



INTERIOR BOARD OF INDIAN APPEALS

Estate of Thomas Hall, Sr.

10 IBIA 17 (06/28/1982)

Also published at 89 Interior Decisions 361



United States Department of the Interior

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

ESTATE OF THOMAS HALL, SR.

IBIA 81-35

Decided June 28, 1982

Appeal from order denying petition for rehearing and order to amend. (Indian probate IP BI 316 D 80 and IP BI 145 D 81.)

Reversed.

1. Indian Probate: Wills: Option to Purchase Real Property

An Indian testator may create an option to purchase trust real property by will.

APPEARANCES: James C. Nelson, Esq., Werner, Nelson & Epstein, Cut Bank, Montana, for appellant Wallace W. Hall; appellees Eloise England, Mary Janice Hall Boggs, Marlene Hall, and Phyllis Buel, pro sese. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Wallace W. Hall has filed a notice of appeal from a March 17, 1981, order in which Administrative Law Judge Alexander H. Wilson denied a petition for rehearing and amended his October 29, 1980, order approving will and

decree of distribution. The appeal is opposed by four of the remaining eight legatees under the will of Thomas Hall, Sr.

Background

Thomas Hall, Sr. (testator), Blackfeet Allottee No. 18, was born on February 16, 1901, and died in Pendroy, Montana, on January 22, 1980. Testator was survived by nine children of his marriage to Mary LaFromboise Hall. 1/ Testator's will, executed on May 13, 1977, was approved by the Administrative Law Judge on October 29, 1980.

The will provided in clause 2 that all of testator's property should be placed in trust for the use of his wife. Upon the death of his wife, any remaining property was to be divided equally among his surviving children and the families of any deceased children. Clause 3 of the will gave decedent's son, Wallace W. Hall (appellant), a 1-year option to purchase any real property that might be part of testator's estate.

Because testator's wife predeceased him, the testamentary trust created in clause 2 lapsed. The Administrative Law Judge apparently interpreted the remainder of the will as passing all of testator's property to his nine children under clause 2, and giving appellant the right subsequently to buy the real property from the other devisees under clause 3. 2/ Accordingly,

1/ A tenth child died in infancy.

2/ The placement of clause 3 after the provisions in clause 2 dealing with the distribution of any property remaining after the death of testator's wife is perhaps responsible for such interpretation.

the Administrative Law Judge regarded any subsequent purchase of this Indian trust property to be a separate matter of no further relevance to the probate proceeding. ^{3/} (See 25 CFR 121.17-121.31 regarding authority of the Bureau of Indian Affairs to approve sales or other conveyances of trust property.) Although he upheld the validity of the option clause set forth in clause 3 of the will, the Administrative Law Judge held that appellant would have to secure the agreement of the remaining devisees and the Bureau of Indian Affairs (BIA) in order to acquire real property under the option.

Based upon the probate decision, BIA required the agreement of all the devisees before approving appellant's purchase of their interests in testator's estate. ^{4/} When appellees here were not amenable to the purchase, appellant sought reopening of the estate to secure his right to purchase the property. Judge Wilson denied reopening on March 17, 1981. ^{5/}

Appellant sought review by the Board of the order denying rehearing. Both appellant and appellees have presented arguments on appeal.

Discussion and Conclusions

From an examination of the will, it is apparent that testator was attempting to give appellant an option to buy the real property in his estate

^{3/} See, e.g., Order Approving Will dated Oct. 29, 1980, at page 3, paragraph 2.

^{4/} Letter from Assistant Area Director, Billings Area Office, Bureau of Indian Affairs, to James C. Nelson, dated Nov. 17, 1980.

^{5/} This order appeared to reverse the earlier order and to hold that appellees could be forced to sell. Administrative Law Judge Keith L. Burrowes, who took over this case when Administrative Law Judge Wilson retired, informed appellant by letter dated May 7, 1981, that the order should not be read to force the sale of the interests of unwilling appellees.

under clause 3 of the will. The principle is well established in general probate law that a person may create an option to purchase real property by will. See, e.g., Hirlinger v. Hirlinger, 267 S.W.2d 46 (Mo. 1954); Watson v. Riley, 101 Neb. 511, 164 N.W. 81 (1917). "An option [to purchase real property] is a continuing offer to sell," Hirlinger, supra at 49, provided that the optionee meets the terms specified in the will. Thomas v. Kelly, 3 S.C. 210 (1871). The testator's intent governs the construction of the terms of options and of the purchase price. Nolan v. Easley, 214 Miss. 190, 58 So.2d 491 (1952); Hornaday v. Hornaday, 229 N.C. 164, 47 S.E.2d 857 (1948); In re Larson's Will, 211 Wis. 237, 247 N.W. 880 (1933); Watson, supra. Title to the property remains in the estate until the optionee determines whether or not to exercise the option. Watson, supra; Daly v. Daly, 299 Ill. 268, 132 N.E. 495 (1921); In re Ludwick's Estate, 269 Pa. 365, 112 A. 543 (1921).

[1] The question before the Board is whether an option to purchase trust real property may be created in an Indian will. Indians are given a broad and unrestricted right to dispose of their trust property by will in 25 U.S.C. § 373 (1976): "Any persons of the age of twenty-one years having any right, title, or interest in any allotment held under trust * * * shall have the right * * * to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior." The Secretary has promulgated regulations dealing with Indian wills and the probate of Indian estates in 43 CFR Part 4, Subpart D. These regulations impose only procedural restrictions on the testamentary disposition of trust property and do not mention the creation of an option to purchase trust real property. In the absence of substantive regulations prohibiting the testamentary creation of an option to purchase real property, there is no reason to deny an

Indian the right, generally enjoyed by other individuals, to dispose of property in this manner. 6/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 29, 1980, decision of the Administrative Law Judge is reversed. Appellant has the option under testator's will to purchase the real property of the estate 7/ "for cash or upon reasonable terms at the going interest rate over a period of twenty (20) years with right of prepayment at any time." The purchase "price [shall be] based upon the value of the assets set forth in the Inventory and Appraisalment of [testator's] estate." Clause 3 of the last will and testament of Thomas Hall, Sr. 8/

Because appellant timely attempted to exercise this option on March 12, 1980, but was prevented from doing so by the misinterpretation of testator's will, he shall have 60 days from receipt of this decision in which to tender payment to the Bureau of Indian Affairs for the property in accordance with

6/ See and compare Estate of Ronald Richard Saubel, 9 IBIA 94, 100-01, 88 I.D. 993, 996-97 (1982).

This type of disposition may be particularly appropriate for Indian trust real property, especially when an estate is largely composed of such property. The option to purchase permits a testator to prevent the continued fractionation of interests in trust property, thus increasing the utility of the land. The testator then, too, has much greater flexibility in determining how to divide the cash value of the estate among the legatees.

7/ Because the real property remains in the estate until appellant either exercises his option or fails to do so within the time given, appellant can purchase even the interests of legatees opposed to the sale.

8/ In his order denying petition for rehearing, the Administrative Law Judge indicates that the purchase price must be the fair market value of the land. This finding is incorrect. The purchase price of land under a testamentary option to buy is the price established in the testator's will, even if that price does not reflect the actual fair market value of the property. See discussion, supra.

the provisions of the will. Such payment shall become part of the estate and shall be distributed to the nine legatees in equal shares.

This decision is final for the Department.

//original signed
Wm. Philip Horton
Chief Administrative Judge

We concur:

//original signed
Franklin D. Arness
Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge