

1953

# In the Matter of the Estate of James John Latsis : Brief of Respondent Virginia Latsis Zambukos

Utah Supreme Court

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Moss & Hyde; Attorneys for Respondent;

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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

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In the Matter of the Estate of  
JAMES JOHN LATSIS (also  
sometimes known as "Latses"),  
*Deceased.* } No. 7954

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**BRIEF OF RESPONDENT VIRGINIA**  
**LATSIS ZAMBUKOS**

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**MOSS & HYDE,**  
Attorneys for Respondent  
Virginia Latsis Zambukos

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**Attorneys for Appellants**

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In the Matter of the Estate of  
JAMES JOHN LATSIS (also  
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## BRIEF OF RESPONDENT VIRGINIA LATSIS ZAMBUKOS

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### STATEMENT OF FACTS

Virginia Latsis Zambukos, formerly a co-administrator of the Estate of James John Latsis, deceased, received a "Petition" directing the Court's attention to improper acts and for an Order to Show Cause why the "Administrators" should not be required to properly administer the Estate (R. 183-197). At the time she received said petition (August 1952) Virginia Latsis Zambukos was not an administrator or co-administrator of the Latsis Estate. She once held such a position but was discharged on October 9, 1945, by order of the Probate Court which had jurisdiction of said Estate and of said administrators. (R. 133). The Order to Show Cause was directed to the "administrators" (R. 180, 181) al-

though no persons any longer held such positions and the petition was served upon James John Latsis (also sometimes known as Latses) (R. 182). However, Virginia Latsis Zambukos filed her motion to dismiss said petition. (R. 198, 199). The Court granted her motion to dismiss. (R. 204, 207, 208).

## STATEMENT OF POINTS

### POINT I

THE ESTATE OF JAMES JOHN LATSIS, DECEASED, HAS BEEN PROPERLY AND FINALLY DISTRIBUTED, THE ADMINISTRATORS HAVE BEEN DISCHARGED AND THE ESTATE HAS CEASED TO EXIST.

### POINT II

A PETITION IN PROBATE IS NOT A PROPER ACTION FOR THE RELIEF SOUGHT AND MUST BE DISMISSED.

## ARGUMENT

### POINT I

THE ESTATE OF JAMES JOHN LATSIS, DECEASED, HAS BEEN PROPERLY AND FINALLY DISTRIBUTED: THE ADMINISTRATORS HAVE BEEN DISCHARGED AND THE ESTATE HAS CEASED TO EXIST.

The record shows that every step was properly taken in the probate of the Estate of James John Latsis. Counsel for appellants point to no jurisdictional omission. They dip into the record of the proceedings and point to a certain stipulation prepared by the attorney for the absent heirs and agreed to by all parties and from this stipulation argue that the probate proceeding

has not been properly concluded. But by the order of the Court approving said stipulation,

“The issuance and delivery of checks to such source. (Hellenic Bank or American Express) shall relieve the administrators herein from further responsibility therefor.” (R. 96, 97)

In the order approving final account and making distribution and discharging administrator, notice of which hearing was given in accordance with the Court’s order, (R. 103, 104, 105) the Court approved and allowed the “settlement, payments and distribution, and provision for distribution” made pursuant to the order of February 27, 1945. The Court was fully cognizant of the stipulation and its “provisions for distribution.” Every step thereunder within the control of the administrators had been taken. The money had been provided and turned over to the attorney for the absent heirs. On the attorney rested the duty to transmit the funds to the parties whom he represented. Therefore, all steps having been taken properly, the Court distributed the remaining assets of the estate and discharged the administrators. No extrinsic fraud is pleaded or shown. *Rule 9 (b) URCP; Glover v. Glover* (Utah) 242 P2d 298; *Howell v. Britton* (Cal.) 119 P2d 333; Annotation 88 ALR 1201. The Estate is closed.

Appellants argue that the stipulation of the parties and the Court’s order approving said stipulation cannot be varied by a subsequent order of the Court without notice. Notice to whom? And notice of what? The record is clear that notice of the hearing for final account and

for discharge of the administrators was made in accordance with law and with the order of the Court. No claim is made that Mr. Cotro-Manes did not have notice. And notice was mailed to *all* heirs—notice that petition was made for *final account and for distribution*. And that's what was done. Distribution was made exactly as agreed by the heirs through their attorneys. The Estate was closed and the administrators were discharged.

