell. Discovery was completed, and on April 15, 2014, Pat and Andrew cross-moved for summary judgment. The motions were fully briefed. On June 24, 2014, Andrew filed a supplemental submission, and Pat filed her response on August 8, 2014.

Additionally, on February 24, 2014, Pat filed a Petition to Remove Andrew as Executor of the Estate ("Petition to Remove"). Andrew filed an Answer on March 20, 2014. On July 1, 2014, Jared Smith, Pat's grandson and devisee and remainderman of the subject land, intervened as a Petitioner in the matter. Discovery was completed and on July 15, 2014, Pat moved for summary judgment on the Petition to Remove. This motion was also fully briefed.

Master Ayvazian combined the two matters, and on December 9, 2014, heard oral argument on all three summary judgment motions. At the conclusion, Master Ayvazian issued an oral Draft report granting summary judgment for Pat in both matters.

On December 15, 2014, Andrew filed exceptions to the Master's Draft Report, and on January 27, 2015, Pat filed a response thereto. On June 18, 2015, Master Ayvazian issued a Final Report granting Pat's motions for summary judgment.

On June 24, 2015, Andrew filed exceptions to the Master's Final Report. The matter was fully briefed by the parties.

On January 19, 2016, Chancery Court issued an opinion rejecting Master Ayvazian's Final Report, denying summary judgment for Pat in both matters, and granting partial summary judgment for Andrew on the Petition to Sell Land.

On July 11, 2016, Chancery Court held a trial on the remaining issues in the cases and on July 13, 2016, issued a post-trial Order granting Andrew's Petition to Sell Land. On August 4, 2016, Pat filed a Motion to Supplement the Record Reargument, which the court denied on August 5, 2016.

On August 11, 2016, Pat filed a Notice of Appeal with this Court, appealing the Chancery Court decision of January 19, 2016. On August 22, 2016, Pat filed an amended Notice of Appeal as directed by this Court. On August 25, 2016, Pat filed a Motion to Stay Sheriff Sale Pending Appeal, and Andrew filed an opposition thereto on August 30, 2016. On August 30, 2016, Chancery Court granted Pat's Motion to Stay Sheriff Sale pending this appeal.

This is Pat's Opening Brief .

SUMMARY OF ARGUMENTS

1. The Chancery Court erred as a matter of law by denying summary judgment to Pat and granting partial summary judgment to Andrew on the Petition to Sell Land.

a. Pierce v. Higgins requirements apply to this case.

b. Chancery Court erred as a matter of law in ruling that Andrew did not have to require Courson to follow the Pierce requirements before he accepted her claim.

c. Chancery Court erred as a matter of law in ruling that Andrew did not have to require Courson to follow the Pierce requirements because he could validly accept a contingent claim.

d. Chancery Court erred as a matter of law in ruling that Andrew did not have to require Courson to follow the Pierce requirements because Full Faith and Credit must be given to child support orders.

e. Chancery Court erred as a matter of law in ruling that Andrew did not have to require Courson to follow the Pierce requirements because the missed child support payments were judgments by operation of law.

2. The Chancery Court erred as a matter of law by denying summary judgment to Pat on the Petition to Remove.

a. The Chancery Court erred as a matter of law in ruling that Andrew did not breach his fiduciary duty by failing to require Courson to follow the Pierce procedures before he accepted her Claim as a just debt.

b. The Chancery Court erred as a matter of law in ruling that Andrew did not breach his fiduciary duty by seeking to pay a claim as a just debt of the estate without sufficient investigation of the claim.

c. The Chancery Court erred as a matter of law in ruling that Andrew did not breach his fiduciary duty by favoring, in actions and attitudes, his mother's Claim.

d. The Chancery Court erred as a matter of law when it ruled that Andrew did not breach his fiduciary duty by attempting to blackmail Pat to fund the litigation to reject Courson's claim.

STATEMENT OF FACTS

The facts in this case are undisputed. Bennie P. Farren ("Bennie") departed this life testate on September 12, 2012. (A37;A47). Bennie's will named Andrew, his son, as Executor and provided that all property owned by him at his death be distributed to the Hercules Living Trust ("Trust") after payment of just debts, funeral expenses and expenses of last illness. (A56-A58). The Trust in turn provides that upon Bennie's death, certain distributions be made to Pat, Jared Smith, Troy Farren (another son), and Andrew. (A60-67).

Pat, Bennie's life partner for approximately thirty years, is the named Successor Trustee of the Trust, as well as a named beneficiary. (A64). The Trust grants Pat a life estate in Bennie's home that they shared during their long-term relationship. (A60). After Pat's death, Jared is to receive Bennie's home as remainderman. (A61). Any residuary assets left in the Trust after Pat's death are to be divided between Troy and Andrew. (A61).

At his death, Bennie held solely owned assets totaling approximately $50,000.00 and his home valued at $176,000.00. (A37;A47). Bennie's assets, apart from his home, were sufficient to pay all debts, except one, a claim filed on February 4, 2013 by Bennie's ex-wife and Andrew and Troy's mother, Rebecca Courson ("Courson") for a "liquidated" amount of $228,459.47 for "owed child

support August 1st, 1986 through July 23rd, 1992, plus interest through December 31st, 2012." (A38;A69;A94).

Courson's claim ("Claim") included several documents. One was an arrearage affidavit from a Florida court clerk's office dated January 18, 2013, stating that Bennie owed $24,300.00 in child support arrears. (A70). This arrearage affidavit left blank the date of the court order that purportedly established the arrearage amount and the arrearage amount itself. (A70). Andrew noted these blanks when he reviewed the Claim, but assumed "it's the way that Florida did their document ... every court has its way of doing documents." (A105). He did not further investigate the blanks in the affidavit. (A106). .

Courson's Claim also included a child support arrears computation from a Georgia public accountant that added $204,159.00 in compound interest. (A71-A78). Within the computation, Bennie's monthly support obligation was listed as $750.00/month from August 1986 to January 1987 and $300.00/month from February 1987 to July 1992. (A72-A73).

Courson's Claim also included a Florida Interest on Judgment table and two Florida orders. (A79-80;A81-A83;A84). The first order was a "Final Order of Custody and Support" issued July 21, 1986. (A81-83). This order, *inter alia*, established Bennie's monthly child support obligation as "$750.00 per month" until August 1987 (when son Troy turned 18 years old), then "$375.00 per month" until

July 1992 (when son Andrew turned 18 years old). (A81). These ordered amounts are not the same amounts used by the accountant in his computation submitted with the Claim. (A72-A73;A81). Andrew recognized this discrepancy in reviewing the Claim, but dismissed it as "easy rounding" by the accountant. (A107).

