No. 22-____

IN THE

Supreme Court of the United States

BARON BOND AND HOWARD B. MILLER,
PERSONAL REPRESENTATIVES of the
ESTATE OF FRANK BOND,

Petitioners,

v.

ROGER D. SILK,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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May 31, 2023

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QUESTION PRESENTED

Whether a complaint seeking, or requiring, an accounting or valuation of the assets of a decedent's estate continues, in the wake of *Marshall v. Marshall*, 547 U.S. 293 (2006), to come within the ambit of the probate exception to federal jurisdiction.

PARTIES TO THE PROCEEDING

Petitioners, Baron Bond and Howard B. Miller, were the defendants and appellees in the proceedings below.

Respondent, Roger D. Silk, was the plaintiff and appellant in the proceedings below.

CORPORATE DISCLOSURE STATEMENT

Petitioners Baron Bond and Howard B. Miller are individuals.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

Silk v. Bond, No. 21-56286 (9th Cir.), judgment entered on April 10, 2023;

Silk v. Bond, No. 2:21-cv-03977 (C.D. Cal.), judgment entered on October 26, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Baron Bond and Howard B. Miller respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 65 F.4th 445 and reproduced at App. 19a-27a. The district court's decision is unreported and reproduced at App. 28a-34a.

STATEMENT OF JURISDICTION

The Ninth Circuit Court of Appeals issued its opinion on April 10, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The decision of the Ninth Circuit conflicts with that of the 11th Circuit and presents "an important question of federal law that has not been, but should be, settled by this Court." *See* Sup. Ct. R. 10 (a) and (c).

STATUTORY PROVISIONS INVOLVED

The relevant Maryland statutory provisions are reproduced at App. 35a-39a.

STATEMENT OF THE CASE

This case implicates an important unresolved question regarding the probate exception to federal jurisdiction precipitated by this Court's decision in *Marshall v. Marshall*, 547 U.S. 293 (2006).

A. Background

Since 1909, federal courts have respected this Court's determination that suits that seek, or require, an accounting or valuation of estate assets are beyond the reach of federal jurisdiction. *See Waterman v.*

Canal-Louisiana Bank & Trust Co., 215 U.S. 33 (1909). However, this Court's holding in *Marshall* that the probate exception must be narrowly construed to embrace only those disputes involving "the probate or annulment of a will . . . the administration of a decedent's estate [or cases that] . . . endeavor[] to dispose of property that is in the custody of a state probate court," *see* 547 U.S. at 311-12, has sowed uncertainty and disarray in the lower courts. In a stark break with a century of precedent, two circuits have now held that, under *Marshall*, the probate exception does not extend to accounting or valuation of estate assets.

B. Facts and Procedural History

In 1959, Frank Bond launched a health and fitness business which became known as U.S. Health, Inc. App. 5a. The business prospered and, in 1988, Bond sold his interest in U.S. Health to Bally's Health and Tennis Corporation for $28.5 million, as well as an additional $8.4 million buyout of his employment contract. During and after the sale of his interest to Bally's, Bond made a series of real estate investments, primarily in apartment and shopping centers. Thus, at his death, on July 26, 2020, Bond's estate held extensive assets and investments. App. 5a.

Roger Silk worked for Bond in the 1990s. App. 5a, 29a. Silk claims that he supervised and directed various aspects of Bond's finances, particularly related to an alleged tax savings strategy. App. 5a, 29a. Silk further claims that he and Bond entered into a series of agreements whereby Silk's compensation would include a performance-based incentive fee of 15% based on tax savings that Bond's estate would realize after his death. App. 5a-6a, 29a. After Bond's death, Silk brought a claim against his estate for approximately $3 million

in alleged incentive fees. App. 7a, 29a-30a. On March 12, 2021, the estate disallowed the claim, leading Silk to file suit. App. 7a, 30a.

On May 11, 2021, Silk brought this diversity action against the personal representatives of Bond's Estate seeking an accounting and damages for the tax and estate planning services Silk claims to have provided Bond during his lifetime. App. 7a, 30a. Silk's complaint is based upon an alleged oral agreement and two letter agreements (the "Agreements") signed by himself and Bond. App. 5a-7a, 29a-30a. The Agreements detail the process for selecting an appraiser and set forth formulas for calculating Silk's incentive fee based on the estate's realized tax savings. App. 5a-7a, 30a. The formulas employed in the Agreements use, as a starting point, the date of death fair market value of partnership assets as appraised by an appraiser agreeable to the personal representatives. The intent of the Agreements was for the personal representatives to procure appraisals that would be used in estate administration, tax reporting and contract performance. Thus, both the Agreements and Silk's complaint require an accounting and valuation of the estate's assets.

On July 13, 2021, the personal representatives moved to dismiss on the grounds, *inter alia*, that the court lacked subject matter jurisdiction over Silk's claims owing to the probate exception to federal jurisdiction. App. 7a, 30a. On October 26, 2021, the district court granted the motion to dismiss. App. 7a, 28a.

Silk appealed to the Ninth Circuit. In a published decision, the Ninth Circuit reversed the district court decision, holding that the probate exception is inapplicable because Silk's suit does not involve the probate of a will, estate administration, or the disposition of estate property. App. 20a.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Demonstrates A Growing Conflict Among Lower Courts

This case presents a question of federal jurisdiction thrown into doubt by this Court's decision in *Marshall v. Marshall*, 547 U.S. 293 (2006), specifically, whether actions requiring the appraisal or accounting of estate assets are within the ambit of the probate exception.

Prior to *Marshall*, it was widely understood that a suit seeking, or requiring, an accounting or valuation of estate assets was outside federal jurisdiction. *See, e.g., Waterman v. Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33, 45 (1909) ("the bill in this case goes too far in asking to have an accounting of the estate, such as can only be had in the probate court having jurisdiction of the matter"); *Michigan Tech Fund v. Century National Bank*, 680 F.2d 736, 741 (11th Cir. 1982) ("valuation of estate assets . . . is precluded by the probate exception"); *Turton v. Turton*, 644 F.2d 344, 347-48 (5th Cir.), *reh'g denied*, 647 F.2d 1122 (1981) (abstention based on the probate exception was appropriate because the action required the district court to prematurely adjudicate valuation of estate assets subject to ongoing probate proceedings); *Spears v. Spears*, 162 F.2d 345, 349 (6th Cir.), *cert. denied*, 332 U.S. 768 (1947) ("a federal court has no jurisdiction in the accounting of an estate"); *Kittridge v. Stevens*, 126 F.2d 263, 266 (1st Cir. 1942), *cert. denied*, 317 U.S. 642 (1942) ("it would seem to be equally clear that the *Waterman* case holds that a federal court has no jurisdiction to make an accounting involving a decedent's estate even when it would not affect a *res*").

Marshall, a case which did not seek or require the valuation of estate assets or any other kind of accounting,

compelled this Court to make sense of a cryptic line in a previous decision, *Markham v. Allen*, 326 U.S. 490 (1946). *Markham* wrote that federal courts have jurisdiction to entertain suits against decedents' estates so long as the federal court does not "interfere" with the probate proceedings. *Id.* at 494 (quoting *Waterman*). In *Marshall*, this Court stated that it comprehended "the 'interference' language in *Markham* as essentially a reiteration of the general principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*." 547 U.S. at 311. The Court therefore concluded that "the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate [and] precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court." 547 U.S. at 311-12. The *Marshall* test makes no mention of valuations or accountings. Thus, *Marshall* seemingly, and silently, eliminated nearly one hundred years of precedent regarding that subject. Or so it has been read by at least some lower courts.

However, pre-*Marshall* authority recognized that the doctrinal underpinning for application of the probate exception in the accounting context had nothing to do with its impact on a *res*. *See, e.g., Kittridge v. Stevens*, 126 F.2d 263 (1st Cir. 1942), *cert. denied*, 317 U.S. 642 (1942) (holding that an accounting performed to determine the exact amount of the residue of the estate to which the plaintiff was entitled "would not have been an accounting immediately affecting a *res*"). Thus, this raises the question as to whether *Marshall* may be legitimately read as extirpating *Waterman's* conclusion that the valuation of estate assets was a subject beyond the ken of federal courts.

In *Marshall's* aftermath, federal courts have wrestled fitfully with the decision's implications and rendered inconsistent decisions regarding the continuing viability of the accounting line of authority. The Eleventh Circuit continues to hold that a federal court's valuation of probate assets is prohibited by the probate exception. In *Stuart v. Hatcher*, 757 Fed. Appx. 807 (11th Cir. 2018), the court concluded that resolution of the plaintiff's claim for compensatory damages would require the district court to assess the value of estate assets so as to determine whether the plaintiff's interest had been reduced by the defendant's alleged mismanagement of the estate. This, the court held, would require "a premature valuation and accounting of the estate." *Id.* at 810-11. The court cited with approval its pre-*Marshall* decision in *Michigan Tech Fund v. Century National Bank*, 680 F.2d 736 (11th Cir. 1982), holding that where a plaintiff "seeks . . . a valuation of estate assets . . . it is clear that such relief is precluded by the probate exception." *Id.* at 741 (citing *Turton v. Turton*, 644 F.2d 344, 347 (5th Cir.), *reh'g denied*, 647 F.2d 1122 (1981)).

