

1953

In the Matter of the Estate of James John Latsis : Respondents' Answer Brief

Utah Supreme Court

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IN THE SUPREME COURT

of the

STATE OF UTAH FILED

1954

Supreme Court

In the Matter of the Estate of James
John Latsis (also sometimes known
as "Latses"),

Deceased.

Case No. 7954

RESPONDENTS' ANSWER BRIEF

Respectfully submitted,

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Utah Savings & Trust Company

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RESPONDENTS' ANSWER BRIEF

STATEMENT

In their Reply Brief, appellants raise new contentions which necessitate this Answer Brief. Each point in appellant's Reply Brief will be discussed.

STATEMENT OF POINTS

POINT I

"SETTLEMENT" WAS HAD IN ACCORDANCE WITH THE STATUTE AND NO COMPROMISE WAS INVOLVED.

POINT II

THE QUESTION OF LIMITATIONS ON AUTHORITY OF AN ATTORNEY APPOINTED UNDER 75-14-25 DOES NOT ARISE IN THIS CASE.

POINT III

THE DECREE OF DISTRIBUTION IS VALID.

ARGUMENT

POINT I

"SETTLEMENT" WAS HAD IN ACCORDANCE WITH THE STATUTE AND NO COMPROMISE WAS INVOLVED.

We have no quarrel with the authorities and cases cited by appellant as to the meaning of "settlement." Attorney Cotro-Manes had authority to represent the absent heirs in all "settlements, partitions and distribution of (the) estate . . ." This he did. Appellants wish to drag in the question of "compromise." But no compromise was here effected. All parties simply agreed that Ten Thousand Dollars (\$10,000.00) fairly represented the interest of the absent heirs. *The Court so found* and Ten Thousand Dollars (\$10,000.00) was distributed to certain heirs. This was the "settlement" of the estate so far as appellants were concerned. They gave up nothing to "purchase peace." In fact, there was no conflict of any sort. At one point in the probate proceedings the absent heirs (and the heir, other than the widow, resident in

Salt Lake County) through their attorney, simply said, "Our share at this time equals \$10,000.00 in cash." The administrators agreed. *The Court found this to be true in fact.* So \$10,000.00 was paid from the estate to the heirs other than the widow on Order of the Court. No claim of the other heirs was surrendered for the Ten Thousand Dollars (\$10,000.00). They received every penny they claimed. No "purchase of peace" was involved.

Joyner et ux v. City of Seattle (Wash.) 258 P. 479 is a tort case having to do with a prior oral contract of settlement later repudiated. It has no relevancy here.

POINT II

THE QUESTION OF LIMITATIONS ON AUTHORITY OF AN ATTORNEY APPOINTED UNDER 75-14-25 DOES NOT ARISE IN THIS CASE.

Appellants question the power and authority of Mr. Cotro-Manes under his appointment by the Probate Court. His authority to do what? His authority to represent and appear for the absent heirs is not questioned. But his authority to "compromise or waive any of their rights or claims" is challenged. With that we agree. No attorney can waive his client's rights without authority so to do from the client. But, as is pointed out above, Mr. Cotro-Manes did not waive any right or compromise any claim. He merely agreed with the administrators and advised the Court in his representative capacity and as an officer of the Court, that in his opinion, based on due inquiry and deliberation, that Ten Thousand Dollars (\$10,-

000.00) represented a fair and adequate amount to be paid over to the other heirs (other than the widow) at that time. Mr. Cotro-Manes gave up nothing belonging to his "clients." He and the administrators jointly advised the Court that Ten Thousand Dollars (\$10,000.00) was a fair settlement for said heirs, in their opinion. But Mr. Cotro-Manes' action did not bind the Court. It simply was advisory and could have been rejected. However, the Court *found as a fact* that Ten Thousand Dollars (\$10,000.00) was a fair settlement and that it was in the best interest of the heirs to receive it at that time. The court ordered the settlement and payment by the administrators of Ten Thousand Dollars (\$10,000.00) to the Hellenic Bank or the American Express Company for transmission to the heirs under the direction of Mr. Cotro-Manes. Consequently, the settlement made was *by the Court* and not by Mr. Cotro-Manes.