The second Florida order attached to Courson's Claim was a contempt order dated May 15, 1987 citing Bennie for failure "to abide by Order of this Court dated January 29, 1987" and ordering him to "serve 364 days" incarceration or "purge himself from such confinement by payment of ...$1200.00 to the clerk of the court." (A84). The contempt order did not specify why Bennie was held in contempt. (A84). Courson's Claim did not include the January 29, 1987 order referenced in the contempt order. (A69-A84), and Andrew, in reviewing the Claim, did not request or seek to review it. (A109).

Courson's Claim did not include any judicial determination establishing the amount of child support arrears owed by Bennie from any court in any state. (A69-A84). Also, the Claim did not include any evidence that Courson ever registered her Florida child support order in Delaware, sought any judicial determination of arrears by a Delaware court, or sought any enforcement action for arrears by a Delaware court either before or after Bennie's death. (A69-A84).

Pursuant to statute, once Courson filed her Claim, Andrew had to decide to accept or reject the Claim for $228,459.47. 12 Del. C. §2102(c). Andrew's complete investigation of the Claim entailed: reviewing the Claim documents; speaking with his mother's accountant who performed the interest calculation; reviewing the Excel formulas used for the interest calculation; confirming the Florida interest rates for the applicable years; and conferring with counsel regarding whether he "should let the claim go through." (A97-A98).

Eleven days after Courson filed the Claim, Andrew notified Pat that he "propose[d] to accept and agree to the claim unless [Pat] agree[d] to pay all the costs of opposing it." (A86).

In June 2013, Andrew again notified Pat he intended to accept his mother's Claim for $228,459.47 and obtain a court order to sell Bennie's home to pay it. (A88). Alternatively, he suggested Pat pay his mother the $228,459.47 from her own funds or mortgage Bennie's home. (A88).

Andrew did accept his mother's Claim for $228,459.47, and on July 13, 2013, filed the Petition to Sell Land in Chancery Court. (A1). In that petition, Andrew averred that "at the time of his death, the decedent left debts owed...[including] a claim...against the Estate *in the form of a judgment* for past due child support in the State of Florida...for $228,459.47." (A38)(emphasis added). Andrew requested the court order the sale of Bennie's home. (A39). The

petition clearly shows that the $228,459.47 claim, and that claim alone, required the sale of Bennie's home. (A37-A39).

Pat objected to Andrew's acceptance of his mother's Claim and to the sale of Bennie's home, and she filed an Answer and Objection to Andrew's Petition to Sell Land on August 19, 2013. (A1). Pat asserted that Andrew should have rejected his mother's Claim as presented and required her to establish through the Family Court the amount of child support arrears owed by Bennie pursuant to Pierce v. Higgins, 531 A.2d 1221 (Del. Fam. Ct. 1987). (A48).

In February 2014, Pat filed a separate action to remove Andrew as Executor of Bennie's estate for breach of fiduciary duties in accepting his mother's Claim. (A20).

Through discovery in these cases, certain undisputed facts came to light. These facts were all discovered *after* Andrew accepted Courson's Claim and filed the Petition to Sell Land.

One undisputed fact was the existence of the previously undisclosed January 29, 1987 Florida Order referenced in the May 1987 Contempt Order. (A124-A125). In that January 1987 Order, the Florida court specifically refused to entered any judgments against Bennie for missed child support payments from July 21, 1986 to January 29, 1987. (A124-A125). Courson's Claim included those

amounts, as well as interest on those missed payments for approximately 27 years. (A72).

Additionally, the January 1987 Order modified Bennie's support obligation to $300.00/month effective February 1987, thereby resolving the discrepancy between the accountant's principal amounts and the July 21, 1986 Order. (A72;A81-83;A124-A125).

Another undisputed fact discovered *after* Andrew accepted the Claim was an error in the Florida Court Clerk's January 2013 affidavit. (A70). The total support owed was actually $24,122.00, and the Clerk's Office issued a new affidavit in August 2013. (A126). But this new affidavit also left blank the amount of arrearage established by court order. (A26).

Another undisputed fact discovered *after* Andrew accepted Courson's Claim was his rejection of another claim filed against Bennie's estate by Courson's Florida attorney for fees ordered in the same Florida Child Support Order that formed the basis of Courson's Claim. (A127;A82-A83). Andrew rejected this claim in January 2013, because he believed that the attorney should have already written off the debt and the time period in which the debt should have been paid had expired. (A94;A102-103;A128).

But the most crucial undisputed fact discovered *after* Andrew accepted Courson's Claim was that the Claim was inflated by *over one hundred thousand*

dollars. (A163-A165). Courson's Claim included compound interest for approximately 26 years that is not allowed under Florida or Delaware law. (A72-A78). Andrew accepted and sought to pay the Claim for approximately $131,490.00 in excess of any amount Courson *could ever* legally be entitled to receive. This fact was discovered *only* because of Pat's efforts in opposing Andrew's acceptance of his mother's Claim for $228,459.47 and his request to sell Bennie's home. Andrew had no choice but to concede his mistake during oral arguments in December 2014. (A163-A165).

In August 2015, over two years *after* Andrew accepted his mother's Claim for $228, 247.49, and in the midst of the parties briefing Andrew's Exceptions to Master's Final Report that dismissed the Petition to Sell Land, Courson filed a Petition to Register the Florida Support Order dated July 21, 1986 in the Delaware Family Court. (A187-A188). Courson was represented in that proceeding by Richard Berl, Esquire, the same attorney who represents Andrew as Executor of Bennie's Estate. (A189-A190). The Registration Affidavit, dated August 3, 2015, named "Bennie Paul Farren deceased" as the Respondent, and listed his address as "c/o The Estate of Bennie Farren" at the Laurel, Delaware address where Pat lives. (A187-188). Andrew, as Executor, was not a named party and there was no requested service of process to Andrew as Executor. (A187;A189;A191). In the Registration affidavit, Courson swore that she "had simultaneously filed a petition

or comparable pleading seeking enforcement of this Order." (A188). There is no record of such a pleading. On August 25, 2015 [sic], the Family Court issued an order registering the Florida Order "for enforcement." (A137).

