

Circuit Court for Wicomico County  
Case No. 22-C-15-001418  
22-C-15-001419

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 514

September Term, 2018

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DONNIE WILLIAMS FOUNDATION, INC.

v.

THE DONALD EDWIN WILLIAMS  
REVOCABLE TRUST, *et. al.*

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Nazarian,  
Leahy,  
Friedman,

JJ.

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Opinion by Friedman, J.

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Filed: September 5, 2019

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. RULE 1-104.

This case concerns a dispute between the Donnie Williams Foundation, Inc. (the “Foundation”) and the Trustees of the Donald Edwin Williams Revocable Trust (the “Trustees” and the “Trust” respectively). On April 22, 2014, the parties entered into a Settlement Agreement and Release. Now, more than five years later, we enforce the terms of this binding contract.

### **BACKGROUND<sup>1</sup>**

Donald E. Williams was a successful real estate developer in Salisbury holding assets valued at nearly \$40 million when he died in 2012. About a year before his death, Williams executed several estate planning documents: his will; a Trust for the benefit of his family, his companion, Linda Slacum, and the Foundation; and the Articles of Incorporation creating the Foundation. After Williams’ death, conflict arose almost immediately between the Foundation, which thought it wasn’t receiving enough money fast enough, and the Trustees. Five lawsuits were filed. The parties then attended mediation supervised by a retired circuit court judge, which resulted in a Settlement Agreement and Release.

Peace did not last long. The Foundation retained new counsel and on September 16, 2015, filed two new lawsuits, which have been described as the Removal Action (by which the Foundation sought the removal of the Trustees) and the Damages Action (by which the Foundation sought money damages). Those cases were consolidated. Eventually, the circuit court dismissed the Removal Action and granted summary judgment in favor of the

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<sup>1</sup> These facts are condensed from our previous published opinion in this case: *In the Matter of Donald Edwin Williams Revocable Trust*, 234 Md. App. 472 (2017).

Trustees in the Damages Action. It is from these decisions, which taken together constitute a final judgment, that this appeal proceeds.

## DISCUSSION

Because it is so central to our analysis, we begin by setting forth many of the critical terms of the Settlement Agreement and Release:

### SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereafter “Agreement”) is made as of April 22, 2014, by and between [all relevant parties].

### EXPLANATORY STATEMENT

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WHEREAS, disputes have arisen between [the parties] with respect to, among other things, the disposition of the assets of the Estate, the disposition of assets of the Trust, the interpretation of provisions of the Revocable Trust Agreement under which the Trust was created, [the personal representative’s] service as Personal Representative, the Commissions claimed by [the Personal Representative], and the compensation claimed by [the Personal Representative’s] attorneys;

WHEREAS, those disputes have given rise to multiple proceedings before the Orphans’ Court for Wicomico County and the Circuit Court for Wicomico County including, *inter alia*, the following cases, which are collectively referred to as the “Litigation”: Estate of Donald E. William[s], Estate No. 19082; *Linda L. Slacum, et al. v. Debra W. Hall*, Civil Action No. 22-C-13-001377 OC; *Linda L. Slacum, et al. v. Debra W. Hall, et al.*, Civil Action No. 22-C-13-001669 DJ; *Linda L. Slacum, et al. v. Debra W. Hall*, Case No. 22-C-13-001968 OC; and *Linda L. Slacum, et al. v. Debra W. Hall*, Case No. 22-C-13-002102 OC.

WHEREAS, following and in accord with the material terms upon which the Parties agreed at the conclusion of an extensive mediation conducted before the Honorable D. William Simpson on March 12, 2014, without admitting liability, the

Parties wish to compromise and resolve the claims raised or which could have been raised in the Litigation and any claims relating to, pertaining to or arising out of the subject matter of the Litigation or the administration of the Estate, and as a part of that resolution, to dismiss, with prejudice, as to these Parties, that Litigation and/or to terminate that Litigation through a stipulation and consent order as provided in this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises and releases contained herein and INTENDING TO BE LEGALLY BOUND BY THIS AGREEMENT, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree to finally compromise and settle all issues that have been raised or which could have been raised between them in the Litigation or otherwise, in accord with the following terms:

