

adjudication dated 12/9/99

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***COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION***

#1 Apr. 99  
No. 191 of 1999

Estate of JOANNE BAKST BLACKSHAW, a/k/a JOANNE BLACKSHAW,  
Deceased

Sur account entitled First and Final Account of Arthur K. Smith, Executor

Before PAWELEC, J.

This account was called for audit April 5 and 26, 1999

Counsel appeared as follows:

GILBERT E. TOLL, ESQ., - for the Accountant

DAVID M. JORDAN, ESQ., - for Gloria Siewierski, Claimant

Joanne Bakst Blackshaw, also known as Joanne Blackshaw, died on July 28, 1997, leaving a will dated June 28, 1990 and codicils dated February 10, 1992 and July 15, 1992, which were duly probated. She was married to David Blackshaw at the time of her death and was not survived by issue.

Letters Testamentary were granted to the accountant on August 20, 1997; proof of publication of the grant of same was submitted and is annexed hereto.

Payment of transfer inheritance tax, \$20,399.79 on April 28, 1998, was duly vouched.

By the terms of her will and codicils, copies of which are annexed hereto, the testatrix gave her tangible personal property to and among Gloria Siewierski, Julian Siewierski, Rita Hurault, Arthur K. Smith, Sally Smith, Lisa Krouse, John Ascenzi, Carol Tenneriello, Kathy Riccio Nahill, Nate Goldiner, Aaron Hunter and Rosalie Robin, with priority of choice being determined by the order of the names in the will. Any tangible personal property which is not chosen shall be sold, and, the proceeds thereof shall be added to the residue of the estate. The testatrix gave her share of a certain mortgage to her brothers, Richard Bakst and Lawrence K. Bakst, in equal shares. She gave the sum of \$14,000.00 to her aunt, Gloria Siewierski. She gave her interest in premises 610 West Rittenhouse Street, Philadelphia, in trust for the benefit of Mary Blackshaw, with the remainder going to the Morris Animal Refuge. She gave premises 1612 Naudain Street, Philadelphia, to Aaron Hunter. She gave the residue of her estate in the following manner: one-sixth (1/6) to Rita Hurault; one-sixth (1/6) to Arthur K. Smith and Sally Smith; one-sixth (1/6) to John Ascenzi and Carol Tenneriello; one-sixth (1/6) to Lisa Krouse; one-sixth (1/6) to Nate Goldiner and Aaron Hunter; and, one-sixth (1/6) to Kathy Riccio Nahill. She directed that each

beneficiary shall pay the transfer inheritance tax attributable to the gift which he or she receives. She appointed Arthur K. Smith to serve as executor of her will.

It is stated that the family exemption has not been claimed.

It is stated that Julian Siewierski, given a right to chose tangible personal property, died in the lifetime of the testatrix.

It is stated that premises 610 West Rittenhouse Street, Philadelphia, was not owned by the decedent at her death.

It is stated that notice of the audit has been given to all parties having a possible interest in the estate.

The accountant acknowledges the existence of a claim of Allegheny University in the amount of \$908.00. The accountant has denied this claim and given due notice of the denial and the audit of the account to the claimant. There being no appearance on behalf of Allegheny University, this claim is denied for lack of prosecution.

The accountant acknowledges the existence of a claim of Lawrence K. Bakst in the amount of \$6,226.00. The accountant has denied this claim and given due notice of the denial and the audit of the account to the claimant. There being no appearance on behalf of Lawrence K. Bakst, this claim is denied for lack of prosecution.

Gloria Siewierski, aunt of the testatrix and recipient of a legacy of \$14,000.00, has appeared to claim the sum of \$30,000.00 which she allegedly loaned to the testatrix. Exhibit "A-7-A" is a copy of a check which purportedly evidences the alleged loan. Made to the order of the testatrix and signed by the

claimant, this check is in the amount of \$30,000.00 and bears the word "gift". It is agreed that the claimant is blind and made no entries on the check other than her signature.

The claimant called Nathan Goldiner to testify on her behalf. Mr. Goldiner receives one-twelfth of the residue under the will of the testatrix. Mr. Goldiner testified that he had been a friend of the testatrix for over thirty-five years, and, that he knew her very well. On direct examination, Mr. Goldiner gave the following testimony concerning the alleged loan,

“Q. Did you know anything about Joanne’s proposed purchase of her co-op apartment?”

