

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)
**In the Matter of the Estate of ISIDORO RUDIMCH,
Deceased,**

**In the Matter of the Estate of KUKUMAI RUDIMCH
Deceased.**

CIVIL ACTION NO. 00-010
(Consol. No. 08-203)

Supreme Court, Trial Division
Republic of Palau

Decided: December 29, 2009

p.290

ARTHUR NGIRAKLSONG, Chief Justice:

INTRODUCTION

This matter was originally filed over nine years ago. During this protracted family dispute, the parties failed at numerous attempts to mediate, balked at the Court's suggestion to appoint a special master, and generally resisted any form of settlement. The Court admittedly encountered its own difficulty managing the protean factual and legal issues, as well as the persistent scheduling conflicts, which arose during the course of litigation. Many of the mixed questions of law and fact, which extend as far back in time as the Second World War, are simply beyond this Court's—or any Court's—competence to decide perfectly. In intractable matters pertaining to descent and distribution, which in this case span over sixty years, courts are instructed to interpret the law with what is most consistent with equity. *In Re Delemel*, 1 ROP Intrm. 653A, 653C (1989). Thus, in order to bring this long-overdue matter to an equitable close, this Court now enters its Decision In the Matter of the Estate of Isidoro Rudimch, with the intention that the Findings of Fact and Conclusions of Law embodied herein will be concordant with our judicial mandate to seek equitable resolutions to estate cases such as this one.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

A. The Death of Isidoro Rudimch

On August 30, 1999, in accordance with Palauan custom, Isidoro Rudimch (“Isidoro”) orally declared his will to Oldiais Ngirakelau, bequeathing all of his property, both real and personal, to his wife and children.¹ The next day, p.291 August 31, 1999, he died. He was

¹Oldiais Ngirakelau filed an affidavit with the Court attesting to this event. Likewise, the parties have stipulated that Isidoro's will should be considered effective according to Palauan custom. (*See* Stipulation, April 20, 2000.) Later in the course of the litigation, the argument was made that this oral will was ineffective because, under 25 PNC § 107(b), an oral, noncupative will can only pass personal property with a maximum value not to exceed \$1,000. While this is an accurate statement of the law, it ignores 25 PNC § 103, which states that “[n]othing in this chapter shall prevent the making of a will in accordance

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

survived by members of his family, including: (1) his wife, Yasko Kishigawa Rudimch (“Yasko”); (2) his children, Dean, Evelyn, Eyos, Shirley, Eunice, Sean Lee, Ivan, and Mark Rudimch; (3) his mother, Kukumai Rudimch (“Kukumai”); (4) his sisters, Eriko Singeo, Miriam Chin, Magdalena Ngirmang; and (5) his brother Matthew Rudimch.

On January 19, 2000, two of his sons, Mark and Ivan Rudimch (“Joint Executors”) sought appointment as Joint Executors of his Estate. In their petition, Mark and Ivan claimed that Isidoro’s many financial and legal affairs needed immediate supervision. Because both had worked as business managers for their father, they petitioned the Court to grant them temporary letters of testamentary administration over the businesses. On January 28, 2000, the Court granted this request, requiring that a Verified Inventory be filed on all of decedent’s property within thirty days. The Court also required the Joint Executors to issue notice of the administration of Isidoro’s Estate to the public at large, as well as to all of the family members named in the petition.

On February 25, 2000, Isidoro’s mother, Kukumai, along with Isidoro’s siblings, Eriko Singeo, Miriam Chin, Magdalena Ngirmang, and Matthew Rudimch (together known as “Respondents”)² filed their initial response indicating that they had no objection to the appointment of Mark and Ivan as Joint Executors.

B. Verified Inventory of the Estate of Isidoro Rudimch

On March 13, 2000, the Joint Executors filed the Verified Inventory of the Estate of Isidoro Rudimch, listing the assets included in the summary below. During the course of the ten-year litigation, the Estate’s interest in these assets **p.292** and liabilities have undoubtedly changed; however, the information below still largely embodies the properties at issue in the case.

with the customary or prior written law of the Republic, nor shall anything in this chapter affect the validity of a will made in accordance with such customary or written law.” The parties stipulated that Isidoro’s will should be considered effective according to Palauan custom, which in turn triggered the application of 25 PNC § 103.

Furthermore, had any of the parties sought to withdraw this stipulation, they would have been bound to do so by motion to the Court, which none did. The stipulation had become the law of the case and therefore the Court cannot imply a withdrawal of it merely because an argument, made years later in a responsive brief, appears to contradict it. Indeed, “where a stipulation has been entered into and filed, one of the parties will not be allowed to withdraw from the agreement thus made without the consent of the other, except by leave of court upon cause shown. Thus a party to a stipulation who desires to have it set aside should seek to do so by some direct proceeding, and, ordinarily, such relief may or should be sought by a motion to set aside the stipulation in the court in which the action is pending, on notice to the opposite party.” 73 Am. Jur. 2d *Stipulations* § 11 (2001). Thus, the crux of this Court’s inquiry shall not be on the effectiveness of Isidoro’s will but on what property Isidoro was capable of devising through it. ²Because of slightly diverging interests that arose during the litigation, Respondents Miriam Chin and Eriko Singeo have filed separate briefs. However, the majority of their legal arguments vis-a-vis the Joint Executors are identical. Thus, for most purposes, this Court shall refer to all of Isidoro’s siblings and Isidoro’s mother, Kukumai, collectively as Respondents.

VERIFIED INVENTORY OF THE ESTATE OF ISIDORO RUDIMCH

(A) BUSINESSES

(1) Koror Wholesalers, including Sure Save Mart, and all buildings, personal property, fixtures, equipment, accessories, tools of trade, merchandise, and accounts receivable.

(2) KR Shopping Center, including all buildings, personal property, fixtures, equipment, accessories, tools of trade, merchandise, and accounts receivable.

(3) KR Hardware & Construction Supplies, including all buildings, personal property, fixtures, equipment, accessories, tools of trade, merchandise, and accounts receivable.

(4) KR Apartments, including all of the Sure Save Apartment Complex, Tivedul Apartment Building, other buildings, personal property, fixtures, equipment, accessories, tools of trade, merchandise, and accounts receivable.

(5) Western Pacific Communications, including all buildings, personal property, fixtures, equipment, accessories, tools of trade, merchandise, and accounts receivable.

(6) FT Apartments : (Note: while this business is listed under the decedent's name, he was merely administering the business for the children of Fuana Tkel. Executors intend to honor the decedent's instructions regarding ownership of the business.)

(B) STOCKS

- (1) Mobil Oil Inc. Cert. 36 (31 shares).
- (2) Belau Industrial Development Corp, (unknown).
- (3) WCTC (50 shares).
- (4) Palau Shipping Inc. (unknown).

