Celebrity Estate Planning: Misfires of the Rich and Famous VI

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As estate planning professionals, we see many clients with poorly drafted documents and poorly conceived estate plans. Sometimes the errors made are based on mistakes of fact and sometimes they are based on mistakes of law. If clients come in time, these estate planning misfires can usually be avoided. If not, the consequences for the client's family can be devastating. Surprisingly, wealthy celebrities are often the recipients of poor estate planning. When estate planning misfires occur, litigation among family members and with taxing authorities can be the ultimate result. The misfires discussed below involve celebrities, but the overarching issues relate to everyone.

Ray Charles: Even the Best Laid Plans Can Go Awry

Background: Ray Charles was a prolific, blind, award-winning musician. Charles overcame a tragic childhood, the loss of his sight, and drug addiction to rise to musical stardom. He is on the short list of artists to be inducted into both the Rock and Roll Hall of Fame and the Country Music Hall of Fame.

Estate Plan: Charles was the father of 12 children by 10 different women. Facing a terminal diagnosis, Charles created trusts funded with $500,000 for each of his children. He communicated to each child that the trust for his or her benefit would be his or her sole inheritance from him, and the balance of his estate would pass to Charles's charitable foundation. Charles's longtime manager, Joe Adams, was named as trustee of the trusts, executor of Charles's estate, and sole chairman, president, and treasurer of the foundation. Charles's children believed that there would be more for them "down the line," including the valuable right to license Charles's name and likeness. Needless to say, Charles's children and Adams did not get along.

Result: At least a half dozen lawsuits were initiated between Charles's children and Adams for trademark infringement, right to name and likeness, breach of fiduciary duties, unfair business practices, and Charles's copyrights, among other causes of action. Some actions were dismissed for procedural issues and some were settled. Although Charles died on June 10, 2004, various lawsuits continued well into 2017.

Lesson: Even well-created estate plans can go awry when family members are disgruntled and left feeling disenfranchised. Ultimately, Charles's estate plan remained intact, but only after much time, money, and energy were expended in the process. One way to minimize potential litigation following death is to separate the fiduciary roles by naming various people or institutions for each role. Leaving one person in a position of absolute power is often inadvisable. If practicable, clients should consider including at least one family member as a co-fiduciary so that all family members will feel adequately represented. In addition, when creating a lasting

charitable legacy, it is advisable to involve at least some family members in order to minimize the suspicion and hurt feelings that often result in legal action.

Ric Ocasek: Estate Planning During a Divorce

Background: Richard T. Ocasek, a/k/a Ric Ocasek, was the frontman for The Cars and a producer of highly successful bands such as Weezer and No Doubt. He married his third wife, Paulina Porizkova, in 1989, and their marriage produced two children. He also had four children from his two prior marriages. Ocasek and Porizkova separated in 2017, and a divorce action was commenced.

Estate Plan: On August 28, 2019, Ocasek executed a new pour-over will that made no provision for Porizkova and stated that she was not entitled to an elective share because she had "abandoned" him. The elective share amount due the surviving spouse is one-third of the net estate (leaving aside very small estates); however, in New York and many other states, abandonment is a defense to the elective share (N.Y. Est. Powers & Trusts Law § 5-1.2(a)(5)). Ocasek died on September 15, 2019, at which time the divorce was still pending.

Result: Ocasek's death terminated the pending divorce proceeding, which meant that Porizkova could not seek the equitable distribution she might have received in such proceeding. Her recourse (other than with respect to assets that passed to her by operation of law and beneficiary designation) was to assert that she was entitled to her elective share. Porizkova filed a Notice of Election on February 17, 2021, which asserted such right.

It is difficult for an executor or administrator to prevail on a defense of abandonment. This is true even in the case of a pending divorce action and can also be true when the spouses have lived in separate homes for many years. For example, having a spouse depart the marital home is not abandonment if the spouses consent. The facts that emerged in the media show that it would have been very difficult for the executor to prove abandonment. For example, Ocasek and Porizkova continued to live in the same townhouse, she checked on him the night before his death, and it was Porizkova who found his body.

Although we are not privy to the exact details of Porizkova's settlement with the estate, we do know that Porizkova's claim was settled in October 2021, and her statements to the media imply that she ultimately received her elective share amount. Therefore, the very public, and likely expensive, two-year dispute that followed Ocasek's death does not appear to have benefited any of the other interested parties.

Lesson: A client may be reluctant to leave the elective share amount to his or her spouse during a pending divorce proceeding. However, consider the position of the nominated executor, who may be pressured by the other beneficiaries to assert the abandonment defense. If the client is unwilling to include an elective share bequest, consider at least having a contemporaneous letter to the client in the file advising the client that it is very difficult to prevail with an abandonment defense, even during an acrimonious divorce proceeding.