The Eleventh Circuit's sustained post-*Marshall* approach to claims involving accountings differs materially from that recently taken in the Ninth and First Circuits. In the decision below, the Ninth Circuit rejected the district court's determination that Silk's complaint asked the district court to exercise jurisdiction prohibited by the probate exception. The district court concluded that Silk was asking the court "to assume control over an estate appraisal and determine what portion of the Estate is due to him as an 'incentive fee.'" App. 33a. It ruled that "Silk's contract dispute cannot be resolved without first determining the value of the Estate [and] the valuation of estate assets is within the province of the probate court and

therefore precluded by the probate exception." App. 33a.

The Ninth Circuit, spurning the line of authority that applied the probate exception to suits seeking, or requiring, an accounting or valuation of estate assets, concluded that "[a]lthough appraisal is a component of estate administration, Maryland's regulation of appraisals as part of the probate process has no legal bearing on whether a federal district court may order an appraisal as part of a contract action." App. 11a. While it acknowledged that "there is an overlap between any Orphans' Court estate appraisal and any other estate appraisal," the court insisted that "the question is not whether we would somehow be duplicating the function of the probate court, or deciding a question the probate court will (or might) need to decide." App. 12a. Instead, the Ninth Circuit concluded that the only question was whether the plaintiff's complaint involves the probate or annulment of a will, the administration of a decedent's estate, or the disposition of estate property. App. 20a.

The Ninth Circuit cited with approval the First Circuit's recent decision in *Glassie v. Doucette*, 55 F.4th 58 (1st Cir. 2022). In *Glassie*, the First Circuit explicitly repudiated *Waterman's* holding, stating that "a rule that any need to value estate assets triggers the probate exception would lead to an expansive understanding of the exception that runs against *Marshall's* cautionary explanation." *Id.* at 67. As had the Ninth Circuit in the decision below, *Glassie* judged the jurisdictional question solely in terms of the three-faceted *Marshall* prism – *Waterman's* rule was invisible when viewed through that prism.

In contrast, in those circuits where the appellate courts have not yet taken a reported stand, *Waterman's*

formulation continues to enjoy wide respect, as reflected in decisions in the **Second**, *see McKie v. Kornegay*, No. 21-1943, 2022 U.S. App. LEXIS 25856, 2022 WL 4241355, at *8 (2d Cir. Sep. 15, 2022) (affirming trial court's denial of leave to amend to add claim for accounting because it "would destroy the federal courts' diversity jurisdiction"); *Groman v. Cola*, 2007 U.S. Dist. LEXIS 82564, 2007 WL 3340922, at *18 (S.D.N.Y. Nov. 7, 2007) (concluding the probate exception applied to "action [that] is, at heart, a dispute about the proper valuation of an estate asset");[1] **Third**, *see Bretter v. Peyton*, Civ. Action No. 22-2509, 2022 U.S. Dist. LEXIS 172276, 2022 WL 4454332, at *12-13 (E.D. Pa. Sept. 23, 2022) (holding that action seeking an accounting "'goes too far in asking to have an accounting of the estate, such as can only be had in the probate court having jurisdiction over the matter'") (quoting *Waterman v. Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33, 45 (1909)); *Bosley v. Bosley*, No. 1:07-CV-1380, 2008 U.S. Dist. LEXIS 39565, 2008 WL 2048665, at *10-11 (M.D. Pa. May 12, 2008) (same); **Fourth**, *see Butler v. Kosin*, 2009 U.S. Dist. LEXIS 5794, 2009 WL 210721 at * 3 n.3 (W.D. Va. 2009) (a suit filed in federal court "goes too far in asking to have an accounting of the estate"); and **Fifth Circuits**, *see Chavez v. First Nat'l Bank*, No. DR-15-CV-065-AM/VRG, 2015 U.S. Dist. LEXIS 188917, 2015 WL 13036708, at *4-5 (W.D. Tex. Nov. 24, 2015) (dismissing case under probate exception where "the Plaintiff's requested relief would require the Court to value the

[1] *Contra Marcus v. Quattrocchi*, 715 F. Supp. 2d 524, 534 (S.D.N.Y. 2010) (having found that "no estate or trust exists" to warrant application of the probate exception, the court further stated in *dicta* that the "requested 'accounting' is not a form of relief that only a probate court can administer or that requires interference with any *res* under the jurisdiction of a probate court").

assets of the estate"); *LRC Technologies, LLC v. McKee*, No. 11-1011, 2011 U.S. Dist. LEXIS 101649, at *10 (E.D. La. Sep. 2, 2011) (dismissing suit where permitting it to proceed "would amount to this Court ordering a premature accounting of Beecher's estate").[2]

Unlike the situation that compelled this Court to remark in *Marshall* that lower courts had erred in "expansively interpreting" the probate exception, the lower court decisions that have applied the probate exception to claims involving an accounting or valuation of estate assets have not been "expansively interpreting" this Court's precedents. To the contrary, they have held true to the long-standing principle announced in *Waterman*, and its ample progeny, that an accounting of an estate "can only be had in [a] probate court having jurisdiction of the matter." *Waterman*, 215 U.S. at 45. Only this Court can determine whether the *Waterman* rule still breathes or whether it was extinguished by *Marshall*.

II. The Decision Below Is Incorrect

In rejecting the application of the probate exception, the Ninth Circuit gave short shrift to the very real risks its decision poses for estate administration. The risk of dueling appraisals and accountings warrants recognizing the continued validity of *Waterman*.

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[2] To date, the Sixth Circuit appears not to have revisited its pre-*Marshall* holding favoring dismissal in cases seeking an accounting of estate assets. *See Spears v. Spears*, 162 F.2d 345, 349 (6th Cir. 1947) ("a federal court has no jurisdiction in the accounting of an estate"); *see also Bortz v. DeGolyer*, 904 F. Supp. 680, 684 (S.D. Ohio 1995) ("This court has no power to order an accounting of an estate being probated. An accounting can only be had in the probate court having jurisdiction over the matter.") (citing *Waterman*).

A. The Appraisal Of Estate Assets Is A Core Probate Function

As a function of probate, estate properties require appraisal. These appraisals are used for both estate administration and tax reporting. As shown below, both the selection of the appraiser and the method of valuation are subject to the probate court's ultimate oversight because the appraisals determine the amount of probate fees, taxes and ultimate distributions.

Maryland's Estates & Trusts Article establishes a comprehensive framework for estate appraisals. The personal representatives are charged with the obligation to obtain independent appraisals. MD. CODE ANN., EST. & TRUSTS § 7-202(a)(3). The Code identifies categories of permissible appraisers: standing, special and general. *Id.*, § 2-301(b). The Code also specifies the accepted methods for appraisers to determine values in given situations (*e.g.*, full cash value, contract sales price or fair market value). *Id.*, § 7-202(c) & (d). The Code requires appraisers to perform their duties "expeditiously," to provide an appraisal in columnar form stating the value of each item in dollars and cents, and to include a statement "signed and verified by the appraisers certifying that they have impartially valued the property described in the appraisal to the best of their skill and judgment." *Id.*, § 2-303. The Code further requires that the appraisal "immediately on completion and verification be delivered to the personal representative." *Id.*, § 2-303. The Code provides that the personal representative may use "[d]ifferent persons . . . to appraise different kinds of assets included in the estate." *Id.*, § 7-202(e)(2). A personal representative is obligated to "make a supplemental inventory or appraisal of an item showing the market value as of the date of the death of the decedent, or the revised

market value," if he or she "learns that the value indicated in the original inventory for the item is erroneous or misleading." *Id.*, § 7-203(2). The Code states that at any time before the estate is closed, the State, acting through the Register of Wills, may petition for revision of a value by an appraiser. *Id.*, § 7-204. The basis for the appraisal may be requested by the Register of Wills or the probate court. *Id*. Maryland Rule 6-403 further delineates requirements for an appraiser's verification, including a description of the appraiser's qualifications and the affirmation that the appraisal was done impartially. Md. Rule 6-403.

The Code authorizes the payment of "[r]easonable appraisal fees . . . as an administration expense." MD. CODE ANN., EST. & TRUSTS § 7-202(f). A probate estate may only pay an appraisal fee to a person making an appraisal requested by the personal representative, and the fee is always subject to review by the probate court. *Id.*, § 2-301(c).

The probate court's specialization in estate matters gives it a "comparative advantage" in performing these managerial functions. *Struck v. Cook County Public Guardian*, 508 F.3d 858, 860 (7th Cir. 2007), *cert. denied*, 553 U.S. 1023 (2008) (Posner, J.) ("State courts . . . are assumed to have developed a proficiency in core probate . . . matters [and] . . . [t]he comparative advantage of state courts in regard to such matters is at its zenith when the court is performing ongoing managerial functions for which Article III courts . . . are poorly equipped"). Thus, in contrast to *Marshall* where the adjudication of a tortious interference claim implicated "no 'special proficiency'" available in state court, the case at bar entails operations for which the probate court possesses a well-established "special proficiency."