On October 12, 2015, as Andrew and Pat awaited the court's decision on Andrew's Exceptions to Master's Final Report, Courson filed an amended statement of claim ("Amended Claim") for "$96,969.36 as of June 30, 2015, plus $8.00 per day interest until paid." (A129-A137). The Amended Claim also no longer claimed the debt to be liquidated; that section was left blank. (A129).

On January 19, 2016, Chancery Court issued an opinion rejecting the Master's Final Report. Op. at 2. The court granted Andrew partial summary judgment, holding "the Florida orders constituted a final judgment entitled to full faith and credit" and it was optional for Courson to register her orders with Family Court and have that court calculate the amount due under the orders, as Chancery Court has "concurrent jurisdiction." Op. at 2 and 20. Additionally, the court denied Pat summary judgment in both matters, holding that Andrew's acceptance of Courson's Claim was valid and his actions did not establish a breach of fiduciary duty as executor as a matter of law. Op. at 2.

ARGUMENT

I. THE CHANCERY COURT ERRED AS A MATTER OF LAW BY DENYING SUMMARY JUDGMENT TO PAT AND GRANTING PARTIAL SUMMARY JUDGMENT TO ANDREW ON THE PETITION TO SELL LAND.

A. Questions Presented

Whether Chancery Court erred in denying summary judgment to Pat and granting partial summary judgment to Andrew on the Petition to Sell Land where the undisputed facts support the legal conclusion that the Courson Claim for $228,459.47 is not a just debt of the estate.

Pat preserved this issue in the trial court in her motion for summary judgment and briefs in support thereof; her answering and supplemental briefs opposing Andrew's motion for summary judgement; oral argument; answering brief regarding Andrew's exceptions to Master's Draft Report; and answering brief regarding Andrew's exceptions to Master's Final Report.

B. Scope of Review

"In an appeal from a trial court's decision to grant [or deny] summary judgment, this Court's scope of review is *de novo,* not deferential, as to both the facts and the law." LaPoint v. AmerisourceBergen Corp., 970 A.2d 185, 191 (Del. 2009). The Court is "free to draw [its] own inferences in making factual determinations and in evaluating the legal significance of the evidence." Id.

"Summary judgment is only appropriate where, viewing the facts in the light most favorable to the non-moving party, the moving party has demonstrated that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Dambro v. Meyer, 974 A.2d 121, 138 (Del. 2009). If the moving party meets that burden, "the burden shifts to the non-moving party to demonstrate that there are material issues of fact." Moore v. Sizemore, 405 A.2d 679, 681 (Del. 1979). If the non-moving party cannot provide evidence that material issues of fact exist, summary judgment must be granted. Burkhart v. Davies, 602 A.2d 56, 59 (Del. 1991).

C. Merits of Argument

In this case, Pat is entitled to judgment as a matter of law on Andrew's Petition to Sell Land because the undisputed facts, viewed in a light most favorable to Andrew, cannot establish that Bennie's estate owes a debt of $228,459.47 to Courson.

It is Andrew's burden to convince this Court that the sale of Bennie's home is required to pay just debts Bennie owed that exceed the liquid assets in the estate. Andrew cannot establish that Bennie owed $228,459.47 to Courson when he died because he accepted his mother's Claim without requiring her to provide proper proof that Bennie actually owed her that specific amount. Therefore, Andrew should have rejected the Claim as presented and required Courson to obtain a

judicial determination of the arrearage amount Bennie owed, if any. Without such a determination, there is no evidence to support the Petition to Sell Land. Thus, this Court should grant Pat summary judgment.

1. *Pierce v. Higgins* requirements apply to this case.

It is clear from legal precedent in Delaware that a legal determination establishing an arrearage amount can be accomplished even though Bennie is now deceased. In Pierce v. Higgins, 531 A.2d 1221 (Del. Fam. Ct. 1987), the court established, as an issue of first impression for Delaware, that "a decedent's estate [is] liable for [child support] arrears which accrued but were not reduced to judgment prior to his death." Id. at 1223. The Pierce court also established the requirements to establish liability for an arrearage amount. These are the requirements that Courson must follow in order to establish Bennie's child support arrears, if any, and the requirements Andrew should have insisted Courson complete.

Procedurally, Pierce was a Family Court action brought by the obligee mother to register *and enforce* a New Jersey child support order against a deceased obligor father who was allegedly in arrears of that order. The family court action was brought after the mother filed a claim against the father's estate. The estate's personal representative denied the claim. The mother filed an action in Chancery Court to enforce her claim. The personal representative moved to dismiss the

action, and Chancery Court stayed the motion to dismiss pending Family Court's determination of whether or not support was owed. Pierce at 1222.

Factually, Pierce is virtually identical to the facts of this case. The mother had a New Jersey child support order which she alleged the father failed to pay for eight years. The father died before the mother took any action regarding the father's failure to pay.

The first issue the Pierce court tackled was whether a Delaware court could "hold a decedent's estate liable for arrears which accrued but were not reduced to judgment prior to his death." Pierce at 1223. Although the issue was one of first impression in Delaware, other states had addressed it. After reviewing those decisions, the Pierce court held that a cause of action for child support arrears does survive the decedent. Pierce at 1224.

The Pierce court next addressed whether it could register a foreign support order against the estate of a deceased support obligor. Pierce at 1224. The court determined that "registration can occur against the personal representative of the deceased support obligor," and that the procedure of registration is the same as required for registering an order against an obligor who was alive, only now, the executor stands in the obligor's shoes. Pierce at 1224-1226.

That procedure is currently set forth in Title 13, Chapter 6, Subchapter 6 of the Delaware Code, and provides specific instructions to Family Court regarding

registering a foreign support order and determining any arrearages stemming from such orders. To begin, the foreign support order "may be registered [in Delaware] for enforcement." 13 Del.C. §6-601. The "may" language grants an obligee the opportunity to have Delaware enforce the order, not the option of whether to register the order before Delaware enforces it. Subchapter 6 makes clear that if an obligee wants Delaware to enforce the foreign order, that order must be registered in Delaware. Arrears claimed pursuant to the foreign order at the time Delaware registers it, §6-604 provides there will be a proceeding to determine the amount of arrears, applying the law of the issuing state.

The Pierce court concluded that if it did register the foreign support order, after determination of any registration defenses raised by the executor, the actual act of registering the order was "merely ministerial" as it "would not prejudice any of the obligor's rights regarding the foreign support order as the administratrix...certainly would have the opportunity to interpose *defenses to actions for enforcement* of the order so registered." Pierce at 1225 (emphasis added).