Basquiat, Blockage Discounts, and Beyond: Intestacy and Estate (and Gift) Valuation

Background: Jean-Michel Basquiat was the first major Black artist. He rose to fame in the 1980s and died intestate in 1988 of a heroin overdose at the age of 27. Basquiat was survived by his parents but did not have a spouse or any children. Under New York intestacy law, Basquiat's parents inherited his estate equally (N.Y. Est. Powers & Trusts Law § 4-1.1(a)(4)). Basquiat left over 1,300 unsold works of art in his estate. Twenty years after his death, Basquiat's mother, Matilde Basquiat, also died intestate. Basquiat's father, Gerard Basquiat, and two sisters inherited Matilde's estate and Gerard administered Matilde's estate until he subsequently died in 2013. In valuing Matilde's estate, Gerard applied a significant blockage discount to the value of the one-half interest in Basquiat's art owned by Matilde at the time of her death. The blockage discount was subsequently challenged by the IRS.

Blockage discounts originated in the securities market. Such discounts are routinely applied when a decedent dies holding a large block of a single stock that must be disposed of immediately at death. If the disposition of a block of stock floods the market, it has the potential to reduce the stock's value. To compensate for the immediate loss of value, the IRS often permits a blockage discount to the value of the gross estate, contingent on the quantity of the single stock in question. Blockage discounts are now often applied in the estates of well-known artists as the price of an artist's work is often significantly reduced if many of such artist's works are released into the market for public sale simultaneously.

Estate Administration: Sotheby's originally valued the Basquiat art owned by Matilde at the time of her death at $36 million. The IRS disagreed, and after applying its own blockage discount, the IRS claimed the value of the artwork in Matilde's estate was worth $69 million and issued another Notice of Deficiency. Gerard disputed the value of the artwork estimated by the IRS, applied his own 46 percent blockage discount, and claimed an IRS refund. After Gerard's death, the Basquiat family valued Gerard's estate at $45 million. The IRS issued a Notice of Deficiency based upon the value of the artwork in Gerard's estate. The IRS has made a confidential settlement offer that is still pending.

Result: The blockage discounts applied in both Matilde's and Gerard's estates were challenged by the IRS. An undisclosed settlement and stipulated value were reached in Basquiat's original estate, additional taxes and penalties were due from his mother's estate, and his father's estate continues to be in settlement proceedings with the IRS.

Lesson: The Basquiat family applied large blockage discounts and reduced valuations to the Basquiat artwork, resulting in several disputes with the IRS. A blockage discount can be a useful tool when an estate holds a large collection of art by a single artist. Such discounts can significantly reduce estate taxes if applied intelligently. The overzealous application of such a discount, however, can trigger an IRS audit and cost an estate both time and money.

Nicholas Zoullas: Second Marriages, Scorned Children, and "Stolen" Art

Background: Nicholas S. Zoullas was a Greek shipping magnate who was worth many millions at the time of his death. Zoullas had five children from two marriages that both ended in divorce. Zoullas and his first wife, Marianna Souyoutzoglou, had two children: Alexis and Sophocles. Zoullas and his second wife, Susan Bates Zoullas, had three children: Diana, Winston, and Andrew. In 2021, Zoullas died peacefully during Christmas week in New York at the age of 84.

Estate Plan: During his life, Zoullas's mismanagement of his art collection caused lots of family stress and bad press. Zoullas and his son Sophocles litigated with each other over whether a Monet painting promised to Sophocles by his grandfather was actually a completed gift. The painting sat in storage for years before Zoullas sold it to one of his own struggling companies and then flipped it at auction to a third party. Zoullas's $10 million erotic art collection was also threatened and damaged during a break-up with his then-girlfriend Stacy Cliett. Zoullas stored the 200-piece collection in his Florida home that he shared with Cliett, and she and her new boyfriend moved the art to a warehouse, where it was ultimately recovered by Florida police. Cliett was charged with grand larceny in the theft. After his death, Zoullas's will gave all of his assets to his second wife Susan and made no provision for his first wife Marianna. Zoullas's will also expressly disinherited his sons Alexis and Sophocles.

Result: The art litigation caused Zoullas to become estranged from his sons Alexis and Sophocles. Tensions ran so high after Zoullas's death that family members published two dueling obituaries in the *New York Times* (with one completely omitting any mention of Susan and their three children). After learning that their father had disinherited them, Alexis and Sophocles issued a joint statement asserting, "we do not agree with many of his

choices, particularly those he made later in his life, when he was unfortunately in a state of decline."

Lesson: Consider including mandatory estate dispositions to children when negotiating a divorce settlement agreement. Art, which can hold huge monetary and emotional value, should be transferred with clear communication and stored in a secured location. Public figures should take measures to keep the disposition of their estate private by using a revocable trust. Finally, leaving a child even a token acknowledgment may go a long way in smoothing over hurt feelings and protecting the entire estate plan from being challenged.

