

*Sale of Real Estate - Sale to Executor - Court Approval*

1. In cases where assets of an estate are being purchased by someone in a fiduciary capacity, the best interest of the estate will be looked at more closely.
2. Where an executor signs an inheritance tax return listing a value for real estate, absent a showing of fraud, he has irrevocably agreed to the valuation for all purposes.
3. Sale to an executor will be upheld where there is no competent evidence that the sale price is unfair, but there is evidence that it is fair.

*James M. Schall, Esquire, Counsel for Estate*

*Donald L. Kornfield, Esquire, Counsel for Wilbert Gene Douglas*

**OPINION AND ORDER**

WALKER, J., March 5, 1990;

**STATEMENT OF FACTS**

Mattie L. Douglas died on December 26, 1987. Her last will and testament, dated April 29, 1980, devised all of her real estate equally to her children, namely Lucille Welder, Thelma McKee, Marvin Douglas, Wilbert Eugene Douglas, Bruce Edward Douglas and Marlin Douglas. The will named Lucille Weller, Thelma McKee, Marvin Douglas and Wilbert Eugene Douglas as co-executors.

On June 27, 1989, a petition was filed with this court, seeking approval of a conditional sales agreement regarding the sale of the farm of the deceased. The farm is located in Fulton County, Pennsylvania. The co-buyers as stated in the sales agreement are Marvin Douglas, Marlin Douglas, Bruce Douglas, Lucille Weller, and Ricky Douglas. Five of the six beneficiaries, and three of the four co-executors seek approval of this sales agreement. The only person objecting is Wilbert Eugene Douglas, a beneficiary and co-executor.

Wilbert Eugene Douglas filed an answer and new matter to the petition, claiming his 1/6 interest in kind. Hearings were held before this court on August 3, 1989 and January 2, 1990.

On January 2, 1990, Wilbert Eugene Douglas withdrew his claim for distribution in kind, leaving before this court the petition for approval of the private sale.

The real estate in question was appraised twice. The property was appraised at \$154,300 and \$143,500. The conditional sales agreement is for \$150,000, a weighted average of the two appraisals. The question of whether or not to approve this private sale is presently before the court.

**DISCUSSION**

The personal representatives of an estate have the power to sell specifically devised real estate pursuant to §3351 of the Probate, Estates and Fiduciaries Code which states in pertinent part as follows:

Except as other wise provided by the will, if any, the personal representative may sell, at public or private sale, any personal property whether specifically bequeathed or not, and any real property not specifically devised, and with the joinder of the specific devisee real property specifically devised . . . .

20 Pa. C.S.A. §3351.

In the case at bar, the personal representatives are not only selling the real estate, but three of the four personal representatives seek to buy the property in question. This action is proper pursuant to 20 Pa.C.S.A. §3356.

Section 3356 states that:

[T]he personal representative, in his individual capacity, may bid for, purchase, take a mortgage on, lease, or take by exchange, real or personal property belonging to the estate, subject, however, to the approval of the court, and under such terms and conditions and after such reasonable notice to parties in interest as it shall direct. . . .

20 Pa.C.S.A. §3356. Section 3353 contains the provision for the order of court necessary to approve such a sale.

Based on the above-cited Code sections, a sale of real estate by the personal representatives to the personal representatives is proper

if court approved. In the case at bar, the situation is complicated by the fact that one of the four personal representatives does not agree to the proposed sale. The Probate, Estates and Fiduciaries Code deals with this problem in Section 3328.

Section 3328 states that:

(a) Decision of majority.--If a dispute shall arise among personal representatives, the decision of the majority shall control unless other wise provided by the governing instrument, if any. A dissenting personal representative shall join with the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court.

20 Pa.C.S.A. §3328. In the case at bar, three of the four personal representatives, a majority, recommend the proposed sale. No evidence of a governing instrument which provides for other than a majority decision has been presented. The decision, therefore, does not have to be unanimous. In the case at bar, three of the four personal representatives and five of the six heirs have agreed to the proposed sale. The only person contesting the sale is Wilbert Eugene Douglas, as both personal representative and as an heir.

The test for court approval of a petition to sell real estate was stated in *Eddinger Estate*, 13 Fiduciary Reporter 304 (1963), as follows:

The test, it will be noted, is whether or not it is in the best interests of the estate to approve the sale upon the basis contained in the offer of the petitioner.

