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KING COUNTY
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CASE NUMBER: 10-4-00500-2 SEA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re the Estate of:

STEPHEN GEORGE POTHIER,

Deceased,

NO. 10-4-00500-2 SEA

JOHN POTHIER'S REPLY TO KARA
POTHIER'S¹ RESPONSE TO MOTION
FOR REVISION OF COMMISSIONER'S
ORDER PARTIALLY APPROVING
SETTLEMENT AGREEMENT

I. REPLY

There were three faulty bases for the Commissioner's ruling: (1) a "stipulation" for mediation which John Pothier was never presented with and which circumvented RCW 11.96A.300(2)'s procedural requirements; (2) that John Pothier's interests where "virtually represented" by his siblings who were actually asserting claims against one-another; and (3) that the Cook v. Brateng case resulted in John Pothier being able to pursue only the amounts remaining from the MetLife policy.

The result of the Commissioner's ruling, though, is that John Pothier could be bound by a settlement agreement that: (1) saddles him with defending and holding his bickering siblings and others harmless from a multitude of claims; (2) forces him to release any and all claims against these persons; (3) provides him no benefit; (4) he did not sign and enforcement of which

¹ Kara Pothier and Theresa Pothier each filed memoranda opposing John Pothier's Motion for Revision that were each 12 pages long. John Pothier is filing separate response memoranda to each opposition memoranda that will not exceed five pages.

1 violates CR 2A, RCW 2.44.010 and RCW 11.96A.220's directive that such agreements, "shall
2 be evidenced by a written agreement signed by all parties" (emphasis added); and (5) deprives
3 him of the right to pursue claims against others for the ill-gotten gains from a non-probate asset
4 in which Dominic Harper clearly violated RCW 11.94.050(1) by directing such proceeds to CO2
5 Petrol, LLC of which he and Theresa Pothier are members. All John Pothier asks is not to be
6 bound by a settlement agreement resulting from an estate dispute in which he never asserted any
7 claims and which occurred before he found out he had rights to a non-probate asset.

8 Binding John Pothier to this settlement agreement violates CR 2A, RCW 2.44.010 and
9 RCW 11.96A.220's requirement that to be valid, a settlement agreement must be stipulated to on
10 record in open court or memorialized by writing signed by the party to be bound. *See e.g., Bryant*
11 *v. Palmer Coking Coal Co.*, 67 Wn. App. 176, 834 P.2d 662 (1992) (reversing a trial court
12 decision to enforce a settlement agreement not signed by the party to be bound).

13 **A. The True Issue in Dispute**

14 The undisputed facts are that *after* the mediation in this matter took place and a written
15 settlement agreement was signed by persons other than John Pothier, an interpleader action was
16 filed in federal district court in Dallas Texas where he was named as an interpleader defendant
17 with potential rights to proceeds from Stephen Pothier's insurance policy with MetLife. John
18 subsequently learned that Dominic Harper, prior to the interpleader action, directed over
19 \$300,000 of those policy proceeds to himself and to CO2 Petrol, LLC which he and Theresa
20 Pothier own. John Pothier obtained partial relief from the Commissioner that the settlement
21 agreement does not bind him from pursuing the remaining proceeds in the interpleader action in
22 Dallas. However, the Commissioner refused to agree that the settlement agreement would not
23 bar John Pothier from pursuing claims related to the monies from the policy that were diverted
24 before the interpleader action was begun. That is what John Pothier seeks relief from. Dominic
25 Harper and Theresa Pothier simply want to use the settlement agreement as a shield to prevent
26

1 John Pothier from pursuing the ill-gotten gains that Dominic Harper distributed to him and to
2 Theresa from the MetLife insurance policy.

