



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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Keolattana Tootoo Saphilom
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Re: In Re: Estate of Peter Sakda Kingkeo, Deceased, CL 2023-1331

Dear Ms. Saphilom and Ms. Abraham:

This matter is before the court on Ms. Saphilom's motion to reconsider the court's order of August 9, 2023 dismissing Ms. Saphilom's petition with prejudice.1 For the reasons set forth below, Ms. Saphilom's motion to reconsider is DENIED.

BACKGROUND

Peter Sakda Kingkeo ("Decedent") died intestate on May 21, 2021. He was a Virginia resident and last resided at 2468 Sycamore Lakes Cove, Herndon, Virginia 20171.

On October 21, 2021, Somken Vichittavong ("Respondent") was appointed administrator of Decedent's Virginia small estate by this court (FI-2021-0002150). Decedent's personal assets subject to Virginia

1 Ms. Saphilom's motion was in the form of a letter (misdated August 8, 2023) which the court deemed a motion to reconsider.

probate were two Capital One bank accounts in Decedent's sole name with a total value under \$25,000.00. Pursuant to this court's Order of October 21, 2021, all inventories and accountings for Decedent's Virginia probate estate were waived.

Decedent also owned real property in his sole name located at 18613 Calypso Place, Gaithersburg, Maryland 20879 ("Calypso property"). Upon appointment as administrator of Decedent's Virginia small estate, Respondent, through counsel, filed exemplified copies of her Virginia probate documents with the Register of Wills for Montgomery County, Maryland to initiate ancillary probate. On November 18, 2021, the Register of Wills for Montgomery County, Maryland appointed Respondent as foreign personal representative of Decedent's Maryland estate (Estate Number: 00000W108856).

ANALYSIS

In Ms. Saphilom's *Response to Respondent's Response And Opposition To Petitioner's Motion To Reconsider* ("Response"), she sets forth in detail her arguments, which she did not do in her letter to the court (misdated August 8, 2023). The court will thus address the arguments made in her *Response*.

1) Ms. Saphilom asserts:

On October 21, 2021, Respondent was appointed administrator of the decedent's Virginia small estate by this Court (FI-2021-0002150), for small estate assets under \$25,000.00, all assets over \$25,001.00 and real estate property were subject to § 64.2-1300.

Response ¶ 8.

While most of Ms. Saphilom's assertion is true, she errs in broadly stating that "real estate property [was] subject to § 64.2-1300" as this is only partially accurate. As relevant here, real estate located outside of Virginia is not subject to Virginia law in that it "is a doctrine firmly established that the law of a state in which land is situated controls and governs its passage in case of intestacy." *Clarke v. Clarke*, 178 U.S. 186, 190-91 (1900). The Court further reiterated that it is "'to the law of the state in which the land is situated we must look for the rules which govern its descent, alienation, and transfer, and for the effect and construction of wills and other conveyances.'" 178 U.S. at 191 (citation omitted).

The Virginia Supreme Court agreed with, and adopted, this fundamental principle in *French, Ex'r v. Short*, 207 Va. 548, 551 (1966): "Under Virginia law, a decedent's . . . real estate passes according to the law of the state where it lies."

Accordingly, Decedent's Maryland real estate is not an asset of his

Virginia estate and Code § 64.2-1300 does not apply to Decedent's Maryland real estate.²

In view of the principle established in *Clarke v. Clarke* and *Ex'r v. Short*, this court is bound to apply Maryland law with regard to Decedent's Maryland real estate.

Md. Code Ann., Est. & Trusts § 1-301(a) provides:

All property of a decedent shall be subject to the estates of decedents law, and upon the person's death shall pass directly to the personal representative, who shall hold the legal title for administration and distribution, without any distinction, preference, or priority as between real and personal property.

Title to real estate in Maryland thus passes "directly to the personal representative" ³ Further, Md. Code Ann., Est. & Trusts § 5-502(b) provides:

A foreign personal representative has the same power to sell . . . real property . . . which is located in Maryland as a Maryland personal representative has with respect to real property

As noted above, on November 18, 2021, the Register of Wills for Montgomery County, Maryland appointed Respondent as foreign personal representative of Decedent's Maryland estate. Thus, Respondent had the power to sell Decedent's real property in Maryland.

As to the division of the proceeds from the sale of the real estate, Md. Code Ann., Est. & Trusts § 3-102 establishes the share of a surviving spouse where there is a surviving child:

² The language in Code § 64.2-1300 concerning "any other real estate that is an asset of the decedent's estate, whether or not situated in the Commonwealth" does not encompass all real estate "not situated in the Commonwealth." Rather, because the phrase "whether or not situated in the Commonwealth" modifies the antecedent phrase ("any other real estate that is an asset of the decedent's estate"), Code § 64.2-1300 is limited to real estate "not situated in the Commonwealth" which is "an asset of the decedent's estate"

³ By contrast, under Virginia law:

In the absence of testamentary language to the contrary, title to real property vests in the devisee or heir immediately upon the death of the decedent. *Broadus v. Broadus*, 144 Va. 727, 741-42 (1925). . . . In other words, . . . real property is part of a decedent's estate only if the decedent makes it part of the estate by will.

Estate of Trent, 58 Va. Cir. 83 (2001).

(b) If there is a surviving minor child, the share shall be one-half.

(c) If there is no surviving minor child, but there is surviving issue, the share shall be the first \$40,000 plus one-half of the residue.⁴

2) Ms. Saphilom's reference to "the final order signed on April 3, 2023" (*Response* ¶ 9) is in error. The order was signed on March 31, 2023 and was not a final order.

