IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

IN THE MATTER OF THE ESTATE OF	)	
	)	PROBATE NO. 12/1980
RANJIT GOBINDRAN HEMRAJANI, Deceased	)	

EDITH L. BORNN, ESQUIRE
DAVID BORNN, ESQUIRE
Attorneys for the Estate

MARIA TANKENSON HODGE, ESQUIRE
Attorney for the Claimant

CHRISTIAN, Alphonso A.,
Senior Sitting Judge

OPINION

The question facing us is whether we should affirm, modify or reverse the decision of the Administrator de bonis non (the ADBN),[1] disapproving two multi-part claims presented against the assets of the estate pursuant to 15 V.I.C., Chapter 23. The decision of the ADBN will be affirmed in part and reversed in part.

I.

Rangit Gobindran Hemrajani was a resident and domiciliary of St. Thomas, U.S. Virgin Islands, living in his suburban and very recently improved and refurbished home situate at No. 1 Estate Contant with his wife and one child when he died a mysterious death on or about January 9, 1980, leaving no Last Will and Testament. His remains were found enclosed

[1] On August 20, 1980, the Court appointed Nanik Hemrajani, a brother of the deceased, as Administrator of the estate of the deceased. On December 20, 1982, Nanik was replaced by David J. Warner as Administrator de bonis non.

in two garbage bags. While there exist and persist many and varied strange suspicions and speculations, the true circumstances of his death are still a mystery to all, including the police.

The decedent was a native of India. In 1975, he and three of his brothers--Ram, Harish and Nanik--created a domestic corporation pursuant to the provisions of 13 V.I.C., Chapter 1, Artland, Inc. (Artland), in which all four brothers were stockholders with equal shares. But decedent was invested as sole manager of the firm, which operated four stores in the district. Testimonial evidence placed decedent's salary variously at from $1,200.00 to $1,600.00 a month.

One year after decedent began management of the corporate interests, he purchased No. 1 Estate Contant for $95,000.00. The property was bought by Deed dated July 23, 1976, and recorded in the Office of the Recorder of Deeds in St. Thomas on August 16, 1987, at Protocol 17I, Page 398, Document No. 1999, Auxiliary 4, Page 48.[2/] A purchase money first priority mortgage in the amount of $65,000.00 was recorded on August 9, 1976. Decedent used the property as his dwelling place.

[2] The deed is in the name of Roy Hemrajani, but the evidence is undisputed that decedent was frequently called Roy instead of Ranjit.

According to Artland's Exhibit 3, decedent ran up a stockholder's account in the firm as to which he was debtor in the following amounts: Schedule A-1, for the period July 13, 1979, through October 11, 1979, $54,458.32; Schedule B-2, for the period October 15, 1979, through October 21, 1980, $63,869.62; and from November 14, 1980, through March 14, 1981, an additional $10,736.50, for a grand total of $129,119.44. According to Appellant's Exhibit 8, this grand total is further broken down as follows:

A. Balance owed by decedent to Corporation at death	$54,458.32
B. Mortgage payments and Insurance on decedent's house	
1) Before his death two mortgage payments at $659.30	1,318.60
2) After his death from January 17, 1980, through July 31, 1981, 19 mortgage payments at $659.30	12,526.70
3) One Insurance payment	467.00
Total	$14,312.30
C. Other house expenses, including furniture and taxes	
1) Before death (11/28/79 to death)	$39,122.99
2) After death	1,613.99
Total	$40,736.98
D. Payments to widow and maid	
From 3/10/80 through 6/10/80	$21,660.00
E. Burial and Estate Expenses	
From 1/14/80 through 2/4/80	$ 2,111.12
For a grand total of	$133,258.72

This grand total exceeds Artland's claim by $4,139.28.

As per handwritten note attached at the back of Artland's Exhibit 8, this discrepancy between the amount of the claim filed and the claim attempted to be proved to the satisfaction of the Court does exist, but no solid explanation of why it exists was made of record. While the discrepancy according to Artland's note is $4,137.20, our computation results in a discrepancy of $4,139.28, an amount of $2.08, which under the de minimis non curat lex rule is of no legal consequence. But the variance between Artland's claim as filed and as attempted to be proved by claimant, given the standard of proof that the law requires in such matters, is one that should be attributed some probative value.