Next, the Pierce court examined those "defenses to actions for enforcement of the order so registered, " and in line with the general principle of law that "an administratrix stands in the decedent shoes and has no greater or other rights or powers than the decedent would have had if living," the court held that "any

defense that can be asserted in any enforcement of support matter could be asserted here." Pierce at 1226. [1]

Pierce next considered whether it had "the authority to reduce the arrears to judgment against the personal representative" and concluded that "in light of the previous determination that the support obligation survives the decedent and that the New Jersey order should be registered and treated like an order of this State, it logically follows that this Court must have the authority to reduce the obligation to judgment unless other defenses are asserted." Pierce at 1227.

Finally, the Pierce court contemplated whether it had "jurisdiction to enforce an order it enters against the personal representative or whether this must be done through the Register of Wills and the Court of Chancery." Pierce at 1227. The court concluded it did *not* have jurisdiction to enforce any order it entered; that jurisdiction lies in Chancery Court. Pierce at 1227.

The facts in this case are precisely the facts of Pierce. Courson has a Florida child support order which she alleges Bennie failed to pay. Bennie died before

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[1] The Pierce court determined that laches was not a valid defense in Delaware to e*nforcement* of a registered support order. Pierce at 1226. Since Pierce was decided, 13 Del.C. §6-604 was enacted providing "the law of the issuing state...governs [t]he computation and payment of arrearages and accrual of interest on the arrearages under the support order." Under Florida law, laches is a valid defense to child support arrearage claims. Ticktin v. Kerin, 807 So. 2d 659 (Fla. 3rd DCA 2002). Thus, in this case, laches may be a possible defense at any future arrears adjudication, but this is not an issue currently before this Court at this time.

Courson took any action regarding his failure to pay and Courson filed a claim against Bennie's estate for the arrears. The only fact that differs from Pierce is that Andrew did not reject Courson's Claim. He should have. If he had, and if Courson successfully followed the requirements of Pierce to secure a judicial determination of arrears, she could then have sought to enforce that judgment in Chancery Court against the estate. Then Andrew may have had the evidence necessary to prove that the estate must sell Bennie's home in order to pay a just debt of the estate.

At the time Andrew accepted Courson's Claim, Courson had never sought to register the Florida support order in Delaware, much less seek to enforce the order and reduce it to a judgment. However, in August 2015, two years *after* Andrew accepted Courson's Claim, Courson did petition Delaware Family Court to register the July 21, 1986 Florida order, and it was registered by Family Court on August 25, 2015.

Nevertheless, there has been no proceeding in Family Court to determine any arrears owed, and while Courson has now in form only complied with step one of the Pierce requirements, she certainly has not complied with the rest. And at the time of Andrew's acceptance of his mother's Claim, Courson had not attempted to comply with any of the Pierce requirements. As such, there is no competent evidence to establish the validity of Courson's claim against the estate and Pat is entitled to summary judgment on the Petition to Sell Land.

The court below held that Andrew's *acceptance* of Courson's Claim was valid irrespective of the Pierce requirements because the *presentation* of her Claim would be delayed beyond the time limits of 12 Del.C. §2102(a). Op. at 1. This was an error of law. The requirements of Pierce to assert arrears liability on a deceased obligor's estate do not have to be *completed* before a claim for such liability can be filed against the estate; only before the claim can be considered a "just debt" against the estate to support a petition to sell land.

Courson did present her Claim timely. 12 Del.C. §2102(a). Courson had until May 2013 to initially present her Claim and she did so in February 2013. Also, as a matter of law, Courson did not have to secure a judgment for arrears *before filing* a claim for arrears. 12 Del.C. §2102(a). Indeed, Courson *could have* presented a contingent claim for child support arrears in an unspecified dollar amount against Bennie's estate and "commence[d] a proceeding against the personal representative in any court where the personal representative may be subject to jurisdiction, to obtain payment of the claim against the estate...within the time limited for presenting the claim." 12 Del.C. §2104(1) and (2).

Instead, Courson presented a "liquidated" Claim for the specific amount of $228,459.47. (A69). Having chosen that path, and lacking a judicial determination from any court in any state establishing the $228,459.47 as the arrears amount owed to her, Andrew should have rejected Courson's Claim. After

that rejection, Courson had three months to *file* (not finish) an action in Family Court against Andrew to satisfy the Pierce requirements and obtain a judgment against the estate for the $228,450.47. 12 Del.C. §2102(c). Courson's Claim against the estate would have been preserved, the Family Court action against Andrew would have proceeded in due course, and at the conclusion of that action, Courson could have brought any judgment she obtained from Family Court to Chancery Court for enforcement against the estate. If the specified amount exceeded the estate's liquid assets, Andrew could have then petitioned Chancery Court to sell Bennie's home to pay a valid debt of the estate.

Pierce v. Higgins clearly establishes the general legal principle that a child support arrears claim does not die with the obligor. But Pierce also clearly establishes requirements for determining the existence and amount of liability using the processes of Family Court. No one disputes that Courson did not adhere to those requirements before Andrew accepted her Claim as a just debt for $228,459.47 and filed the petition to sell Bennie's home.

2. Chancery Court erred as a matter of law in ruling that Andrew did not have to require Courson to follow the Pierce requirements before he accepted her claim.

The court below erred as a matter of law when it ruled that Andrew validly accepted his mother's Claim without demanding the Pierce requirements because,

as a matter of law, Pierce established only an "optional detour" from Chancery Court, and "the adjudication of a claim against an estate based on a support order...appears to be an area where this court and the Family Court can and should cooperatively exercise *concurrent* jurisdiction." Op. at 20 and 22.

Pierce does not establish an "optional detour." Family Court has exclusive jurisdiction *to determine* child support arrears. 10 Del.C. § 921 (3) and (9). See also 13 Del.C. §6-102(29) and §6-103. Chancery Court has exclusive jurisdiction *to enforce judgments or orders* against an estate. 12 Del.C. §2102, et seq. As Pierce concluded, an obligee establishing liability for child support arrears against a deceased obligor involves two separate courts.

Chancery Court interpreted the Pierce court's use of "can" language to conclude that adherence to Pierce is "optional." Op. at 22. This extraordinarily narrow reading of Pierce is error as a matter of law.