3) Ms. Saphilom's assertion that "the property Petitioner owned with Decedent was a gift" (*Response* ¶ 9) is not properly before this court because any issues concerning the ownership of real estate in Maryland must be resolved in Maryland.⁵

4) Ms. Saphilom asserts:

The decedent also owned real property located in Maryland in his sole name located at 18613 Calypso Place, Gaithersburg, Maryland 20879 ("Calypso property") which was subjected to Virginia Probate Codes of Virginia, which has jurisdiction over the estate per § 64.2-1300.

Response ¶ 12.

As discussed, *supra*, the Calypso property was not subject to Virginia probate.

5) Ms. Saphilom asserts:

The Calypso property was part of the decedent's Virginia probate estate and not part of the decedent's Maryland probate estate, Maryland has no jurisdiction over this estate.

Response ¶ 14.

As discussed, *supra*, the Calypso property was not part of Decedent's Virginia probate estate; it was part of Decedent's Maryland probate estate, so that Maryland had exclusive jurisdiction over it.

6) Ms. Saphilom asserts that "Ancillary probate is still governed by the probate laws of the jurisdiction of the estate, which is in

⁴ It is beyond this court's jurisdiction to determine which provision applies.

⁵ Even if the issue was properly before this court, Ms. Saphilom has waived this argument in this court because she did not call any of the five witnesses to testify.

Virginia." Response ¶ 14. This is incorrect; Maryland law governs the ancillary probate of Maryland real estate.

7) Ms. Saphilom asserts that "all Virginia probate codes applies to all estate assets regardless of its location at the time of Decedent's death" Response ¶ 15. This is incorrect in part. Virginia probate law does not apply to real estate outside Virginia; "a decedent's . . . real estate passes according to the law of the state where it lies." *French, Ex'r v. Short, supra*, 207 Va. at 551.

8) Ms. Saphilom asserts that, "[i]n Virginia, real property does become a part of a decedent's probate estate" Response ¶ 16. Again, for the reasons discussed, *supra*, this is erroneous.

9) Ms. Saphilom asserts that "Maryland has an unsupervised ancillary probate process which defers to the probate laws where jurisdiction is held for the estate" Response ¶ 19. Ms. Saphilom cites no authority for this proposition. And not surprisingly, as her assertion is directly contrary to well-established law. See *Clarke v. Clarke, supra*, and *French, Ex'r v. Short, supra*.

10) Ms. Saphilom asserts:

Virginia estate assets law . . . requires all estate assets and liabilities to be inventoried to the Commissioner of Accounts regardless of the location of the property or estate assets.

Response ¶ 19.

This is incorrect; Code § 64.2-1300 is limited to real estate "not situated in the Commonwealth" which is "an asset of the decedent's estate" because the phrase "whether or not situated in the Commonwealth" modifies the antecedent phrase ("any other real estate that is an asset of the decedent's estate"). Here, the Maryland real estate was not "an asset of the decedent's estate"; thus, it is not governed by Code § 64.2-1300.

11) Ms. Saphilom asserts that "Calypso belongs to the estate in Virginia" Response ¶ 20. For the reasons discussed, *supra*, this is not correct; the Calypso property is part of the Maryland estate.

12) Ms. Saphilom asserts that "[R]espondent, as foreign personal representative, had no authority to sell or distribute the Calypso property in kind to herself or Emma Kingkeo" Response ¶ 20. Ms. Saphilom is incorrect. Pursuant to Md. Code Ann., Est. & Trusts § 5-502(b), a foreign personal representative "has the same power to sell . . . real property . . . which is located in Maryland as a Maryland personal representative has with respect to real property"

13) Ms. Saphilom asserts that "the proceeds from the sale of the Calypso property were part of the decedent's Virginia probate estate . . ."

. ." Response ¶ 23. Ms. Saphilom cites no authority for this assertion. In fact, it is contrary to Maryland law, which provides that a foreign personal representative "has the same power to sell . . . real property . . . which is located in Maryland as a Maryland personal representative has with respect to real property" Md. Code Ann., Est. & Trusts § 5-502(b). Moreover, Md. Code Ann., Est. & Trusts § 1-301(a) provides that "All property of a decedent shall be subject to the estates of decedents law" Thus, the proceeds become part of the Maryland probate estate.

14) Ms. Saphilom asserts:

Respondent did not have authorization to sell the estate properties as foreign personal representative since Respondent and her attorneys did not open probate in Fairfax County Probate Court which has jurisdiction of the estate.

Response ¶ 24.

Ms. Saphilom is in error. Respondent's authority to sell the Maryland real estate derives from Md. Code Ann., Est. & Trusts § 1-301(a) ("All property of a decedent shall be subject to the estates of decedents law") and Md. Code Ann., Est. & Trusts § 5-502(b) (foreign personal representative "has the same power to sell . . . real property . . . which is located in Maryland as a Maryland personal representative has with respect to real property"). Moreover, Respondent *did* open probate in Fairfax County Probate Court.


15) Ms. Saphilom asserts that Respondent had "an obligation to report all sales proceeds of the Maryland properties to the Virginia probate court" Response ¶ 27. Ms. Saphilom cites no authority for this assertion. In fact, it is contrary to well-established law that "a decedent's . . . real estate passes according to the law of the state where it lies." *French, Ex'r v. Short, supra*, 207 Va. at 551.

CONCLUSION

For the reasons discussed, *supra*, Ms. Saphilom's motion for reconsideration is DENIED and the court's order of August 9, 2023 remains in full force and effect.

An appropriate order will enter.

Sincerely yours,


Richard E. Gardiner
Judge