(C) BANK ACCOUNTS

- (1) Twenty-two Bank of Hawaii Savings Accounts.
- (2) Five Bank of Hawaii Checking Accounts.

Note: A complete listing of various account numbers are included on the actual Verified Inventory, which is on file with the Court.

(D) OTHER PERSONAL PROPERTY

- (1) White Ford Explorer.
- (2) All residential buildings on Temporary Lot 182-320, in Iyebukel Hamlet, Koror State.
- (3) Continental One Pass Card TV917012.
- (4) Building located on Lot 40047.
- (5) Building located on lot 40785.
- (6) Tivedul Building.

(E) REAL PROPERTY

(1) Thirty-nine separate pieces of real p.293 property.

Note: Lot numbers and specific descriptions are included on the actual Verified Inventory, which is on file with the Court.

(F) OTHER PERSONAL RECEIVABLES

The following are personal loans owed to Isidoro Rudimch:

- (1) \$15,000.00 from Paulus Antol.
- (2) \$2,000.00 from Augustine Mikel.
- (3) \$10,000.00 from Obedei Iyar.
- (4) \$1,700 from Jose Ise.

(G) LIABILITIES

Isidoro Rudimch owes five loans to the Bank of Hawaii. Loan Nos. 7301-500-20, 7301-500-21, 7301-500-22, 7301-500-9001, and 7301-500-9002.

C. Claims Against the Estate

On April 18, 2000, after the above Verified Inventory had been filed with the Court, Respondents claimed ownership in almost all of the property listed therein. Specifically, they claimed ownership in five of the six businesses listed above.³ In support of these claims, Respondents averred that they owned all of the businesses equally, that is, Kukumai and each of her children, including Isidoro Rudimch, possessed an interest. They claimed that even though Isidoro had been entrusted to manage the businesses after Kukumai retired, he had never been given sole ownership of the enterprises.

Respondents also claimed ownership of 31 shares of Mobil Oil Inc., 50 shares of WCTC, 10 shares of Palau Shipping Inc., and an undetermined portion of shares of Belau Industrial Corp. Likewise, Respondents claimed ownership in all twenty-seven bank accounts, Items (4) and (5) of Isidoro's "Other Personal Property," all real property, except Items (5), (20), (21), (37), (38), and (39), and, finally, the lot upon which Topside Mobil Service Station is located. In support of all of these ownership claims, Respondents averred that, to the extent that the stock, personal property, and real property were purchased with profits from the KR businesses and to the extent that the bank accounts contained proceeds therefrom, the property belonged, at least in part, to Respondents. Respondents made similar claims to the loans owed to Isidoro, to the extent KR assets were used in extending them.

On March 28, 2000, the Koror State Public Lands Authority ("KSPLA") filed its own claims against the Estate, claiming past rents due on three pieces of property, including \$18,376.76 on a property in Medalaii, \$15,795.93 on Lot No. 40193, and \$49,371.47 on Lot No. 40795.

Two years later, on March 22, 2002, the Republic of Palau filed a claim against the Estate

³With respect to number (6), they asked that it be transferred immediately to the children of Fauna Tkel.

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

based upon a settlement agreement in *ROP v. Akiwo, et al.*, Civil Action No. 95-350, and *Akiwo v. ROP*, Civil Appeal No. 96-7. According to the Republic of Palau, the terms of the settlement required Isidoro to pay \$16,000, plus simple interest of 9% per year. As of Isidoro's last payment, the Republic claimed he still owed \$7,233.08. It requested that this p.294 amount, plus applicable interest, be paid out of the Estate.

D. The Litigation of Respondents' Claims

In support of Respondents' ownership claims, Respondent Miriam Chin filed an affidavit on August 10, 2000, in which she claimed that Isidoro had operated the businesses on behalf of himself and his mother and siblings. She claimed that this had been the generally-accepted agreement ever since the death of their father Indalecio Rudimch. She claimed that it was only after the death of Isidoro that his children (the Joint Executors) attempted to exert total control over the business operations. On the same day, Kukumai Rudimch and Miriam Chin filed a statement in which they claimed ownership of three-quarters (3/4) of all KR assets. Asserting that the Joint Executors were exerting control over property that did not belong to them, Respondents asked the Court for a complete accounting of their management of the Estate.

On September 20, 2000, the Joint Executors filed an affidavit in opposition to Kukumai and Miriam's Motion to Compel Accounting. They claimed that all interest in the businesses belonged to them under Isidoro's will because, at the time of their grandfather Indalecio's death, all interest in the businesses passed to their father, Isidoro. This was the first—but certainly not the last—time the will of Indalecio Rudimch, the family patriarch, was injected into the dispute. Moreover, attached to their Response to the Motion to Compel Accounting was an exhaustive list of business licenses, on which Isidoro Rudimch was the only signatory. Despite this, on September 25, 2000, this Court granted the Respondents' Motion to Compel Accounting.

For over two years, the case dragged on, during which time the parties engaged in pretrial discovery disputes. A trial date was finally set for March 11, 2003. On the day before trial, Justice Barrie Michelson recused himself. Thus, on March 26, 2003, Chief Justice Ngiraklsong issued an Order indicating that all four of the available Justices now had potential conflicts in the case. In this Order, though, he requested that the parties waive their right to have the case heard by an off-island Justice. The parties agreed, and, on September 12, 2003, Chief Justice Ngiraklsong retained the case on his docket and set it for trial on January 29, 2004.

E. Pretrial Matters

On January 14, 2004, the Joint Executors moved the Court for an order disqualifying Doug Cushnie from representing Respondent Miriam Chin, based upon his prior representation of Isidoro Rudimch in another matter. The Court set a hearing for this motion on January 29, 2004, and moved the trial date back again, this time to April 5, 2004. On Feb 2, 2004, the Court entered an order denying the motion to disqualify Cushnie.

On April 5, 2004, the Joint Executors filed a pretrial statement, stating that the only issue left before the Court was whether the Respondents, under their so-called theory of partnership

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

with Isidoro, could be seen as true owners of all of the assets in the Verified Inventory. The Joint Executors stated that “the claims are vague and extremely broad” and that the issue of the probate of Isidoro’s will was finally decided when all the parties stipulated to p.295 its effectiveness under Palauan customary law. Finally, they addressed the other claims against the Estate. The Joint Executors acknowledged the Estate’s debt to the KSPLA, insisting that they were in settlement negotiations to resolve the debt. With respect to the claim made by the Republic of Palau based upon the settlement in *ROP v. Akiwo, et al.*, Civil Action No. 350-95, and *Akiwo v. ROP*, Civil Appeal No. 7-96, however, the Joint Executors claimed that it should be barred by the statute of limitations.⁴

In support of their averment that Isidoro was the sole owner of all of the assets in the Verified Inventory, the Joint Executors stated that they should be entitled to a presumption of ownership, in that all of the assets were listed in his name at the time he died and at all times prior to his death. They recited a brief history, noting that in 1967, when Isidoro’s father, Indalecio, died, he inherited through Indalecio’s written will nothing more than his father’s small business. Over the next thirty-two years, the Joint Executors claimed that Isidoro expanded the businesses to include the multi-faceted conglomerate embodied by the Estate today. They claimed that, even though some of them worked in various capacities in the businesses, were given some authority, and received recurring sums of money out of the businesses’ profits, none of the Respondents were ever considered “owners” of the businesses. The Joint Executors further claimed that, during his lifetime, Isidoro purchased or was given several parcels of public lands in Koror, all in his own name.

