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NOTES

RENTS ACCRUING AFTER DEATH OF DECEDENT LESSOR

It is a trite principle of law that rents due a lessor at the time of his death are personal property and constitute a part of the personal estate for administration. Therefore, the personal representative of the decedent collects such due rents from the tenant for the benefit of the estate, but the right to receive the rents falling due subsequent to the death of the lessor passes to his heirs or devisees and not to the administrator or executor. This general rule is subject to the exception in the case of life tenant lessors, where rent is apportioned to the time of death, by Sec. 11 (e) of the Fiduciaries Act of 1917, P. L. 447. See Trickett on Landlord and Tenant, second edition, Section 541 at page 573.

In *Herron v. Stevenson*, 259 Pa. 354 (1918), Stewart, J. said:

"In *Morrison's Est.*, 196 Pa. 80, it is said: 'While in this State lands are assets for the payment of debts, they are not assets in the hands of an administrator, and without an order of the Orphans' Court he has nothing to do with them. In case of intestacy they descend to the heirs, and

if needed for the payment of debts there is a mode pointed out by the act of assembly which the administrator is bound to pursue, 'or the real fund is not absolutely, but sub modo, assets in his hands': *McCoy v. Scott*, 2 *Rawle* 222; *Bakes v. Reese*, 150 *Pa.* 44. 'Although the administrator may assume to act in his representative capacity in the management of the real estate and the collection of the income thereof, he is merely the agent of the heir': *Appeals of Fross and Loomis*, 105 *Pa.* 258; *Walker's App.*, 116 *Pa.* 419. 'This rule has been strictly adhered to.'

Section 14 of the Fiduciaries Act, June 7, 1917, P. L. 447, (20 PS Section 503) however, provides as follows:

"Rents of real estate accruing after the death of the owner of such real estate, who shall die on or after the day on which this act shall go into effect, shall be assets for the payment of debts of such decedent whenever the personal estate shall be insufficient therefor. Whenever the personal estate of such decedent shall appear to be probably insufficient for the payment of debts, the orphans' court having jurisdiction of the accounts of the executor or administrator shall, upon application of any creditor of the decedent, or upon application of the executor or administrator, or of any other person interested, authorize and direct the executor or administrator to collect such rents for such period as the court shall fix. In such case, the executor or administrator shall have power to collect such rents by action at law, distress, or otherwise, as the decedent, in his lifetime, might have done as to rents of such real estate; and rents so collected shall be accounted for by the executor or administrator in his account of the personal estate of the decedent."

The note of the Commissioners in their report to the General Assembly of 1917 in explanation of the above section is as follows:

"Note.—This is a new section. Land in Pennsylvania has been an asset for the payment of debts, at least since 1693; *Laws Made at Philadelphia*, c. 14; but until the land has been brought into administration either by the provisions of the will or by process of law, it belongs to the heir or devisee, who is consequently entitled to the rents; and even where the estate is insolvent an executor or administrator, and consequently the creditors, have no right to the interim rents: *Fross's Appeal*, 105 *Pa.* 258. This does not appear to be just, for the devisee or heir should have no right to anything until the debts are paid; and the Commissioners recommend this change in the law in order that this inequality may be corrected.

Furthermore the application of the rents during the period of administration to the payment of debts may in some cases obviate the necessity for a sale and perhaps a sacrifice of the real estate."

In *Reel's Estate*, 263 Pa. at page 250, 1919, Brown, C. J. after quoting Section 14, supra, observed:

"This is new and very wise legislation, for before its passage the rents accruing from the real estate of a decedent owner went to his heirs and devisees from the time of his death; *Haslage v. Krugh*, 25 Pa. 97; *Fross's Appeal*, 105 Pa. 258; and the heir or devisee of an insolvent decedent took such rents at the expense of the creditors of the estate. To remedy this long-existing injustice by making rents, as well as the land out of which they issue, assets for the payment of the debts of a decedent, the fourteenth section of the Act of 1917 was passed."

