PROBATE CORNER

By: David M. Garten, Esq.

ARTICLE: Who Is A Reasonably Ascertainable Creditor?

To administer an estate in an orderly manner, the personal representative must ascertain what debts and claims are to be paid by the estate, because no assets should be distributed until the personal representative is certain that these debts and claims can be paid. In furtherance of his duties, the personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are “reasonably ascertainable”, even if the claims are unmatured, contingent, or unliquidated. Impracticable and extended searches are not required. *Refer to* §733.2121(3)(a), F.S. and Fla. Prob. R. 5.241(a). A personal representative may be personally liable for the shortfall in the estate’s assets that are insufficient to pay a reasonably ascertainable creditor’s claim. *See, Miller v. Estate of Baer,* 837 So. 2d 448 (Fla. 4th DCA 2002).

A "reasonably ascertainable creditor” of the decedent is one that the personal representative would discover upon exercise of reasonable diligence -- a personal representative has no duty to speculate and conjecture that someone might possibly have a claim against the estate. *See, Strulowitz v. The Cadle Company, II, Inc.*, 839 So. 2d 876 (Fla. 4th DCA 2003), *citing, Jones v. Sun Bank/Miami, N.A*., 609 So. 2d 98 (Fla. 3d DCA 1992). To be reasonably ascertainable, the claimant need only be a “potential” creditor; the merits of the claim are determined in an independent action. *See, Strulowitz v. The Cadle Company, II, Inc*., 839 So. 2d 876 (Fla. 4th DCA 2003); *Simpson v. Estate of Simpson,* 922 So. 2d 1027 (Fla. 5th DCA 2006).

The determination of whether a creditor is reasonably ascertainable is an evidentiary matter; therefore, evidence must be presented to support the notion that a creditor was in fact reasonably ascertainable by the personal representative. *See, Faerber v. D.G*., 928 So.2d 517 (Fla. 2d DCA 2006). The Committee Notes to Fla. Probate Rule 5.241read in part that “[t]he steps to be taken by a personal representative in conducting a diligent search for creditors depends, in large measure, on how familiar the personal representative is with the decedent's affairs. Therefore, the committee believes it is inappropriate to list particular steps to be taken in each estate, since the circumstances will vary from case to case.” Although there is no specific checklist for a reasonable diligent search, it is clear that a personal representative is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the personal representative.

In *Strulowitz v. The Cadle Company, II, Inc*., 839 So. 2d 876 (Fla. 4th DCA 2003), after the statutory claims-bar date had run, the creditor, Cadle, made a claim on its debt. The personal representative subsequently sought to strike the claim and the probate court referred the matter to an attorney ad litem who interviewed the parties and issued a report concluding that Cadle was a reasonably ascertainable creditor. The attorney ad litem acknowledged the difficulty he had tracking down Cadle and the debt, but, concluded that the personal representative could have conducted a more diligent search. Specifically, had the personal representative flipped back just a few more pages in the decedent's check register, he might have noticed a pattern of checks for $1,500 and determined the identity of the creditor. The lower court found that the fact there were four recurring payments in an identical amount to Cadle over the past year and an attorney ad litem was able to locate Cadle and confirm the debt with two phone calls, indicated that Cadle was a reasonably ascertainable creditor and was entitled to notice. The order was affirmed on appeal. The personal representative’s argument that Cadle was not a reasonably ascertainable creditor is instructive:

The personal representative counters that he conducted a diligent search for creditors and Cadle was neither known nor reasonably ascertainable. He maintains that his first knowledge of the debt came from Cadle's phone call in January 2001. At that point, he had not received any bills, letters, payment books, phone calls, or correspondence of any kind concerning an outstanding debt to the company. The decedent's personal and business files did not contain a copy of the Joint Stipulation of Settlement; nor did his files contain the order approving the settlement. Contrary to the report of the attorney ad litem, he argues, there was nothing among the decedent's personal and business records that would have revealed Cadle's claim without "a handwriting interpreter and detective." Further, he submits, there was no way of knowing whether those checks represented an outstanding debt or simply a store purchase. As the Jones court explained, it is not just the claimant's identity but its "claim" that must be reasonably ascertainable. Jones, 609 So. 2d at 102. The personal representative has no duty to speculate and conjecture that someone might possibly have a claim against the estate. Id.

The personal representative asserts that requiring the administrator of an estate to locate and study all checks written by the decedent during the year preceding his or her death and to chart out patterns in the amounts paid, where no bill, phone call, or correspondence reflects an outstanding debt, places a greater burden on the personal representative than what is required by law. He reminds us that section 733.212(4)(a) does not require impracticable and extended searches. Additionally, the personal representative argues that there is no legal authority requiring him to review any check stubs at all, let alone those beyond seventeen weeks. In so arguing, the personal representative highlights a concern that makes his appeal problematic: the absence of any written rules or guidelines on specific steps that an estate administrator must take during the course of a diligent search.

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**Service of notice to creditors**: Service of the notice to creditors shall be either by informal notice, or in the manner provided for service of formal notice at the option of the personal representative. Service on one creditor by a chosen method shall not preclude service on another creditor by another method. Refer to Fla. Prob. R. 5.241(a).