On the same day, Respondents Eriko Singeo and Miriam Chin filed a joint pre-trial statement in response. From the outset, the Respondents laid claim to ownership through their mother, going so far as to suggest that the “KR,” in KR Wholesalers actually stands for Kukumai Rudimch.⁵ They claimed that while Isidoro was alive, he himself never claimed to be the owner of the businesses, nor did he ever seek to probate the will of his father Indalecio. Rather, in keeping with the Palauan custom of allowing the oldest son to run the family-owned business, “Isidoro was given a wide latitude in running the business and because KR, by deliberate choice of Kukumai Rudimch, remained a sole proprietorship, and with her advancing age and poor health, Isidoro listed his name in the business licenses with full knowledge of his mother and his siblings.” In discussing Eriko Singeo’s potential testimony, Respondents stated, *inter alia*, that Kukumai, when she was in better health, possessed a veto power over the KR businesses’ decisions, that each of the siblings were paid a monthly draw (called an “owners draw”), and that said practice still happened up until Isidoro’s death. Finally, Respondents stated p.296 that the KR businesses paid for all the expenses of Kukumai’s children, including “buying two houses in Guam for Toni; a house and an apartment for Huana’s children; building a house for Isidoro,” and so on. In discussing Miriam Chin’s potential testimony, Respondents stated that Miriam also

⁴With respect to this claim, the Joint Executors claim that it was filed on March 22, 2002, over two years after the date the executors took possession of the assets of the deceased and almost two years after the deadline by which the Court ordered all claims to be filed. The Joint Executors argued that their claim should be barred by not only 14 PNC § 404, but also the Court’s Order. No attorney, agent, employee, or representative of the ROP has appeared at any hearing to dispute the Executor’s rejection of the ROP’s claim. Accordingly, the Court shall treat this claim as abandoned by the ROP.

⁵By this time, Kukumai Rudimch was bedridden and could not speak.

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

gets an owners draw and “whatever she needs, the business would provide.” They claim that Isidoro never questioned the ownership of KR businesses but acknowledged Kukumai’s authority and ownership. Respondents went on to list eighteen different witnesses and their corroborating testimonies about the nature of the KR businesses and Kukumai’s authority over them.

With both pre-trial statements submitted, the case seemed ready to go to trial. Inexplicably, however, just before trial, Doug Cushnie withdrew as counsel for the Respondents on April 22, 2004. The trial date was rescheduled accordingly. By August 30, 2004, Respondent Miriam Chin had procured a new attorney. After another series of long delays, on April 15, 2005, the Court ordered the parties to file their written opening arguments on June 6, 2005, with a response due on June 30 and a reply due by July 11.

F. Written Trial Arguments

On June 6, 2005, the Joint Executors filed their argument. In substance and form, it largely recapitulated their pretrial statement. However, it began by arguing for a presumption of ownership of the real and personal property in the Verified Inventory. The Joint Executors claimed that the “the fact that a person is in possession of real property, exercising rights of ownership . . . creates a rebuttable presumption that he is invested with some right or title to it.” In further support of this claim, they cited the will of Indalecio Rudimch, which they claimed gave all of Indalecio’s properties to Isidoro. They further pointed to numerous pieces of evidence and testimony purportedly proving that, in fact, Isidoro was consistently treated and referred to as the sole proprietor of the KR businesses and that he had independent sources of income, such as the monies from the Mobil Service Station in Topside, with which to purchase the other assets listed in the Verified Inventory. They concluded by stating that Isidoro, through his actions, words, and in some instances through sworn testimony and affidavits, held out that he was the sole proprietor and owner of the businesses listed in the Verified Inventory, from Indalecio’s death in 1967 until his own death.

On the same day, Respondent Singeo filed her argument. In addition to recapitulating the arguments contained in her pre-trial statement, Singeo included the following statements in support of her ownership claims. First, Isidoro Rudimch never probated his father’s will, i.e., Indalecio Rudimch’s will, which evidences his intention to give all of his interest in the KR businesses to Isidoro, should be given no legal effect, because it was never probated and Isidoro never claimed ownership under it. Second, Respondent Singeo claimed that Kukumai’s will directly contradicts Indalecio’s will. Kukumai’s will states that all businesses collectively known as Koror Wholesalers belong solely to her. Third, Isidoro’s name on the business licenses does not constitute a sufficient basis to imply his ownership. In closing, Singeo reasserted claims to the properties and nonbusiness assets listed in the Verified p.297 Inventory, claiming that the executors have “failed to show that other properties they claim to be part of the Estate of Isidoro Rudimch are in fact part of the said estate, having been acquired with his personal funds without the use of the business funds.”

On the same day, Respondent Chin filed her own written argument. First, Chin claimed

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

that the tenth paragraph of Indalecio's will appoints Isidoro Rudimch as the "Trustee" of any trust created in the document, and the ninth paragraph directs that land will be held in Isidoro's name as the head of the Rudimch family for the benefit of all of Indalecio's children. This represents the first true instance in which a trust theory of ownership of the KR businesses was offered as an explanation of the KR businesses' ownership structure. Chin stated, "[h]e was in essence a trustee holding the property for the benefit of the entire family and not just for himself or his immediate family through marriage." In support of her argument that the family arrangement, in which individual property and family property were often indistinguishable, was indeed the one in operation, Chin noted that the house in which Isidoro lived was actually in Kukumai's name.

On June 27, 2005, Respondents Singeo and Chin filed their responses to the Joint Executor's closing argument. Not to make short shrift of the arguments therein, but they were nearly identical to the ones made in their pretrial statements and initial written arguments.

The Joint Executors filed their response to the Respondents' closing arguments on the same day. Once again, this response largely recapitulated the substance of what had already been said. However, a portion of the argument discussed the Respondents' contention that Isidoro had been bound to probate Indalecio's will for it to be effective. They argued in turn that "absent a statute dictating otherwise, a will is a donative transfer that takes effect at the time of the death of the testator." *Restatement (Second) of Property* § 33.1 (1977). Palau did not and does not have a probate statute. Thus, they argued, Isidoro was under no obligation to probate the will in order for the devises and bequests therein to be effective.