In this case there was a petition of the residuary devisee for vacation of order authorizing the executors to collect rent and for an order enjoining the executors from taking possession of certain real estate. It was finally held that under the Fiduciaries Act making rents of real estate assets for the payment of debts of a decedent, the personal representative has authority not only to collect rents accruing under leases made by the decedent but also to collect rents from real estate which was not under lease at the time of the decedent's death.

APPLICATION TO COURT

The section provides that where the personal estate shall appear to be probably insufficient, the Orphans' Court having jurisdiction of the accounts of the personal representative shall, upon application of such representative, or any creditor of the decedent, or any other person interested, authorize and direct the personal representative to collect "such rents for such period as the court shall fix."

In *Sheely's Estate*, 15 D. & C. at page 374 (1931), Davison, P. J. of the Orphans' Court of Franklin County, stated:

"This was a very marked change in the law from what it had been before the passage of that act, as before that rents were not part of the estate of a decedent for the payment of his debts, but belonged to his heirs. The legislature evidently intended this drastic change to become operative only when properly brought into being by a proceeding on the part of some one in interest, and, hence, the provision for application to the proper court for such authority to collect rents and thus to make them part of the decedent's estate and to be accounted for as such. If rents were to be made applicable for payment of debts under all circumstances, the legislature could well have said so and not put in the act the necessity for an order of the court so to make them. In the instant case no application of this kind was made to the court by any one, and, as we view the law, said rents were not part of the decedent's estate for any

purpose and the accountant could not have been surcharged with any amount for this item. Under these circumstances, it is not necessary for us to decide what our attitude would have been, under the facts, if such an application had been made to us."

In *Estate of Seifert*, 10 *Erie County Law Journal*, at page 201, Clark, P. J. in disposing of an exception to an executor's accounts, observed that there had been no application to the Court and no authorization to the Executor to collect rents, and if he did collect any rents, he might be held responsible to the heirs in another forum. This case was in 1928.

In 1927 in *Estate of Kelso*, 9 *Erie County Law Journal* 283, the same Judge had before him an account of an executor which included several hundred dollars of rent, and pointing out the provisions of Section 14, that rents of real estate accruing after the owner's death can be applied to the payment of debts, advised that a petition in compliance with the Act could at that time be drawn and submitted for the action of the Court, and opined that such a petition ought to be granted nunc pro tunc.

It is obvious, however, that an order nunc pro tunc would not be granted as a matter of course. In fact where rents had been collected by the Executor or Administrator as agent of the heirs or devisees any such order would be in apparent violation of their vested rights. Furthermore, the interests of other persons such as mortgagees might be seriously affected. Consequently, we find Clark P. J. again referring to the question in *Smith's Estate*, 10 *Erie County Law Journal* at page 66 wherein it is held: "It would appear that a safe practice to follow when a petition for collection of rents is presented that notice should be given to parties in interest so that they might be heard if they so desired."

In *Merten's Estate*, 18 *D. & C.* 310, the Executor presented a petition for an order to lease and collect rent from decedent's real estate. The Court received the petition and granted a rule upon "all mortgagees and co-owners of real estate" to show cause within a certain period of time. Answers were filed by several of the mortgagees and also by the owners in common with the decedent. After an interesting discussion of the Common Law relative to mortgages and the law of Pennsylvania on the same subject, the Court in granting the order held that under section fourteen of the Fiduciaries Act of 1917, the executor of an insolvent decedent may on his petition be authorized to collect rents from real estate belonging to the decedent for a limited time from the date of death, subject to the rights of mortgagees and of the collector of taxes, with directions to keep in separate accounts the rentals from each property as collected and to apply them first to the taxes and interest on the respective properties, and with further instructions to proceed without delay to dispose of the real estate in accordance with section sixteen of the statute.

See *Devlin's Estate*, 26 *Dist.* 161, 1917; *Kearney's Estate*, 30 *Dist.* 75, 1920.