The probate administration of the estate of decedent was commenced on March 13, 1980, by Petition dated March 5, 1980. The Corporation filed claim for the $129,119.44 with the ADBN who summarily rejected the claim in all its parts on January 18, 1984. On the same date, he also summarily rejected the three-part claim of Ram Hemrajani (Ram) for sums of $20,000.00, $6,500.00, and $1,500.00, totalling $28,000.00. The ADBN also, on the same date, dealt the same treatment to a claim for $75,000.00, filed by brothers of the decedent, Nanik and Ram, notwithstanding the fact this claim was filed directly with the Court as the then Administrator was a joint claimant, (15 V.I.C., Section 398), was the subject of a full evidentiary hearing as to its merits on May 27, 1981, and was approved by the Court on May 27, 1981.[3]

This appeal to the Court followed with respect to the claims of Artland and Ram, pursuant to 15 V.I.C., Section 395.

The appeal came on for hearing on July 9, 1985, February 27, 1986, and March 12, 1986. Artland and Ram, Appellants, appeared by Nanik Hemrajani and by the firm of Maria Tankenson Hodge, Esquire (Judith A. Knape, Esquire, of counsel). Ram's deposition taken for use as evidence in support of his claim on December 8, 1983, was presented in evidence, by virtue of Federal Rules of Civil Procedure 32(a)(3)(B), as it was testified that Ram was in India. The Estate was represented by Edith Bornn and David Bornn, Esquires. The Court having heard the testimony of the witnesses,

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[3] In the Brief filed by the estate in support of its proposed findings of fact and conclusions of law, one of the arguments advanced to defeat both the $129,119.44 claim of Artland and the $28,000.00 claim of Ram is that the claims were not verified as required by 15 V.I.C., Section 393. This objection was made for the first time in said Brief filed on April 30, 1987, although the $75,000.00 claim was filed with the Court directly, not with the personal representative, and after a full hearing, was approved by the Court directly after being dealt with as required by and for the reasons stated in 15 V.I.C., Section 398; although the Artland claim, also being a claim of the corporation in which the then Administrator owned stock and was its vice president, was required by said Section to be presented initially directly to the Court for acceptance, rejection, or other appropriate action; and although all three claims had been the subject of extensive evidentiary hearing as to their authencity. Apart from the probability of waiver of the technical attack due to its intolerable lateness, due to the fact that from the repeated affirmations under oath by all claimants of the veracity and authencity of all three claims, we find this manuever to be without merit.

the arguments of counsel, and received in evidence such other pertinent proofs, including several exhibits, as were offered by them, and being fully advised and satisfied in the premises, hereby makes the following

II.
FINDINGS OF FACT

1. That as to the three-part claim of Ram, the Court is satisfied that the claim has been established by the standard of proof mandated by 15 V.I.C., Section 395, i.e., "upon competent and satisfactory evidence other than the testimony of the claimant".

2. That that part of the Artland claim which is for payment of burial and estate expenses in the amount of $2,111.12 (E in our analysis above) has been likewise established.

3. That that part of Artland's claim for Mortgage and Insurance payments for No. 1 Estate Contant paid both before and after the death of the deceased has been likewise established. (B in our analysis above).

4. That that part of Artland's claim for payments to widow and her maid during the first fifteen months after the sudden tragedy struck the family (D in our analysis above) has not been established by the required probative standard. The Court believes that the evidence clearly establishes that these payments were made as a gift, and not as a loan, during this limited period by the family corporation to the widow out of sympathy to ease her pain, since she was known to be unemployed to give her some means of sustenance from the family

company in which her deceased husband owned a share until she could find some other means of survival for her and their child, and also because due to the sudden sorrow which descended on the family many relatives of the family sojourned with the widow and stayed and ate and generally lived in the house with the widow. These people had to be sustained somehow. Nanik testified that some of the people who stayed at the house during this period supplied all the money and help needed for the sustenance of all in the house, that the widow could not even cook. We do not credit that testimony. But even if these people did supply enough money to take care of themselves, to feed themselves, and even the widow and the child of decedent included, surely man does not live by bread alone. To put it mildly, we believe it is cruel and heartless for the corporation to attempt to recover this bare sustenance allowance paid to the widow during her hour of sudden grief, need and possibly panic.