On October 18, 2005, after the primary briefs had been submitted, this Court issued its request for additional briefing, outlining three main areas of inquiry raised by the parties' primary briefs in the case. First, the Court asked questions regarding the ownership structure of the KR businesses prior to the death of Indalecio Rudimch in 1967. That is, even if the Court were to give effect to Indalecio's will, it must still determine what property Indalecio could pass on to his son. For example, if Indalecio and Kukumai held the KR businesses together in a joint venture or partnership, Indalecio would only have been competent, at most, to pass his one-half interest to Isidoro. Second, the Court questioned whether Indalecio's will should be given effect at all, and, if not, what statute or procedure should control distribution of the estate. Third, the Court sought additional information regarding the ways Indalecio's children—that is, Isidoro and his siblings—treated the businesses during Isidoro's lifetime.

The Joint Executors filed a response to [p.298](#) the Court's request for additional briefing on December 9, 2005. As they rightly pointed out, trying to discern the ownership structure of the KR businesses between Indalecio and Kukumai prior to Indalecio's death would be incredibly difficult. The time period in question began sometime after the Second World War and ended upon Indalecio's death almost forty years ago. Indeed, almost all of the evidence presented by the Respondents in this regard was in the form of testimony elicited from former employees, who are now quite old and only remembered that Kukumai exerted varying degrees of control over the day to day operations of the businesses. To show that Indalecio was the sole owner of the KR businesses, the Joint Executors further asserted that Indalecio's will serves as

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

indicia of the ownership structure between Indalecio and Kukumai, i.e., it was drawn contemporaneously with the events in question and demonstrates at least his belief that he owned the KR businesses and had the power to pass them on to his son. With respect to the Court's suggestion of a joint venture or partnership between Kukumai and Indalecio, the Joint Executors admitted that "there is little doubt that Kukumai worked in the business, had some degree of control over it, and shared in the profits of the operation," at least to the extent that the profits were used to support her and her children. However, they claimed there is no evidence that Kukumai contributed any money at the outset to help finance the small business. The Joint Executors contended that this, combined with the post-War, male-dominated business culture, rendered it more probable than not that the businesses belonged solely to Indalecio.

As to the validity of Indalecio's will, the Joint Executors stated that there was simply no need for Isidoro to have the will probated because "a will is a donative document of transfer intended to be legally operative to effect a transfer of property upon the donor's death." *Restatement (Second) Property* § 33.1 (1971). Because probate of a "decedent's estate is purely statutory," and there was no statute in Palau in 1967 that required the will to be probated for it to be legally effective, Isidoro had no legal obligation to do so. 31 Am. Jur. 2d *Executors and Administrators* § 2. Moreover, that his other siblings and his mother knew about the will and did not contest his ownership of the businesses provided him no practical reason to probate it. They stated that, because Respondents dispute the bequests under a will they knew existed, they had an obligation under law to challenge that will within the time specified under the applicable Palau Statute of Limitations. The two possible statutes that would apply, 14 PNC § 405 (six years) or 12 PNC § 402 (twenty years), would bar them from now contesting it.

On the same day, Respondent Chin replied, stating that, following Indalecio's death, all of the family members continued to share in the profits of the business through monthly stipends and funds for building houses or other facilities. Moreover, each had the authority to charge items without having to pay them back. This, coupled with the testimony relating to Kukumai's daily management and control over the businesses prior to Indalecio's death, made it reasonable to conclude that Kukumai maintained ownership of the businesses after Indalecio's death. Chin also took issue with the idea of allowing Isidoro to take via intestate succession, p.299 that is, if the Court determined not to give effect to Indalecio's will. The gist of Respondent's argument was this: even though Palau's intestate succession laws would allow Indalecio's property to come to Isidoro, a person in possession of a will that designates *that* person as administrator of the will should not be entitled to withhold the will from probate for thirty years and then take under intestate succession. Chin claimed that "certainly estoppel and laches would apply." Finally, Respondent argued that (1) Isidoro never attempted to probate the will, (2) Kukumai continued to manage the business after Indalecio's death, including the hiring and firing processes, (3) Kukumai determined the amount of monthly allowances and the extent to which they could be used for various projects, and (4) Kukumai insisted that Isidoro return certain properties to her which he had placed in his name.

Respondent Singeo filed a response on the same day, pointing to various pieces of testimony, including her own, that her mother Kukumai actually started the business and operated it during Indalecio's lifetime. She noted testimony of Singeko Olkeriil that Kukumai

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

ordered merchandise, set prices, hired employees, and expanded the business. Singeko also testified about a conversation she had with Kukumai, involving the following exchange:

There was one time . . . I said to her that, Kukumai, Isidoro is very lucky, he's the only son that she has and he's lucky, and Kukumai said, have a seat and we talk . . . and she told me that this business was not going to only one Isidoro, not only one child, its going to go to all of them, all of my five children.

(Trans. Vol. I, p. 97, lines 1-4.)

To buttress this testimony, Singeo offered Kukumai's will, which references Indalecio's will, stating:

I have seen and read the statements in the alleged will of my husband Indalecio Rudimch who passed away on November 27, 1967. That will has no force and does not deserve attention so no provision in it has ever been implemented because said will of Rudimch attempts to distribute and give out my properties which are my individual properties which I administered, bought, so Rudimch has no authority to prepare his will governing them. He was not able to govern them when he was alive so likewise he cannot govern them at death.

(Respondent Singeo's Br. at 6) (Note: Kukumai's will was written in Palauan and was translated by Respondent Singeo).

Finally, Singeo stated that Isidoro's failure to bring forth , probate, or act upon Indalecio's will clearly shows that he did not consider it an effective testamentary transfer of the property. Likewise, the other members of the family failed to step forth to challenge it because p.300 they too thought it was ineffective.

After the additional briefing concluded in the case, a status conference was scheduled for August 25, 2006. The parties then attempted mediation at the end of that year but were again unsuccessful. The case sat idle for some time as the parties and the Court navigated settlement attempts and scheduling conflicts. Finally, on July 18, 2008, Indalecio's will was offered into probate and assigned Civ. Action No. 08-203. On September 15, 2008, this Court consolidated the probate of Indalecio's will with this case. Finally, on November 13, 2008, this Court appointed Respondent Eriko Singeo, along with Eyos Rudimch and Dean Rudimch as co-administrators of the Estate of Isidoro Rudimch, alongside the Joint Executors Mark and Ivan Rudimch. The Court essentially gave life to a Stipulation between Respondents and Joint Executors, which arose after a dispute over significant tax delinquencies incurred by the Estate under the management of the Joint Executors. The Order appointing the new co-administrators is the last document contained in the file.