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4 **B. It is clear that Dominic Harper violated RCW 11.94.050 and In Re Palmer. John Pothier should not be considered to have released claims against Dominic Harper or CO2
5 Petrol, LLC to pursue insurance policy proceeds directed by Dominic Harper to himself or elsewhere.**

6 There is no dispute that Dominic Harper, as the “attorney-in-fact” for decedent Stephen
7 Pothier, directed over \$300,000 in proceeds from MetLife to himself and to CO2 Petrol, LLC –
8 an LLC in which he and Theresa Pothier are members. Magically, as part of the “settlement
9 agreement” those monies will stay right where they are. John Pothier received none of them in
10 the settlement yet he is saddled with the burden of a complete release of any and all claims
11 against these people. RCW 11.94.050 clearly states that an attorney-in-fact is barred from
12 making any gifts or transfers of property owned by the principal (Stephen Pothier) unless it
13 benefits the principal alone. The Court of Appeals affirmed this in In re the Estate of Palmer, 145
14 Wn. App. 249, 187 P.3d 758 (2008) (affirming trial court’s determination of liability of
15 decedent’s daughter to the estate after she transferred money and security from the decedent’s
16 accounts to herself and made gifts and loans of decedent’s funds). Dominic Harper did the same
17 thing and the LLC benefitted to the tune of approximately \$300,000 and now John Pothier who
18 did not settle any claims against these people could be barred from seeking recoupment of those
19 funds if it is determined he is the rightful beneficiary of the MetLife policy.

20 While John Pothier appreciates Kara Pothier’s concession that the settlement agreement
21 does not impair John Pothier’s individual claims, such concession is empty because Kara Pothier
22 desires to assert no claims to the MetLife insurance monies. Notably, Theresa Pothier makes no
23 similar concession thereby fully illustrating that Theresa Pothier could not have ever protected
24 John Pothier’s interest under the doctrine of virtual representation.

25 **C. The doctrine of virtual representation does not apply.**

1 Kara Pothier asserts that John Pothier’s “interest as a statutory heir was the same as that
2 of his three siblings[.]” *Response* at 8. Which siblings? John Pothier’s siblings were entrenched
3 in disputes with one another in this estate and were asserting claims against each other. If Kara
4 Pothier’s statement were true, then John Pothier would have received the same financial benefit
5 that his siblings received out of the settlement agreement. Instead, he received nothing but
6 burdens of releases and requirements of defense and hold harmless directives. Theresa Pothier
7 walked out of the mediation with the benefit of \$300,000 having been directed to her LLC and
8 with the agreement that she received the rest of the MetLife proceeds. If John Pothier’s interests
9 were aligned with or protected by sibling Theresa Pothier then where is the directive in the
10 settlement agreement that John equally share in those proceeds? It does not exist. RCW
11 11.96A.120(3) specifically provides that a party is not virtually represented by another if a
12 conflict of interest is known to exist.

13 **D. The Commissioner’s reliance on Cook v. Brateng was misplaced**

14 In holding that John Pothier can only pursue the funds remaining from the MetLife policy
15 in the interpleader action, the Commissioner mistakenly relied on Cook v. Brateng, to bar John
16 Pothier from pursuing the \$300,000 plus in funds that were directed by Dominic Harper to the
17 LLC. The Court in Cook v. Brateng held that a trust beneficiary was barred from seeking to
18 recoup monies expended by the decedent’s trustee prior to the decedent’s death. That case is
19 inapposite, though, because it involved a Trust which specifically required the decedent’s trust to
20 “provide as much of the principal and net income of [the] trust as is necessary or advisable in
21 [the Trustee’s] sole discretion.” No such similar directive exists here and, as noted above,
22 Harper clearly violated RCW 11.94.050 by self dealing the funds at issue to himself and to an
23 LLC in which he and Theresa Pothier have an ownership interest.

24 **II. CONCLUSION**

25 All John Pothier seeks is not to be bound by a settlement agreement that he did not sign
26 and in particular, a general release of any and all claims against individuals whom he may have

1 claims against and of which he was not aware until after the mediation took place and after the
2 settlement agreement was signed. There is no authority for the propositions asserted by Kara
3 Pothier and others to avoid the mandates of CR 2A, RCW 2.44.010 and the common law which
4 says that to be bound by a settlement agreement, a party must have signed the same. Notably,
5 even TEDRA remarks that it supplements, not contradicts the common law. Moreover, RCW
6 11.96A.220 mandates that to be binding the settlement agreement must be signed by all the
7 parties unless a special representative has been appointed pursuant to RCW 11.96A.240 which,
8 notably would require the court to determine whether the interests of the "represented parties"
9 have, "been adequately represented and protected" and, if not, "the agreement shall be declared
10 of no effect."

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12 DATED this 9 day of February, 2011.

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