When the Pierce court considered the issue of first impression of whether a support arrears claim "can" (or cannot) survive an obligor's death, and found that "it can," the court was certainly not making it *optional* that an arrearage claim survives the obligor's death. When the Pierce court considered whether the court "can" (or cannot) register the underlying support order against a deceased obligor, and found that it "can," it was not making it *optional* that registration for future courts to register a support order against a deceased obligor. And when the Pierce

court considered whether it "can" (or cannot) reduce an arrears to judgment against the personal representative if proper proofs were made, and found that it "can," the court was not making it *optional* to reduce an arrears to judgment if proper proofs were made.

Pierce's well-reasoned decision which clearly establishes the process and procedures by which Delaware courts should consider an obligee's claim of child support arrears against a deceased obligor should be followed by this Court. The process and procedures does involve two courts with different jurisdictional responsibilities of adjudication versus enforcement.

However, Chancery Court proposes a scheme in which it and Family Court exercise "concurrent jurisdiction" of "the adjudication of a claim against an estate based on a support order." Op. at 20. Chancery Court cited several cases as examples of where it and Family Court have shared this "concurrent jurisdiction." Op. at 20, fn.5 and Op. at 23, fn.7. These cases actually reinforce Pierce's holdings that there is a difference between adjudication and enforcement and while Family Court has the jurisdiction to adjudicate against estates, in matters where it has exclusive jurisdiction, it can never enforce against estates in matters where it has exclusive jurisdiction. Chancery Court holds that jurisdiction. All of the cases cited by the Chancery Court involve issues of *enforcement* of orders already issued by Family Court against deceased parties.

Chancery Court also read Pierce as supporting its "concurrent jurisdiction" finding by concluding that in Pierce itself, once the Family Court had decided the important family law issues of first impression, "the parties returned to Chancery court for the purposes of the estate proceeding." Op. at 21. On the contrary, the Pierce court was clear as to which court had jurisdiction over adjudication versus enforcement, stating, in conclusion, that a claim for child support arrears accrued at the time of obligor's death is "a valid claim which can be registered with *this* Court against the decedent's personal representative and...reduced to judgment *by this Court* provided the proper proofs are made" but the enforcement of that judgment is "within the sole province of the Court of Chancery if at all...[i]t is for *that Court* to determine the effect of *this Court's* judgment." Pierce at 1227-1228 (emphasis added). The Pierce court further provided the following instructions to the parties involved in the case: "Once the support order is registered pursuant to such order, Petitioner must apply within 30 additional days for entry of judgment on the order so registered." Pierce at 1228. These instructions make clear that the Pierce court was preparing to register the New Jersey Order and rule on entry of judgment on the New Jersey Order. It was not simply "sending the parties back to Chancery Court...." as stated by the court below.

But Chancery Court does not need to "dismiss a claim based on a child support order for lack of jurisdiction pending a decision by Family Court that

reduces the claim to a final judgment specifying a sum certain." Op. at 21-22. It just cannot enforce any payment of the claim by the estate until the claim is reduced to final judgment. Nevertheless that is exactly what Andrew requests Chancery Court do in his Petition to Sell Land.

3. Chancery Court erred as a matter of law in ruling that Andrew did not have to require Courson to follow the Pierce requirements because he could validly accept a contingent claim.

Chancery Court erred as a matter of law when it held that "assuming the arrearage claim was contingent," Andrew could validly accept it. Opinion at 13. Viewing the facts in the light most favorable to Andrew, there are no facts to support a finding as a matter of law that Courson's Claim was presented or accepted as contingent.

Courson's Claim clearly states it is a "liquidated claim" for "$228,459.47." (A69). When Andrew accepted the claim, he clearly accepted it for $228,459.47. (A88). When Andrew filed the Petition to Sell Land in June 2013, he clearly delineated Courson's claim as $228,459.47. (A38). Courson's Claim was not presented or accepted as a contingent claim, and thus, whether a contingent claim can be accepted by an executor is irrelevant to this case.

4. Chancery Court erred as a matter of law in ruling that Andrew did not have to require Courson to follow the Pierce requirements because under federal law, full faith and credit must be given to child support orders.

Chancery Court erred as a matter of law when it held that Andrew correctly accepted Courson's Claim because he recognized that Delaware "must give a foreign judgment" Full Faith and Credit. Op. at 12. Viewing the facts in the light most favorable to Andrew, there are no facts to support a finding that as a matter of law Courson's Claim was based on a judgment that was entitled to full faith and credit. Courson's Claim certainly did not contain a judgment for $228,459.47 from any court of any state.

However, Chancery Court held that as a matter of law, no judgment was necessary because "a child support order does not have to be in the form of a final judgment for a liquidated amount to be enforceable." Op. at 14 (citing 28 U.S.C. §1738B Full Faith and Credit for Child Support Orders Act ("FFCCSOA"))

FFCCSOA provides that "[t]he *appropriate authorities* of each State shall enforce according to its terms a child support order made… by a court of another State." 28 U.S.C. §1738B(a). Delaware Family Court is the "appropriate authority" of Delaware with exclusive jurisdiction to hear and determine child support matters. "Child Support Order" is defined as "a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and includes a permanent or temporary order; and an initial order or a

modification of an order." 28 U.S.C. §1738B(b)(5). "Child Support" is defined to include arrearages. 28 U.S.C. §1738B(b)(4). Thus, applying the various definitions of FFCCSOA, FFCCSOA provides that Delaware Family Court shall enforce a judgment, decree, or order of a court of another State requiring the payment of arrears in periodic amounts or in a lump sum.

However, in this case, Courson does not possess any judgment, decree, or order issued by any court requiring the payment of arrears in periodic amounts or a lump sum by Bennie. If she did, FFCCSOA would demand Delaware give it full faith and credit. But she doesn't. Thus, FFCCSOA cannot require Andrew to accept the Claim under Full Faith and Credit.

5. Chancery Court erred as a matter of law in ruling that Andrew did not have to require Courson to follow the Pierce requirements because the missed child support payments were judgments by operation of law.

Chancery Court found, as a matter of law, that "the [Florida] Child Support Order constituted a series of final judgments of specific, liquidated amounts" and thus, Courson's Claim was based on a judgment, actually many of them. Op. at 15-16. This is legal error.

Under Florida law, child support orders become final judgments by operation of law *only* after notice to the obligor as provided for specifically by statute. In this case, that specific notice was not been established.