DISCUSSION

Despite the unimaginable duration of this case and the voluminous briefs submitted by

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

the parties, the Court returns to a simple issue—whether the KR businesses, properties, and nonbusiness assets listed in the Verified Inventory belong to the Estate of Isidoro Rudimch. If so, they should be distributed to his heirs in accordance with his oral will.⁶ If not, the Court must determine who owns them. In order to do so, the Court must first make determinations about the ownership structure of the KR businesses. [1] Because no purely legal remedy has proven satisfactory to this Court and because this case pertains to matters of descent and distribution, this Court is instructed to make these determinations with what is most consistent with equity. *Delemel*, 1 ROP Intrm. at 653C.

A. Summary of the Parties' Positions

The Joint Executors, as heirs under Isidoro's will, claim that they are entitled to the KR businesses and all of the property and nonbusiness assets listed in the Verified Inventory, because Isidoro was the sole owner of these assets and he devised his interest in them to his wife and children in his will. They claim that Isidoro was the sole owner by virtue of (1) Indalecio's will, (2) his thirty-odd years of operating the businesses as a sole proprietorship, and (3) his family's failure to contest either Indalecio's will or Isidoro's management of the businesses during his lifetime. As to Respondents' contention that the nonbusiness assets listed in the Verified Inventory were purchased with KR funds, the Joint Executors assert that Isidoro possessed independent sources of income with which to purchase those assets and Respondents have simply failed to prove that he used KR funds to purchase them.

Respondents claim that they own at least **p.301** a large portion of the KR businesses, the properties, and the nonbusiness assets, because their mother, Kukumai, retained ownership over this property after Indalecio died. They claim that Isidoro never probated Indalecio's will (which purported to pass everything to Isidoro) because he knew the will was worthless. Likewise, Respondents claim that they never sought to challenge the will because they knew it was worthless too. They now contend that Isidoro's heirs should be estopped from probating the will because Isidoro sat on his rights for so many years. Finally, they claim that Isidoro himself never actually tried to assert sole ownership over the KR businesses during his life and instead managed the businesses in a quasi-trustee capacity because (1) he was the oldest son, and (2) Kukumai was in ill-health. As a result of Isidoro's trusteeship, Respondents argue that they should be entitled to a share of the KR businesses, the properties, and the nonbusiness assets listed in the Verified Inventory because such assets were probably purchased with profits from the KR businesses.

B. Ownership Structure of the KR Businesses

The Court is charged with determining which of the parties' theories of ownership it should credit. Although the Court considered copious testimonial and documentary evidence throughout the pendency of this case, no single theory of ownership of the KR businesses has stuck. The Court's inability to make any, one legal theory stick is due in large part to the Rudimch family's nonchalant treatment of both the KR businesses and Indalecio's will over the

⁶As this Court noted earlier, the parties have stipulated that Isidoro's will should be considered effective according to Palauan custom. (*See* Stipulation, April 20, 2000.)

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

thirty-two years between his death in 1967 and Isidoro's death in 1999. The businesses were treated casually; Indalecio's will was treated casually; yet now, the parties ask the Court to assign one of their formal legal theories to them. Under the law, this Court simply cannot do so. Equity, however, regards substance over form. Lest the Court be seen as simply cutting the Gordian knot, the Court shall first outline the legal theories it considered before turning to an equitable distribution of the Estate.

Two ownership questions exist here. First, what was the ownership structure of the KR businesses prior to Indalecio's death in 1967? And second, which necessarily follows from the first, what was the ownership structure during Isidoro's lifetime, until his death in 1999?

1. The ownership structure of the KR businesses prior to Indalecio's death.

With respect to the ownership structure of the KR businesses prior to Indalecio's death, Respondents' theories of a partnership or joint venture between Kukumai and Indalecio are belied by a notable lack of any firm contractual arrangement between the parties. In the case of a partnership, the law almost always requires a formal contract or partnership agreement. 59A Am. Jur. 2d *Partnership* § 1 ("Partnership is a legal relationship . . . arising out of a contract."). Although a contract is "essential to the formation of a partnership," "the contract may be implied from conduct and circumstances alone." 59A Am. Jur. 2d *Partnership* § 89 (2003). Moreover, although married persons can form a partnership together, the existence of a marital relationship does not by itself prove the existence of a partnership. *Id.* Instead, courts routinely require some other indicia of partnership and a p.302 clear intention to form such an association. *Id.* Because the events between Kukumai and Indalecio occurred so long ago, and because Indalecio's will itself shows no evidence, at least from his perspective, that a partnership or joint venture was ever formed, it is doubtful that Indalecio and Kukumai ever entered into a formal partnership agreement.

Likewise, with joint ventures, parties need (1) joint interest in property with the contributions being equal or of the same character; (2) express or implied agreement to share profits and losses of the venture; and, (3) action or conduct showing cooperation in the venture. 46 Am. Jur. 2d *Joint Ventures* § 1. This theory would seem closest to the actual situation between Kukumai and Indalecio, except for the glaring fact that joint ventures are commonly only used for a single, limited purpose, for a short period of time. *Id.*

After considering both options, the ownership structure of the KR businesses prior to Indalecio's death was probably in the form of an implied partnership between Kukumai and Indalecio. Reduced to its essentials, a partnership is a combination by two or more persons of capital, labor, or skill, for the purpose of forming a business for their common benefit. The elements of a partnership are (a) an association of persons to combine property, money, effects, skill, and knowledge under a contract or agreement to carry out a lawful business enterprise for profit; (b) co-ownership of the business enterprise; (c) the conduct or contemplation of business activity; (d) a community of interest in the business profits, management, and control; and (e) the sharing of profits and losses from the business enterprise. 59A Am. Jur. 2d *Partnership* § 131. *See also Song v. Fejeran*, 8 TTR 252, 254-55 (1982) (stating "the requisites of partnership are

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

that the parties must have joined together to carry on a trade or adventure for their common benefit, each contributing property or services and having a community of interest in the profits.”). At the inception of Koror Wholesalers, both Indalecio and Kukumai clearly contributed to the business and shared the profits. The evidence suggests that Indalecio dealt with the paperwork side of the business, while Kukumai managed many aspects of the business itself and the employees. When applied to the facts of Indalecio and Kukumai’s business relationship, all the elements are met, except the presence of a written contract. The Court finds that Indalecio and Kukumai operated the KR businesses as an implied partnership.

2. *The ownership structure during Isidoro’s lifetime*

Although Isidoro’s name appeared on the businesses licenses and although he exerted managerial control over the businesses, the Joint Executors’ theory of Isidoro’s sole ownership is belied by three primary facts. First, although probative of ownership, his name on the business licenses does not conclusively establish ownership. Second, it is uncontested that Isidoro distributed profits to his siblings, described by the Respondents as an “owners draw.” Third, his mother exercised varying degrees of control over the businesses during Isidoro’s management of the businesses.

