

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Joseph Carchidi,
Deceased
443 DE of 2008
Control No. 085499

Sur First and Final Account of Vincent Carchidi, Executor for the Estate of Joseph Carchidi, Deceased

The account was called for audit September 8, 2008
Counsel appeared as follows:

By: **HERRON, J.**

John Crampton, Esquire - for the Accountant
Bruce M. Dolfman, Esquire – for Objectant

ADJUDICATION

Introduction

A central issue raised in the account filed by executor Vincent Carchidi for the estate of Joseph Carchidi, (“Joseph”) deceased, is whether the distribution to Joseph’s brother Anthony from the estate should be decreased by \$35,500 as repayment for money Joseph gave Anthony in 1994. For the reasons set forth below, the executor’s claim for repayment of this \$35,000 is barred by the statute of limitations. Anthony—like his two brothers-- should receive one-third of Joseph’s estate as provided in his brother’s will.

Background

Joseph Carchidi (“Joseph”) died on June 16, 2007. Under his Will dated April 27, 1984, Joseph named his brother, Vincent Carchidi, as executor.¹ Joseph Carchidi never married but he was survived by his three brothers: Vincent Carchidi, Nicholas Carchidi and Anthony Carchidi.

¹ Letters testamentary were granted on June 25, 2007, and proof of their publication was presented.

His Will provided that his estate should be equally divided among his three brothers. Joseph also placed his three brothers' names on the deed to his house at 1138 Watkins Street.² In addition, during his lifetime Joseph opened joint bank accounts exclusively with his own funds at the United Savings Bank ("USB") in Philadelphia titled in his brothers' names as well as his own.³

After Joseph's death, Anthony Carchidi filed a petition seeking two accountings: one account for the jointly held bank accounts and another account for the estate.⁴ By decree dated June 9, 2008 Vincent Carchidi, as executor, was ordered to file an account of his administration of the estate. In addition, the two brothers, Vincent and Nicholas Carchidi, were ordered to file an accounting of their actions regarding the funds maintained in joint bank accounts in the names of all four brothers.

The executor filed his account for the estate on July 11, 2008 for the period June 16, 2007 to March 14, 2008. One month later, on August 8, 2008, Vincent and Nicholas filed their account of the funds maintained in the joint bank accounts. Anthony filed objections to both accounts. A hearing was scheduled to consider these objections,⁵ after which the parties submitted briefs. Because the two accounts deal with assets subject to different legal principles, they will be analyzed in a separate adjudication and opinion except to the extent that the facts are relevant to both accounts.

2 2/9/09 N.T. at 11 (Anthony).

3 See 4/2/08 Anthony Carchidi Petition for an Accounting, ¶9; 5/15/08 Response ¶ 9 (conceding that Joseph had opened an account with his own funds in the joint names of his brothers but denying the sums set forth in the petition). See also Ex. O-1 (Supplemental Account of Funds Maintained in Joint Names).

4 4/2/08 Anthony Carchidi Petition, ¶ 9-10.

5 At the outset of the hearing, Anthony withdrew certain objections. The remaining objections to the estate account included 2 – 7, 9-12. Objections 1-3 to the account for the joint funds remained. 2/9/09 N.T. at 5 (Dolfman).

Objections to the Estate Account

Initially, Anthony raised 13 objections to the estate account. Certain of these objections overlapped, were overly general or were undeveloped. At the hearing, counsel for the objectant clarified that some objections had been resolved, but the following objections remained to the estate account: objections 2 through 7 and objections 9 through 12. At the hearing, however, evidence was not produced to support several objections and they were abandoned in the briefs.⁶

Consequently this adjudication for the estate account will focus on the following objections: (1) that decedent's 1994 payments to Anthony in the amount of \$35,500 were unenforceable as loans due to the statute of limitations; and (2) that the accountant, Executor Vincent Carchidi, failed to account for check 4839 for \$2674.40. The objections Anthony raised to the checks drawn from the joint account will be analyzed in a separate opinion.