B. The Valuation Of Estate Assets And The District Court's Direction And Supervision Of Appraisals Collateral To Probate Will Undermine Efficient Estate Administration

The estate cannot allow itself to have divergent appraisals because this would lead to inevitable challenges by taxing authorities on the grounds that appraisals submitted for estate administration are inconsistent with appraisals performed under the Agreements. Accordingly, the appraisals required by the Agreements will necessarily also operate as the appraisals for estate reporting. Thus, the estate valuations, which are an essential component of the Agreements, must be performed subject to the probate court's supervision and approval.

Silk's suit contemplates replacing the probate process with a judicial accounting in federal court. App. 30a. Silk's approach would replace the jointly selected appraiser acceptable to the probate court and subject to its control with a district court appointee answerable neither to the probate court nor Maryland law. This obviously runs the risk of unsatisfactory outcomes.

First, the probate court's statutorily prescribed supervisory role ordinarily would mean that disputes regarding appraisers or appraisals would be decided by that court. Under Silk's federal suit, the parties would have to look to the district court, not the probate court, for the resolution of such disputes. Second, appraisals conducted pursuant to the district court's order would overlap with those authorized by the probate court and would risk inconsistent methodologies and valuations. The taxing authorities would then be in a position to challenge the appraisals submitted to the probate court based on inconsistent appraisals

in the district court. Whatever else may be said of *Marshall*, it can hardly be read as intending to incite warring appraisals and ancillary tax litigation. Third, a federally ordered appraisal will not enjoy the supervision of a court designed for this purpose. For example, the probate court is statutorily empowered to judge whether the fair market value used by the estate administrators is acceptable because this value impacts probate fees, taxes and ultimate distributions. The district court's assumption of these responsibilities would divert them from a specialized court having particular expertise in such matters to a court of general jurisdiction with no particular expertise in probate.

The court below waived away these concerns and asserted that the risk of overlapping and conflicting appraisals is addressed by *res judicata*. App. 15a. But this conclusion oversimplifies the problem.

First, by giving a green light to third parties to take the process outside the control of the probate court and the executor, the court below gave short shrift to the probate court's importance in performing efficient and swift estate administration. Judicial economy is a powerful incentive for preserving *Waterman's* interpretation of the probate exception. *See Dragan v. Miller*, 679 F.2d 712, 714 (7th Cir. 1982) (offering several non-historical, practical reasons for the exception's continued vitality, chief among them, judicial economy). The expeditious administration of estates is also an essential concern of probate courts. *See, e.g., Thomason v. Bucher*, 266 Md. 1, 4, 291 A.2d 437, 439 (1972) ("highly desirable that there should be a prompt settlement and distribution of decedents' estates and the policy of the law has been to prevent any unnecessary delays"); MD. CODE ANN., EST. & TRUSTS § 7-101.

Thus, judicial economy favors retention of *Waterman's* guiding principle.

Second, it is not entirely clear how and when *res judicata* will apply. For example, it is unclear, in situations where the state court is the first to render a final judgment, whether that decision will be respected. State courts are divided over the effect of an appeal on the applicability of *res judicata*. *See, e.g., Campbell v. Lake Hallowell Homeowners Association*, 157 Md. App. 504, 522, 852 A.2d 1029, 1039-40 (2004) (citing jurisdictions following the majority and minority view). This would mean, in jurisdictions holding to the minority view, that the mere filing of an appeal would prevent the use of the state judgment in federal court. This, in turn, would ensure the prospect of dueling appraisals and would assure the subversion of the probate court's completed work.

Third, the Ninth Circuit's interpretation will very likely engender a race to obtain competing appraisals by parties having divergent agendas (the estate, seeking to minimize taxes, is desirous of conservative appraisals, while a claimant in Silk's shoes seeking to maximize his claim, is desirous of more liberal appraisals). This, too, would subvert the work of the executor and the probate court while working against one of the central purposes behind specialized probate courts – the expeditious resolution of estates.

III. The Question Presented Is An Important And Recurring One That Warrants The Court's Review

As the decisions reviewed above demonstrate, the question presented is a recurring one that remains unsettled and that has serious implications for efficient and swift estate administration. As this Court has

observed, the probate exception is a "judicially created doctrine[] stemming in large measure from misty understandings of English legal history," *Marshall*, 547 U.S. 299, and past efforts to clarify its reach have not been fully successful. The widely diverse views exhibited in the lower court decisions attests to this confusion. Petitioners submit therefore that this Court's review is highly desirable and in the public interest.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for *certiorari*.

Respectfully submitted,

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May 31, 2023

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-56286

D.C. No. 2:21-cv-03977-ODW-JPR

ROGER D. SILK,

Plaintiff-Appellant,

v.

BARON BOND; HOWARD B. MILLER, in their capacity as Personal Representatives of the Estate of Frank Bond,

Defendants-Appellees.

Appeal from the United States District Court for the Central District of California Otis D. Wright II, District Judge, Presiding

Argued and Submitted January 10, 2023
Pasadena, California

Filed April 10, 2023

Before: Paul J. Watford, Michelle T. Friedland, and Mark J. Bennett, Circuit Judges.

Opinion by Judge Bennett

OPINION

SUMMARY*

Personal Jurisdiction

The panel reversed the district court's judgment dismissing for lack of personal jurisdiction Roger Silk's suit alleging breach of contract.

Silk provided Frank Bond tax- and estate-planning services. When Bond died, Silk filed a claim in Baltimore County Orphans' Court against Bond's Estate for fees allegedly due under contracts. After the Estate disallowed the claim, Silk sued in federal court.

Following the U.S. Supreme Court's decision in *Marshall v. Marshall*, 547 U.S. 293 (2006), this Court held that the probate exception bar to federal jurisdiction was limited to cases in which the federal courts would be called on to "(1) probate or annul a will, (2) administer a decedent's estate, or (3) assume *in rem* jurisdiction over property that is in the custody of the probate court." *Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1252 (9th Cir. 2017).

The panel held that none of the *Goncalves* categories applied to Silk's suit against the Estate. First, neither party contends that Silk was seeking to annul or probate Bond's will. Second, this suit does not require the federal courts to administer Bond's Estate. Valuing an estate to calculate contract damages is not administering an estate. Third, this suit does not require the federal courts to assume in rem jurisdiction over property in the custody of the probate court. If Silk were to prevail at trial, he would be awarded an in

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* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

personam judgment for money damages. Also, the fact that assets under control of the Orphans' Court might ultimately have to satisfy a federal court judgment or a federal court order to pay court expenses does not mean that any such judgment or order is an order disposing of assets under the control of the Orphans' Court. Finally, this decision is consistent with authority from other circuits.

The panel held that Silk made out a prima facie case of personal jurisdiction. Under California's long-arm statute for the exercise of personal jurisdiction, the Estate had "minimum contacts" with California. During his life, Frank Bond established purposeful contact with California via his contacts with Silk, then a California resident, for services. In doing so, Bond created a muti-year business relationship with Silk in California. The panel held that it was reasonable for California courts to exercise specific personal jurisdiction over Bond's Estate. The panel rejected the Estate's challenges to the exercise of personal jurisdiction.

The panel held that the district court erred in holding that Silk's suit was barred by the probate exception to federal jurisdiction. Because at this stage of the proceedings Silk has made a prima facie case for personal jurisdiction over the Estate, the panel reversed and remanded for further proceedings.

COUNSEL

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OPINION

BENNETT, Circuit Judge:

As the Supreme Court has reminded us, "[i]t is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Marshall v. Marshall*, 547 U.S. 293, 298–99 (2006) (ellipsis in original) (quoting *Cohens v. Virginia*, 19 U.S. 264, 404 (1821)).

Plaintiff-Appellant Roger Silk provided Frank Bond tax- and estate-planning services. Under contracts between Silk and Bond, part of Silk's compensation was to be based on savings realized by Bond's Estate. These "incentive fees" were intended to align Silk's financial interests with Bond's, and due to their nature, could be paid only after Bond's death. When Bond died, Silk filed a claim in a Maryland probate court[1] against Bond's Estate for fees he contended were due to him under the contracts. After the Estate disallowed the claim, Silk sued in federal court.[2] The district court dismissed Silk's suit for lack of subject matter jurisdiction, finding that the suit was barred by the "probate exception" to federal court jurisdiction.

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[1] Baltimore County Orphans' Court ("Orphans' Court").

[2] No argument has been made on appeal that the determination of the Orphans' Court is somehow entitled to preclusive effect as to the merits of Silk's claim for fees.

But because the probate exception does not strip federal court jurisdiction over this routine contract dispute, and because at this stage of the proceedings Silk has made a prima facie case for personal jurisdiction over the Estate, we reverse and remand for further proceedings.

BACKGROUND

For more than two decades, Roger Silk provided tax- and estate-planning services to Frank Bond.[3] Bond, who died in July 2020, had approximately $40 million in liquid assets at the time he retained Silk—monies he amassed by launching a health and fitness business, U.S. Health, Inc., which he later sold.