Florida Law §61.14(6) provides:

> (6)(a)(1). When support payments are made through the local depository, any payment...which becomes due and is unpaid under any support order... [the] unpaid payment...and all other costs and fees...become, *after notice to the obligor and the time for response as set forth in this subsection*, a final judgment by operation of law, which has the full force, effect, and attributes of a judgment entered by a court in this state for which execution may issue.

It is clear by the statute that there are certain requirements that must be met before past due installments become judgments by operation of law. The support payments themselves have to be payable through the local depository. §61.14(6)(a)(1). In this case, the 1986 Order provided for payments to be made to a local depository, to wit: The Circuit Court, Osceola Count, Support Department. (A81) .

Most importantly, according to the statute, a past due installment only become a final judgment by operation of law "*after notice to the obligor.*" 61.14(6)(a)(1)(emphasis added). Subsection 61.14(6)(b) defines the specific requirements of "notice to the obligor":

> (b)1. When an obligor is 15 days delinquent in making a payment or installment of support, the local depository *shall* serve notice on the obligor informing him or her of:
>
> a. The delinquency and its amount.
>
> b. An impending judgment by operation of law against him or her in the amount of the delinquency and all other amounts which thereafter become due and are unpaid, together with costs and a fee of $5, for failure to pay the amount of the delinquency.

c. The obligor's right to contest the impending judgment and the ground upon which such contest can be made.

d. The local depository's authority to release information regarding the delinquency to one or more credit reporting agencies.

(b)2. The local depository shall serve the notice by mailing it by first class mail to the obligor at his or her last address of record with the local depository. If the obligor has no address of record with the local depository, service shall be by publication as provided in chapter 49.

In this case, there are approximately 73 alleged nonpayment of child support. For each of those alleged nonpayment to become 73 judgments by operation of law, there would have to be evidence of 73 notices to Bennie issued by the Support Department of the Circuit Court for Osceola County, as required by statute. However, no one has proffered any such evidence.

Chancery Court circumvented this statutory notice requirement by imputing the required notice upon Bennie through Pat's deposition testimony. Op. at 16. This is an error as a matter of law. The Florida statute providing missed support payments become judgments by operation of law does *not* provide for imputed notice. Subsection 61.14(6)(b) is quite specific as to the requirements of notice to the obligor prior to a missed payment becoming a judgment. It is an error of law to presume that the Support Department provided the required notice to Bennie or to impute such notice on Bennie through Pat.

Chancery Court also held that "under Florida law, an arrearage affidavit presumptively establishes the amount due under a child support order." Op. at 6. There is no citation to any Florida law by the court below, and no such law was found.

Additionally, there is established, undisputed factual evidence in this case that at least 6 of the 73 missed child support payments *did not* become judgments by operation of law. The Florida court specifically *denied* issuing any judgments to Courson against Bennie for missed payments occurring between July 21, 1986 and January 29, 1987. (A124). But those amounts are included in Courson's Claim, in the Arrearage Affidavit, and the accountant's computation of interest. (A69;A70;A72). This is a prime example of why proper proofs are required in order to establish a specific amount of liability in accordance with Pierce. It is not merely a determination of "the specific amount of the claim by calculating the amount of interest." Op. at 17.

In this case, there are no Florida judgments by operation of law that Andrew or any court could give full faith and credit.

Before this Court are undisputed facts that the requirements of Pierce to validate Courson's Claim have not been undertaken, but must be. Thus, Courson's Claim should not have been accepted as a just debt against Bennie's estate as a matter of law, Andrew cannot establish needing to sell Bennie's home to satisfy

just debts of the estate, and Pat is entitled to summary judgment on Andrew's Petition to Sell Land.

II. THE CHANCERY COURT ERRED AS A MATTER OF LAW BY DENYING SUMMARY JUDGMENT TO PAT ON THE PETITION TO REMOVE.

A. Questions Presented

Whether the Chancery Court erred in denying summary judgment to Pat where the undisputed facts support the legal conclusion that Andrew breached his fiduciary duties to the estate.

Pat preserved this issue in the trial court in her motion for summary judgment and briefs in support thereof; her answering and supplemental briefs opposing Andrew's motion for summary judgement; oral argument; answering brief regarding Andrew's exceptions to Master's Draft Report; and answering brief regarding Andrew's exceptions to Master's Final Report.

B. Scope of Review

The scope of review of this issue is identical to Issue I. It is *de novo* review. LaPoint v. AmerisourceBergen Corp., 970 A.2d 185, 191 (Del. 2009).

C. Merits of Argument

Pat is entitled to summary judgment on her Petition to Remove because the undisputed facts, viewed in the light most favorable to Andrew, establish as a matter of law that Andrew breached his fiduciary duties as Executor of Bennie's estate. Andrew's acceptance of his mother's admittedly inaccurate Claim for $228,459.47 was detrimental to Bennie's estate and its beneficiaries.

"Administrators or executors of estates are among the classes of persons recognized under Delaware law as standing in the position of a fiduciary." Thomas & Agnes Carvel Found. v. Carvel, 2008 WL 4482703, 10 (Del. Ch. Sept. 30, 2008). aff'd, 970 A.2d 256 (Del. 2009). "As a fiduciary, the administrator 'shall not act for himself in any matter with respect to which he has duties to perform or interests to protect for another.'" Id. "The law imposes on the administrator the duty to act in good faith, and [he] will be held accountable for the loss or depreciation of the assets if [he] breaches that duty." Id. "The administrator, like a trustee, must 'deal fairly with the beneficiaries' and cannot place [his] interests 'ahead of the interests of the Trust and its other beneficiaries.' " Id. See also Vredenburgh v. Jones, 349 A.2d 22, 32-33 (Del. Ch. 1975); Walls v. Peck, 1979 WL 26236 (Del. Ch. Oct. 24, 1979).

The undisputed facts establish that Andrew failed to uphold his fiduciary duties to the estate and the beneficiaries regarding his acceptance of his mother's Claim. There are several examples of Andrew breaching his duties, and each of these alone is sufficient legal basis to remove him as executor. But even if this Court disagrees, when viewed in their totality, there is more than enough undisputed evidence to support, as a matter of law, Andrew breached his fiduciary duties as executor. Pat is therefore entitled to summary judgment from this Court on her Petition to Remove.

1. The Chancery Court erred as a matter of law in ruling that Andrew did not breach his fiduciary duty by failing to require Courson to follow the Pierce requirements before he accepted her Claim as a just debt.

