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FOR PUBLICATION

IN THE SUPERIOR COUR FOR THE

E-FILED CNMI SUPERIOR COURT E-filed: Aug 03 2017 02:02PM Clerk Review: N/A Filing ID: 60931409 Case Number: 16-0252-CV

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

THE ESTATE OF ANGELINA BORJA) CIVIL ACTION NO. 16–0252
PEREDO, aka ANGELINA P. RIOS, ¹)
	ORDER VACATING THE
) CONDITIONAL APPOINTMENT OF
Deceased.) CO-ADMINISTRATRIX AS HER
) PERSONAL INTEREST CONFLICTS
) WITH THE FIDUCIARY DUTIES TO
) THE ESTATE THEREFORE SHE IS
	NOT THE BEST PERSON TO
) ADMINISTER THE ESTATE AS
) REQUIRED BY NMI R. PROB. P. 18
)
)

I. INTRODUCTION

THIS MATTER came before the Court on July 27, 2017 at 9:00 a.m. in Courtroom 220 on the Objection to Conditional Appointment of Co-Administratrix. Attorney Charity Hodson represented the Estate of Angelina Borja Peredo ("Estate"). Daisy Ramirez, Administratrix² for the Estate of Angelina Borja Peredo ("Administratrix Ramirez"), and conditionally-appointed Co-Administratrix Hilda V. Rios ("Hilda") were both present.

Angelina Borja Peredo ("Ms. Peredo") died intestate on December 7, 1981. Her estate consists of a single piece of real property identified as Lot No. 002 D 87 in Saipan. Ms. Peredo was survived by issue³ from two marriages, one of whom was a daughter named Susana P. Rios. On October 28, 1985, Susana P. Rios signed a quit claim deed that purports to sign away her vested ¹ The case caption has been changed in accordance with THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 10.2.1(b)

at 97-98 Columbia Law Review Ass'n et. al. eds., 20th ed. (2015).

² An administratrix is a "woman appointed by the court to administer the estate of a deceased person." Administratrix, BALLENTINE'S LAW DICTIONARY (3d ed. 2010).

³ "Issue" is a term of art meaning the descendants of a person (such as children or grandchildren). See Issue, BALLENTINE'S LAW DICTIONARY (3d ed. 2010).

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future interest in Lot No. 002 D 87. See generally, Objection to Conditional Appointment of Co-Administratrix Ex. 1. Susana P. Rios has since passed away leaving surviving issue, including a daughter – Hilda.

On May 2, 2017, on petition of Armando Villafuerte, Administratrix Ramirez was appointed as an Administratrix of the Estate without objection. See In the Matter of the Estate of Angelina Borja Peredo, aka Angelina P. Rios, Civ. No. 16–0252 (NMI Super. Ct. May 2, 2017) (Conditional Order Granting Petition for Letters of Administration and Appointing Co-Administratrices at 2) [hereafter "Peredo Appointing Order"]. Hilda came forward at the hearing for the appointment of Administratrix Ramirez on April 20, 2017 and requested to be appointed Co-Administratrix. The Court conditionally appointed Hilda as a Co-Administratrix of the Estate, subject to any objections to her appointment made within five weeks of the Court's order. See Peredo Appointing Order, Civ. No. 16-0252 at 2-3.

On June 6, 2017, counsel for the Estate filed an objection to the conditional appointment of co-administratrix of Hilda on behalf of nine heirs to the Estate. The Estate and objectors allege that Hilda has a personal interest, which is in conflict with the interests of the Estate and would interfere with her duties to the Estate; specifically, Hilda wishes to challenge a transfer of property by her mother Susana P. Rios. The property transferred represents Susana P. Rios' share in the Estate. The objectors further allege that Hilda wished to be Co-Administratrix of the Estate only because of her personal claim and "did not care if her role as co-administratrix resulted in the deadlock of administration of this Estate or if such deadlock resulted in increased expense and delay." Objection to Conditional Appointment of Co-Administratrix at 3. Heirs Dorothy Kurtz, Julius P. Villafuerte,

Armando Villafuerte, and Ana R. Vergara proposed that another person, namely Magdalena Naputi, be appointed as a co-administratrix or as a substitute administratrix.⁴

At the hearing on July 27, 2017, the Court heard testimony from Hilda and arguments from counsel as well as from Administratrix Ramirez. Hilda testified that she is the granddaughter of Ms. Peredo; via Ms. Peredo's daughter Susana P. Rios. Hilda alleges that she should be a beneficiary of the Estate via the estate of her mother Susana P. Rios. Hilda admitted that she was reluctant to sign any documents that would move the proceeding forward until she resolved her issues regarding her mother's estate. Hilda also admitted she previously stated she would refuse to sign an inventory of the Estate until her claims were litigated, though after explanation and clarification from the Court she stated she might sign an inventory, but would not sign any documents relating to distribution. Further, Hilda stated that despite receiving the legal advice of Attorney Hodson regarding the best interest of the Estate, the state of the law, and the validity of the quit claim deed in question, she still wanted to pursue her claims. The crux of Hilda's claim is that her mother, Susana P. Rios, did not understand the quit claim deed when she signed the document on October 28, 1985. Though Susana P. Rios lived for years after the quit claim deed was signed, there is no evidence Susana P. Rios pursued legal action to contest the validity of the quit claim deed.

After reviewing the party's submissions, oral arguments, and relevant law, the Court makes the following order.

