8.07 Ancient Documents[1]

(1) All maps, surveys and official records affecting real property, which have been on file in the state in the office of the register of any county, any county clerk, any court of record or any department of the city of New York for more than ten years, are prima facie evidence of their contents.

(2) A statement in a document that is not included in subdivision one is admissible if it is proved to be in existence for more than thirty years, and its authenticity is supported by its proper custody or otherwise accounted for, and it is free from any indication of fraud or invalidity.

Note

Subdivision (1) is taken verbatim from CPLR 4522. (*See* Guide to NY Evid rule 3.22.) That CPLR statute creates a hearsay exception for the specified documents.

Subdivision (2) is commonly referred to as the "ancient documents" exception to the hearsay rule and is derived primarily from Court of Appeals decisions dealing with certain recitals in documents affecting interests in real property. (*See e.g. Young v Shulenberg*, 165 NY 385 [1901] [statement in 81-year-old deed]; *McKinnon v Bliss*, 21 NY 206 [1860] [statement in "ancient" deed and will regarding title].)

The Court of Appeals explained the rule by noting that

> "[i]t is usually impossible to establish a very ancient possession of property by the testimony of persons having knowledge of the fact, and when a deed forming part of a chain of title is so ancient that there can be, in the nature of things, no living persons who can testify to acts of ownership by the grantor or grantee, it may be received in evidence without such proof." (*Greenleaf v Brooklyn, F. & C. I. R. Co.*, 132 NY 408, 414 [1892].)

However, before receiving such documents in evidence, the Court of Appeals advised that "[c]are is first taken to ascertain their genuineness, and this may be shown *prima facie* by proof that the document came from the proper custody, or by otherwise accounting for it. The documents found in a place in which and under the care of persons with whom such papers might naturally and

reasonably be expected to be found, or in possession of persons having an interest in them, are in precisely the custody which gives authenticity to documents found within it." (*Dodge v Gallatin*, 130 NY 117, 133-134 [1891].)

The Appellate Division has more recently reaffirmed the "ancient document rule," explaining that

> "a record or document which is found to be more than 30 years of age and which is proven to have come from proper custody and is itself free from any indication of fraud or invalidity 'proves itself' (*Fairchild v Union Ferry Co.*, 121 Misc 513, 518 [1923], affd 212 App Div 823, affd 240 NY 666). This rule dispenses with the proof of the execution of a record or document on the proof of its antiquity. It presumes that the entrant of the record or document is dead after the passage of 30 years. (*Matter of Barney*, 185 App Div 782, 798, 799 [1919].) If the genuineness of an ancient document is established, it may be received to prove the truth of the facts that it recites." (*Tillman v Lincoln Warehouse Corp.*, 72 AD2d 40, 44-45 [1st Dept 1979].)

In the *Fairchild* case, cited by *Tillman*, an action in which rights to docks and piers in New York harbor were in issue, the Supreme Court held that old writings and book entries were properly admitted under the ancient document rule, observing:

> "This rule is that a record or document which is found to be more than thirty years of age and which is proven to have come from proper custody and is itself free from any indication of fraud or invalidity proves itself." (*Fairchild*, 121 Misc at 518.)

While the Court of Appeals has not held that this exception applies to non-real-property documents, the Appellate Division has so held. (*See e.g. Estate of Essig v 5670 58 St. Holding Corp.*, 50 AD3d 948, 949 [2d Dept 2008] ["The stock certificates are more than 30 years old, are free from any indication of fraud or invalidity, and were discovered by the plaintiff . . . amongst the personal records of (the deceased) after her death. Under such circumstances, the stock certificates are self-authenticating pursuant to the ancient document rule"]; *Tillman*, 72 AD2d at 44-45 [inventory list; quoting the rule as set forth by the Supreme Court in *Fairchild*]; *Matter of Barney*, 185 App Div 782, 798 [1st Dept 1919] [psychiatric hospital records]; *Layton v Kraft*, 111 App Div 842, 847 [1st Dept 1906] [church records].)

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[1] In December 2022, this rule was revised for the purpose of dividing it into two subdivisions, numbering the then existing rule as subdivision (2) and adding subdivision (1).