Chancery Court erred as a matter of law when it ruled that Andrew did not breach any fiduciary duty by accepting his mother's Claim for $228,459.47 as a liquidated just debt of the estate, nor when he petitioned the court to sell Bennie's home to pay his mother without first requiring her to establish liability for child support arrears accrued but not reduced to judgment prior to Bennie's as required by Pierce.

As discussed fully in Argument I, Pierce requires certain steps be taken in order to establish a decedent's estate [is] liable for support arrears. Andrew did not require his mother to comply with any of these steps before accepting the liquidated amount of her Claim against the estate and petitioning to sell Bennie's home to pay it. His pursuit to pay the Claim was a breach of his fiduciary duty as executor of Bennie's estate and the beneficiaries and he should be removed as executor.

Chancery Court held that as a matter of Delaware law, a claim against an estate does not have to be based on a judgment or any other court document, but "can be due or to become due, absolute or contingent, liquidated or unliquidated...." Op. at 13. The court is absolutely correct. However, it is undisputed that Courson's Claim was not presented or accepted as a contingent

claim. (A69). The Claim was for $228,459.47. (A69). Andrew certainly did not treat his mother's Claim as contingent. Instead, he treated it as a liquidated claim for the amount stated therein, and sought court permission to sell Bennie's house to pay the Claim. (A37-A40). That was a breach of his fiduciary duty and he should be removed as executor for that breach.

If Courson's Claim was presented as a contingent claim, Andrew could not sell estate property to pay a contingent claim with no amount certain. He needs a legal determination of the amount of a claim to determine whether the estate has the liquid assets to pay it or needs to sell estate property to raise the cash. Andrew does not have any evidence of that legal determination. Not through Pierce procedures in Delaware or any judgment, decree or order from any court in any other state.

2. The Chancery Court erred as a matter of law in ruling that Andrew did not breach his fiduciary duty by seeking to pay a claim as a just debt of the estate without sufficient investigation of the claim.

Chancery Court erred as a matter of law when it ruled that Andrew did not breach any fiduciary duty by failing to sufficiently investigate his mother's Claim for $228,459.47 to determine whether it was a just debt of the estate.

The undisputed facts are that Andrew's investigation of the Claim entailed: reviewing the Courson Claim documents; speaking with his mother's accountant

who performed a calculation of principal and interest; reviewing the Excel formulas used by the accountant to calculate the interest; confirming online the Florida interest rates for the years of the claimed arrearage; and conferring with legal counsel for approximately 30-40 minutes regarding whether he "should let the claim go through." (A97-A98).

Andrew also testified in deposition that his attorney's advice to him at the time was to let the claim "go through." (A98). This testimony is contradicted by other evidence that suggests Andrew's attorney advised him to reject the claim. (A120-A123). However, this is not a question of material fact that would preclude summary judgment for Pat on this issue, as there are more than sufficient undisputed facts to support a finding as a matter of law that Andrew failed to appropriately investigate the Claim before accepting it, therefore breaching his fiduciary duty to the estate and its beneficiaries.

One undisputed fact is Andrew's failure to reconcile discrepancies of amounts of principal in the accountant's interest calculation. The spreadsheet provides for $750.00/month until February 1987, then $300.00/month until July 1992. (A72-A73). However, the Final Order issued in July 1986 provided for child support of $750.00/month until August 5, 1987, then $375.00/month until July 23, 1992. (A81). Andrew recognized there was a discrepancy there, but dismissed it as "easy rounding" by the accountant. (A107). When pressed

regarding his investigation of this discrepancy, Andrew admitted that he took no action to reconcile the discrepancy. (A107).

The mystery was solved through discovery in this litigation and also another of Andrew's failures to investigate was brought to light. Courson's Claim included a May 15, 1987 court order that referenced a January 29, 1987 court order that was not part of the Claim. (A69-A84). But, through discovery, that order was produced, although Andrew had never requested to see it. That January 1987 order provided the answer to why the accountant's calculation went from $750.00 to $300.00 in February 1987. It was *not* "easy rounding" as Andrew had thought; in fact, the Florida court amended the amount of child support originally ordered in July 29, 1986 from $750.00/month to $300.00/month. (A124-A125). But Andrew did not know of this amendment, nor did Courson's Claim disclose the amendment of the original 1986 Order.

This undisputed fact that Andrew failed to review all of the Florida court orders, even ones referenced but not included in Courson's Claim, and upon which the liquidated Claim amount of $228,459.47 was based, is poignant undisputable evidence of Andrew's lack of attention and investigation of his mother's Claim.

Another undisputed fact supporting a finding as a matter of law that Andrew failed to appropriately investigate the Claim before accepting it, is that Andrew

recognized, but did nothing to investigate, discrepancies and deficiencies in the Florida Court Clerk Arrearage Affidavit presented with his mother's Claim.

The Arrearage Affidavit purports to show an arrears balance of $24,300.00 as of January 18, 2013, but fails to reference any Order which established the arrearage, instead leaving that blank. (A70). The Affidavit states, "Order dated _[blank]_ established the arrearage on the above referenced case at $_[blank]_." (A70). Andrew noted the blanks, but resolved it by assuming "it's the way that Florida did their document"..."every court has its way of doing documents." (A105). When pressed, Andrew admitted that he never reconciled that discrepancy. (A106).

Through this litigation, a new arrearage affidavit was issued by the Florida Court Clerk on August 27, 2013. (A126). This affidavit had one of the two blanks filled in with dates "7-29-86 & 1-29-87." It also had a new arrearage amount of $24,122.00, which is less than the original arrearage amount that was the basis of the $228,459.47 Claim Andrew had already accepted as valid. The affidavit still contains a blank where the amount of arrears ordered should have been imputed. (A126).

It is important to recognize that it is not the discrepancy amount that is significant here; but the fact that there was a discrepancy at all. The discrepancy

should have raised red flags to Andrew when evaluating his mother's Claim and been resolved to his satisfaction.

Yet, regardless of all that Andrew did or didn't do to investigate his mother's claim, there is one undisputed fact that in and of itself establishes his utter breach of his duty of care. That is his acceptance of his mother's Claim for $228,459.47 which was derived primarily from compound interest that is absolutely not allowed by Delaware or Florida law.

Andrew accepted the Claim and sought to sell Bennie's home to pay over $100,000.00 greater than anything Courson could have hoped to receive as a liquidated claim. And Andrew conceded this in oral argument before Master Ayvazian.