ORDER OF PAYMENT

The order of payment of debts in the administration of a decedent's estate is set forth in the Fiduciaries Act, *supra*, Section 13 providing as follows:

"(a) All debts owing by any person within this state, at the time of his decease, shall be paid by his executors or administrators, so far as they have assets, in the manner and order following, viz: 1. Funeral expenses, medicine furnished and medical attendance given during the last illness of the decedent, and servants' wages, not exceeding one year; 2. Rents, not exceeding one year; 3. All other debts, without regard to the quality of the same, except debts due to the commonwealth, which shall be last paid.

"(b) No executor or administrator shall be compelled to pay any debt of the decedent, except such as are by law preferred in the order of payment to rents, until six months be fully elapsed from the granting of the administration of the estate."

It has already been noted in *Mertens's Estate*, *supra*, where a mortgage is involved the rights of the mortgagee as regards the rentals accruing from the mortgaged property may be superior to other claimants, but in other classes of claims, including those of judgment creditors, the order of priority is as set forth in Section 13 regarding a distribution of the personal estate.

Consequently, we find in *Reel's Estate*, 272 Pa. at page 142, Sadler, J. stating:

"In determining the amount of the assets for distribution, in which unsecured creditors may share, there is to be included the various items of rent received. Under the provisions of Section 14 of the Fiduciaries Act (June 7, 1917, P. L. 447), the executors, on petition, were authorized to collect the rentals from the real estate: *Reel's Estate*, 263 Pa. 248. Having received them, the sums paid in are, by the express wording of the above section, to be accounted for as a portion of the personal estate, and they become part of the fund for the payment of debts. Such rents as were here thus collected, are to be included in the balance to which the creditors generally may look, though the right to share in the proceeds of the realty is lost by failure to comply with the statute."

On the other hand, it has been held that where an application for the collection of rents from real estate of decedent was not made until more than one year after the death of the decedent, such application was too late and the same was dismissed. *Kearney's Estate*, 30 Dist. 75, 1920. In this case, Sando, P. J. made the following statement:

"The petitioner had the right to institute suit against the administrator at any time within one year from the death of the decedent, thereby

continuing the lien of its debt. Having failed to avail itself of the statutory provision, the respondent has no authority to apply the rents from the real estate of the decedent to the payment of the alleged claim."

Some interesting questions may arise on this matter of application of rents accruing subsequent to the death of the lessor. For example, in the case last stated let it be assumed that within the year the claimant would proceed under the provisions of Section 15(a) of the Fiduciaries Act, *supra*, by bringing his action and thus continuing the lien beyond the year but no application would be made within the year. If in such a case the administrator was collecting the rents for the heirs at what point of time would the rents as collected become available or would the time of filing the application mark the line of cleavage between rents not available and rents available? Another situation would be where the land at the time of decedent's death was subject to the lien of a judgment, the rents are collected by the administrator as agent for the heirs during the year following the death of the owner and later the real estate is sold by order of the Orphans' Court for the payment of debts. Are the rents as collected subject to an accounting on the part of the administrator and if so who can participate in such distribution, all upon the assumption that no application has ever been made for the segregation of the rents although the estate is insolvent?

It has been held that before fiduciary can collect rents for purposes of paying debts of estate, he must obtain leave of Orphans' Court, and where rents were collected without leave of court, on presentation of proper petition, court will ratify collections. *Fullerton's Estate 13 Erie 50 (1931)*.

In another recent case it was determined the Orphans' Court has no jurisdiction to determine ownership of rents which it is alleged, belonged to decedent under terms of oral agreement, where rights of living persons who do not claim title through estate are involved, nor may surcharge be imposed upon trustee in respect of such item. *Gandolfo's Estate, 17 D. & C. 701 (1932)*.

A. J. White Hutton.

CAN THERE BE A SUB-LEASE FOR THE ENTIRE TERM IN PENNSYLVANIA?

It is settled beyond all doubt that the assignee of a leasehold is liable to the lessor for the rent reserved in the original lease.¹ It is equally well settled that this liability continues only so long as he continues as assignee, and

¹Washington Natural Gas Co. v. Johnson, 123 Pa. 576, (1888); Ottman v. Nixon-Nirdlinger, 301 Pa. 234, (1930).