

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

IN THE MATTER OF THE ESTATE OF)	ST-12-PB-143
)	
GOBIND HARKISHANDAS)	
UTAMCHANDANI,)	
)	
Deceased.)	
)	

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on a Motion from Petitioners Divishia Gobind Utamchandani Samtani and AzureTrustees Limited. In the Motion, the Petitioners request that the Court place the Petitioners in possession of the personal property of the Decedent present in the Virgin Islands, that no accountings be required, and that the Petitioners be allowed to proceed without providing additional proof of trusteeship for the testamentary trust created in the Decedent's Last Will and Testament. In support of the motion, the Petitioners state that because the Decedent was not living in the Virgin Islands at the time of his death, no testamentary trust, as defined in 15 V.I.C. § 1141(a), was created.

The term "testamentary trust" is not expressly defined in § 1141(a). According to the Restatement, a testamentary trust is simply defined as a trust "created by a will."¹ Further, a testamentary trust is created when, in the will, the settlor "manifests an intention to impose enforceable duties" on the trustee, also named.² However, § 1141(a) defines a testamentary trustee as "a trustee serving under a trust created by will of a testator domiciled in this jurisdiction at the time of his death whose will has been admitted to probate in this jurisdiction."³

From a review of the will in this probate matter, which was originally filed and probated in Hong Kong, it appears that no testamentary trust, as defined above, was created in this jurisdiction. The Decedent died in that jurisdiction and the will was probated in that jurisdiction. The will was probated in this jurisdiction in accordance with Superior Court Rule 210 in order to distribute the contents of two bank accounts in the Virgin Islands. In other words, the settlor did not manifest an intention to impose enforceable duties on the trustee as it pertains to this jurisdiction.

¹ Restatement (Third) of Trusts § 17(a) (2003).

² *In re the Estate of Richards*, 1996 U.S. Dist. LEXIS 20862 (D.C.V.I. 1996) (citing Restatement (Second) of Trusts § 25 (1959)).

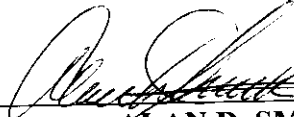
³ V.I. Code Ann. tit. 15 § 1141(a) (1957).

The premises being duly considered, it is hereby
ORDERED that the Petitioners' Motion is **GRANTED**; and it is further
ORDERED that the Petitioners shall fully comply with Superior Court Rule 210; and it
further

ORDERED that the Petitioners shall, on or before May 20, 2013, submit their Proposed
Judgment or Adjudication; and it is further

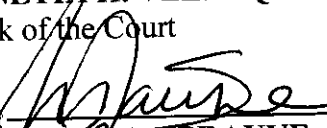
ORDERED that copies of this Order shall be directed to Steven K. Hardy, Esq.

DATED: April 22, 2013



ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: 

JEWEL A. SPRAUVE
Court Clerk Supervisor 4/22/13