Lessons from the Britney Spears Guardianship Saga

Background: Britney Spears has been in the public eye virtually her entire life, making her solo debut as a singer at age 5 and achieving her first Number One hit at age 17. Following her meteoric rise, she has continued to issue one platinum album after another. How she was forced into conservatorship against her will and how she and her fans fought a battle to escape it provide a disturbing example of the powers that conservatorships—especially abusive ones—hold over those who have lost their personal freedom and also provides lessons on how to avoid such situations.

Imposition of Guardianship: Spears was a mega-star by her 20s, but after a few well-publicized incidents raised questions among her family and advisors regarding her mental stability, she found herself in the grip of a court-appointed involuntary conservatorship or guardianship. She was by no means a willing conservatee and tried repeatedly to free herself from this ordeal. Despite being a remarkably productive songwriter, singer, and performer—producing albums winning critical and commercial acclaim, conducting multiple worldwide tours, and becoming the top-earning woman in music—she was subject to the involuntary conservatorship for almost 14 years.

Result: As stories of her struggles trickled out, a concerted "#FreeBritney" social media campaign arose, followed by an Emmy-nominated documentary and damning news articles chronicling her plight. The public's condemnation had an effect, and in late 2021 her conservatorship was finally terminated. Both the California legislature and Congress have taken note of the saga, and increased transparency and stricter accountability for guardianships may be in store.

Lesson: How can less-famous clients protect themselves when worried about or facing future incapacity? Three common, but sometimes overlooked or ignored, techniques, if put into place, can significantly reduce the risk that a guardian may be necessary or may be imposed. First, under a health care proxy or medical power of attorney, clients can appoint someone to make health care decisions for them should they later be unable to make those decisions themselves, thereby reducing the risk that a court will name a guardian. Likewise, a durable power of attorney permits clients to appoint someone to act on their behalf for financial and estate planning purposes, again limiting the risk of court intervention. Finally, a *funded* revocable trust with appropriate successor trustee mechanisms is a beneficial way of avoiding court intervention. So long as the trust deed has provided for the appointment of a trusted successor (including backups or appropriate appointment provisions), the management of the trust assets should continue without interruption should the client suffer a mental injury. These three documents can serve to keep control over a client's affairs in the hands of the client and not in those of the court. So long as clients incorporate documents such as these as part of their planning, they will greatly reduce the risk of falling into Britney's situation.

James Brown: Charitable Planning, Liquidity Planning, and Anticipating Challenges to an Estate Plan

Background: James Brown, also known as "the Godfather of Soul" and "the Hardest-Working Man in Show Business," was a singer, songwriter, and dancer who was one of the most successful and influential pop-music entertainers of the 20th century. He was inducted into the Rock and Roll Hall of Fame in 1986. Brown was a

tireless performer who continued headlining concerts until his death from congestive heart failure at age 73 in 2006.

Estate Plan: Brown's will left the bulk of his estate to a charitable trust providing scholarships for underprivileged children in South Carolina and Georgia. Brown's will did not mention his 36-year-old surviving partner, Tomi Rae Hynie, who had allegedly married Brown in 2001. Brown had reportedly signed the will 12 months before he allegedly married Hynie.

Result: Hynie filed a petition in South Carolina probate court claiming to be Brown's surviving spouse, which, under South Carolina law, would have entitled her to set aside Brown's will and receive a one-third "elective share" of his probate estate. In 2020, though, the South Carolina Supreme Court ruled that Hynie had not been legally married to Brown and therefore had no rights in his estate. This was not the only legal obstacle preventing the closing of Brown's estate, however; more than a dozen lawsuits were filed over the years by people trying to lay claim to the singer's assets, which have been estimated to be worth approximately $100 million. In July 2021, the estate sold all of its assets for an estimated $90 million to Primary Wave Music, a New York company that specializes in marketing celebrity estates and song catalogs, but even after the sale the estate has continued to be embroiled in litigation.

Lesson: Ensure that clients update their documents upon the happening of a major life event, such as a marriage. Create records that will help a litigation attorney to defend against challenges to an estate plan (on the basis of claims of undue influence or lack of testamentary capacity). Carefully analyze liquidity planning options such as life insurance, Code Section 6166, and *Graegin* loans. Consider encouraging clients to make lifetime, rather than testamentary, charitable gifts. Doing so is likely more tax-efficient and will also allow clients to benefit from the enjoyment and public prestige of seeing the outcomes and social recognition of their philanthropy.

Conclusion

The celebrities highlighted above each had an estate misfire. Some had no estate plan at all, and some had plans that suffered from poor drafting or poor planning. In today's increasingly varied and complex families, all persons, including but not limited to wealthy celebrities, should protect their assets and their loved ones by hiring competent estate planning counsel and devising thoughtful and comprehensive estate plans.