COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Vernetta Drummond-Poles, Deceased
O.C. No. 730 DE of 2009
Control No. 091266

O P I N I O N

This Opinion addresses a dispute between Petitioner, Deutsche Bank National Trust Company as Trustee under NovaStar Mortgage Funding Trust ("Deutsche Bank") and Respondent, Kim Drummond, Administratrix ("Respondent") of the Estate of Vernetta M. Drummond-Poles ("Decedent"). The parties have, at the Court's request, submitted a joint statement stipulating to the facts which are uncontested thereby enabling the Court to address two contested legal issues: whether Deutsche Bank as the mortgagee has standing to contest the previous transfer of realty from the Decedent's estate to a third party and whether the disclaimers executed by certain beneficiaries are effective with respect to real estate in the estate even though not notarized.

The relevant portion of the Joint Statement of Uncontested Facts is as follows:

The Decedent died September 10, 2003, intestate, survived by her children, Clyde Drummond, III, Sheila Drummond, Nadine Drummond, and the Respondent. The principal asset of the estate was a residence located at 6014 N. 19th Street, Philadelphia ("Residence") jointly owned by the Decedent and the Respondent. This residence is the focus of the dispute between the parties.

On September 28, 2006, documents titled "Waivers of Beneficial Interest" ("the Waivers") were executed by Clyde Drummond, III, Sheila Drummond and Nadine Drummond and filed with the Register of Wills. The Waivers were thereafter filed with the Clerk of this Orphans' Court. The Waivers effectively transferred the surviving children's intestate share of Decedent's estate including the residence to Respondent, who, as a result, became the sole owner of the residence. On October 3, 2006, Letters of Administration were subsequently granted to the Respondent by the Register of Wills of Philadelphia at Administration No. 4657 of 2006.

The history of the ownership of the residence is somewhat complicated. On January 4,

2000, the Decedent, individually and as Administratrix of the Estate of Ruth A. Lowber, Deceased, and Respondent, individually, conveyed the premises at 6014 N. 19th Street, Philadelphia to themselves individually, by Deed dated that day and recorded in the Department of Records of Philadelphia on January 7, 2000 as Document No. 50018285.

On October 4, 2006, the Respondent, by Deed ("the Deed") made by her "individually and as sole remaining beneficiary of Vernetta M. Drummond-Poles, Deceased" conveyed the Residence to Tionna N. Miller ("Miller") for the sum of $100,000.00. The Deed was recorded October 6, 2006 in the Department of Records of Philadelphia as Document No. 51545713.

Miller is the daughter of the Respondent; she continues to live at the Residence. On October 4, 2006, Miller made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as mortgagee and NovaStar Mortgage, Inc. as lender, a certain mortgage in the original principal amount of $80,000 ("the Mortgage"). The Mortgage was recorded October 6, 2006 in the Department of Records of Philadelphia as Document No. 51545714. By Assignment of Mortgage dated January 30, 2009 and recorded February 4, 2009 in the Department of Records of Philadelphia as Document No. 52021024, the Mortgage was assigned to Petitioner.

DISCUSSION

It is clear from the stipulated facts that Petitioner lacks standing. In order to challenge the distribution of an estate, the Petitioner must be a beneficiary or creditor. See generally In re Westin, 2005 Pa. Super. 158, 874 A.2d 139 (2005); Estate of Seasongood, 320 Pa. Super. 565, 467 A.2d 857 (1983). Here, Petitioner is a lender which took a security interest in realty after it had been transferred from the estate to a third party. Petitioner is not a beneficiary and has no interest in or relationship with the estate. Moreover, Respondent has had no ownership interest in the Residence since October, 2006 when she deeded the property to her daughter.

Alternatively, if petitioner is considered a claimant against the estate, its claim would be invalid under 20 Pa.C.S. §3532(b)(2) since "[n]o claimant shall have any claim against real property conveyed by a personal representative in distribution at his own risk…unless such claimant, within one year after the decedent's death, files a written notice of his claim with the clerk. Such claim against real property shall expire at the end of five years after the decedent's death, unless within that time the personal representative files an account or the claimant files a petition to compel an accounting." See also Estate of William Levin, 10 Phila. 306, 1984 Phila.