*Id.* at 306. In cases where the assets of an estate are being purchased by someone who maintains a fiduciary capacity, the best interests of the estate will be looked at more closely. As stated in *May Estate*, 63 D.&C. 634 (1948):

As a general proposition, a fiduciary should not purchase assets of the estate under his control. The orphans' court may of course authorize a fiduciary to bid at his own sale of real estate, . . . The power is a delicate one, however, and should always be cautiously exercised, and the sale itself carefully scrutinized . . .

*Id.* at 636 (citations omitted).

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## LEGAL NOTICES, cont.

rious name of JIM DANDY'S with its principal place of business at 10462 Lincoln Way West, St. Thomas, Pennsylvania 17252. The name and address of the person owning or interested in said business is James M. Smith, of 1711 Appleway, St. Thomas, Pennsylvania 17252.

Timothy S. Sponseller, Attorney  
215 Chambersburg Trust Building  
Chambersburg, PA 17201

10/26/90

### NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with and approved by the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on September 14, 1990, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, as amended. The name of the corporation is COVE EQUIPMENT, INC., 3387 Mountain Rd., Mercersburg, Franklin County, Pennsylvania.

The purpose or purposes for which the corporation is incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania are to engage in, and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under said Business Corporation Law, including, but not limited to, manufacturing, processing, owning, using and dealing in personal property of every class and description, engaging in research and development, furnishing services, and acquiring, owning, using and disposing of real property of any nature whatsoever.

Dixie C. Newhouse  
Creager & Newhouse, P.A.  
P.O. Box 1417  
Hagerstown, MD 21741  
Attorney for  
Cove Equipment, Inc.

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In the *May Estate*, the sale of an oil stove was upheld absent a showing that the estate suffered any loss by the executor also being the purchaser.

In 1963, the Orphans' Court of Montgomery County held that:

Private sales of estate assets to personal representatives have been the subject of regulation by the laws. The possibility of an inadequate consideration or other unfairness, stemming from self-dealing, has given rise to a statutory procedure which permits such sales, if advantageous and fair, and yet preserves the rights of other interested parties.<sup>1</sup>

*Cantanesi Estate*, 13 Fiduciary Reporter 534, 537 (1963).

In determining whether or not the proposed sale contains adequate consideration and is fair, the court will consider the two appraisal values and the valuation agreed upon by the personal representatives for purposes of the Inheritance Tax Return of the decedent. The real estate in question was appraised at \$154,300 by the Fulton County National Bank and Trust Company, and at \$143,500 by Ronnie R. Zimmerman. The co-executors, after reviewing both appraisals, agreed that the real estate was worth \$150,000, the amount entered on The Inheritance Tax Return of the decedent.

Wilbert Eugene Douglas admits that he agreed to the \$150,000 valuation "to avoid another round of appraisers' opinions and the substantial cost of such opinions." (brief on behalf of Wilbert Eugene Douglas, p. 2), but now claims that his withdrawal of his petition seeking distribution in kind also withdraws his agreement on the value of the real estate. The court finds that absent a showing of fraud, Wilbert Eugene Douglas has irrevocably agreed to the \$150,000 valuation as evidenced by his signature on the Inheritance Tax Return of decedent. Mr. Douglas can not now claim that this valuation was in error.

Based on the Inheritance Tax Return filed by the personal representatives, the court finds that the value of \$150,000 was

1. This quote refers to §546 of the Fiduciaries Act of 1949. This is the prior law of 20 Pa. C.S.A. §3356.

agreed upon by all four personal representatives as the fair market value of the real estate in question. The court can find no evidence that the \$150,000 sale price is unfair, other than the mere speculation of Wilbert Eugene Douglas that the property would bring a higher price if put up for public sale by auction, with a \$150,000 reserve.

In *Brodoski Estate*, 16 Fiduciary Reporter 506 (1966), the Orphans' Court of Montgomery County held that absent competent evidence to show that the proposed sale price was unfair, the sale of the property to the executrix would be upheld. In that case, besides the lack of evidence that the sale was unfair, the court found ample evidence that the price was a "fair and full price."

In the case at bar, the facts are similar to those in *Brodoski Estate*. There is no competent evidence that the \$150,000 sale price is unfair, but there is ample evidence that it is a "fair and full price". The two appraisal values and the value agreed upon for the Inheritance Tax Return support his conclusion.

