

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX: KINGSHILL

IN THE MATTER OF THE ESTATE OF)
)
)
MARIE EDWARDS,) PROBATE NO. 26/1977
)
Deceased.)
_____)

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PETERSEN, Judge

MEMORANDUM OPINION & ORDER
September 24, 1986

This matter is before this Court on the Executor's petition for leave to subdivide a parcel of real property in accordance with the dictates of Paragraph 11 of the testatrix's will, paragraph II. The Court is confronted with the question as to whether the exception provided in 29 V.I.C. 226(f) permits the requested subdivision.

FACTS

Marie Edwards died testate on July 14, 1972. Her last will and testament, which she executed on August 17, 1971, has been duly admitted to probate. In her will she directed her executor to partition her property located at 15A

and B Market Street, Christiansted, St. Croix, separating her residence from a rental unit located thereon. The residence was devised to two granddaughters. A life interest in the rental property was devised to a third granddaughter with the remainder to the testatrix's granddaughters. The property consists of 3,117 square feet, comprising of two smaller plots, located in the R-4 zoning district.

In 1963, the testatrix encumbered the aforementioned property, for the express purpose of making improvements, in anticipation of subdividing it to give to her granddaughters.

After Ms. Edwards's demise, the executor attempted to effect the subdivision in compliance with the provisions of the will. However, the surveyor reported that the Virgin Islands zoning laws prevented said subdivision. The Executor then filed the instant petition alleging that the exception provided in 29 V.I.C. 226(f) permits the subdivision.

The relevant Zoning Act became law on October 1, 1972. The subdivision is the only matter that precludes the closing of the estate.

DISCUSSION

It is clear that the intended subdivision is unlawful. "The validity and effect of a testamentary

disposition of real property" is governed by the laws of the Virgin Islands. 15 V.I.C. 38, In Re Estate of Georg, 298 F. Supp. 741, 743. The zoning laws require that every parcel of property located within the R-4 District have a minimum lot area of 3,000 square feet. 29 V.I.C. 229(f). The intended subdivision will yield 1,522.8 square feet to plot 15 A and 1,593.9 square feet to plot 15B. Such plots would be substandard in size in violation of §229(f).

Courts generally give full force and effect to the intention of testators. cf. Caron v. First Pennsylvania Bank, N.A. & Odell, Probate No. 141/1977, Civil No. 149/1978 (Terr. Ct. V.I. April 28, 1986). However no effect can be given to an intention which, if implemented, would violate the laws of the Virgin Islands. Accordingly, the testatrix's devise of plot 15A and B Market Street can not be given full force and effect.

The Executor maintains that 29 V.I.C. 226(f) permits the subdivision for the following reasons: (1) The testatrix initiated improvements on plot 15A and B prior to the passage of the Zoning Act with the intention of subdividing and devising the property afterwards; (2) The improvements were completed in accordance with that section; and (3) The division was not violative on the Zoning Act at the time the

testatrix's will was drafted.

The Zoning Act does not require any change in plans, construction or designated use of buildings or structures if actual construction began prior to the adoption of subchapter I of Chapter 3 of Title 29 (i.e. October 1, 1972) and was completed within two years of its passage. 29 V.I.C. 226(f).

While the legislative history, the purpose and the context of a statute are all aids in statutory construction which may indicate the proper scope of law Miller v. Schneider et. al. 16 V.I. 422, 425 (1979) the plain language used within a statute is the necessary starting point of any statutory construction. Ernst & Ernst v. Hachfelder, 425 U.S. 185, 197 (1976); Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975), Virgin Islands Press Association v. Luis 17 V.I. 329, 330 (1980).

The express language of §226(f) creates an exception for construction on buildings and structures in progress when the Act was passed. However, it would be anomalous to impute to the legislature the intention that said exception also applies to the subdivision of land. The legislative intent is clear from the statute's definite language, which in no way provides exceptions for the subdivision of land.

There is nothing, however, to preclude the Executor from applying to the Board of Land Use Appeals for a variance

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pursuant to 29 V.I.C. 236(g). The Board is empowered to grant specific variances from the strict application of §229 in certain cases of practical difficulty or unnecessary hardship. The Executor might also choose to pursue other avenues such as sale of the subject property or a joint distribution of the entire plot to the granddaughters.


EILEEN R. PETERSEN
Judge