Bond hated paying income taxes, and he retained Silk for various financial services, including to legally shield his assets from the taxing authorities. From approximately 1991 to 1995, Silk worked exclusively for Bond, supervising his investment portfolio, addressing issues regarding insurance and philanthropic entities, and "quarterbacking the team" of professionals who also advised Bond on tax issues. In the early 1990s, Silk developed a private variable annuity for Bond, which would lead to tax savings for Bond through deferral. In exchange for the creation of the annuity, Bond agreed to pay Silk 15% of tax savings attributable to the annuity strategy. The two agreed that the incentive payment would be paid at the

[3] As the Estate brought a facial challenge to jurisdiction, we accept all plausibly pleaded facts in the Complaint as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

earlier of the end of the tax deferral period, or Bond's death.[4]

Silk and Bond also made other deals involving incentive fees. In 1998, Silk provided Bond with tax planning involving an existing Grantor Retained Interest Trust (GRIT) related to Bond's interest in a shopping center limited partnership. In June 1999, Bond and Silk signed a contract that set out the work Silk was to do. The contract provided that the incentive fee would "only become payable upon [Bond's] death," and, based on the formula in the contract, would be "computed in good faith" by a named accounting firm "or any other independent accounting firm selected by [Bond's] personal representatives." The contract also provided that the incentive fee would "constitute a valid and binding obligation on [Bond's] estate," and Bond agreed to "alert [his] personal representatives to" the agreement.

In the same year, Silk and Bond also signed a contract concerning certain apartments. Silk, again, provided tax planning services, and, again, his compensation was to be an incentive fee based on a contractual formula. And again, the incentive fee would only "become payable upon [Bond's] death." This fee, too, was to be "computed in good faith" by the same named accounting firm "or any other independent accounting firm selected by [Bond's] personal representatives." The contract also provided that the incentive fee was a "valid and binding obligation of

[4] Bond's death occurred prior to the end of the tax deferral period.

[Bond's] estate," and that Bond would alert his personal representatives to the agreement.[5]

After Bond died in 2020, Silk filed a $3.1 million claim against the Estate in Orphans' Court. The Estate disallowed the claim, and the notice of disallowance stated that Silk's claim would "be forever barred unless within 60 days after the mailing of this notice you file a petition for allowance of the disallowed amount in the Orphans' Court *or a suit against the personal representative*."

Silk sued Baron Bond (Bond's son) and Howard Miller, the personal representatives of the Bond Estate.[6] Silk sought breach of contract damages based on the unpaid incentive fees arising from the three contracts described above. The suit alternatively sought damages based on unjust enrichment and promissory estoppel. Under all theories, Silk also sought an accounting sufficient to calculate the incentive fees.

The Estate moved to dismiss under Federal Rule of Civil Procedure 12(b)(1), arguing that the suit was barred, in its entirety, by the probate exception. The district court granted the motion and dismissed the case. The court held that, because the claim "cannot be resolved without first determining the value of the Estate," the court would be required to take control of the appraisal process, which "would amount to the administration of Decedent's Estate—a right reserved

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[5] The copy of the contract appended to the Complaint contains a handwritten notation reading: "Explained 8/26/99 Howard B. Miller." Howard Miller was Bond's longtime attorney and is one of the personal representatives of Bond's Estate.

[6] Because Silk does not seek relief from the defendant personal representatives in their personal capacities, we refer to them as the Estate.

to the state probate court." It also held that as the contracts required the Estate to pay the cost of any appraisal, ordering an appraisal would "improperly interfere with the probate court's authority and dispose of estate assets in its control." While the district court did not apply the doctrine of "prior exclusive jurisdiction,"[7] it noted that "Silk acknowledged the probate court's jurisdiction by first filing his claim in the Baltimore County Orphans' Court." Silk appeals from the district court's grant of a motion to dismiss for lack of subject matter jurisdiction, which we review de novo. *See U.S. ex rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d 1121, 1126 (9th Cir. 2015) (en banc).

I.

In *Marshall v. Marshall*, the petitioner sought review in the Supreme Court of a decision from our court dismissing an action under the probate exception. We had held that although tortious interference claims arising out of the death of J. Howard Marshall, II did "not involve the administration of an estate, the probate of a will, or any other purely probate matter," the probate exception still applied because the claims raised "questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument." *In re Marshall*, 392 F.3d 1118, 1133 (9th Cir. 2004), *rev'd sub nom.*

[7] The "prior exclusive jurisdiction doctrine holds that when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*." *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 651 F.3d 1039, 1043 (9th Cir. 2011) (internal quotation marks omitted) (quoting *Marshall*, 547 U.S. at 311). Because we conclude that the federal district court would not be required to assume in rem jurisdiction were Silk's case to proceed, we hold that the prior exclusive jurisdiction doctrine does not apply.

Marshall v. Marshall, 547 U.S. 293 (2006). The Supreme Court reversed. The Court first emphasized the narrowness of the probate exception, 547 U.S. at 305, and then held that while "the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate" and "precludes federal courts from endeavoring to dispose of property" in the custody of the state probate court, "it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction," *id.* at 311–12. The Court also stated: "We hold that the Ninth Circuit had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception."[8] *Id.* at 299–300.

Following *Marshall*, we have since held that the probate exception is limited to cases in which the federal courts would be called on to "(1) probate or annul a will, (2) administer a decedent's estate, or (3) assume *in rem* jurisdiction over property that is in the custody of the probate court." *Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1252 (9th Cir. 2017) (quoting *Three Keys Ltd. v. SR Util. Holding Co.*, 540 F.3d 220, 227 (3d Cir. 2008)). None of the *Goncalves* categories applies to Silk's suit against the Estate.

A. Probate or Annul a Will

Neither party contends Silk is seeking to annul or probate Bond's will.

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[8] Justice Stevens, concurring in part, and concurring in the judgment, referred to the "so-called" probate exception and wrote: "I do not believe there is any 'probate exception' that ousts a federal court of jurisdiction it otherwise possesses." 547 U.S. at 315, 318.

B. Estate Administration

This suit does not require the federal courts to administer Bond's Estate. Yet the district court reasoned that hearing Silk's claim would require it to "assume control over an estate appraisal" in order to "determine what portion of the Estate" is due to Silk under the incentive fee agreements. The court reasoned that taking "control of the appraisal would amount to the administration of [the] Decedent's Estate." On appeal, the Estate likewise argues that Silk's lawsuit would require the district court to administer Bond's estate. But valuing an estate to calculate contract damages is not administering an estate.

The Estate urges us to repeat the mistake we made in *Marshall*. It argues that by valuing estate property, the district court would be *interfering* with the Maryland probate proceedings.[9] This so-called interference allegedly occurs because "Maryland's Estates & Trusts Article establishes a comprehensive framework for estate appraisals." According to the Estate, the fact that the contracts would obligate it to also pay for an independent appraisal to calculate Silk's fees moves this case into the province of estate administration. And as noted above, the district court adopted the Estate's view, finding that entertaining this action would "improperly interfere with the probate court's authority."

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[9] The Estate's brief claims that "in contrast to *Marshall* where the adjudication of a tortious interference claim implicated no special proficiency available in state court, the case at bar entails operations for which the probate court is emphatically the best suited forum." We disagree that the probate court is the "best suited forum" for resolving a contract dispute like the one here. But even were that not so, just like there is no "interference" category of the probate exception, there is similarly no "best suited forum" category.

Although appraisal is a component of estate administration, Maryland's regulation of appraisals as part of the probate process has no legal bearing on whether a federal district court may order an appraisal as part of a contract action. And in the context of this case, an appraisal is specifically contemplated by the contract between the parties. For purposes of Silk's breach of contract action, an appraisal of the Estate's value is a matter of contract interpretation, purely incidental to the task of the probate court in administering the estate. To be sure, there is an overlap between any Orphans' Court estate appraisal and any other estate appraisal. But the Supreme Court in *Marshall* rejected the notion that such factual overlap implicates the probate exception.

As the Supreme Court stated:

> In the Ninth Circuit's view, a claim falls within the probate exception if it raises "questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument," whether those questions involve "fraud, undue influence, or tortious interference with the testator's intent."

547 U.S. at 304 (alterations omitted). Indeed, we had held that the exercise of federal jurisdiction over tortious interference claims would "interfere with the Texas probate court proceedings." *In re Marshall*, 392 F.3d at 1134. But the Supreme Court made clear that our view was wrong:

> In short, [courts should] comprehend the "interference" language in *Markham* [*v. Allen*, 326 U.S. 490 (1946)] as essentially a reiteration of the general principle that, when

> one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*.

547 U.S. at 311.

So the question is not whether we would somehow be duplicating the function of the probate court, or deciding a question the probate court will (or might) need to decide. And as the Supreme Court has also told us, the question is not whether we would be "interfer[ing]" with the probate court. *See id.* If the district court would neither be probating or annulling a will (it wouldn't be here), or administering a decedent's estate (and again, it wouldn't be here), the only question is whether it would be assuming in rem jurisdiction over property that is in the custody of the probate court, including by endeavoring to dispose of such property. *See Goncalves*, 865 F.3d at 1252.