A. Yes, she discussed her intention to purchase a co-op with me several times.

Q. Did she discuss with you how she was going to finance the purchase of that?

A. Yes, she said she was going to see -- first she said she was going to see if she could get the money from her aunt, and then she said that her aunt agreed to give her the money. And I said, ‘Oh, she is going to give you the money?’ and she said, ‘But I have to pay it back.’

Q. Who was her aunt?

A. Gloria Siewierski.

Q. On or about November 16th or 17th, 1995, did you have discussions with Joanne about this?

A. Yes, I think that was the day I went with her to -- she was supposed to pick up the check from her aunt’s apartment, and she asked me to go along with her.

Q. Do you know that she did, in fact, receive the money?

A. Yes, yes. I didn't actually see it handed to her, because I perhaps was out of the room, or whatever, but when we left, she did indicate that she received the check.

Q. What did she tell you she had to do with this money eventually?

A. Pay it back." NT 27-29

In response to questioning by this Court, Mr. Goldiner gave the following testimony concerning the alleged loan,

“ THE COURT: I have just one question, sir. You indicated she received a check from her aunt, but you never told us how much. Do you know?

THE WITNESS: I didn't know.

THE COURT: But she got a check? That, you know?

THE WITNESS: Yes, I assume it was for the amount that she needed for the co-op, which was \$30,000.00.

THE COURT: Where did you get that number from?

THE WITNESS: Well, we had talked about it, because her aunt agreed to an amount, and she told her that would be the highest she would lend her; that if the co-op would be more than that, then she was not going to give her the check. And I was privy to that, because it did cost her more, and she had, in confidence, asked me to please not let her aunt know that the co-op was going to cost more than \$30,000.00, or she wouldn't give her the money.” NT 31-32

On cross-examination, Nathan Goldiner testified that, when she was buying the co-op, the testatrix owned premises 1612 Naudain Street; had money in the bank; and, had an account with Vanguard. Mr. Goldiner did not know the value of the Naudain Street property, but, he did know that it was rented out, and, that there was no mortgage on it. Mr. Goldiner stated that, in addition to his share of the residue under the will, he also received about \$30,000.00 from an account which the testatrix had at Vanguard.

The claimant called Aaron Hunter to testify on her behalf. Mr. Hunter

receives premises 1612 Naudain Street, and, one-twelfth of the residue under the will of the testatrix. Mr. Hunter testified that he knew the testatrix quite well, and, spent a lot of time with her. They spoke on the phone, every evening, between 11:30 p.m. and 1:00 a.m. On direct examination, Mr. Hunter gave the following testimony concerning the alleged loan,

“Q. Around the time of November 16th or 17th of 1995, do you recall talking on the phone with Joanne Blackshaw?

A. Yes.

Q. Do you recall the conversation? Can you tell us what the conversation was, to the best of your recollection.

A. To the best of my recollection, when she called that evening, she told me that she had gotten a check from her aunt, Gloria Siewierski, and the check was to be used to purchase an apartment. She told me the amount of the check was \$30,000.00, and that she was having a problem, because there was a delay in getting the money, and she needed the additional

money to purchase the apartment, but that she did have that additional amount of money, but that I should not tell her aunt, because her aunt would be very angry that the apartment cost more than she stated that it would.

Q. Did she tell you the conditions of the money that she had received from her aunt?

A. Yeah, her words were that her aunt had given her the money, but that she did have to pay her back.”

NT 33-34

In response to questioning by counsel for the accountant, Mr. Hunter gave the following testimony concerning the alleged loan,

“BY MR. TOLL:

Q. She indicated to you that her aunt had given her the money, but she had to pay her back?

A. Yes. I’m using her language.

Q. Right. Right. Is it possible from the manner in which she told this to you in her language that she regarded this as having been given to her as a gift, but that she had a personal obligation, meaning a moral obligation, to give the money back to her aunt?

A. No, I think what she meant was that her aunt had given her the physical check, but that she did have to pay this money back. It was not a gift.” NT 35

On cross-examination, Aaron Hunter testified that he knew the testatrix for thirty years, and, had been close to her over the last ten or fifteen years. He knew that her husband left her. He knew that she had an account with Merrill Lynch. Mr. Hunter stated that the testatrix gave him a copy of her codicil of February 10, 1992, giving him the property on Naudain Street, after she had executed it. Mr.