1. Ocean City Condominium. \*\*\*\*\*
2. Distribution of Lots Owned by Estate. \*\*\*\*\*
3. Distribution of Other Estate Assets and Claims. \*\*\*\*\*
4. Filing of Dismissals and Stipulations. \*\*\*\*\*
5. Consent Order. \*\*\*\*\*
6. Commissions, Attorneys' Fees[,] and Legal Expenses.  
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7. Disclosure of Documents to Foundation. Upon the Foundation's execution of the Undertaking attached as a part of the Stipulated Non-Disclosure Agreement approved by the Orphans' Court on August 5, 2013, the Estate and/or the Trust, as the case may be, shall provide the Foundation with a true copy of the following:
  - a) The Federal Estate Tax Return (Form 706) Return, with all schedules and exhibits, as filed by the Estate;
  - b) The Maryland Estate Tax Return, with all schedules and exhibits, as filed by the Estate;
  - c) All fiduciary tax returns, with all schedules, as filed by the Estate or Trust; and,

- d) Such other documents as the Foundation might reasonably require to perform its responsibilities.

The disclosure required hereunder shall be a continuing obligation of the Estate and the Trust respectively until such time as all of their assets are distributed and accounted for. Copies of fiduciary tax returns shall be furnished to the Foundation within 30 days after they are filed; and copies of any amendments to state or federal estate tax returns shall likewise be furnished to the Foundation within 30 days after they are filed. In addition, the Estate and/or Trust may exchange other documents with the Foundation in accord with and subject to the terms of the Non-Disclosure Agreement....<sup>[2]</sup>

8. Headstone. \*\*\*\*
9. Family Monument. \*\*\*\*
10. Linda Slacum's Personal Property. \*\*\*\*
11. Mutual Release. Except for the rights created by this Agreement, [the parties] hereby release one another and their respective agents, attorneys, accountants, ... predecessors, successors, heirs, assigns, representatives, partners, officers, directors, shareholders, parent companies, subsidiaries, affiliates, related entities and employees, from and against any and all actions, causes of action, suits, debts, sums of money, accounts, reckonings, bills, trespasses, damages, judgments, executions, defaults, covenants, contracts, controversies, agreements, provisions, counsel fees, costs, counterclaims, claims and demands whatsoever, whether known or unknown, that relate to the subject matter of this Agreement, the Estate and/or the Litigation and/or that were or could have been asserted in the Estate and/or the Litigation; SAVE AND EXCEPT for any and all claims whatsoever that each of the Parties or any of them may have against the attorneys and law firm responsible for the preparation

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<sup>2</sup> The Non-Disclosure Agreement does not create any substantive disclosure obligations but, instead, provides a procedural framework by which the parties may exchange documents.

of the Documents and any other agents or representatives of that firm and/or its predecessors and successors arising from or in any way related to the drafting, revision, or execution of the Documents and/or any other acts or omissions related to the establishment of The Donald Edwin Williams Revocable (Now Irrevocable) Trust and the Donnie Williams Foundation, Inc., and any problems or concerns arising from any such acts or omissions, which claims are expressly reserved to each of the Parties and not released hereby.

12. Payment of Mediator. \*\*\*\*\*
13. Non-Disparagement. \*\*\*\*\*
14. Construction of Agreement. Each of the Parties acknowledges that this is a fair agreement and is not the result of fraud, duress[,] or undue influence exercised upon it by any person or entity....
15. Entire Agreement, Integration[,] and Amendments in Writing. \*\*\*\*\*
16. No Waiver. \*\*\*\*\*
17. Authority. \*\*\*\*\*
18. Benefit and Burden to Successors and Assigns. \*\*\*\*\*
19. No Third Party Beneficiaries. \*\*\*\*\*
20. Governing Law and Remedies. \*\*\*\*\*
21. Waiver of Jury Trial. \*\*\*\*\*
22. No Admission of Liability. \*\*\*\*\*
23. Severability. \*\*\*\*\*
24. Cooperation. \*\*\*\*\*
25. Counterparts/Signatures. \*\*\*\*\*
26. Notices. \*\*\*\*\*
27. Date. \*\*\*\*\*

There were also numerous exhibits attached and incorporated by reference, including a “Joint Stipulation as to Interpretation of Trust Agreement.” The Settlement Agreement and Release was signed by all the parties.

We interpret settlement agreements as we do all other contracts, under the well-established “objective theory.” That is, we ask ourselves what a reasonable person would think the words of the contract mean. *Brethren Mut. Ins. Co. v. Buckley*, 437 Md. 332, 341 (2014).