C. In Rem Jurisdiction/Disposal of Property

1. In Rem Jurisdiction

This suit does not require the federal courts to assume in rem jurisdiction over property in the custody of the probate court. Though "[w]e recognize that the distinction between *in rem* and *in personam* is often as elusive as the boundary lines of the probate exception," *Three Keys Ltd.*, 540 F.3d at 229, this suit involves the standard exercise of in personam jurisdiction over the personal representatives of Bond's Estate. Accordingly, the third *Goncalves* category does not apply.

"An action is *in rem* when it determines interests in specific property as against the whole world." *Goncalves*, 865 F.3d at 1254 (internal quotation marks and alteration omitted). If the action seeks "merely to determine the personal rights and obligations of the

parties," on the other hand, it is in personam. *Id.* (cleaned up). In assessing whether an action is in rem or in personam, courts "look behind the form of the action to the gravamen of a complaint and the nature of the right sued on." *State Eng'r v. S. Fork Band of the Te-Moak Tribe of W. Shoshone Indians of Nev.*, 339 F.3d 804, 810–11 (9th Cir. 2003) (internal quotation marks omitted).

The "nature of the right sued on" here is purely contractual. Silk's claims against the Estate are for breach of contract or, in the alternative, unjust enrichment and promissory estoppel. The "gravamen" of Silk's complaint is that Bond breached a series of contracts, and Bond's Estate now owes him money. Actions for breach of contract are in personam claims because they are, by their nature, claims between discrete entities and not between individuals and the world at large. *See* 20 Am. Jur. 2d Courts § 80 (2d ed. 2023) ("When the cause of action is based on a contract and the action seeks damages on the ground of breach of contract, the action is transitory in nature and may be adjudicated by any court which has jurisdiction in personam of the defendant . . . ."); *see also In Personam*, Black's Law Dictionary (11th ed. 2019) ("A normal action brought by one person against another for breach of contract is a common example of an action *in personam*."). Thus, even though an estate is a *res*, *see Marshall*, 547 U.S. at 310–11, and even though the Estate is in the process of probate administration, Silk's claims that Bond breached their contracts are not claims against the world: They are claims against Bond as a contracting party who has now died.

The Estate argues that Silk's suit would "require[] the district court to assume core probate functions"

were it to calculate the damages Silk seeks. But the limited accounting called for in the contracts does not somehow transform an in personam action into an in rem action, nor otherwise bring a suit within the ambit of the probate exception, particularly when the accounting is contemplated by the very contracts Silk is trying to enforce.

As noted in *Goncalves*, *Commonwealth Trust Co. of Pittsburgh v. Bradford*, 297 U.S. 613, 619 (1936), held that an action for determination of rights to trust funds was an action in personam, not in rem, because it sought "only to establish rights" rather than to "deal with the property and other distribution." 865 F.3d at 1254. In *Bradford*, the defendant argued that "no adjudication was possible in the absence of an accounting" of the trust and that "to enforce the remedy sought would necessarily interfere with possession and control of the res in the custody of the Orphans' Court." 297 U.S. at 618. Unpersuaded, the Supreme Court reasoned that whatever control the Orphans' Court had over the trust

> did not materially differ from that exercised by probate courts over such fiduciaries as guardians, administrators, executors, etc. The jurisdiction of federal courts to entertain suits against the latter is clear, *when instituted in order to determine the validity of claims against the estate* or claimants' interests therein. *Such proceedings are not in rem;* they seek only to establish rights; judgments therein do not deal with the property and order distribution; they adjudicate questions which precede distribution.

Id. at 619 (emphasis added).

If Silk were to prevail at trial, he would be awarded an in personam judgment for money damages. As *Goncalves* notes, a "federal court may proceed to judgment in personam, adjudicating rights in the res and leaving the in personam judgment to bind as res judicata the court having jurisdiction of the res." 865 F.3d at 1254 (internal quotation marks omitted) (quoting *Jackson v. U.S. Nat'l Bank*, 153 F. Supp. 104, 110 (D. Or. 1957));[10] *see also Action*, Black's Law Dictionary (11th ed. 2019) (defining an "action in personam" as one "brought against a person rather than property" that "can be enforced against all the property of the judgment-debtor"). Silk obtaining an in personam judgment against the Estate does not by itself get Silk any money. If Silk were to prevail in federal court, he would "need to present, in a probate court, any judgment obtained, if he desired payment from the assets under" that court's control. *Pufahl v. Est. of Parks*, 299 U.S. 217, 226 (1936); *see also Byers v. McAuley*, 149 U.S. 608, 620 (1893) ("A citizen of another state may establish a debt against the estate, but the debt thus established must take its place and share of the estate as administered by the probate court . . . ." (citation omitted)). The "marshaling of that claim with others, its priority, if any, in distribution, and all similar questions [would be] for the probate court upon presentation to it of the judgment or decree of the federal court." *Pufahl*, 299 U.S. at 226; *see also* Dan B. Dobbs & Caprice L. Roberts, Law of Remedies § 1.4 (3d ed. 2018) ("Ordinary money judgments reflect

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[10] For the same reason, the Estate's concern about "warring appraisals" is misplaced. *See also Ashton v. Josephine Bay Paul & C. Michael Paul Found., Inc.*, 918 F.2d 1065, 1072 (2d Cir. 1990) ("[T]he . . . probate court will be obliged to give full faith and credit to the district court's adjudication.").

an adjudication of liability but they do not enter any command to defendant.").

2. Disposal of Property

As discussed above, the Court in *Marshall* held that the probate exception precludes federal courts from endeavoring to dispose of property in the custody of a state probate court. 547 U.S. at 311–12. The district court here found that because the contracts at issue require the Estate to pay for the relevant appraisals, ordering such appraisals (which was, in the court's view, a prerequisite to determining damages), would be the same as the court disposing of estate assets under the control of the Orphans' Court. And the Estate suggests that entering a damages judgment against it would do the same. But neither ordering an appraisal nor entering a money judgment against the Estate would "dispose" of assets in the control of the Orphans' Court any more than defending a lawsuit—something no one contends the Estate is disallowed from doing.[11]

The fact that assets under the control of the Orphans' Court might ultimately have to satisfy a federal court judgment or a federal court order to pay court expenses does not mean that any such judgment or order is an order *disposing* of assets under the control of the Orphans' Court. *See* 13E Wright & Miller, Federal Practice and Procedure § 3610 (3d ed. 2022) ("[T]he federal courts will entertain suits by claimants to establish a right to a distributive share of

[11] Similarly, when the Tax Court must decide what an estate is worth, it too is obviously not "disposing" of the property it values. *See, e.g.*, *Est. of Kollsman v. Comm'r*, 113 T.C.M. (CCH) 1172 (T.C. 2017) (determining fair market value of estate's paintings). Mere valuation is not disposal.

an estate . . . or a debt due from the decedent."); *Hess v. Reynolds*, 113 U.S. 73, 77 (1885) (noting that while "[i]t may be convenient" for "all debts to be paid out of the assets of a deceased man's estate" to be established in probate court, that convenience does not deprive federal courts of jurisdiction merely "because the judgment may affect the administration or distribution in another forum of the assets of the decedent's estate"). To hold otherwise would have us commit the same mistake we committed in *Marshall*—authoring a "sweeping extension of the probate exception," with no "warrant" from either Congress or the Supreme Court. 547 U.S. at 299–300.

D. Supporting Out-of-Circuit Authority

Our decision is consistent with authority from other circuits. In *Glassie v. Doucette*, 55 F.4th 58 (1st Cir. 2022), Glassie sued "favored beneficiaries" of her father's will and the executor of his estate under, among other things, federal RICO laws, 18 U.S.C. § 1962. 55 F.4th at 62. Glassie's primary allegation was that, in concert with other favored beneficiaries, the executor of her father's estate fraudulently obtained a loan guaranteed by the estate which was used to collect interest payments from the estate, and this loan had the effect of transferring estate assets to the favored beneficiaries. *Id.* at 62–63. The district court dismissed Glassie's suit pursuant to the probate exception, and the First Circuit reversed. *Id.* at 71.

Rejecting the executor's argument that the probate exception applied because the federal action would require an accounting of the estate, the First Circuit held that "the probate exception does not apply merely because a judgment in the federal-court action 'may be intertwined with and binding on . . . state proceedings.'" *Id.* at 67 (alterations in original) (quoting

Jimenez v. Rodriguez-Pagan, 597 F.3d 18, 24 (1st Cir. 2010)). "[A]ny damages calculation will not preclude the probate court from approving a final accounting, nor will it determine the distribution Georgia will receive from the estate itself." *Id.*

Likewise, in *Chevalier v. Estate of Barnhart*, 803 F.3d 789 (6th Cir. 2015), Chevalier and Barnhart were married, and "[t]hroughout the course of their marriage, Chevalier made a series of loans to Barnhart, which Barnhart never repaid." *Id.* at 791. Chevalier sued in federal court alleging contract and tort claims to recover her loans. *Id.* The district court dismissed Chevalier's action pursuant to the "domestic-relations exception to federal diversity jurisdiction" which "deprives federal courts of jurisdiction to adjudicate 'only cases involving the issuance of a divorce, alimony, or child custody decree.'" *Id.* at 791–92 (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 704 (1992)); *see also Marshall*, 547 U.S. at 308 (describing the probate exception as "kin to the domestic relations exception"). Chevalier appealed, and while the appeal was pending, Barnhart died. *Chevalier*, 803 F.3d at 792. The Sixth Circuit reversed the district court, holding that neither the domestic-relations exception nor the probate exception stripped the federal court of jurisdiction over Chevalier's claims. *Id.* at 804.