A. The Accountant's Claim That Anthony Should Be Required to Repay to the Estate the \$35,500 that He Was Given by Joseph in 1994 Is Barred by the Statute of Limitations

The most hotly contested issue between the brothers was whether Anthony's distribution from Joseph's estate should be reduced by \$35,500 as repayment for money that Joseph gave to him in 1994. Anthony does not deny that he received this money from Joseph, but he asserts that any claim to decrease his distribution from Joseph's estate to recover this sum would be barred by the

⁶ Objections 3 and 4 to the estate account, for instance, essentially overlap since objectant complains that the accountant commingled the probate assets and expenses with the nonprobate assets; these objections were not, however, addressed in his brief nor was a specific remedy suggested. Objections 5 and 6 relating to the valuation and expenses of the decedent's real property at 1138 Watkins Street were not addressed either at the hearing or in the briefs. By withdrawing objection 13, which would have imposed a surcharge for failure to appeal the tax imposed based on treatment of decedent's real estate, objections 5 and 6 are rendered academic. The objectant failed to present any evidence—or raise any argument—concerning objection 11 that the attorney and executor fees were excessive. Finally, in objections 10 and 12 the objectant raises questions about particular checks (Nos. 4826, 4837, 4832, 4840, 4843) that were not developed during the hearing.

four year statute of limitation. 42 Pa.C. S. § 5525. This four year statute of limitations applies, inter alia, to “an express contract not founded on upon an instrument in writing” or to an “action upon a contract implied in law....” 42 Pa.C.S. § 5525(a)(3) & (4).

In an early case, the Pennsylvania Supreme Court concluded that “the statute [of limitations] is available in a distribution in Orphans’ Court as in actions at law in the Common Pleas,” as to any debts to the decedent but not to “advancements” given to a beneficiary by the decedent. Estate of David Light, 136 Pa. 211, 20 A. 536 (1890). In deciding whether a debt has been converted into an advancement, the intent of the testator controls. A testator may, for instance, make any distribution to a beneficiary contingent on the repayment of sums previously given to him. See, e.g., Gowen’s Estate, 285 Pa. 219, 221-222, 131 A. 727, 727-28 (1926); Estate of Jacob Eichelberger, 135 Pa. 160, 169-171, 19 A. 1014 (1890). In the instant case, in contrast, Joseph Carchidi’s will clearly expresses his intent that his “entire estate” be given “in equal one-third (1/3rd) shares, share and share alike, unto my three beloved brothers, namely VINCENT CARCHIDI, NICHOLAS CARCHIDI and ANTHONY CARCHIDI, their heirs and assigns forever, absolutely and in fee.” There is no mention in Joseph’s Will of past advancements to Anthony. No evidence was presented that Joseph made any attempt to recover the \$35,500 during the 13 year period from 1994 until the date of his death in June 2007. It was not until less than 2 weeks after Joseph’s death that his two brothers—Nicholas and Vincent—sought to recover the \$35,500 from Anthony.

In seeking to recover this money from Anthony, the respondents concede that under the four year period of limitation, this claim against Anthony to recover the \$35,500 he received from Joseph in 1994 is clearly barred.⁷ But they seek to revive their claim for this \$35,500 by invoking

⁷ 7/4/09 Respondents’ Brief at 4 (“The applicable Statute of Limitations in this case is four years, 20 Pa.C.S.

the acknowledgment doctrine. Under the acknowledgment doctrine, a promise to pay a preexisting debt may toll the statute of limitations where “both the promises to pay and acknowledgments of indebtedness” are “unequivocal and unconditional.” Gurenlian v Gurenlian, 407 Pa. Super. 102, 114, 595 A.2d 145, 151, (1991). While the acknowledgement doctrine can revive a debt, because this “doctrine removes the protection of the statute of limitations, the acknowledgement must be patently clear and distinct and free from ambiguity.” Huntingdon Finance Corp. v. Newtown Artesian Water Co., 442 Pa. Super. 406, 411, 659 A.2d 1052, 1055 (1995). The evidence and testimony presented at the hearing did not support respondents’ effort to invoke the acknowledgment doctrine.

During the hearing, Anthony unhesitatingly admitted that in 1994 Joseph gave him \$35,500 in the form of four checks and cash because “I needed it, and he just gave it to me.”⁸ According to Anthony, they did not discuss any obligation to return the money and they never signed any documents regarding it. He testified that he never returned that money to Joseph prior to his death.⁹

The issue of this \$35,500 came up after Joseph’s death when the three surviving brothers met for a reading of Joseph’s will on June 29, 2007 at the home of Anthony’s nephew, Vincent, Jr. (hereinafter “Vincent, Jr.”). Anthony’s son, Anthony Jr., was also present. There are two conflicting versions of this encounter. According to Anthony, after the will was read, his brother Nicholas asked him if he had received the \$35,500. Anthony recalled responding by

5525(3) (sic). Since the loans to the Petitioner-Objectant by the Decedent were made in 1994, this statute would normally foreclose the collection of these loans in 1998”).