The petitioners cite *Larson Estate*, 22 Fiduciary Reporter 112 (1971), to support their position that even if the proposed sale was to third parties rather than to personal representatives, the sale should not be set aside or stayed. In *Larson Estate*, the Orphans' Court of Lycoming County held that:

As a general policy, finality in contracts is to be preferred . . . and we should ascertain only that, at the time of the contract, the fiduciary was acting prudently and in good faith. If that be the case, the contract should not be disturbed, and if it is to be disturbed, only the protestations of the heirs or prospective heirs should be heard.

*Id.* at 116. The court goes on to list four factors to consider: (1) if the property has sentimental value; (2) if the heirs want to take distribution in kind; (3) if the personal representatives have a dispute regarding keeping the real estate for investment purposes rather than selling it; or (4) if an heir can show a wide divergence between the sale price and market price at the time the contract is entered. *See Id.* at 117.

In the case at bar, there is no evidence that the farm has sentimental value; distribution in kind was requested by Wilbert Eugene Douglas, but has since been withdrawn; there is no evidence

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that the farm should be retained as an investment rather than sold; and, as stated above, there is no competent evidence that the proposed sale price of \$150,000 does not represent the current fair market value of the farm.

Based on the above analysis and based on the undisputed fact that the estate has insufficient assets from which to pay the estate bills, the court finds that the proposed sale as recommended by a majority of the personal representatives is in the best interest of the estate of Mattie L. Douglas. The proposed sale is hereby approved by this court.

#### ORDER OF COURT

March 5, 1990, the court hereby approves the proposed sale of the farm to Marvin A. Douglas, Marlin T. Douglas, Bruce E. Douglas, Lucille Weller, and Ricky M. Douglas.

However, if this sale is not completed within one hundred twenty (120) days of this order, the real estate shall be listed by the personal representatives for public sale.

MOCK V. ELIE, C.P. Franklin County Branch, A.D. 1989-270

*Trespass to Real Estate - Trespass to Chattels - Emotional Distress*

1. A trespass to realty occurs whenever a person enters upon the real property of another without authorization.
2. The intent required to hold a person liable for the trespass is the intent to enter onto the particular piece of realty.
3. A cause of action in trespass where no actual injury or damage is sustained is maintainable in Pennsylvania.
4. A cause of action exists for inconvenience and discomfort caused by the interference with the peaceful possession of real property.

*Thomas M. Painter, Esq.*, Counsel for Plaintiffs  
*Richard J. Walsh, Esq.*, Counsel for Defendant

#### OPINION AND ORDER

KAYE, J. March 5, 1990:

#### OPINION

This case is before the Court on preliminary objections filed by the defendant.

#### 1. PROCEDURAL HISTORY AND FACTS

On August 16, 1989, Thomas R. Mock and Joyce E. Mock ("the plaintiffs"), filed a civil action against John Elie ("the defendant"), in trespass, trespass to chattels, and infliction of emotional distress. The defendant filed preliminary objections in the nature of a motion to strike and a motion for a more specific pleading on November 14, 1989. The plaintiffs filed an amended complaint on November 21, 1989 to which the defendant filed preliminary objections in the nature of a demurrer and a motion for a more specific pleading on December 13, 1989. On January 22, 1990, the defendant filed a praecipe for the issuance of a writ to join Nicole Mock as an additional defendant. On February 1, 1990, oral argument was held on the defendant's preliminary objections.

The plaintiffs claim that the defendant entered their residence on three separate occasions (February 17, March 5 and March 16, 1989), without their consent or permission. Further, the plaintiffs aver that since September, 1988, they had informed the defendant not to enter onto their property on several occasions.

The plaintiffs also allege that during the March 5, 1989, entry onto their property, the defendant removed a stereo, video cassette recorder, and a television from their residence. On March 6, 1989, the property was returned to the plaintiffs.

Finally, the plaintiffs allege that they have suffered severe emotional distress as a result of the defendant's conduct, and that the defendant either acted with the intention to cause the severe emotional distress or with reckless disregard to the severe emotional distress and anxiety suffered by the plaintiffs. The plaintiffs allege that as a result of the severe emotional distress caused by the defendant, they purchased a home security system at a cost of \$2,466.00 to protect themselves and their property from the defendant's intrusion.

In his preliminary objections, the defendant contends that: 1) the