

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

**IN THE MATTER OF THE ESTATE OF)
ALAN J. O'HARA,) PROBATE NO. ST-02-PB-113
Deceased.)
_____)**

MEMORANDUM OPINION

SUMMARY

Christina O'Hara, Executrix of the Estate of Alan J. O'Hara, (hereinafter "Petitioner"), by and through her counsel Tom Bolt & Associates, P.C., filed three motions as follows: Amended Motion for Citation, Motion to Inventory Safe Deposit Box, and a Renewed Motion for Further Information Concerning Bank Accounts and Safe Deposit Boxes, all in an effort to gain information surrounding the transfer of funds from Alan J. O'Hara (hereinafter "Decedent") to Michael O'Hara (hereinafter "Respondent") that took place before Decedent's death. Petitioner claims that Respondent misappropriated funds that belong to the Estate, and asks the Court to grant her Motion and allow her access to Respondent's records, bank account information, and safety deposit box. The Court will deny Petitioner's Motions.

FACTS

There is no dispute between the parties as to the following facts¹: On August 27, 2002, decedent underwent surgery at Good Samaritan Hospital in Palm Beach, Florida.² His physician, Dr. Norberto Vasquez, declared decedent "mentally incapacitated" and "unable to handle any health or financial affairs."³ On or about that same day, the sum of One Hundred Twenty Four Thousand Two Hundred Sixty and 00/100 Dollars (\$124,260.00) was transferred from several of decedent's accounts into a joint account with right of survivorship that decedent shared with Respondent.⁴ The next day, August 28, 2002, Respondent flew to St. Thomas, U.S. Virgin Islands and retrieved a safety deposit box held jointly between Decedent and Respondent, Respondent then opened a deposit box in his own name and placed the contents of the joint box into his personal deposit box.⁵ There is a dispute between parties as to how much money Respondent took from the joint box, which varies

¹ Petitioner's Affidavit (Mar. 17, 2005); Respondent's Affidavit (Dec. 16, 2003).

² Paragraph 5 of Petitioner's Affidavit.

³ Amended Motion for Citation, Exhibit G.

⁴ Paragraph 6 of Petitioner's Affidavit; Paragraph 5 of Respondent's Affidavit.

⁵ Paragraph 9-10 of Petitioner's Affidavit.

between Twelve Thousand and 00/100 Dollars (\$12,000.00) and Thirty Thousand and 00/100 Dollars (\$30,000.00).⁶ Decedent was discharged from the hospital on August 30, 2002.⁷

DISCUSSION

This Court has jurisdiction over the administration of estates pursuant to 15 V.I.C. § 161, which provides:

In addition to the jurisdiction and powers conferred upon it by other provisions of law, the district court has jurisdiction and the power to administer justice in all matters relating to the affairs of decedents, and, upon the return of any process, to try and determine all questions, legal or equitable, arising between any party and any other person having any claim or interest therein who voluntarily appears in such proceeding, or is brought in by citation, as to any and all matters necessary to be determined in order to make a full, equitable, and complete disposition of the matter by such order or decree as justice requires; and, in the cases and in the manner prescribed by law, and in addition to and without limitation or restriction on the foregoing powers, to –

- (1) take proof of wills;
- (2) grant and revoke letters testamentary, and of administration;
- (3) direct and control the conduct, and settle the accounts, of executors and administrators;
- (4) direct the payment of debts and legacies and the distribution of the estates of intestates; and
- (5) order the sale and disposal of the real and personal property of deceased persons.⁸

Petitioner argues that this provision gives this Court the authority to issue a citation to Respondent, a Florida resident and allow access into Respondent's personal accounts.

It is well established law that Probate Courts have limited jurisdiction.⁹ Indeed, the District Court found that "In the Rules of the Probate Court ... only such matters as pertain to the administration and settlement of estates of decedents are provided for."¹⁰ This Court does not have jurisdiction to hear matters outside the scope of administration and the settlement of estates.

The bank account and safety deposit box are not part of the probate estate because they were not owned by decedent at the time of death. "The probate estate comprises property owned by the decedent **at the time of death** and property

⁶ Paragraph 9 of Petitioner's Affidavit.

⁷ Paragraph 12 of Petitioner's Affidavit.

⁸ See V.I. CODE ANN. tit. 15 § 161 (1996).

⁹ *In re Estate of Below*, 3 V.I. 448, 456-457 (D.V.I. 1958).

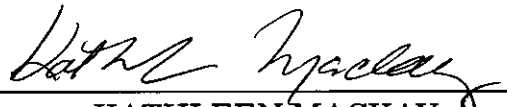
¹⁰ *Id.* at 456.

acquired by the decedent's estate at or after the time of death." BLACK'S LAW DICTIONARY (9th ed. 2009) (*emphasis added*). The withdrawal of money from accounts and the emptying of the deposit box all took place while decedent was still alive. The property, as it exists now, is not probate property and is therefore outside of the jurisdiction of this Court.

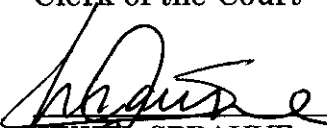
CONCLUSION

Even if the Respondent's actions constitute tortious conduct or malfeasance there is no indication that they occurred after the death of the Decedent. As a result the Probate Court does not have jurisdiction over the assets or the authority to compel citation or to otherwise grant Petitioner the relief she seeks. Therefore, the Amended Motion for Citation, Motion to Inventory Safe Deposit Box, Motion for Further Information Concerning Bank Accounts and Safe Deposit Boxes, and Renewed Motion for Further Information Concerning Bank Accounts and Safe Deposit Boxes are all denied.

DATED: January 12, 2013


KATHLEEN MACKAY
Judge of the Superior Court
of the Virgin Islands

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

BY: 
JEWEL SPRAUVE
Court Clerk Supervisor 1/15/13