In addressing the applicability of the probate exception, the Sixth Circuit used the test relevant here: "whether Chevalier seeks to reach the *res* over which the state court had custody." *Id.* at 801 (cleaned up). It held she did not, as "[h]er first four claims—for breach of contract, default, unjust enrichment, and fraud—are *in personam* actions." *Id.* at 802.

Finally, in *Lefkowitz v. Bank of New York*, 528 F.3d 102, 104 (2d Cir. 2007), the plaintiff asserted claims

against estate administrators for the administrators' own alleged wrongful conduct. Unlike here, no claims were based on the actions of the decedent. The district court, relying on law preceding *Marshall*, held that the claims were barred by the probate exception. *Id.* at 106–07. The Second Circuit, based on *Marshall*, reversed in part, distinguishing claims including breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent misrepresentation, and fraudulent concealment—which it held were not barred by the probate exception—from claims including conversion, unjust enrichment, and payment for monies allegedly owed, specific performance, and declaratory relief confirming entitlement to estate assets, which it held were barred. *Id.* at 104, 107. The court reasoned that in the former category of claims, the plaintiff "s[ought] damages from Defendants personally rather than assets or distributions from [an] estate." *Id.* at 107–08. In the latter category of claims, however, the plaintiff sought, "in essence, disgorgement of funds that remain under the control of the Probate Court" and that she was attempting "to mask in claims for federal relief her complaints about the maladministration of her parent's estates, which have been proceeding in probate courts." *Id.* at 107.

To the extent that *Lefkowitz* suggests that the prospect of a damages award paid by an estate itself rather than the personal representative of an estate deprives the federal courts of jurisdiction, *see id.* at 107–08, that suggestion is incompatible with *Marshall* and *Goncalves* for the reasons explained above.[12] The

[12] The Eleventh Circuit's opinion in *Fisher v. PNC Bank*, 2 F.4th 1352 (11th Cir. 2021), likewise suggests that federal jurisdiction would be inappropriate were damages to be paid by an estate rather than by a defendant in its individual capacity. Like the

question under *Marshall* and *Goncalves* is not whether a money judgment would need to come from an estate; it is whether a case requires a court to annul or probate a will, administer an estate, or assume in rem jurisdiction over property within the custody of a state probate court. *Marshall*, 547 U.S. at 311–12; *Goncalves*, 865 F.3d at 1252. This case does not require the court to perform any such impermissible function.

II.

The Estate also moved to dismiss for lack of personal jurisdiction. The district court did not reach this argument, but the Estate advances it on appeal as an alternative ground for affirmance. As "[w]e may affirm the district court's dismissal on any ground that is supported by the record, whether or not the district court relied on the same ground," we exercise our discretion to reach this argument.[13] *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1121 (9th Cir. 2013).

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claims the Second Circuit held were not barred in *Lefkowitz*, the claims in *Fisher* sought damages from a defendant personally, rather than from an estate. *Id.* at 1357. To the extent that *Fisher* implies that seeking damages from an estate would be inconsistent with federal jurisdiction, it is similarly at odds with *Marshall* and *Goncalves*.

[13] The Estate submitted declarations and affidavits to the district court in support of its motion to dismiss. Silk submitted a declaration in opposition. The Estate suggests in its briefing that some facts are disputed. When a district court acts on a defendant's motion to dismiss without first holding an evidentiary hearing, "the plaintiff need only make a prima facie showing of jurisdiction to avoid the defendant's motion to dismiss." *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). And "conflicts between the facts contained in the parties' affidavits must be resolved in [the plaintiff's] favor for purposes of deciding whether a prima facie case for personal jurisdiction exists." *Id.* (internal quotation

During the relevant period, Silk lived in California and Bond lived in Maryland. Bond did not travel to California to do business with Silk; the two instead conducted business by phone, email, fax, and mail. Under the agreements at issue here, Silk supervised the liquid portion of Bond's investment portfolio from California, and when Silk worked for Bond, he did so primarily from California. According to Silk, Bond paid into Silk's California bank account for his work, and Bond mailed Silk "substantial paper copies of his portfolio" for review "every month until he died." Silk also declares that he "retained California counsel on behalf of Bond in connection with some of his investments," that Bond "sometimes sent his son" to California to discuss business on his behalf with Silk, and that at one particular meeting between Silk and Bond's son in 2013, the two discussed "sensitive aspects" of Silk's tax- and estate-planning services.[14]

As "California's long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution," *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014), the question is whether the Estate had "minimum contacts" with California "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks and citation omitted). The answer is yes. Our court has "set forth a three-part

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marks omitted). We conclude that Silk has made a prima facie showing of personal jurisdiction and leave any further proceedings on this issue to the district court.

[14] The Estate disputes this allegation, stating that when Baron Bond met with Silk in California, they merely "discussed shared interests including weight lifting, science fiction, and classical liberal political philosophy and religion."

test, derived from the Due Process Clause, that examines the defendant's purposeful conduct towards the forum, the relation between his conduct and the cause of action asserted against him, and the reasonableness of the exercise of jurisdiction." *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007).

As discussed above, during his life, Frank Bond[15] established purposeful contact with California via his contracts with Silk, then a California resident,[16] for services. In doing so, Bond created a multi-year business relationship "that envisioned continuing and wide-reaching contacts" with Silk in California. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 480 (1985). Moreover, by contracting with Silk, Bond created "continuing obligations" to Silk. *See Hirsch v. Blue Cross, Blue Shield of Kansas City*, 800 F.2d 1474, 1478 (9th Cir. 1986). That conduct gives rise to this action: When Silk performed financial services for Bond he did so from California, and the relevant contracts list Silk's California address. Claims arising out of the alleged breach of those contracts therefore arise out of forum-based activities. *See id.* at 1480. Finally, even though Bond did not travel to California to conduct business with Silk, it is still reasonable for California courts to exercise specific personal

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[15] A court may exercise personal jurisdiction over the representatives of an estate if it could have done so over the decedent. *Mitsui Manufacturers Bank v. Tucker*, 199 Cal. Rptr. 517, 519 (Ct. App. 1984).

[16] Silk declares that he lived in California during the relevant time period, but Howard Miller, one of the co-personal representatives of the Estate, declares that Silk lived in Maryland from 1991 to 1995. As factual conflicts from affidavits are resolved in the plaintiff's favor at this stage, we treat Silk as a California resident. *See Harris Rutsky*, 328 F.3d at 1129.

jurisdiction over his Estate given Bond's retention of a California-based financial advisor who performed all the contracted-for services from California. *Cf. Burger King*, 471 U.S. at 476 (recognizing that the absence of physical contacts does not alone defeat personal jurisdiction, as "it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, . . . obviating the need for physical presence within a State").

The Estate contests the exercise of personal jurisdiction. It first argues that "a contract alone does not automatically establish minimum contacts in the plaintiff's home forum." *Boschetto v. Hansing*, 539 F.3d 1011, 1017 (9th Cir. 2008) (citation omitted). While this is true, the contacts here go beyond the "lone transaction for the sale of one item" at issue in *Boschetto*. *Id.* Moreover, *Boschetto* confirms that business activity constitutes purposeful availment when that activity reaches out and creates "*continuing relationships and obligations*" in the forum state. *Id.* (quoting *Travelers Health Ass'n v. Commonwealth of Va.*, 339 U.S. 643, 647 (1950) (emphasis in original)). The yearslong business relationship between Silk and Bond was significantly more extensive than the purchase of a single item in *Boschetto*. Indeed, the Complaint alleges that Silk worked for Bond for "over two decades." A decades-long business relationship[17] with

[17] While the Estate argues that Silk's suit is for "two discrete contracts for tax planning allegedly performed in 1998 and 1999," this ignores that Count One of the Complaint alleges breach of contract for the private variable annuity incentive fee Silk alleges he earned from 1991 to 1993. The Complaint also alleges decades of work related to, but not constituting, the relevant breaches of contract.

a California-based service provider clearly constitutes purposeful availment of the privilege of doing business in California. The Estate's arguments that payments for a contract alone do not constitute "the deliberate creation of a substantial connection with California," and that unlike in *Burger King*, the contracts at issue "did not require Bond to subjugate his business affairs to a California operation," do not change our analysis.