In all of this argument, appellants persist in their assumption that Mr. Cotro-Manes could not act for the absent heirs and could not bind them. But the very purpose of our statute (75-14-25) is to provide adequate representation of absent heirs and minors without guardians, and at the same time to permit the orderly and prompt settlement of probate proceedings. If the heirs are available to choose their own counsel or if minors have guardians who can act for them and choose counsel, there is no need for the statute. However, in situations such as we have here, the law provides for an attorney by Court appointment who "is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment." The proceedings referred to include "settlements, partitions and distributions of estates."

Counsel do not attack the statute, but they argue that what Mr. Cotro-Manes did on behalf of the absent heirs could not bind them unless they receive notice of his actions *and ratified same*. If this be true, then the statute serves no purpose. Estates might be held in abeyance for years and decades while an attorney sought

to locate an absent heir to ratify his acts. To avoid such an intolerable situation is the purpose of the statute.

*State v. Dist. Ct.* (Mont.) 57 P 2d 1227;

*In re Otting's Estate*, (Minn.) 252 NW 740.

These cases hold that a judge should appoint an attorney for absent heirs when a necessity therefor exists. The case in hearing most certainly is one of necessity. Mr. Cotro-Manes actively and successfully protected the interests of his "clients" and secured for them a fair and generous settlement in 1945. Seven years later property values seem to have changed, so the absent heirs want to repudiate what was done. After seven years they would reach back and say, "I don't like the settlement made by my attorney. I'll repudiate it and maybe get a bigger piece of pie." But not only is their claim invalid, but it is utterly impossible of fulfillment. How could these administrators now gather in property sold (some of it several times) to bona fide purchasers in good faith and in reliance on a court decree. Must these purchasers lose? By what means could the administrators compel transfer back of property? What of property that has been dissipated or consumed by an heir or bona fide purchaser? The whole prospect is ludicrous. There must be some finality to probate proceedings.

## POINT II

A PETITION IN PROBATE IS NOT A PROPER ACTION FOR THE RELIEF SOUGHT AND MUST BE DISMISSED.

Petitioners and appellants claim an interest in real estate. They contend that title in the property of the



estate vested in the heirs upon the death of decedent, and they seek now to remove "the cloud of the orders of distribution." If this be so, appellants have not proceeded properly to clear their title. 78-40-1 authorizes an action against another *who claims an estate or interest in real property or an interest or claim to personal property adverse to him*. This then would be an action against all persons who claim some title or interest in the corpus of the former estate. Since neither former co-administrator claims or ever had any such title or interest in *the capacity of administrator*, they are not proper parties defendant. They had *possession* only and that possession passed from them upon distribution of the estate by the Court. Virginia Latsis Zambukos acquired and claims title to certain property formerly in the estate, but she does so as an *heir*; not as an administrator. In this action she is named as an *administrator*. She is not designated at any point as an heir and is not in the action in her individual capacity.

But Virginia Latsis Zambukos has ceased to be an administrator of the estate. She was discharged in 1945. She is not here sued as an individual heir and owner; therefore, the type of action filed is improper and unavailable to petitioners. Their remedy is not by petition in the probate proceedings. Either they should bring equitable action to quiet title and determine ownership, or bring an action at law for damages against the administrators for fraud. These actions, however, must be brought within the statutory time limit and be upon grounds permissible by law. Which probably gives a

clue as to why these appellants are so inconsistent and are trying so hard to bring this matter as a petition in probate. After seven years of sleeping on their rights, they will be confronted with a statute of limitations defense if they file a complaint for damages.

## CONCLUSION

The Estate of James John Latsis was duly and properly administered and distributed in accordance with law. The administrators were discharged in 1945. The Court has no further jurisdiction over said estate and the administrators. No extrinsic fraud in the administration or distribution was shown. Appellants have selected the wrong action in which to assert their claims. Therefore, the order of the District Court dismissing appellant's petition was proper and should be upheld.

## NOTE:

Respondent Virginia Latsis Zambukos hereby adopts the statements and arguments made by respondent Utah Savings and Trust Company in its Brief. The Conclusion arrived at in said Brief is sound and should be adopted by this Court.

Respectfully submitted,

MOSS & HYDE

Attorneys for Respondent  
Virginia Latsis Zambukos.