We make a few preliminary observations. *First*, it is abundantly clear to us that the scope of the Settlement Agreement and Release is not nearly so limited as the Foundation urges. It is not simply a release of the five lawsuits listed in the “WHEREAS” paragraph (and collectively defined as the “Litigation”). Instead, ¶11 of the Settlement Agreement and Release unambiguously releases all claims “known or unknown” that “were or could have been asserted” concerning the relationship between the parties arising out of Williams’ estate, the trust creation and operation, and the Foundation. Relatedly, the parties’ characterization of the Settlement Agreement and Release as either “general” or “limited” is unhelpful. The Settlement Agreement and Release releases what it releases and nothing less. *Second*, in this and other settlements, when parties settle lawsuits they don’t have perfect knowledge. Here, the Foundation settled knowing it didn’t have complete information about the administration of the Trust because, among other reasons, it was not to receive documents (pursuant to ¶7) until later. That’s okay. When you settle, you

generally assume the risk that things are worse than you thought.<sup>3</sup> And, *third*, the Settlement Agreement and Release didn't just resolve past issues but also provided a framework for the resolution of future problems in administration of the Trust (principally by way of the Joint Stipulation as to Interpretation of Trust Agreement). That framework is binding on the parties. With those thoughts in mind, we turn to the resolution of the Foundation's specific claims.

I.

The Foundation's first claim goes to the validity of the Settlement Agreement and Release and requires three steps. *Step one*, the Foundation asserts that at the time of execution of the Settlement Agreement and Release, it was in a fiduciary relationship with the Trustees. *Step two*, the Foundation asserts that the Trustees acted fraudulently in their efforts to get the Foundation to agree to the Settlement Agreement and Release. And, *step three*, the Foundation insists that the allegation of fraud between fiduciaries has the legal effect of flipping burdens of proof, such that to prevail on summary judgment, the Trustees had to provide evidence of the *absence* of fraud, not as the circuit court had it, that the Foundation had to provide evidence of the *occurrence* of fraud.

There is, to be sure, legal support for *step three* of the Foundation's argument: that burdens can flip. *See, e.g., Auslander v. Helfand*, 988 F. Supp. 576, 581 (D. Md. 1997)

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<sup>3</sup> We, however, are not suggesting that the Trustees could have withheld material information that they had a fiduciary and a statutory duty to report to the Foundation. Failure to disclose information may be actionable if, "[a]t the time of the ... release, ... the beneficiary did not know of the rights of the beneficiary or of the material facts relating to the breach." Md. Code, Estates and Trusts § 14.5-907(2).



(noting that trustees in a fiduciary relationship bear the burden of proving that a release was not obtained by fraud); *Parish v. Md. & Va. Milk Producers Ass’n*, 250 Md. 24, 101-02 (1968) (noting that when a release is challenged, the “party to it who stands in a confidential relationship to the other party has the burden of showing that the release was not obtained by fraud, undue influence[, ] or over-reaching”). But a party does not get to *step three* without proving that burden flipping is appropriate in *steps one* and *two*. As to *step one*, we hold, as the circuit court at least impliedly found, that by the time of the execution of the agreement, the Trustees no longer owed the Foundation a fiduciary duty. Once the Foundation started suing the Trustees, the Foundation could no longer assume that the Trustees were compelled to act in the Foundation’s best interest. *See Latty v. St. Joseph’s Soc. of Sacred Heart, Inc.*, 198 Md. App. 254, 268 (2011) (observing that a fiduciary relationship “involves a duty on the part of the fiduciary to act for the benefit of the other party to the relation”) (cleaned up). As to *step two*, the Foundation waves the word “fraud” around like a talisman but has produced no support to make us think that fraud occurred. In fact, from our review of the circumstances, we see only evidence to suggest that the Settlement Agreement and Release was *not* procured by fraud, including that its terms seem reasonably fair and were negotiated at arm’s length by competent counsel, under the supervision of a retired judge. The parties even recited at ¶14 of the Agreement itself that it was not procured by fraud. We don’t require strict proof of the fraud such that it would undermine the point of flipping the burdens, but a party must do more than simply recite the word to succeed at *step two*. Given the Foundation’s failures to establish *steps one* and *two*, we never reach *step three*. In such a circumstance, the trial

court did not err by declining to flip the burdens of proof. And, as a result, it did not err in granting summary judgment.