The Estate next argues that Silk's focus on his own California ties is misplaced because it is Bond's contacts with California that matter for the purpose of personal jurisdiction. This misses the mark. No party contends that California has general personal jurisdiction over the Estate by virtue of Bond establishing residence or property ownership in California. Instead, Silk argues that Bond availed himself of Silk's California-based services in a manner "sufficient to establish the required minimum contacts for specific personal jurisdiction." Silk's focus on his own California address and bank account are relevant because it is Bond's contacts with him that support the exercise of personal jurisdiction.

Finally, the Estate argues that even if Silk has made a prima facie case for the exercise of personal jurisdiction in California, exercise of that jurisdiction would be unreasonable. We disagree.

We employ a multi-factor balancing test to determine the reasonableness of exercising personal jurisdiction over a non-resident defendant, assessing:

> 1) the extent of the defendant's purposeful interjection into the forum state's affairs; 2) the burden on the defendant; 3) conflicts of law between the forum and defendant's home jurisdiction; 4) the forum's interest in

> adjudicating the dispute; 5) the most efficient judicial resolution of the dispute; 6) the plaintiff's interest in convenient and effective relief; and 7) the existence of an alternative forum.

Roth v. Garcia Marquez, 942 F.2d 617, 623 (9th Cir. 1991) (citations omitted). No single factor is dispositive. *Id.* And as we conclude that at this stage of the proceedings, Silk has established that Bond purposefully availed himself of the privilege of doing business in California and that this suit arises out of that contact with California, the Estate "must come forward with a 'compelling case' that the exercise of jurisdiction would not be reasonable." *Boschetto*, 539 F.3d at 1016 (quoting *Burger King*, 471 U.S. 476–78).

The Estate has not presented a compelling case that the exercise of jurisdiction would be unreasonable. *See Caruth v. Int'l Psychoanalytical Ass'n*, 59 F.3d 126, 129 (9th Cir. 1995) ("Neither party is clearly favored in the final balance. However, given the closeness of the factors, we conclude that [defendant] has not presented a 'compelling case' that exercising jurisdiction over it would be unreasonable.").

First, Bond's interjection into California is analogous to his purposeful availment and, accordingly, the first factor favors jurisdiction. *See Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988). Next, although defending a lawsuit in California is surely burdensome to the Estate, the Estate has not "presented evidence that the inconvenience is so great as to constitute a deprivation of due process," and so this factor just "barely" weighs against the exercise of personal jurisdiction. *Freestream Aircraft (Bermuda) Ltd. v. Aero L. Grp.*, 905 F.3d 597, 608 (9th Cir. 2018) (internal quotation marks omitted).

The Estate speculates that Silk filed in California instead of Maryland to avoid Maryland's "Dead Man's Act," which prevents interested parties in civil actions from testifying about conversations or transactions with the deceased. Even if true, and even if California wouldn't apply a similar rule, this does not by itself render the exercise of jurisdiction in California unreasonable. Different forums have different rules, and parties often pick the one they perceive to be most favorable to them. We reject the Estate's contention that exercising jurisdiction would conflict with Maryland's "sovereign prerogatives," because, as we have previously observed, "any clash between a forum's law with the fundamental substantive social policies of another state may be resolved through choice of law rules, not jurisdiction." *Haisten v. Grass Valley Medical Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1401–02 (9th Cir. 1986). The fact that "California might apply its own law against the [Estate] should not complicate or distort the jurisdictional inquiry." *Id.* at 1402.

As for the remaining factors, although California has an interest in providing an effective means of redress for its residents, Silk is no longer a California resident. Efficient judicial resolution of the controversy is neutral, as it focuses on the location of the evidence and witnesses, *see Harris Rutsky*, 328 F.3d at 1133, which are split between Nevada and Maryland. And, in any event, "this factor is no longer weighed heavily given the modern advances in communication and transportation." *Id.* (internal quotation marks and citation omitted). California also serves Silk's interest in convenient and effective relief: Even though Silk now lives in Nevada, California is a more convenient forum for him than Maryland, and he was a California resident when he entered the contracts and did the work at issue in this dispute. Finally, "[w]hether

another reasonable forum exists becomes an issue only when the forum state is shown to be unreasonable," and the Estate has made no such showing here. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1080 (9th Cir. 2011) (quoting *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 929 n.19 (9th Cir. 2011), *rev'd on other grounds*, 571 U.S. 117 (2014)).

For the foregoing reasons, we hold that Silk has made out a prima facie case of personal jurisdiction.

CONCLUSION

Because federal jurisdiction over this case is not barred by the probate exception, and because at this stage of the proceedings Silk has made a prima facie case for personal jurisdiction over the Estate, we reverse the judgment of the district court and remand for further proceedings.

REVERSED and REMANDED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:21-cv-03977-ODW (JPRx)

ROGER D. SILK,

Plaintiff,

v.

BARON BOND and HOWARD B. MILLER, in their capacity as Personal Representatives of the Estate of Frank Bond,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [30]

I. INTRODUCTION

Plaintiff Roger Silk initiated this action against the representatives of the late Frank Bond's Estate seeking payment for tax and estate planning services Silk provided Bond during Bond's lifetime. (Compl. ¶ 1, ECF No. 1.) Defendants Baron Bond and Howard B. Miller are personal representatives of the estate of Frank Bond and move to dismiss for lack of subject matter jurisdiction and personal jurisdiction. (Mot. to Dismiss ("Mot."), ECF No. 30.) The matter is fully briefed. (Opp'n, ECF No. 36; Reply, ECF No. 37.) For

the reasons discussed below, the Court GRANTS Defendants' Motion.[1]

II. BACKGROUND

Silk worked exclusively for Frank Bond ("Decedent") between 1991 and 1995. (Compl. ¶ 18.) Throughout that time, Silk supervised and directed various aspects of Decedent's finances, particularly related to tax savings strategy. (*Id*. ¶¶ 18–19.) Silk alleges he and Decedent entered into a series of agreements whereby Silk's compensation would include a performance-based incentive fee of 15% on income-tax savings, annuity-tax savings, and savings Decedent's Estate would realize after his death. (*Id*. ¶ 19.)

Silk presents two written documents signed by himself and Decedent to support his claimed incentive fee, the "North Point" and "Westcliffe" agreements (the "Agreements"). (*Id.* Exs. 1–2 ("Agreements"), ECF Nos. 1-1, 1-2.) The North Point Agreement addresses Silk's incentive fee for Silk's tax planning in 1998 related to Decedent's interest in the North Point Shopping Center Limited Partnership. (*See id.* Ex. 1.) The North Point Agreement provides a step by step process for selecting an appraiser and calculating Silk's incentive fee based on the Estate's realized savings following Decedent's death. (*Id*.) Likewise, the Westcliffe Agreement addresses Silk's incentive fee for tax planning in 1999 related to the sale of Bond's Westcliffe, Warwick, and Harbond properties. (*See id.* Ex. 2.) The Westcliffe Agreement also specifies calculations for determining Silk's incentive fee based on the Estate's realized tax savings. (*Id*.) Additionally, although Silk

[1] After carefully considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

submits no agreement in support, he also seeks a 15% incentive fee related to a private variable annuity Silk established for Decedent. (*Id.* ¶¶ 23–24.)

Now that Decedent has passed, Silk seeks the promised incentive fees. (*See id.* ¶¶ 29–31.) The Orphans' Court for Baltimore County, Maryland is currently overseeing probate of Decedent's Estate. (*Id.* ¶¶ 10, 32.) Defendants have filed a Notice of Disallowance against Silk's claim for these incentive fees in the probate court. (*Id.* ¶ 32, Ex. 3, ECF No. 1-3.)

Accordingly, Silk initiated this action asserting causes of action for breach of contract, unjust enrichment, and promissory estoppel. (*Id.* ¶¶ 33–62.) He seeks (1) judgment against Defendants; (2) an accounting sufficient to calculate the amounts due to Silk; (3) damages; (4) pre- and post-judgment interest; (5) attorneys' fees and costs; and (6) other relief as the Court deems just and proper. (Compl., Prayer for Relief.) Defendants now move to dismiss under Federal Rule of Civil Procedure ("Rule") 12(b)(1) and (b)(2). (*See* Am. Notice of Mot. 2, ECF No. 30.)

III. LEGAL STANDARD

Pursuant to Rule 12(b)(1), a defendant may move to dismiss a complaint for lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "They possess only that power authorized by Constitution or a statute, which is not to be expanded by judicial decree." *Id.* (internal citations omitted). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). A challenge pursuant to Rule 12(b)(1) may be facial or factual. *White v. Lee*, 227 F.3d

1214, 1242 (9th Cir. 2000). Where a defendant brings a facial attack on the district court's subject-matter jurisdiction under Rule 12(b)(1), the court "assume[s] [plaintiff's factual] allegations to be true and draw[s] all reasonable inferences in his favor." *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

Rule 12(b)(2) provides for dismissal for lack of personal jurisdiction. The plaintiff bears the burden of demonstrating that jurisdiction exists. *Love v. Assoc. Newspapers Ltd.*, 611 F.3d 601, 608 (9th Cir. 2010). For a court to exercise personal jurisdiction over a nonresident defendant consistent with due process, the defendant must have sufficient "minimum contacts" with the forum state so that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

IV. DISCUSSION

Defendants argue the probate exception to federal jurisdiction bars Silk's action and this Court therefore lacks personal jurisdiction. (Mot. 2.) As the Court concludes it lacks subject matter jurisdiction in this case, it does not reach Defendants' arguments against personal jurisdiction.