The question, therefore, is "did the Court have power to make the settlement as it did?" There can be no question on that. The function of the Probate Court is to determine heirship, to determine distributive shares, and to make distribution of estates. The Court acts in rem. *Barrette v. Whitney*, 36 Utah 574, 106 P. 522; *In re Ottings Estate* (SD) 252 NW 740. At common law aliens had no rights of heirship, but our statute grants rights of inheritance to aliens. However, heirship is determined by the Court; so also are distributive shares so determined. Suppose that the Greek heirs were unknown to the Court and to the administrators (no question of fraud) and suppose the estate had been filed for probate.

Suppose all statutory notices were given and the Court determined the heirs, leaving out the Greek citizens. Suppose the estate was then distributed to the heirs found by the Court and the administrators were discharged and the estate closed. Would not this action be final and conclusive? Would not the Greek heirs be forever barred from asserting their claims? The Court does have power to distribute the estate in accordance with statute and cut off unknown heirs. Equally true it is that the Court can determine the distributive share due known heirs and having found said distributive share can order distribution. An heir agrieved thereby may appear and oppose final settlement and distribution, or may appeal within the statutory time. An heir who has not contested a decree of final distribution made after notice, is forever foreclosed — unless fraud has intervened. 75-11-37 UCA 1953; In re *Estate of Rice* 111 U. 428, 182 P. 2d 111.

Since the Court did what it had power and jurisdiction to do under our statutes, its action cannot now be attacked with success.

The California cases cited by appellants do not construe our statute nor are they in point. The Devoe case (*Estate of James Devoe, Deceased*, Myrick's Probate Reports, p. 6) is a Superior Court case in 1872. It is extremely terse and simply recites a holding to the effect that an attorney appointed for a minor cannot stipulate to withdraw an action contesting a will and thereby bind the minor who later, through another attorney, seeks to contest the will. The Fuller case (*Estate of William P.*

Fuller, Deceased, 2 Coffey's Probate Decisions 521) is also a Superior Court case. It holds that an attorney appointed to represent a minor heir in a probate proceeding may collect a fee from the minor's distributive share, rather than the estate as such, and further decides that the attorney involved claimed too much as his fee.

The quotation from 11 *Cal Jur*, Sec. 793, p. 1204 is merely a discourse on the California statute now repealed.

In re Lux Estate (Cal) 66 P 30 simply holds that a court may appoint an attorney for non-resident heirs only if they do not have an attorney of their own choosing, and when such an attorney is appointed, his fee cannot be fixed in advance. The case contains much loose dicta. *In re Otting's Estate* (SD) 252 NW 740 held that an attorney appointed to represent absent heirs is entitled to a fee for his services from the estate. After quoting from the Lux case, the Court says that the result there reached is wrong. In any event, these cases are not in point here.

POINT III

THE DECREE OF DISTRIBUTION IS VALID.

It is now argued for the first time that the Court lacked judicial power to render the decree. Certain cases are cited which have no relevancy here. In the Winona Oil case (*Winona Oil Co. v. Barnes* (Okla) 200 P 981) the Court failed to order sale to the highest bidder as required by law, so its order of sale to a certain company by name without bids was void. Other cases are cited

to the effect that a judgment void on its face cannot stand and that lack of jurisdiction or power or a legally organized tribunal will render a judgment void. With this we can agree, but what is its application here? Are appellants now saying that the decree is void on its face? If so, how? Are they saying that our Probate Court was not legally organized, or had no jurisdiction over the res of the estate, or lacked power to issue its decree of distribution. If so, they have failed to point out any such defects. Our duly constituted Probate Court was properly invested with jurisdiction of the estate of James John Latsis. It properly exercised its powers in accordance with statute to cause all proper claims to be paid, to determine heirs, to determine distributive shares, to settle and distribute the estate and to discharge the administrators.

CONCLUSION

This appeal from the Order of the District Court should be dismissed.

Respectfully submitted,

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