The Respondents’ business trust theory appears to be a better—but not exact—fit. The p.303 theory propounds that Kukumai and Isidoro operated the KR businesses as a business trust, in which Kukumai and the children shared equally as beneficiaries, and with Isidoro and Kukumai acting as co-trustees and as co-beneficiaries. Indeed, “[o]ne of the distinctive devices by means of which individuals may combine their resources to operate a business for profit is the so-called business trust.” 13 Am. Jur. *Business Trusts* § 1. It is created by the voluntary act of the parties and is based on contract. *Id.* Title to the capital of the organization is vested in trustees, who usually manage the affairs of the trust. The beneficial interests in the trust estate and the profits are usually evidenced by transferable certificates. *Id.* Finally, to determine the existence of a business trust, courts routinely use the control test, i.e, the more power the beneficial interests have over the affairs of the business association, the more likely it is that the association is a partnership rather than a trust. *Id.* This theory appears closest to the actual situation between Isidoro and his mother and siblings, except for the almost complete lack of compliance with the requisite formalities. For example, the parties executed no contract, nor did they distribute transferrable certificates.

Because Indalecio and Kukumai operated the businesses during Indalecio’s lifetime as an implied partnership, the Court finds that Indalecio had the power to dispose of all of *his* interest in the KR businesses upon his death, that is, his one-half interest. Therefore, in the days immediately following Indalecio’s death, the ownership structure of the KR businesses was that of an implied partnership between Kukumai and Isidoro. The Court finds that Kukumai and her other children probably never challenged the will because they were acting under this assumption. However, the Court further finds that Kukumai and Isidoro’s operation of the KR businesses over time manifested their intent that the businesses should actually be operated as an implied business trust, in which Kukumai and her children would be beneficiaries and for which Kukumai and Isidoro would serve as co-trustees. Indeed, the facts on the ground lend credence

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

to this assumption. Although the family did not refer to the arrangement as an implied business trust, nor was there any contract between the parties or other requisite formalities creating such a trust, the Rudimchs consistently neglected properly documenting their business affairs. Even though Kukumai's will expressly rejected that Indalecio's will was capable of transferring ownership in the KR businesses, her previous statements that the businesses should benefit all her children are far more reliable and more indicative of such an understanding between herself and Indalecio.

In implying a business trust arrangement between Kukumai and Isidoro, the Court returned to the touchstone consideration in determining the proper descent and distribution of wills—the intent of the parties. Despite all the comings and goings and legal maneuverings, both Indalecio and Kukumai intended for their children to benefit from the businesses. Indalecio allowed each of his children and his wife to benefit from the profits during his life. Kukumai not only mentioned that she wanted all of her children to benefit but also rarely challenged Isidoro's management of the businesses during *his* lifetime. Finally, Isidoro's operation of the businesses demonstrated his understanding that he was acting as a trustee of a business trust, allowing his p.304 mother, as co-trustee and co-beneficiary, to retain some decision-making powers to the extent her health would allow, and continuing to distribute owner's draws to members of his family according to their needs. Combined, these factors clearly coincide with a business trust theory in which Kukumai and Isidoro acted as co-trustees.

To summarize, the Court finds that, upon Indalecio's death, Indalecio passed a one-half interest in the KR businesses to his son Isidoro. At the time, Kukumai retained her one-half interest. However, the resulting business arrangement between Kukumai, Isidoro, and the other children, evolved into an implied business trust agreement, in which Isidoro and Kukumai clearly acted as co-trustees and co-beneficiaries by managing business affairs and distributing owner's draws to the other beneficial interests. In making this finding, the Court rejects Respondents' contentions that the KR businesses were either a sole proprietorship under Kukumai's control or a partnership between them and Isidoro. [3] Under the control test, which courts routinely use to differentiate a business trust from a partnership, the more power the beneficial interests have over the affairs of the business association, the more likely it is that the association is a partnership rather than a trust. 13 Am. Jur. *Business Trusts* § 1. Here, the beneficial interests did not exert a high premium of control over the businesses at all. Some worked as employees in the businesses and perhaps even had some limited decision-making power. But the lion's share of all business dealings was controlled almost exclusively by Isidoro, with Kukumai exerting a veto power consistent with her role as an aging co-trustee. Applying the control test, the Court finds that the KR businesses were indeed operated as a business trust, in which Isidoro and Kukumai acted as co-trustees. However, the Court finds that, when Kukumai gradually became more and more incapacitated, Isidoro became sole trustee of the KR business trust. *See Restatement (Third) of Trusts* § 32, cmt. c. (2003) (An "incompetent adult can acquire or hold property either beneficially or as trustee. Because transfers and contracts by persons under legal disability are voidable, however, such an individual cannot act as trustee, at least until the disability is removed."); *See also* 13 Am Jur. *Business Trusts* § 46 (The death or disability "of a trustee of a business trust ends his interests under the trust agreement."))

C. Equitable Distribution of the Estate of Isidoro Rudimch

In the Verified Inventory of the Estate of Isidoro Rudimch, the Joint Executors listed the following assets of the estate: (1) six businesses (Koror Wholesalers, KR Shopping Center, KR Hardware, KR Apartments, Western Pacific Communications, and FT Apartments); (2) various stocks; (3) twenty-seven bank accounts; (4) six pieces of personal property; (5) thirty-nine pieces of land/claims to land/leases; and (6) four personal loans owed to Isidoro. Respondents claimed almost all of these assets on the grounds that the assets are either part of the businesses owned by them or were purchased with business funds. Respondents also asserted that, to the extent new business ventures were funded by KR funds, all such new ventures are now owned by them and the late Isidoro Rudimch. Respondents went even farther and asserted that, because Isidoro had management responsibility over KR p.305 Construction, Honda Marine, Midtown Tire Shop, and Topside Mobil Service Station, they owned these businesses as well.⁷

As for the nonbusiness assets, Respondents argued that they own the stocks, bank accounts, almost all of the buildings, almost all the pieces of real property, and the loans. Despite their claims, there has been relatively little discussion in the numerous briefs regarding who owns these “other” assets and why. However, the Joint Executors have claimed these properties because they were listed in official documents in Isidoro’s name. Finally, within the Verified Inventory, there are (surprisingly) some items of property that remain uncontested between the parties.

Accordingly, the Court turns finally to the proper distribution of the Estate of Isidoro Rudimch. The Court shall make determinations in the following order: (1) Ownership and Distribution of the KR businesses; (2) Ownership and Distribution of Nonbusiness Assets; and (3) Distribution of Uncontested Property.

1. Ownership and Distribution of the KR businesses

Having exercised its equitable powers to decide that (1) Isidoro and Kukumai administered the KR businesses as a business trust for the benefit of each other and the Respondents, and (2) upon Kukumai’s increasing incapacity, Isidoro eventually became sole-trustee, this Court must now determine the status of the business trust upon Isidoro’s death in 1999.