The Chancery Court characterized this huge discrepancy as "a mistake . . . but not a facially implausible thing to do." Op. at 35. Andrew accepted Courson's Claim that included approximately $204,000.00 of interest without so much as questioning whether compound interest was even appropriate. This goes far beyond "a mistake" and is certainly sufficient as a matter of law to show Andrew's breach of fiduciary duty and care to the estate.

Discovery of this discrepancy of over $100,000.00 *was not a result of anything that Andrew did to further investigate the claim.* Instead, this huge discrepancy was discovered as a result of Pat's efforts in this litigation.

The undisputed facts of Andrew's failure to appropriately investigate his mother's Claim establish that as a matter of law, he breached his fiduciary duties to the estate. Therefore, Pat is entitled to summary judgment on her Petition to Remove Andrew as executor of Bennie's estate.

3. The Chancery Court erred as a matter of law in ruling that Andrew did not breach his fiduciary duty by favoring, in actions and attitudes, his mother's Claim.

The Chancery Court erred as a matter of law when it ruled that Andrew did not breach his fiduciary duty by his actions and attitudes that clearly favored his mother's Claim. The undisputed facts establish that Andrew placed his own interests, and those of his mother, ahead of the interests of the estate and beneficiaries.

Andrew repeatedly expressed his strong, personal views on child support obligations in his deposition:

> A:...I'll be very frank with you. We're getting to the child support. My dad didn't pay child support for me. Personally I'm in HR, I have a big issue when people don't pay for their kids.
>
> * * *
>
> Q: So you have taken it very personally that your father didn't pay child support to you?
>
> A: I think a commitment of -I have two kids and I think that you should support your kids. That's a personal view, yes.

(A92-A93). Andrew, when asked if he would participate in any dispute of his mother's claim in a productive, constructive manner, answered "no" and "it's a debt that needs to be paid." (A117). He further stated:

> A: I would not dispute the child support claim.
>
> * * *
>
> A: I think that child support, it doesn't matter if he was my father or not, it needs to be paid if you're a father, that's my feeling. That's my personal feeling.

(A117).

Andrew clearly placed his personal views and agenda regarding child support arrearage before his duty to the estate and its beneficiaries to thoroughly investigate Courson's Claim and to resist an improper claim against the estate. He admits that he would not dispute his mother's Claim for child support arrears. So it really did not matter what documents Courson did or didn't submit with her Claim. Any Claim for child support arrears was apparently okay with Andrew. This is a breach of his fiduciary duty as a matter of law, and requires him to summarily be removed as executor.

Andrew further revealed his bias in favor of his mother's Claim in his treatment of another claim made for a debt for legal services. Courson's Florida attorney, who was awarded fees from Bennie by the July 1986 Final Order, made a claim against the estate, even before Courson filed her Claim. (A127). However,

Andrew rejected that claim because he *believed* the attorney had already written off the debt and the period of time in which the debt should have been paid had expired *in his opinion.* (A94;A101-A103).

That is not the standard upon which acceptance or rejection of a claim against an estate is made. Clearly, the attorney hadn't written off the debt, as she filed for payment of it from the estate. And the fact that his rejection of this claim saved the estate from paying the debt because she didn't further prosecute the claim, does not excuse Andrew from his job as executor. Instead, it provides more undisputed evidence that Andrew's personal views on child support, as opposed to any other type of debt, effected his treatment of his mother's Claim against the estate. Andrew is entitled to his personal views regarding child support and those who do not pay it. But, he is not entitled to interject those personal views into his job as the executor. Allowing his personal views to color his judgment as executor is a breach of his fiduciary duties.

Contrary to Chancery Court's interpretation, Pat does not "advance a legal principle contrary to Delaware law" that Andrew "had a duty to dispute claims by the Estate's creditors to favor its beneficiaries." Op. at 35. Certainly Andrew has a duty to Bennie's legitimate creditors to pay legitimate debts.

However, Andrew's rejection of the liquidated claim against Bennie's estate by Courson's attorney but his acceptance of the liquidated claim against Bennie's

estate by Courson herself is undisputed evidence that Andrew favored his mother's claim. Whether Andrew would have been able to pay both claims is not the point. Whether Andrew's mother's claim took precedent over her attorney's is not the point. The point is that Andrew exhibited his personal bias, views and agenda by his actions in these two claims. He said himself: "I would not dispute the child support claim." (A117). He also said he "would not participate in any dispute of his mother's claim in a productive, constructive manner." (A117). That establishes a breach of his fiduciary duties to the estate and its beneficiaries as a matter of law.

4. The Chancery Court erred as a matter of law when it ruled that Andrew did not breach his fiduciary duty by attempting to blackmail Pat to fund the litigation to reject Courson's claim.

Andrew also breached his fiduciary duties to the Estate when he demanded that he would oppose his mother's claim against the estate *only if* Pat agreed to fund the opposition. Andrew proposed to accept Courson's claim "unless…your client agree[s] to pay all the costs of opposing it." (A86). If Andrew believed he had a basis to oppose Courson's Claim, as clearly he did when making such a demand of Pat, he had the duty to the Estate and its beneficiaries to do so, regardless of who funded the opposition. By failing to oppose the claim when he

had a basis to do so, he breached his duties, and thus, should be removed as Executor.

Chancery Court opined that Andrew had the right and obligation to "demand security from a recipient of a bequest if the executor knows of claims against the estate and believes that the estate's assets will be insufficient to pay the claim," and that his request from Pat was merely a demand of "sufficient security as a condition precedent to delivery of a legacy upon demand of the legatee." Op. at 38-39.

The facts do not support 12 Del.C. §2312(b) is relevant to this case. It is undisputed that Pat had not received any legacy or distributive share from the estate upon which Andrew could demand security. 12 Del.C. §2312(b). All of Bennie's assets were still in the estate at the time Andrew made his demand that Pat fund the litigation.

Andrew's failure to oppose Courson's Claim when he had a basis to do so because Pat would not finance the opposition was a breach of his fiduciary duties to the estate, and a legal basis to remove him as Executor.

Given all the undisputed facts regarding Andrew's actions and inactions as executor, this Court has more than a sufficient basis, as a matter of law, to find that Andrew breached his fiduciary duties to Bennie's estate and should be removed as executor.

CONCLUSION

For all the reasons stated herein, Pat respectfully requests this Honorable Court reverse the court below and grant her summary judgment on the Petition to Sell Land and the Petition to Remove Executor.

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