5. While it is adequately shown that the corporation paid several bills for furniture and construction costs at the house, the following factors will have to be clearly established to create an adequate evidentiary base for a finding of the amounts owed for these two items (A and C in our analysis above). We require this particularly as we find that during the period July to November or December of 1979 when Apex Construction (Apex) is said to have done considerable work on No. 1 Estate Contant, Apex during that same period also worked at one or more of the stores, owned by Artland. The

The requisites are:

(a) Proof from Apex as to the entire cost of the work it did during this period for the house and the store or stores of Artland.

(b) What part of that total is chargeable to No. 1 Contant and what part is chargeable to the estate.

3. We have carefully perused the documentary evidence presented to establish the fact that furniture was paid for which reached the decedent, but we have been able to detect precious little clear proof. Claimant to get a reversal of the ADBN's rejection here will have to provide invoices, vouchers, receipts or other clear proof showing the purchase of the furniture for, and its receipt by, the deceased. And the Court will cooperate in putting this behind us by even taking a judicial view of the premises which might help to determine if the particular furniture claimed to be bought and invoiced did in fact go to enrich the decedent and his estate. Absent such proof, the best evidence is that of the keeper of the records, made in the regular course of business. The Court cannot recall that any such maker and/or custodian of the records was called to testify, especially as to claimant's Exhibit 3. Frankly, this Exhibit is very unclear in many parts, probatively leaves a lot to be desired, and without the testimony of the person who prepared it, leaves many real pertinent questions unanswered, given the high standard of proof we are required to have, to credit as adequate to establish, this large claim against a man who cannot speak for himself.

III.

CONCLUSIONS OF LAW

We therefore make the following conclusions of law:

1. That Ram is entitled to be paid his claim of $28,000.00. Therefore, to this extent, the decision of the ADBN is reversed.

2. That that part of the claim of Artland for burial and estate expenses in the amount of $2,111.12 is well laid, and should be paid by the estate. Therefore, the rejection of this claim by the ADBN is reversed.

3. That that part of Artland's claim for mortgage and insurance paid on the homestead of decedent in the amount of $14,312.30 is well laid, and should be honored by the estate. Therefore, the rejection of this part of Artland's claim by the ADBN is reversed.

4. That that part of Artland's claim for payments to the widow and maid is not entitled to payment from funds of the estate. Therefore, the rejection of this portion of Artland's claim by the ADBN is affirmed.

5. That as to parts A and C according to our analysis hereinabove made, Artland is given thirty (30) days from this date to supply the proof above specified, failing which, the ADBN's rejection of these parts of Artland's claim will be deemed affirmed.

IV.

ORDER

It is accordingly SO ORDERED.

Dated: October 13, 1987

Alphonso A. Christian
ALPHONSO A. CHRISTIAN,
JUDGE.

Attest:
Viola E. Smith
Administrator/Clerk of the Court

By: Gloria E. Thompson
Chief ~~Deputy~~ Clerk

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CHRISTIAN, Alphonso A.,
Senior Sitting Judge

AMENDMENT TO OPINION

The Court's Opinion dated October 13, 1987, is hereby amended in the following two respects:

The last sentence in Footnote 3 on Page 5 thereof is amended to read as follows:

> Apart from the probability of waiver of the technical attack due to its intolerable lateness, due to the fact of the repeated affirmations under oath by all claimants of the veracity and authenticity of all three claims, we find this manuever to be without merit.

Subdivision (b) at the end of Paragraph 5 on Page 8 is amended to read as follows:

"(b) What part of that total is chargeable to No. 1 Contant and what part is chargeable to Artland."

Dated: October 20, 1987

Alphonso A. Christian
ALPHONSO A. CHRISTIAN,
JUDGE.

Attest:
Viola E. Smith
Administrator/Clerk of the Court

By Gloria E. Thompson
Chief-Deputy Clerk