Hunter testified that, in addition to the Naudain Street property and a share in the residue, under the will, he also received \$30,000.00 in the form of a one-half interest in an account which the testatrix had at Vanguard.

Claims against a decedent's estate must be proven by evidence which is clear, precise and convincing. See Dart Estate, 426 Pa. 296 (1967); Petrov v. Secary Estate, 403 Pa. 540 (1961); Liggins Estate, 393 Pa. 500 (1958); and, Stafford v. Reed, 363 Pa. 405, 70 A. 2d 345 (1950). The term "clear, precise and convincing" has been defined by our Supreme Court in the following manner, to wit,

" In *Broida v. Travelers Ins. Co.*, 316 Pa. 444, 175 A. 492 (1934), at 448, in describing the meaning of the phrase, 'clear, precise and convincing,' we stated, 'the witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue ... It is not necessary that the evidence be uncontradicted [citing cases], provided 'it carries conviction to the mind' (Burt v. Burt, supra,) or 'carries a clear conviction of its truth'..." LaRocca Trust, 411 Pa. 633, 640 (1963)

This Court finds Nathan Goldiner and Aaron Hunter to be credible witnesses who spoke against their own interests, as residuary beneficiaries, in giving this Court their best recollections of the statements of the testatrix. The testimony of these witnesses leaves this Court with no doubt that the testatrix borrowed the sum of \$30,000.00 from her aunt, Gloria Siewierski, and, that this transaction was a loan and not a gift. The unexplained presence of the word "gift", on the face of the

check evidencing the loan, is meaningless in light of the clear, precise and convincing testimony of the claimant's witnesses.

The accountant asserts the existence of a settlement agreement whereby the claimant allegedly agreed to accept \$20,000.00 in full and final satisfaction of her claim. This settlement is allegedly made out in correspondence between counsel.

Exhibit "A-7" is a copy of a letter from counsel for the claimant to counsel for the executor. Exhibit "A-7" is dated January 29, 1998, and, contains a demand for payment of \$30,000.00 which was allegedly loaned to the testatrix by her aunt, Gloria Siewierski.

Exhibit "A-1" is copy of a letter from counsel for the executor to counsel for the claimant. Exhibit "A-1" is dated June 25, 1998, and, reads as follows, to wit.

" I am enclosing herewith a check in the amount of \$11,755.50 payable to your client as the net bequest to her under the July 15, 1992 Codicil. This represents the \$14,000.00 bequest less one-half moving expenses (170.00) and reduced by 15% Pennsylvania Inheritance Tax.

You will recall that in consideration of the present payment of this bequest, your client agreed to accept \$20,000.00 in settlement of the \$30,000.00 claim she has made. This claim is separate from the bequest enclosed.

It was understood that the payment of the \$20,000.00 settlement was contingent upon the approval of the residuary beneficiaries. Should the

residuary beneficiaries not consent to this settlement, the Executor reserves the right to contest the claim in its entirety in connection with an Accounting and Petition for Adjudication in the Orphans Court. Similarly your client reserves the right to pursue the recovery of the claim in its entire amount of \$30,000.00. It was further agreed that in the event that the residuary beneficiaries do not approve this settlement, neither of us would introduce evidence of the proposed settlement in connection with the Orphans Court proceedings. Finally, should the deductibility of the \$20,000.00 for Inheritance Tax purposes be disallowed, the applicable taxes will be deducted from the \$20,000.00 subject to your right to contest the disallowance.

If this letter does not accurately set forth the agreement you and I have reached on behalf of our respective clients, please return the check forthwith. If this letter does accurately set forth the agreement, you may turn the check over to your client provided she executes the enclosed Release, Refunding and Indemnification Agreement and you promptly return same to me.”