II. DISCUSSION

While the Court conditionally appointed Hilda as Co-Administratrix of the Estate, such appointment was subject to timely objections made with the presentation of supporting evidence.

⁴ Though such proposal was made, as of the issuance of this order, no petition for the appointment of an alternative or additional administratrix or administrator has been filed to put the issue properly before the Court.

Now faced with such evidence, the Court must consider whether the appointment of Hilda as Co-Administratrix is appropriate pursuant to the NMI Rules of Probate Procedure.

The NMI Rules of Probate Procedure provide that a court must appoint an administratrix "who under the circumstances is best able to administer the Estate." NMI R. PROB. P. 18 ("Rule 18"). The administratrix's responsibilities include filing an inventory of the estate within 60 days of appointment, taking possession of the estate and its debts, paying the debts of the estate with the court's consent, maintaining awareness of prior or pending probate or civil matters that conflict with the proposed distribution, petitioning for the court's permission before making any payments or distributions from the estate, fulfilling instructions and orders of the Court, fulfilling the notice requirements for creditor claims, and fulfilling the requirements for final distribution of the estate. NMI R. PROB. P. 9–11, 19–22.

An administratrix who is a participant in a probate proceeding owes a fiduciary duty of fair dealing to the other participants, analogous to the duty of a trustee. *See Piteg v. Piteg*, 2000 MP 3 ¶ 18. The administratrix of an estate also owes a duty of undivided loyalty to the estate. *In re the Matter of the Estate of Elias S. Wabol*, Civ. No. 86–0791 (NMI Super. Ct. Aug. 3, 1998) (Decision and Order at 8) (hereafter *Wabol* Order) (citing *Ramsell v. Union Trust Co.*, 519 A.2d 1185, 1189 (Conn. 1987)). Further, an administratrix is expected to act as a "prudent person dealing with the property of another, one who is required to act with care, diligence, integrity, fidelity, and sound business judgment." *Wabol* Order, Civ. No. 86-0791 at 8. When there are co-administratrices, each administratrix has a duty to cooperate in administering the estate and may be removed if her lack of cooperation substantially impairs the administration of the estate. *See* RESTATEMENT 3D OF TRUSTS, § 81 (2012); U.T.C. § 706(b)(2) (2010).

The court also imposes upon an administratrix the duties of honesty, loyalty, restraint from self-interest, and good faith. *Wabol* Order, Civ. No. 86-0791 at 8 (citation omitted). Moreover, the

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court has an active duty to ensure that a person whose interests conflict with the interests of the estate does not serve as the administratrix of an estate because in such circumstances "the [administratrix]'s ability to represent fairly the interests of the estate is irreparably tainted." *See Id.* (citation omitted).

Rule 18 grants the Court broad discretion to look at the individual circumstances of each case and determine who is best able to carry out the fiduciary duties owed in the administration of the estate in question. Here, the Co-Administratrix has the duty to further the interests of the Estate by identifying the heirs and using sound business judgment to expediently and efficiently distribute the Estate's property and cooperate in the administration of the estate. However, delaying distribution to determine whether the identified heirs chose to dispose of or maintain their share of the Estate via a facially valid deed is not in the interests of the Estate, unless some extenuating circumstances exist – such as when the action somehow diminishes the decedent's ownership or damages the overall value of the Estate or renders identification of the heirs impossible.

Hilda wishes to contest whether her mother, who had been identified as an heir to the Estate, chose to deed away her vested future interest in the Estate to third parties. Hilda's claim has no bearing on Ms. Peredo's ownership of the Estate, no effect on the overall value of the Estate, no obstructive effect on identifying the heirs, nor are there any other extenuating circumstances that involve the Estate's interests in Hilda's claim. Distribution of the Estate is not contingent upon the resolution of Hilda's claim. Rather, Hilda's claim is on behalf of herself, pursuing her mother's share, against the third parties who benefitted from the quit claim deed signed by Hilda's mother (Susana P. Rios), and distribution of the Estate would not affect Hilda's ability to pursue her claim against the third parties. *See* Objection to Conditional Appointment of Hilda V. Rios Ex. 1.

Hilda's claim therefore is not aligned with the interests of the Estate; rather Hilda's claim aligns with her own interests in pursuit of a property that her mother, Susan P. Rios, appears to have

given away via a quit claim deed. Hilda desires to be an administratrix of the Estate in order to advance her personal interests – nullifying a facially valid quit claim deed that has stood uncontested for thirty years in hopes of gaining her mother's share in the Estate. While Hilda has the right in her individual capacity as an heir to her mother's estate to pursue her own interests, those interests cannot and do not alter the fiduciary duties owed the Estate to act in fairness, loyalty, good faith, cooperation, and sound business judgment. Hilda has placed her own interests in conflict with an administratrix's duties to the Estate, hindering the distribution process and failing to cooperate with Administratrix Ramirez for the benefit of her own interests. Under the circumstances she is not the person best able to administer the Estate. Therefore, the Court has a duty to deny her appointment. *See Wabol* Order, Civ. No. 86-0791 at 8.

IV. CONCLUSION

Accordingly, for the reasons stated above, the Court hereby <u>VACATES</u> the conditional appointment of Hilda V. Rios as a Co-Administratrix of the Estate.

IT IS SO ORDERED this 3rd day of August, 2017.

/s/

JOSEPH N. CAMACHO

Associate Judge