⁸ 2/9/09 N.T. at 7 (Anthony). The four checks (totaling \$25,500) together with decedent’s savings account passbook, with its notation “*loan to Tony” by a September 20, 1994 withdrawal of \$10,000, were presented as evidence. Ex. R-3 & Ex. R-4.

⁹ 2/9/09 N.T. at 7 (Anthony Carchidi).

asking the question, “Did you receive any money?”¹⁰ Anthony explained that he asked that question because “[t]hey received money during the time, too, when my brother was living.”¹¹ When asked if he had ever made a promise to his brothers to repay that 1994 money—even after Joseph’s death—Anthony unequivocally replied “No.”¹²

Anthony’s two brothers—Nicholas and Vincent—presented a different version of this exchange. According to Vincent, after Joseph’s will was read, the following colloquy took place at his son’s house:

A (Vincent): Well, my son read the will. And after he read the will, I said to my brother, Anthony, I said, you know, you owe Joe thirty-five thousand five hundred, and he said prove it.

Q: And Tony said prove it?

A: He said prove it.

Q: Yes.

A: He said prove it. And I showed him the checks, the bankbook, and the paper he had written the dates on, and he said, “You got me.”

Q: Did he say anything else at that time?

A: Well, after it was all over, we were ready to leave, and then he says, “I’ll pay ya when we sell the house.”¹³

Both Vincent’s son, Vincent Jr., and his brother, Nicholas Carchidi, supported Vincent’s version of the exchange by testifying (1) that Anthony stated “you got me” when he was confronted with the 1994 checks and (2) that Anthony stated that he would pay back the money after the house was sold.¹⁴ Anthony’s son, Anthony Jr., in very brief testimony recalled that after Joseph’s will was read, Nicholas “threw a couple of checks on the table and said, “What about this?,” but Anthony Jr. did not recall his father’s response. Instead, Anthony Jr.

10 2/9/09 N.T. at 9 (Anthony Carchidi).

11 2/9/09 N.T. at 10 (Anthony Carchidi).

12 2/9/09 N.T. at 10 (Anthony Carchidi).

13 2/9/09 N.T. at 84 (Vincent Carchidi, Sr.).

14 2/9/09 N.T. at 93-94 (Nicholas Carchidi, Sr.); 2/9/09 N.T. at 99-100 (Vincent J. Carchidi, Jr.).

remembered being shocked when he asked his uncles about the joint accounts and was told they could not see the checkbook because it had been shredded.¹⁵

This conflicting testimony raises issues of fact and credibility especially since both renditions are presented by highly interested parties with clear cut financial motives in play. It is, of course, well established that the Orphans' Court sits as the fact finder charged with determining issues of credibility. Owens v. Mazzei, 2004 Pa. Super. 106, 847 A.2d 700, 706 (2004), *quoting* In re Estate of Harrison, 2000 Pa. Super. 19, 745 A.2d 676, 678 (Pa. Super. 2000). In the instant case, Anthony Carchidi's candid opening testimony that his brother Joseph gave him \$35,000 in 1994 because he needed it without any documentation or discussion of repayment was straightforward and convincing.

To get around the bar of the four year statute of limitations, the accountant attempts to establish that at the brothers' June 29, 2007 meeting, Anthony acknowledged a \$35,500 loan and promised to pay it. The testimony of Nicholas and Vincent lacked credibility as to the events at that meeting for several reasons. First, although their testimony repeated the same phrases allegedly spoken by Anthony, their rendition of this event or encounter had a rote-like quality that seemed rehearsed. Moreover, their testimony about Anthony's statements after the will reading is undermined when viewed in the larger context of their testimony as a whole.

In addition to their dispute over Joseph's \$35,500 payment to Anthony in 1994, the brothers disagreed over distributions or management of the joint bank accounts that Joseph had established with his own money in the names of all three of his brothers. At the hearing, Anthony testified that he had not learned of the joint bank accounts until Joseph's death and had

¹⁵ 2/9/2009 N.T. at 25-26 (Anthony Carchidi, Jr.).

never had access to them prior to that time.¹⁶ When he asked his brothers to see records of checks issued from the accounts, Anthony was told that the checking account records had been destroyed or shredded.¹⁷ Nicholas conceded that he had written checks drawn from the joint accounts both before and after Joseph's death,¹⁸ but no explanation was offered as to why the account passbooks had been destroyed. Vincent's testimony as to the fate of these records was evasive and unclear:

Q: But it was Joseph's money that created the accounts?

