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FOR PUBLICATION



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IN THE SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE ESTATE) OF:	Civil Action No. 08-0195
GREGORIA CAMACHO CABRERA,	ORDER REMOVING TRUSTEE
Deceased.	

THIS MATTER came before the Court on March 27, 2014, where the Court issued a tentative ruling on the issue of the trustee, on which the Court instructed the parties to submit briefing materials. Having reviewed both briefings submitted by the trustee and the guardian ad litem in this matter, as well as the applicable legal principles of trust, the Court hereby **REJECTS** Ms. Aldan's argument that she is entitled to use as her own the rental income of the property which she holds in trust for the minor children.

A trustee's powers over the trust estate must be exercised in accordance with the trustee's fiduciary obligations. See Restatement (Third) of Trusts § 70, comment a. This means that a trustee must "administer the trust, diligently and in good faith, in accordance with the terms of the trust and applicable law." See id. § 76. Included within a trustee's duty to administer are to "ascertain the duties and powers of the trusteeship, and the beneficiaries and purposes of the trust." Id. Further, a trustee must collect and protect the trust property and manage "the trust estate to provide returns or other benefits from the trust property." Id.

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24 25 Lastly, a trustee must apply or distribute to or for the beneficiaries "trust income and principal during the administration of the trust and upon its termination." *Id.* comment f.

The Restatement of Trust also details the fiduciary duties a trustee owes to the beneficiaries of the trust. The primary duty owed is the duty of loyalty, which requires that the trust be administered solely in the interest of the beneficiaries unless otherwise provided in the terms of the trust. *Id.* § 78. Thus, a "trustee" is strictly prohibited from engaging in transactions that involve self-dealing or that otherwise involve or create a conflict between the trustee's fiduciary duties and personal interests." *Id.* Further, a trustee has "a duty in dealing with a beneficiary to deal fairly and to communicate to the beneficiary all material facts the trustee knows or should know in connection with the matter." Id.; § 82; § 83. Lastly, a trustee cannot commingle trust property with her own and cannot "deposit money of the trust into trustee's personal account in a bank. See id. § 84, comment b.

Here, Ms. Aldan holds the title to the income producing properties at issue as trustee for the minor children until they reach the age of 18, at which point she is instructed to transfer the title to and possession of the named properties by quitclaim deed to the named heirs. This means that until such a time that the minors reach age 18, Ms. Aldan owes the aforementioned fiduciary obligations to them, including managing and maintaining the trust's assets, as well as accounting for and distributing trust income during its administration. The Court hereby finds that Ms. Aldan has continually and consistently failed to demonstrate that she has properly managed and maintained the trust's assets, including providing an accounting of and distribution of trust income during such administration.

Furthermore, Ms. Aldan has a duty of loyalty to the beneficiaries of the trust, meaning that she must administer the trust in the sole interest of the named beneficiaries, refraining from self-dealing transactions and the commingling of trust property with her own. Most importantly, as a trustee, Ms. Aldan is prohibited from transactions that would involve or create a conflict between her fiduciary duties to the trust and her personal interests. Here, however, the Court finds that Ms. Aldan has violated those fiduciary duties by retaining the income produced by the properties held in trust and using it as her own, as opposed to

distributing said income to the beneficiaries as required by law. There is nothing in the trust provisions of the decedent's will that permit Ms. Aldan to use the properties and any income derived therefrom for her own personal use, for to do so would defeat the whole legal and practical concept of a trust. Further, Ms. Aldan failed to pay the outstanding mortgage loan on the property at issue, as well as ignoring the notice of default and the summons and complaint of foreclosure filed against the estate. Such inaction and gross neglect of her duties has jeopardized the 11 year-old beneficiary's right to claim the property at issue, as the decedent intended. This matter is presently under litigation for foreclosure proceedings.

Accordingly, the Court **FINDS** that: (1) Ms. Aldan is not entitled to use the rental income of the trust property until the minor children reach majority because they have a property interest in the income generated therefrom, and (2) Ms. Aldan has disregarded numerous fiduciary obligations she owes the minor children as trustee in her management of the trust's assets. As such, sitting as a court of equity with the authority and duty to preserve the estate, the Court hereby **REMOVES** Ms. Aldan from her position as trustee. The Court will further appoint a new executor and trustee to replace Ms. Aldan, and will provide notice of such a hearing to the parties as necessary.

SO ORDERED this 1^{st} day of April, 2014.

/ s /
David A. Wiseman, Associate Judge