

Estate of Prindle

4/20

Waiver and Estoppel; Creditor s claim; Insurance bad faith

Angela Prindle was murdered by her estranged ex-husband in May 2002. He also shot Ms. Prindle s sister, Jessica Harris, and Jessica s daughter. In July 2002, Angela and Jessica s mother, Earline Harris filed a petition for probate of the estate of Angela Harris. Earline was appointed administrator. The estate gave notice to Angela s creditors to file claims against the estate by January 2003.

In May 2003, Jessica filed suit against the estranged ex-husband and the estate, after the time for filing claims against the estate. The suit alleged Angela **negligently failed to warn Jessica that her ex-husband would return to the residence**. As administrator, Earline Harris asked Travelers to **provide a defense and to pay the \$100,000 policy limits when it was demanded by Jessica**. Travelers denied coverage and the case proceeded to a court trial. The court found the estate liable to Harris for negligence in the amount of about \$7 million.

The administrator then **assigned** the estate s rights against Travelers for failure to defend and indemnify in the negligence action in exchange for an agreement not to execute on the judgment. Jessica and the Administrator then sued Travelers for **bad faith**. In April 2006, Jessica filed a belated creditor s claim against the estate, claiming about \$7 million plus interest.

Travelers filed a summary judgment in the bad faith action, asserting the policy s **exclusion for intentional acts of the insured precluded coverage** for the actions of the ex-husband. It also argued that Jessica Harris **failed to file a timely creditor s claim**, and therefore the estate was never in danger of a judgment exceeding the limits of the policy. The court found there was sufficient evidence the ex-husband was not an insured so that the exclusion was not applicable. It also ruled the validity of the creditor s claim would be determined by the Probate Court.

In the probate action, Travelers petitioned to remove the Administrator and find the creditor s claim by Jessica was invalid. The Administrator moved to have the belated claim approved, despite the absence of a late claim petition. The Probate Court found Travelers was an **interested person** under probate code section 48, such that it had standing before the court. The Court then denied the petition to remove the Administrator, and also found the conduct of the administrator acted as a **waiver and estopped** it from asserting the failure to file a late claim as a defense to the potential liability of Travelers. The absence of a late claim would not be deemed relevant to the issues before the court.

The Administrator and Harris contend on appeal that the Probate Court abused its discretion in finding Travelers had standing. The Third DCA disagreed, finding the Probate Code confers **standing** on anyone having an interest in an estate which may be

affected by a probate proceeding. (*Estate of Davis* (1990) 219 Cal.App.3d 663) Since Travelers could obviously be financially impacted as the insurer, it had standing in the probate matter.

Meanwhile, Travelers contended the Probate Court erred in finding the Administrator and Travelers are **estopped** from asserting that the failure of plaintiffs in the negligence action to file a timely creditor's claim. It argued the untimely claim acted to bar relief against Travelers in the bad faith action. The Appellate Court noted that generally the administrator did not have authority to waive formal presentation of a claim, but where there is **knowledge of the claim**, there is **a concession it is meritorious**, where the **estate is protected by insurance exceeding the amount of the claim**, and **where waiver results in the loss of no substantial benefit and causes no detriment to the heirs**, **the late claim requirement may be waived**. (*Satterfield v Garmire* (1967) 65 Cal.2d 638)

Based on a 1983 case, the Justices noted that **a party who by his conduct consents to or permits action which may be in excess of the court's power may be estopped to complain of the ensuing action in excess of jurisdiction**. (*Rogers v Hirschi* (1983) 141 Cal.App.3d 847) Applying this **estoppel doctrine**, the court in *Rogers* indicated that where an executor never raised the failure of the plaintiff to file a claim in the probate action until after entry of final judgment it could be **estopped** from doing so. If the executor had raised the failure in the answer or demurrer, the plaintiff would have had time to file a creditor's claim.

Instead, the executor allowed the case to consume trial court resources. Allowing the Administrator to raise the claim issue *after* the judgment would be contrary to public policy in favor of the **finality of judgments**. (*Rogers*, at p. 852)

Travelers then argued the Probate Code capped its liability at the limits of coverage. Probate Code section 550 allows an action to establish the decedent's liability for which the decedent was protected by insurance to be commenced against the estate without the need to join the administrator or heirs. **Unless the representative is joined the judgment may not exceed the limits of insurance coverage**.

Here, Jessica Harris did not proceed under the Probate Code. The negligence case did not name the estate and was not served on Travelers pursuant to section 550. Instead, it was a **negligence action against the Administrator, pursuant to Code of Civil Procedure section 377.40, as a common law negligence action against the decedent that survived her death**. Accordingly, section 550 does not apply.

Travelers also asserted it had **standing** to defend against the bad faith action by asserting the absence of a creditor's claim by Harris. Turning to the reasoning in *Rogers*, the Third DCA pointed out that the Administrator had allowed the negligence action to proceed to final judgment. As such, she was estopped to question that proceeding.

Further, equitable considerations were raised. Although there was a possible loss to the beneficiaries of the estate from the judgment in the negligence action, the Administrator

was able to counteract that possibility by assigning the estate's rights against Travelers to Harris in exchange for a covenant not to execute on the judgment against the estate. Therefore, in the end, the negligence action did not expose the beneficiaries of the estate to a loss. *The important public policy that there must be an end to litigation which underlies the doctrine of finality of judgments is an additional consideration indicating defendant should be estopped from attacking the judgment. (Satterfield v Garmire (1967) 65 Cal.2d 638)*

Since the Administrator allowed the negligence claim to proceed through to final judgment, without raising the failure to file a claim as a defense, equitable considerations support the application of **estoppel** against the Administrator. The Probate Court ruling was correct. Even though it is Travelers, not the Administrator, that is trying to attack the final judgment, this does not change the result. **Given Travelers voluntary absence from the negligence proceedings, it is now bound by the final judgment in that action.**

If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former. Civil Code section 2778, subdivision 5. Because Travelers refused Earline Harris' request for a defense, it is bound by the judgment in the same manner she is bound as the Administrator. She acted in good faith in defending the action and since she is **estopped** from attacking the judgment, so too is Travelers.

Lastly, Travelers argues Jessica Harris' recovery must be limited to the \$100,000 policy limits, based on the Probate Code. Since Harris' action was against the personal representative under the Code of Civil Procedure and was not within the Probate Code, the limitations do not apply.

The order of the Probate Court is affirmed.