The probate exception limits federal jurisdiction and "reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court." *Marshall v. Marshall*, 547 U.S. 293, 311–12 (2006). However, the probate exception "does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction." *Id*. The Court in *Marshall* considered

this rule "essentially a reiteration of the general principle that, when one court is exercising in rem jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*." *Id*. at 311. Therefore, "a federal court may adjudicate rights regarding property that is the subject of a probate proceeding so long as the relief sought would not require the federal court 'to assert control over property that remains under the control of the state courts.'" *Hollander v. Irrevocable Tr. Established by James Brown in Aug. 1, 2000*, No. CV 10-7249 PSG (AJWx), 2011 WL 2604821, at *2 (C.D. Cal. June 30, 2011) (quoting *Lefkowitz v. Bank of N.Y.*, 528 F.3d 102, 107 (2d Cir. 2007)).

Silk maintains that the Complaint seeks a purely *in personam* judgment related to a contract dispute that does not fall within the probate exception. (Opp'n 7–8.) However, Silk's claims are not like the "common contract disputes" on which he relies. (*See id*.) For example, Silk cites *Cunningham v. World Savings Bank, FSB*, No. 3:07-cv-08033 JWS, 2007 WL 4181838 (D. Ariz. Nov. 21, 2007), but the contract dispute there concerned funds that were not in the control of the probate court. (Opp'n 8); *see Cunningham*, 2007 WL 4181838, at *4. In *Cunningham*, the plaintiff claimed the defendant-bank had wrongfully distributed the estate's funds to a third party and therefore sued the bank to recover those funds, i.e., an *in personam* judgment against the bank. *Cunningham*, 2007 WL 4181838, at *4. The action did not require the court "to reach a *res* in the custody of a state court" so the probate exception did not apply. *Id.* Likewise, in *In re Kendricks*, 572 F. Supp. 2d 1194, 1199 (C.D. Cal. 2008), the dispute concerned a royalty contract's validity and whether the royalties were correctly paid to a third party rather than to the decedent's estate. Both

cases sought the return of assets to the estate; neither disputed estate property under the control and custody of probate court.

In contrast, Silk's "contract dispute" turns on property currently in the control and custody of the probate court. Indeed, Silk acknowledged the probate court's jurisdiction by first filing his claim in the Baltimore County Orphans' Court. (*See* Compl. ¶ 32.) Nevertheless, Silk asks this Court to assume control over an estate appraisal and determine what portion of the Estate is due to him as an "incentive fee." (*See* Compl., Prayer for Relief; Agreements.) Silk's contract dispute cannot be resolved without first determining the value of the Estate. But the valuation of estate assets is within the province of the probate court and therefore precluded by the probate exception. *See Mich. Tech Fund v. Century Nat'l Bank of Broward*, 680 F.2d 736, 741 (11th Cir. 1982) (citing *Turton v. Turton*, 644 F.2d 344, 347 (5th Cir. 1981)). For this Court to take control of the appraisal would amount to the administration of Decedent's Estate—a right reserved to the state probate court. *Marshall*, 547 U.S. at 311–12; *see Markham v. Allen*, 326 U.S. 490, 494 (1946) (explaining that a federal court may not assume "control of the property in the custody of the state court").

Furthermore, Maryland estate and trust law closely regulates appraisals and provides that payment of "[a]n appraisal fee . . . is always subject to review by the court." Md. Code Ann., Est. & Trusts § 2-301(b)–(c). As the Agreements allegedly require the Estate to pay the cost of the appraisal, were the Court to order an appraisal as Silk requests, this Court would improperly interfere with the probate court's authority and dispose of estate assets in its control.

The Supreme Court expressly precluded federal courts from administering a decedent's estate and disposing of property in the custody of state probate courts. *Marshall*, 547 U.S. at 311–12. Accordingly, this Court lacks jurisdiction over Silk's claims in this case and must dismiss. In light of Silk's allegations and the Agreements, leave to amend would be futile and is therefore denied.

CONCLUSION

For the reasons discussed above, the Court GRANTS Defendants' Motion to Dismiss. (ECF No. 30.) All dates and deadlines are vacated. The Clerk of the Court shall close this case.

IT IS SO ORDERED.

October 26, 2021

/s/ Otis D. Wright, II
OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

APPENDIX C

Relevant Statutory Provisions

MD. CODE ANN., EST. & TRUSTS § 2-301

Appointment by register; fees.

* * *

(b)

(1) If a register exercises the register's authority to appoint standing appraisers, all property required to be independently appraised but not appraised by special appraisers under § 7-202(e) of this article shall be appraised by standing appraisers.

(2) If a register does not appoint standing appraisers, the register shall, with respect to any estate which contains property required to be independently appraised but not appraised by special appraisers, appoint general appraisers as provided in § 2-302 of this subtitle.

(c) An appraisal fee is payable only to a person making an appraisal requested by the personal representative, and is always subject to review by the court.

MD. CODE ANN., EST. & TRUSTS § 2-303

Duty of appraisers.

(a) An appraiser shall perform his duty expeditiously.

(b)

(1) The appraisal shall be in columnar form, and state generally each item that has been appraised and the value of each item in dollars and cents.

(2) The appraisal shall contain a statement signed and verified by the appraisers certifying that they have impartially valued the property described in the appraisal to the best of their skill and judgment.

(c) The appraisal shall immediately on completion and verification be delivered to the personal representative.

MD. CODE ANN., EST. & TRUSTS § 7-101

Duties of personal representative generally.

(a)

(1) A personal representative is:

(i) A fiduciary; and

(ii) Under a general duty to settle and distribute the estate of the decedent in accordance with the terms of the will and the estates of decedents law as expeditiously and with as little sacrifice of value as is reasonable under the circumstances.

(2) A personal representative shall use the authority conferred on the personal representative by:

(i) The estates of decedents law;

(ii) The terms of the will;

(iii) Orders in proceedings to which the personal representative is a party; and

(iv) The equitable principles generally applicable to fiduciaries, fairly considering the interests of all interested persons and creditors.

(b) Unless the time of distribution is extended by order of court for good cause shown, the personal representative shall distribute all the assets of the estate of which the personal representative has taken possession or control within the time provided in § 7-305 of this title for rendering the first account.

(c) The personal representative does not incur any personal liability for the payment of claims or distribution of assets even if the personal representative does not consider claims for injuries to the person prosecuted under the provisions of § 8-103(e) or § 8-104 of this article, if at the time of payment or distribution:

(1) The personal representative had no actual knowledge of the claim; and

(2) The plaintiff had not filed on time a claim with the register.

MD. CODE ANN., EST. & TRUSTS § 7-202

Appraisals.

(a)

(1) Subject to the provisions of this section, the value of each item listed in the inventory shall be fairly appraised as of the date of death and stated in the inventory.

(2) The personal representative may appraise the corporate stocks listed on a national or regional exchange or over the counter securities and items in § 7-201(b)(4) and (5) of this subtitle.

(3) The personal representative shall secure an independent appraisal of the items in all of the other categories.

(4) The personal representative may select one of the methods specified in this section.

(b) The personal representative may apply for appraisal by appraisers designated by the register under § 2-301(a) or § 2-302 of this article.

(c)

(1) Except as provided in paragraph (2) of this subsection, instead of an appraisal of the fair market value, real and leasehold property may be valued at:

(i) The full cash value for property tax assessment purposes as of the most recent date of finality; or

(ii) The contract sales price for the property if:

1. The contract sales price is set forth on a settlement statement for an arm's length contract of sale of the property; and

2. The settlement on the contract occurs within 1 year after the decedent's death.

(2) Paragraph (1) of this subsection does not apply to property assessed for property tax purposes on the basis of its use value.

(d) Instead of an appraisal of the fair market value, a motor vehicle may be valued by a personal representative on the basis of the average value of the motor vehicle set forth in:

(1) The National Automobile Dealers' Association official used car guide; or

(2) Any substantially similar price guide designated by the register.

(e)

(1) The personal representative may employ a qualified and disinterested appraiser to assist the personal representative in ascertaining the fair market value, as of the date of the death of the decedent, of an asset the value of which may be fairly debatable.

(2) Different persons may be employed to appraise different kinds of assets included in the estate.

(3) The name and address of each appraiser shall be indicated on the inventory with the item or items the appraiser appraised.

(f) Reasonable appraisal fees shall be allowed as an administration expense.

MD. CODE ANN., EST. & TRUSTS § 7-204

Revision of inventory.

(a) At any time before an estate is closed, the State or an interested person may petition the court for revision of a value assigned to an item of inventory and the court may require revision as it considers appropriate.

(b) Unless the personal representative has filed a petition under subsection (a) of this section, the court shall hold a hearing on the petition.