Exhibit “A-4” is a copy of a letter from counsel for the executor to the nine residuary beneficiaries under the will of the testatrix. Exhibit “A-4” is dated July 23, 1998, and, asks the residuary beneficiaries to approve the settlement of Gloria Siewierski’s claim. Exhibit “A-4” reads, in relevant part, as follows,

“All the disputed liabilities set forth in Exhibit “E” remain unresolved and disputed with the exception of the loan of Gloria Siewierski. A tentative settlement in the amount of \$20,000.00 has been negotiated which is subject to the approval of all of the residuary beneficiaries. Arthur K. Smith, the Executor, as well as the undersigned attorney recommend the approval of this settlement based upon evidence submitted by the attorney for Gloria Siewierski as well as the large legal cost and lengthy time delay which would result from contesting this claim in Court. Should any of you

wish further information with regard to this proposed settlement, please contact the undersigned attorney.”  
EXHIBIT “A-4”. Page 3

Exhibit “A-2” is copy of a letter from counsel for the claimant to counsel for the executor. Exhibit “A-2” is dated August 10, 1998, and, reads as follows,

“ I enclose herewith the Receipt & Release form signed by Gloria Siewierski, signifying receipt of the net bequest of \$11,755.50, and tangible personal property. Obviously, since Julian Siewierski died a couple of years back, he has not joined in this.

I understand that you have not gotten the approval of all of the residuary beneficiaries to the settlement of Mrs. Siewierski’s claim for the \$30,000 loan because you have been unable to locate one of the residuary beneficiaries. If this is in fact the case would you let me know. Do you have any ideas for handling this situation? It seems to me that the executor can authorize such a payment when it has been approved as a reasonable settlement by 5/6ths of the residuary beneficiaries and he himself believes it to be reasonable. The understanding set forth in your June 25 letter is otherwise agreed to as the settlement which we made.”

Exhibit “A-3” is a second copy of the aforementioned letter of August 10, 1998 from counsel for the claimant to counsel for the executor. It appears that counsel for the executor jotted a handwritten response to Exhibit “A-2” right on the face of “Exhibit A-2”, and, FAXED this handwritten response to counsel for the claimant on August 15, 1998. Said handwritten response reads as follows,

“ I have rec'd approval from previously unlocated heir - I now have all but 2, both of whom have contacted me on prior occasions. I expect to receive all! Letters were mailed 7/23/98. I'll be on vacation thru 8/21.”

Exhibit “A-5” is copy of a letter from counsel for the claimant to counsel for the executor. Exhibit “A-5” is dated September 2, 1998, and, reads as follows,

“ As you know, we reached a proposed compromise settlement agreement for Gloria Siewierski's claim against the estate, but this has neither been agreed to on the estate's part nor paid to her. In the meantime, Mrs. Siewierski has had discussions with several of the residuary beneficiaries, and she tells me that they feel that she should be paid the \$30,000 claim in full. Inasmuch as you have been unable to implement the proposed settlement, we wish to pull that proposal off the table and assert the full claim for Mrs. Siewierski in the amount of \$30,000. I shall wait to hear from you.”

Counsel for the executor states that he did not received approvals from all nine residuary beneficiaries until some time in November of 1998. By September 2, 1998, the date on which counsel for the claimant purportedly withdrew her offer of settlement, seven of the nine approvals had been received by counsel for the executor.

In his brief, counsel for the executor asserts that his client was not given a “reasonable time” within which to obtain the approvals of the residuary beneficiaries. Counsel further asserts that it would have taken many months to fully administer the decedent's estate and litigate the aunt's claim. Counsel

argues that this Court should specifically enforce a binding settlement for payment of \$20,000.00 in full and final satisfaction of the aunt's claim.

In his brief, counsel for the claimant asserts that his client was free to withdraw her offer of settlement at any time prior to unconditional acceptance of said offer. Counsel further asserts that his client did revoke her offer prior to a valid, unconditional acceptance thereof. Counsel argues that his client properly revoked her offer of settlement, and, that she is entitled to collect the full amount of her claim of \$30,000.00.

This Court holds that the letters dated June 25, and August 10, 1998, being Exhibits "A-1" and "A-2", contain all of the elements of a binding contract of settlement of the claim of Gloria Siewierski. In his letter of June 25, counsel for the executor clearly states that the check in payment of the legacy is to be returned to him if his letter does not accurately set forth the terms of an agreement between counsel. In his letter of August 10, counsel for the claimant clearly states that the parties have reached an agreement on the terms in the letter of June 25, and, that he is most desirous of getting the approval of all nine residuary beneficiaries as soon as possible. Nothing in the letters of June 25 or August 10 sets any time limit for the securing of the approvals of the residuary beneficiaries.