When Isidoro orally declared his will to Oldiais Ngiraikelau, he bequeathed all of his property, both real and personal, to his wife and children. Because, by this point, Kukumai’s control over the business had substantially waned due to her health, the Court finds that he intended this to include his sole title to the business trust of the KR businesses. [5] Under the statutes of most states in the United States, the trustee has no power to devise or bequeath the trust property, unless such power is conferred on him by the trust document. If the trust document does not provide for the passage of trust title, the title to the trust vests in the Court or

⁷Honda Marine, Midtown Tire Shop, and Topside Mobil Service Station were not listed in the assets of the Estate provided by the Joint Executors.

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

is suspended until a new trustee is appointed. *Restatement (Second) of Trusts* §105, cmt. b (1959). Palau has no statutory provision directing how trust title should pass in a will. As it happens, though, the common law rule does not drastically depart from most statutory provisions. “Although the title to the trust property passes to the devisee or legatee, he is not permitted to administer the trust unless by the terms of the trust he is so authorized. If he is not so authorized a new trustee will be appointed.” *Id.* at §105, cmt. a. “A new trustee can be appointed (a) by a proper Court; or (b) by a person authorized under the terms of the Court to appoint a trustee.” *Id.* at § 108.

This Court finds that, upon Isidoro’s death, title to the business trust vested in the Court, because there was no trust document that would have guided the passage of the trust title upon his death. As a practical matter, however, p.306 the Joint Executors have essentially been acting as *de facto* trustees of the business trust since Isidoro’s death. Because this Court appointed Respondent Singeo, along with Eyos Rudimch and Dean Rudimch, as co-administrators of the Estate of Isidoro Rudimch on November 13, 2008, they also have been acting as co-trustees alongside the original Joint Executors. Therefore, as it stands now, the KR business trust is currently being managed by co-trustees, who have been appointed by the Court. Up to this point, these co-trustees have appeared incapable of managing this trust together; however, their inability to work together is likely more a result of the uncertainty surrounding the ownership of the assets of the Estate and less a consequence of their lack of desire to see the businesses thrive. Thus, this Court shall not dissolve the business trust, which it has the equitable power to do, but shall appoint the existing co-administrators of the Estate as the new co-trustees of the KR business trust. Accordingly, co-administrators Eriko R. Singeo, Eyos Rudimch, and Dean Rudimch, along with the former Joint Executors Mark and Ivan Rudimch, are hereby appointed co-trustees of the KR business trust, to administer the businesses as fiduciaries for the benefit of themselves and the other beneficial interests, including, but not limited to, Shirley Rudimch, Eunice Rudimch, Evelyn Rudimch, Sean Rudimch, Miriam Chin, Magdalena Ngirmang, and Matthew Rudimch.

To summarize, the Court finds that, upon Isidoro’s death in 1999, he attempted to pass title to the business trust to his wife and children. However, there was no trust document stating that trust title was capable of being so devised, and title to the trust therefore vested in the Court. Upon the Court’s appointment of Mark and Ivan Rudimch as Joint Executors in early 2000, and later upon the Court’s appointment of Respondent Eriko Singeo, Eyos Rudimch and Dean Rudimch as co-administrators of the Estate of Isidoro Rudimch, the trust has been operated for the past ten years by *de facto* trustees who, as a result of the ongoing uncertainty about ownership of assets in the Estate, have been in a hopeless deadlock that has paralyzed its business and activities. This Court’s forthcoming distribution of the Estate’s nonbusiness assets should inject some certainty into this prolonged dispute. Although it has the equitable power to do so, the Court shall refrain, at least for now, from dissolving the business trust, winding up its affairs, and distributing the proceeds, because the existing businesses are best left to the family’s continued management, which is adequately represented by the new co-trustees of the KR business trust.

The Court hereby orders the new co-trustees of the KR business trust to convene a

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

meeting within sixty (60) days of this Decision to outline the new contours of the KR business trust and to report to the Court no later than ten (10) days after said meeting. [6] It is important to note that “no special form need be followed in creating a . . . business trust, and it is even possible to create such trust without the use of the word ‘trust’ or ‘trustee’ where the intention to do so appears from the instrument as a whole.” 13 Am. Jur. *Business Trusts* § 12. However, the instrument that the new co-trustees adopt shall embody all the necessary elements of a business trust, which are: (1) an unequivocal declaration of trust; (2) a vesting of title in named trustees (which can be evidenced by reference to p.307 this Decision); (3) a description of the character and nature of the businesses to be carried on; (4) an outline of the powers and duties of the trustees, including voting authority and other requirements; (5) provisions for the tenure and election of new trustees; and (6) the issuance of certificates of beneficial interest and the transfer thereof, with a statement of the rights of the shareholders with respect to profits and dividends. If desired, there may also be provisions fixing the term and duration of the trust and limiting the liability of shareholders and trustees to third persons. *See generally* 13 Am. Jur. *Business Trusts* § 12.

To be sure, if the new co-trustees fail to pursue their duties in this manner and return to this Court in yet another deadlock, the Court will use its equitable powers to dissolve the business trust and distribute the proceeds. Indeed, “where a Court of equity has assumed jurisdiction of an action to dissolve a business trust, it may adjust all the rights between the parties and will retain jurisdiction until that end is accomplished.” 13 Am. Jur. *Business Trusts* § 89. Therefore, in issuing this decision, the Court hereby retains jurisdiction over this matter at least until the co-trustees come to an agreement over the terms of the KR business trust.

2. Ownership and Distribution of Nonbusiness Assets

The Court vested title to the KR business trust in the new co-trustees because there was ample evidence on the record that Isidoro and Kukumai intended the KR businesses to be operated like a trust, for the benefit of the Rudimch family. This Court sought to breathe new life to this intention by appointing the new co-trustees to manage the KR business trust for the benefit of their heirs. However, this Court must now address Respondents' claimed interest in the nonbusiness assets listed in the Verified Inventory. First, they have claimed ownership in Isidoro's shares of stock, stating that they were allegedly purchased with KR funds. Likewise, they have claimed ownership in the real property based on the "understanding that KR funds were used to purchase all such real property." Moreover, with respect to the loans due to the Estate, they contend that "[t]o the extent KR funds or other assets were used in extending the loans . . . Respondents claim ownership to the same." Finally, as for the bank accounts, Respondents assert that they should not be listed as part of Isidoro's estate "unless it can be shown that Isidoro Rudimch's personal funds and not KR Funds were deposited into any of them."

