



INTERIOR BOARD OF INDIAN APPEALS

Estate of Elsie White Wesley

13 IBIA 326 (11/15/1985)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF ELSIE WHITE WESLEY

IBIA 85-11

Decided November 15, 1985

Appeal from an order denying petition for rehearing entered by Administrative Law Judge Robert C. Snashall in IP PO 52L 84-66.

Vacated and remanded.

1. Indian Probate: Claim Against Estate: Secured Claim

Claims presented against a deceased Indian's trust estate that are secured by non-trust assets will be considered as general creditors' claims only to the extent that the claimant shows the collateral and other non-trust assets of the estate are insufficient to cover the indebtedness.

APPEARANCES: John Platt, Portland, Oregon, for appellant. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On December 20, 1984, the Board of Indian Appeals (Board) received a notice of appeal from the Columbia River Inter-Tribal Finance Corporation (appellant). Appellant sought review of an order denying petition for rehearing issued on October 18, 1984, 1/ by Administrative Law Judge Robert C. Snashall in the estate of Elsie White Wesley (decedent). Judge Snashall's denial of rehearing let stand an August 7, 1984, order in which he denied appellant's claim against decedent's estate. For the reasons discussed below the Board vacates the October order and remands this case for further consideration.

Background

Decedent, Yakima 124-A4433, died intestate on May 20, 1983. A hearing to probate her Indian trust estate was held on May 17, 1984. Appellant filed a claim against decedent's estate for \$9,466.03 in principal and interest, arising from a \$9,000 loan made on April 3, 1978, to decedent and her husband, Cecil Wesley, for use in their fishing operations. The note submitted in

1/ This order is internally dated Aug. 18, 1984. The covering notice to parties is dated Oct. 18, 1984. The record evidence shows that October is the correct date.

support of the claim shows that decedent and her husband pledged as security for the note "all fishing equipment, vehicles and other personal property owned by the borrower and used in his fishing operation." Appellant stated that the only payment made on the loan was an interest payment of \$52.03. At the hearing Judge Snashall stated:

This is a claim for \$9,466.03 and it's given to me only for a matter of information, for you people. The claim is valid as far as the Tribe is concerned, but it is a secured claim which means it's backed up by security and all I can tell you is if the heirs in this estate don't make this payment, the Tribe will foreclose on you or whatever it is. It's one of those claims that transfers with the death to the heirs and they have to make the payment. You talk to the Columbia River Inter-Tribal Finance Corporation in connection with that.

Tr. at 26. Judge Snashall consequently denied the claim on the grounds that it was a secured claim.

Appellant petitioned for rehearing, arguing that there was no statutory or regulatory basis for rejecting secured claims and that payment of this claim was needed to provide funds for loans to other tribal members. In denying rehearing, Judge Snashall stated at pages 1-2 of his October 18, 1984, order:

As in all cases of security, whether it be the title to a motor vehicle, a mortgage on cattle or a home mortgage, when an individual dies the property transfers to the heirs or devisees subject to the lien and therefore, unless the security holder waives his security and presents his claims as a general claim or first executes against the security and then presents a claim for the deficiency, his interest is neither considered nor affected by the particular proceedings. Additionally, it should be kept in mind that with most secured transactions, the debt is not due at the time of death of decedent and therefore no claim would be appropriate in any event and the secured interest merely would transfer to the heir or devisees as indicated above subject to the lien of the outstanding debt. * * * The applicable regulation under which claims are permitted to be considered in Indian probate estates specifically makes reference to only "unsecured" or "general" claims and therefore by specific exclusion excludes from consideration by the Administrative Law Judge secured claims. 43 CFR 4.251.

Appellant's notice of appeal from this order was received by the Board on December 20, 1984. Only, appellant filed a brief on appeal.

Discussion and Conclusions

Appellant first argues that Judge Snashall incorrectly found that the note was not due upon decedent's death. The Judge's order does not find that this note was not payable upon death, but rather makes a statement of general

law. This particular note does specify that it is due upon death, at the option of appellant's agent.

Appellant next argues that there is no statutory or regulatory prohibition against the payment of secured claims in Departmental probate proceedings. In support of its argument, appellant cites the development of case law on the question of payment of secured debts, and in particular notes Estate of Gilbert Black Moon, IA-D-14 (1967); Estate of Martin Spotted Horse, 2 IBIA 265, 81 I.D. 227 (1974); and Estate of John Joseph Kipp, 8 IBIA 30, 87 I.D. 98 (1980). Appellant concludes that these cases "establish that secured creditors' claims in Indian probate will be preferred over general claims to the extent of the security's value, with amounts in excess of that value shared on an even footing with all other general creditors." Petition for rehearing at 8. As a factual matter, appellant states that its collateral may be almost worthless because of deterioration.

The Department has held that a secured creditor need not participate in its probate proceeding because a secured creditor has other means for receiving satisfaction of the debt, such as foreclosing against the collateral, or, in some cases, proceeding against co-signers on the debt. See, e.g., Estate of Lawrence Ecoffey, 5 IBIA 185 (1976). Appellant in this case could have proceeded in either way: the collateral existed, although perhaps with diminished value; and decedent's husband, the co-signer on the loan, was still living. Instead, appellant sought to recover the total amount of outstanding indebtedness from the trust estate.

[1] Appellant's collateral is non-trust property. This status is evidenced by the fact that BIA did not have to approve the mortgaging of the property. In Kipp, *supra*, the Board held that debts secured by non-trust assets would be considered only as general creditors' claims and only to the extent that the claimant showed that the collateral and other non-trust assets of the estate were insufficient to satisfy the indebtedness. The Board noted at n.5, 8 IBIA 38, 87 I.D. 102, that "[i]n some cases, this will require retention of jurisdiction over a case by the Administrative Law Judge until a creditor can prove that non-trust assets or other securities have been exhausted and that a sum certain from the trust estate is therefore owing."

Here, appellant took no steps to satisfy the debt: it did not foreclose on the collateral, nor did it file a claim against decedent's surviving spouse. It merely filed a claim with the Administrative Law Judge noting a debt secured with non-trust assets. It had no representative at the probate hearing to explain its position. With no additional explanation of appellant's intentions, when faced with such a secured claim, Judge Snashall logically believed that the filing was only informational.

Upon learning, however, that appellant sought payment from the trust estate, under Kipp Judge Snashall should have granted the petition for rehearing and retained jurisdiction in order to allow appellant an opportunity to foreclose on the collateral, seek payment from the loan co-signer or other non-trust estate assets, or reach some arrangement with the heirs. If such measures resulted in a deficiency, the Judge should then have considered

whether appellant was entitled to receive payment from the trust assets. Finally, if appellant were entitled to any payment, Judge Snashall should have determined the amount of that payment. Any payment is, of course, subject to the restrictions established in 43 CFR 4.251-4.252.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Snashall's October 18, 1984, order denying rehearing is vacated and the case is remanded to him for further action consistent with this opinion.

//original signed

Jerry Muskrat
Administrative Judge

I concur:

//original signed

Bernard V. Parrette
Chief Administrative Judge