Given the savings in time and money to be achieved from a settlement, and, given the fact that the claimant accepted and retained the immediate payment of the bequest to her, this Court holds that the requirement

of approval of all residuary beneficiaries constitutes a “condition subsequent” which would act to discharge the contractual duty which had arisen, and, not a “condition precedent” to the existence of a contract. See Village Beer & Bev. v. Vernon D. Cox & Co., 327 Pa.SuperiorCt. 99 (1984). Under the circumstances, the law implies a “reasonable time” for the obtaining of the approvals. See Francis Gerard Janson, P.C. v. Frost, 422 Pa.SuperiorCt. 36 (1993). This Court holds that a “reasonable time” had not yet passed when claimant’s counsel sent his letter of September 2, 1998. Accordingly, this Court will enforce what it has determined to be a binding settlement for payment of \$20,000.00 in full and final satisfaction of the aunt’s claim.

The claimant’s Objections to the account are dismissed.

The accountant has requested a tax reserve of \$1,750.00. There being no objection, said request for a tax reserve is allowed, and any balance of said tax reserve remaining after determination and payment of taxes is to be distributed to the residuary beneficiaries.

The Objections having been dismissed, the account shows a balance of principal, personal property, before payment of inheritance taxes, and, before distributions, of \$ 78,819.80

which, composed as set forth in the account, is awarded as follows: \$141.00 to Carol O’Rourke Phy, Official Court Reporter, for transcript of hearing; \$20,000.00 to Gloria Siewierski, in full and final satisfaction of her claim, per the foregoing discussion; tax reserve of \$1,750.00 to the accountant, as requested; tangible personal property chosen by Gloria Siewierski, at an appraised value of \$313.00,

to Gloria Siewierski; tangible personal property chosen by Arthur K. Smith and Sally Smith, at an appraised value of \$152.00, to Arthur K. Smith and Sally Smith; decedent's share of mortgage, at an appraised value of \$614.80, in equal shares, to Richard Bakst and Lawrence K. Bakst; \$14,000.00 bequest to Gloria Siewierski; one-sixth (1/6) of the residue to Rita Hurault; one-sixth (1/6) of the residue to Arthur K. Smith and Sally Smith; one-sixth (1/6) of the residue to John Ascenzi and Carol Tenneriello; one-sixth (1/6) of the residue to Lisa Krouse; one-sixth (1/6) of the residue to Nate Goldiner and Aaron Hunter; and, one-sixth (1/6) of the residue to Kathy Riccio Nahill.

The account shows unconverted real estate appraised at \$ 87,331.20

being premises 1612 Naudain Street, Philadelphia, Pennsylvania, which is awarded to Aaron Hunter.

The account shows a balance of income, before distributions,  
of

\$ 8,504.00

which, together with income received since the filing of the account, if any, is awarded as follows: \$1,565.00, being net rentals on premises 1612 Naudain Street, Philadelphia, to Aaron Hunter; \$1,131.40, being net mortgage payments received, in equal shares, to Richard Bakst and Lawrence K. Bakst; one-sixth (1/6) of the residue to Rita Hurault; one-sixth (1/6) of the residue to Arthur K. Smith and Sally Smith; one-sixth (1/6) of the residue to John Ascenzi and Carol Tenneriello; one-sixth (1/6) of the residue to Lisa Krouse; one-sixth (1/6) of the

residue to Nate Goldiner and Aaron Hunter; and, one-sixth (1/6) of the residue to Kathy Riccio Nahill.

The above award of decedent's share of mortgage to Richard Bakst and Lawrence K. Bakst is made subject to payment of the following items: \$92.22 in transfer inheritance tax, and, \$49.10 in legal costs, as reflected at page 14 of the account.

The above award of \$14,000.00 to Gloria Siewierski is made subject to payment of the following items: \$2,075.00 in transfer inheritance tax, and, \$170.00 in moving expenses, as reflected at page 8 of the account.

The above award of premises 1612 Naudain Street, Philadelphia, to Aaron Hunter, is made subject to payment of \$13,011.00 in transfer inheritance tax, as reflected at page 8 of the account.

The above awards of residue are made subject to payment of such transfer inheritance tax as may be found to be due and assessed on the residue.

All of the above awards are made subject to all conveyances and payments heretofore properly made on account of distribution.

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

AND NOW, \_\_\_\_\_, unless exceptions are filed to this adjudication within twenty (20) days, the account is confirmed absolutely.

J.