Cty. Rptr. LEXIS 28, aff'd, 348 Pa. Super 636 (1985) (a dilatory creditor may not impose personal liability upon the executor for distributions made 17 months prior to bank's written notice of its contingent claim). In this case, Deutsche Bank did not comply with the statutory requirements for asserting its claim. Instead, more than five years after decedent's death, it filed a petition for citation against the respondent, as administratrix, to show cause why she should not execute a "proper" deed for the premises at 6014 N. 19th Street, Philadelphia.

Petitioner argues unconvincingly that it is not challenging distribution of the estate, but rather the cloud on the title to the premises resulting from the Respondent's sale of the Residence to the daughter without Court approval in violation of 20 Pa.C.S.A. §3356 "Self Dealing" which provides for a personal representative to take title to real property of an estate only upon Court approval. However, this statute does not confer standing to third parties, which remains in beneficiaries and creditors of the estate, but not others. Therefore, the right to challenge any "self dealing" transfer rests solely and exclusively with those persons who have a right of inheritance or distribution from the estate. Were it otherwise, collateral attack by non beneficiaries might be waged at any time during or after administration of an estate, thus exposing every personal representative to challenge for conduct performed in their fiduciary capacity such as occurred here. Finally, the Petitioner overlooks a key fact in asserting its claim against the administratrix. The mortgage at issue was not entered into by the administratrix. Instead, after the property was conveyed by the administratrix to Tionna Miller, Ms. Miller executed the mortgage that was subsequently assigned to Petitioner. Hence, its claim against the administratrix is directed against the wrong individual. Since Petitioner has no standing, the second issue need not be reached; however, in the interests of judicial economy, this Court will address the issue nevertheless.

The second issue raised by Petitioner concerns the validity of the waivers executed by the beneficiaries. Petitioner argues that the waivers are legally insufficient because the signatures are not notarized as required by 21 P.S. § 325.1 relating to conveyances in real estate; do not describe the disclaimed interest specifically in violation of 20 Pa.C.S.A. §6201(1); and do not declare the extent of the disclaimer as required by 20 Pa.C.S.A. §6201(2). We disagree and find the disclaimers are effective and in full accord with statutory requirements.

Respondent argues correctly that 20 P.S. §6201 permits an intestate heir to disclaim an

interest in an estate by a written disclaimer. Here, the disclaimers refer to "…all beneficial interest…" in the estate and there is no language in the statute or decisional law requiring greater specificity of the interest disclaimed. Petitioner cites no case law in support of the argument that the disclaimers here are inadequate. Furthermore, the statute imposes no requirement for a notary acknowledgement. Respondent correctly cites 20 P.S. §6204(4) as allowing, but not requiring, the filing of a disclaimer to the right to real estate with the recorder of deeds and 21 P.S. §325.1 only requires a notary acknowledgement when such a disclaimer in real estate is filed. In this matter, the disclaimers of "all beneficial interests" are specific and all inclusive and constitute a valid and effective renunciation of each sibling's intestate share.

Paradoxically, this dispute arises only after reasonable and good faith efforts were made by Respondent in a failed attempt to address Petitioner's concern that its security interest in the real estate was unenforceable because of the questionable validity of the disclaimers. Despite the estate being fully administered and the Respondent having no legal obligation to do so, Respondent obtained two of her siblings' signatures to a new deed at Petitioner's insistence but failed to obtain the third and last sibling's signature because her present whereabouts are unknown. Thereafter, Petitioner filed this action against Respondent to show cause why she should not execute a certain deed.

Accordingly, for reasons stated herein above, the Petition is DENIED and an Order is entered to this effect.

Date: _____ BY THE COURT:

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John W. Herron, J.

Robert H. Dickman, Esquire
Glenn R. Bartifay, Esquire