

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

IN THE MATTER OF THE ESTATE OF)

DONALD ALEXANDER SMITH,)

Deceased.)

Probate No. ST-02-PB-52

WILLIAM S. MCCONNELL, ESQ.

Dudley, Topper and Feuerzeig, LLP

1000 Frederiksberg Gade

St. Thomas, Virgin Islands

SMITH, ALAN D., Magistrate

MEMORANDUM OPINION

Summary

Counsel for the Estate of Donald Alexander Smith, Deceased has filed a motion in which he seeks payment of attorney's fees. Virgin Islands law treats attorney's fees like any other expense of administration in that they are an expense of the administrator or executor. Therefore, the administrator or executor is the one who must review the attorney's fees sought to be recovered, find them to be reasonable, and move the Court for payment.

Facts

The Executrix retained Counsel to administer this Estate. To this date, the Estate has been opened, and it appears that the six-month creditor's claim period has concluded. At this point, Counsel is requesting payment of \$55,692.50 for interim fees and \$1,897.53 for interim costs. In addition to filing a motion for payment of the fees, Counsel has also filed an Affirmation Regarding Legal Fees, signed by a partner of the law firm in which he is affiliated with. No similar filing signed by the Executrix, stating that she has reviewed the requested fees and costs and finds them to be reasonable, has been filed.

Discussion

Virgin Islands law clearly states that attorney's fees are one of many expenses of an administrator or executor. Title 15 V.I.C. § 568 provides that "an executor or administrator shall be allowed in the settlement of his account, all necessary expenses incurred in the care, management, and settlement of the estate, including reasonable attorney's fees in any necessary litigation or matter requiring legal advice or counsel."¹ The administrator or executor must demonstrate to the Court that the attorney's fees were not only generated in "necessary litigation or matter[s] requiring legal advice or counsel" but were also "reasonable" before they will be allowed in settlement of the account. Furthermore, "[i]t is the duty of the personal representative to pay all the claims against the estate and the expenses of administration of the estate"²

¹ VI CODE ANN. tit. 15 § 568 (1996).

² *In the Matter of the Estate of Bonifacio Latalladi, Deceased*, 23 V.I. 353, 356 (Terr. Ct. 1988) (citing VI CODE ANN. tit. 15 § 492 et seq.).

Finally, "[t]he executor or administrator may retain in his hands in preference to any claim or charge against the estate, the amount of his own compensation and necessary expenses of administration."³ Therefore, under appropriate circumstances and with Court approval, an administrator or executor may pay reasonable attorney's fees from the assets of the estate.

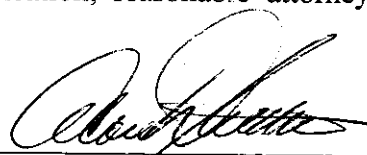
While the Court is mindful that some judges have awarded attorney's fees in the past, both interim and final, there is no statute or court rule that authorizes payment of attorney's fees to counsel upon his direct request to the Court. Moreover, in light of the Court's supervisory function, sections 421(c), 492 and 568 should be prudently read. Therefore, prudence requires that applications for attorney's fees must, at a minimum, be approved by the administrator or executor of the estate.

In this case, the application for interim attorney's fees and costs was made by Counsel. There is no evidence that the Executrix reviewed or approved that application. Under such circumstances, it would not be prudent to release monies to satisfy the entire outstanding balance due to Counsel. This is especially true where, as is the case in this matter, administration of the Estate is incomplete.

Conclusion

Attorney's fees are an expense of the administrator or executor. Therefore, the Court will not, absent explicit approval by the administrator or executor, award attorney's fees upon application of Counsel. Upon receipt of such approval or application, reasonable attorney's fees will be granted.

DATED: September 7, 2011



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 9/8/11

³ VI CODE ANN. tit. 15 § 421(c).