There are at least three problems with Respondents' claims to these properties. First, to the extent that the properties are listed in Isidoro Rudimch's name, Respondents—and not Mark and Ivan as former Joint Executors—must establish that the properties were purchased with KR funds or that the bank accounts contain KR monies. Respondents have failed to do so. Respondents have not presented evidence that KR funds were used to purchase these other assets or were commingled with these other assets. Respondents argue that the onus should be on the Joint Executors to establish that the "other" assets are Isidoro's individual and separate property. Instead, in light of the evidence that the property is in Isidoro's name, the burden is more properly on Respondents to trace the source of the monies that purchased the "other" assets. As a general rule, the party who **p.308** objects to an issue bears the burden of proof. *See Ngirmang v. Filibert*, 9 ROP 226, 228 (Tr. Div. 1998) ("The burden of proof on an issue is generally placed on the party who would lose if no evidence were presented on either side of the issue."). Here, Respondents' only evidence amounts to little more than speculation that Isidoro probably or simply "must have" used KR funds to obtain all of these properties.

The second problem with Respondents' arguments regarding the source of the nonbusiness assets is that tracing the source of the assets is likely impossible now. As this Court has said before, much of what went on at the KR businesses was undocumented or, at the very least, these documents have not been introduced into evidence. Not only have Respondents failed to provide evidence that the properties claimed as assets came from KR funds, it is also likely that no such evidence exists because everyone in the family, including Isidoro, apparently treated KR money like his own. This presents especially difficult problems with respect to the various bank accounts in Isidoro's name. Some of them were undoubtedly business accounts; some were probably personal accounts. At this point, the Court lacks the competence to trace their proper source.

Finally, and perhaps most importantly, even if Respondents could prove that the nonbusiness assets in the inventory were purchased with KR funds, this does not mean that the

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

assets are not Isidoro's. [7] It is true that, "[w]here property standing in the name of a decedent was purchased with funds of another, there is normally a presumption that decedent held title to the property in trust for the one advancing the purchase price and that such property is not an asset of the decedent's estate." 31 Am. Jur. 2d *Executors and Administrators* § 473. Thus, if Respondents established that Isidoro used KR funds to buy property in question, and KR funds were in the bank accounts, the burden would shift to the Estate to prove that Isidoro personally owned the property. Here, there is good reason to believe that, even if Isidoro used KR funds to purchase property, the property should be considered his. First, Respondents themselves acknowledge that KR money was used to buy things for Kukumai's children. According to Respondent Singeo's pretrial statement, the KR businesses bought two houses in Guam for Toni, a house and an apartment for Huana's children, a house for Eriko, and a house for Kukumai's brother, Max. It is also undisputed that Isidoro ran the family businesses for many years. Doubtless, he was entitled to compensation for this work, and it is quite possible that he bought the claimed assets with money as part of his compensation for running the business. Put simply, Respondents have failed to trace the source of the nonbusiness assets of the Estate to the KR businesses, and, even if they did trace the source to KR, there is good reason to believe that Isidoro was still entitled to the properties purchased as a result either of his share of the business or as compensation for his work.

Accordingly, the Court finds that the nonbusiness assets listed in the Verified Inventory, which include various stocks; twenty-seven bank accounts listed in Isidoro's name; six pieces of personal property; thirty-nine pieces of land/claims to land/leases; and four personal loans owed to Isidoro, rightfully belong to the p.309 heirs of Isidoro Rudimch, with the following exceptions.⁸⁹ First, to the extent that any of the properties listed in the Verified Inventory represent homes in which any of the Respondents or other beneficial interests (such as the children or siblings of Isidoro Rudimch) are currently living, those homes shall remain in the possession of those inhabiting them. Second, the Court must address the intractable situation with respect to the bank accounts and the real property. Foremost, all of the bank accounts listed in the Verified Inventory are listed in Isidoro's name; however, this Court is unable to separate those which were in his name because of being tied to his personal accounts from those which were in his name because of his role as trustee of the KR business trust. Moreover, the Court lacks the competence to accurately parse out the thirty-nine land claims and leases between those associated with the KR business trust and those associated with Isidoro's personal Estate.

⁸⁹The Estate of Yasko Rudimch ("Yasko") has not been consolidated with this matter and is currently stayed pending the outcome of this case. Suffice it to say, the record appears to show that Yasko died intestate, and the "disposition of an intestate decedent's property is governed by the statute in effect at the time of death." *Ngirchokebai v. Reklai*, 8 ROP Intrm. 151, 152 (2000). Yasko died on September 28, 2005. Thus, her real property will likely pass in accordance with 25 PNC §301 and her personal property will pass in accordance with customary law. *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33 (2008) ("Absent an applicable descent and distribution statute, customary law applies."). The Court reemphasizes that this case is not consolidated here and thus beyond the scope of this decision; however, it would appear, upon a cursory review, that Yasko Rudimch's real property would pass to her oldest male child, Ivan Rudimch. Her personal property, however, would pass to the proper customary heirs, and "who the customary heir happens to be is a question of fact to be established by the parties," at trial. *Obak v. Joseph*, 11 ROP 124 (2004).

In re Rudimch, 16 ROP 289 (Tr. Div. 2009)

Accordingly, the new co-trustees shall identify these business accounts and properties during their meeting outlining the contours of the KR business trust and distribute them either to the KR business trust or to the Estate of Rudimch accordingly. The co-trustees are reminded that their new roles place them in a fiduciary capacity to the trust and to the beneficial interests.

3. Uncontested Property

Respondents specifically do not claim “Items 5, 20, 21, 37, 38, 39 and the lot on which Topside Mobil Service Station is located” under the items listed as Real Property in the Verified Inventory. Thus, the Court declares that such property is property of the Estate of Isidoro Rudimch and now rightfully belongs to his heirs. Before the death of Yasko Rudimch, this uncontested property would have passed to Yasko and to the children equally under the terms of his oral will, an undivided one-half interest to Yasko and an undivided one-half interest to be shared equally by Isidoro’s children, Dean, Evelyn, Eyos, Shirley, Eunice, Sean Lee, Ivan, and Mark Rudimch. However, since her intestate death, Yasko’s undivided one-half interest should pass in accordance either with 25 PNC §301 or with customary law. In either event, this distribution will be given effect only after this Court’s ultimate determination in the Estate of Yasko Rudimch, Civil Action No. 08-153. See p.310 FN 8 on previous page.

CONCLUSION

The foregoing Decision embodies this Court’s attempt to meet the judicial mandate to seek equitable resolutions in Estate cases. Of course, the Court would have preferred to leave these inherently familial matters to be settled by the exercise of goodwill and fair dealing between the family members. However, the passage of over ten years and the many failed settlement attempts obligated this Court to render a decision and bring some degree of closure to this protracted dispute. Finally, the Court is aware that its Decision today may leave some questions unanswered. To the extent that this is the case, the Court shall entertain Motions for Clarification over the next thirty (30) days.