## II.

The Foundation’s second claim is that the trial court erred in interpreting the Trust Agreement to permit the Trustees to pay Slacum from the principal and not just income.<sup>4</sup> If we were interpreting the Trust Agreement afresh, we might agree with the Foundation that the boilerplate language of the “spendthrift” provisions (§§ 6.01, *et seq.*) does not expand the “operative” provisions, which limit payment to income only (§§ 4.11, *et seq.*). But we are not interpreting the Trust Agreement afresh. The parties agreed upon an interpretation of the Trust Agreement in their “Joint Stipulation as to Interpretation of Trust Agreement,” which stated, unequivocally, that “[t]he [p]arties agree that the Trust Agreement should be interpreted consistent with the apparent intent of Mr. Williams, to require that the funding for the [Individual Beneficiary Trust] for the benefit of Ms. Slacum is to be in the amount of \$5,120,000.” Joint Stipulation at ¶ 3. Thus, the question on summary judgment should not have been whether the Trustees could fund Slacum’s Trust with principal and interest or interest only. Rather, the question could only have been whether the Trustees violated the Settlement Agreement and Release by failing to fund Slacum’s Trust for the amount required. There is no allegation, let alone evidence, of such

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<sup>4</sup> For purposes of the following discussion we assume that the Foundation had standing to object to the manner in which Slacum’s Trust was funded, an assumption about which we have serious reservations.

a failure before us. Accordingly, we hold that the trial court did not err in granting summary judgment on this issue either.

### III.

The Foundation's third claim is that the Trustees paid both Slacum and the Foundation too slowly and as a result, the Trustees ought to have been removed. We observe that: (1) the Settlement Agreement and Release is silent as to when payment was to have been made; and (2) pursuant to §5.01(d) of the Trust Agreement, the Trustees are vested with "sole and absolute discretion" regarding monetary distributions.<sup>5</sup> We see no evidence that the Trustees acted outside the scope of their "sole and absolute discretion" in determining how and when to make payments. In the absence of such evidence, we fail to see how the trial court could have done anything other than granting summary judgment in the Trustees' favor.

### IV.

The Foundation's fourth claim is that the Trustees merit removal because they failed to provide the Foundation information in the proper format as quickly as it would have liked. The Foundation never claims that it did not receive the information it needed (and, in fact, received over 11,000 pages of documents). Instead, the Foundation alleges that the

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<sup>5</sup> Monetary distributions to the Foundation were also predicated on its status as a charitable organization. Under § 4.17 of the Trust Agreement, the Trustees were not authorized to distribute to the Foundation until it qualified as a "charitable organization" and "established its tax-exempt status under § 501(c)(3) of the Internal Revenue Code of 1986, as amended." The Foundation did not obtain § 501(c)(3) certification until June 3, 2014. Thus, there is a serious dispute about how late the payments really were.

Trustees failed to provide the documents in a timely manner or in accordance with the formatting requirements for a fiduciary's annual account set out by Maryland Rule 10-708.

The Foundation's argument promotes style over substance. To merit removal, a trustee must have committed a *significant* breach on a matter of substance, not style. *See Miller v. Rosewick Rd. Dev., LLC*, 214 Md. App. 275, 305-06 (2013) (noting that removal of a trustee requires a finding of the trustee's significant lack of diligence). *First*, issues of document distribution were resolved in ¶7 of the Settlement Agreement and Release. *Second*, the Foundation does not even contend there was a breach of the Settlement Agreement and Release. Even if Rule 10-708 applies here, and even if the Trustees bear some responsibility for the delays (about each of which we have doubts), we are not persuaded that these failures would constitute such a significant breach that their removal would be merited. We, therefore, affirm summary judgment on this ground as well.

V.

The Foundation's fifth claim is that the trial court erred by finding that the commissions taken by the Trustees on the sales of assets were not unreasonable. More specifically, the Foundation argues that if the Trustees had been diligent in the exercise of their duties, they would have received smaller commissions. In our view, this question turns exclusively on the factual finding by the trial court that the commissions the Trustees took were consistent with the local rule for trustee sales,<sup>6</sup> about which nobody has offered

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<sup>6</sup> According to the trial judge, the local rule applicable to this situation in the First Judicial Circuit provides that:

evidence that would create a genuine dispute of material fact. As such, we have no power to undo the grant of summary judgment.

### CONCLUSION

In conclusion, we make two additional observations. *First*, when cases settle, they are settled. Only under the most extreme situations are they allowed to become unsettled and this isn't such a case. And, *second*, Williams intended that on his death, his money was to support his family and Slacum, and then provide programs for schoolchildren. Reasonable minds might differ on the amounts and proportions, but it cannot be disputed that he did not intend for his fortune to be swallowed by legal fees.

**JUDGMENT OF THE CIRCUIT COURT  
FOR WICOMICO COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**

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In all sales of real, leasehold[,] and tangible personal property made pursuant to an order of Court, or subject to ratification by the Court, unless the compensation of the trustee or other fiduciary is fixed by the instrument pursuant to which the sale is conducted, the following compensation shall be allowed to the trustee or other fiduciary:

10% on the first \$3,000 and 5% on the balance  
of the purchase price.