A (Vincent): That was his, yeah.

Q: And after he died, you paid the bills from that joint account?

A: All the bills. All the bills came out of this.

Q: So after his death, you took possession of the checkbook and the savings book?

A: Yeah.

Q: And did you keep the check registers?

A: I didn't take care of the checks. My brother Nick took care of the checks.

Q: So you don't know what happened to the check registers, then?

A: Well, everything was done, everything was cleared, so we didn't think we needed it anymore.

Q: So what did you do, destroy it?

A: Well, I don't know what he did with it, you know.

Q: But you don't have it anymore; is that true?

A: No, but the checks—

Q: No, do you have the registers?

A: No.¹⁹

This testimony casts serious doubts as to the credibility of both Vincent and Nicholas in two ways. First, their failure to keep the check register for the joint account was evasive at best. Second, they were allied in dealing with the funds to the exclusion of Anthony. Because of their collusion, neither brother's testimony provides an independent, countervailing perspective. Consequently,

16 2/9/09 N.T. at 13 (Anthony Carchidi).

17 2/9/09 N.T. at 13-14 (Anthony Carchidi).

18 2/9/09 N.T. at 68 (Nicholas Carchidi).

19 2/9/09 N.T. at 37-38 (Vincent Carchidi). Vincent testified that he did not have access to the joint accounts before Joseph's death. Id. at 36 ("No. My name was on it but I never had anything). Inexplicably, Nicholas was never asked what he did with these records. See, e.g. 2/9/09 N.T. at 68-75 & 89-97 (Nicholas Carchidi). Anthony

their identical testimony regarding Anthony's alleged intent to pay back the money Joseph gave Anthony in 1994 cannot be accorded much weight. For all of these reasons, this court finds that the testimony of Anthony is credible and that the respondents failed to establish that the acknowledgement doctrine applies to preclude the bar of the statute of limitations.

B. Check Number 4839 Falls Outside the Probate Estate And Its Proper Disposition Is Controlled by the Multi-Party Accounts Act (MPAA)

Another objection that Anthony raises to the Estate Account is that the executor's failure to account for check number 4839 dated July 16, 2007 in the amount of \$2674.40 (Ex. O-3). This check was payable to Vincent Carchidi and signed by him. On its face, check number 4839 indicates that it was drawn from the joint bank account that the decedent had opened in the names of Joseph Carchidi, Vincent Carchidi, Nicholas Carchidi and Anthony Carchidi. It was also dated July 16, 2007 or a month after Joseph's death. The funds in this joint account, therefore, were not part of the probate estate for which Vincent, as executor, had been ordered to file an account. Instead, title to these assets is determined by the Multiple Party Accounts Act, 20 Pa.C.S. §§ 6301-6306, as set forth in a contemporaneously issued opinion addressing the brothers' accounting for the jointly held funds in the USB joint bank accounts.

According to the Vincent Carchidi, as executor and accountant, Pennsylvania transfer inheritance tax in the total amount of \$19,777.44 was paid on November 16, 2007 and March 12, 2008 as set forth in the Commonwealth of Pennsylvania Inheritance Tax Statement of Account.

The account shows a balance of principal before distribution of \$224,637.20 and no balance of income before distribution for a total of \$ 224,637.20. This sum, composed as stated

testified, however, that Nicholas had told him that the records had been shredded. Id. at 14 (Anthony Carchidi).

in the account, plus income or credits received since the filing thereof, subject to distributions already properly made and subject to any additional tax as may be due is awarded as set forth in the Accountant's Petition with the exception that Anthony Carchidi shall not be charged \$35,500 as repayment for sums distributed to him by the decedent in 1994:

Income

| | |
|--------------------------|-----------|
| Anthony Carchidi | One-Third |
| Nicholas Carchidi | One-Third |
| Vincent J. Carchidi, Sr. | One-Third |

Principal

| | |
|--------------------------|-----------|
| Anthony Carchidi | One-Third |
| Nicholas Carchidi | One-Third |
| Vincent J. Carchidi, Sr. | One-Third |

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this _____ day of MARCH 2010 the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of the Adjudication. An Appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1A and Pa. O.C. Rule 7.1. as amended, and Pa.R.A.P. 902 and 903.

John W. Herron, J.