20080337

IN THE COURT OF COMMON PLEAS

PROBATE DIVISION

CLARK COUNTY, OHIO

COMPUTER

IN THE MATTER OF:	:	CASE NO. 20080337
THE ESTATE OF	:	
DONALD A. STACCIA aka DONALD A STACCIA, PhD aka DONALD A. STACCIA, SR.,	:	JUDGE RICHARD P. CAREY
DECEASED	:	**DECISION-ENTRY ON INVENTORY AND EXCEPTIONS FILED THERETO**

FILED
CLARK COUNTY PROBATE COURT
MAY 8 2009
RICHARD P. CAREY
PROBATE JUDGE

Introduction

This matter came before this Court for Hearing on the Inventory pursuant to RC 2115.16 over the course of six days beginning on March 9, 2009 and ending on March 26, 2009. All interested persons were given Notice of the same. The task at hand: to determine the nature and value of all estate assets of the Decedent, Donald A. Staccia, Sr., PhD, at the time of his death on March 27, 2003.

Some history. Donald A. Staccia Sr. was a practicing substance abuse counselor for many years in the City of Springfield, Ohio who, as part of his practice, had operated a driver's intervention program for OMVI offenders. He also owned a number of rental properties in Clark County; and was part owner of the corporation, ACOSEP, which was the parent corporation of his counseling ventures.

Dr. Staccia died a resident of Clark County, Ohio unexpectedly while on his sailboat in Florida. He was survived by four children: Donald A. Staccia, Jr. (hereinafter "Staccia Jr."), Gregory Staccia, Christina Staccia, and Angela Beams. Shortly after the funeral, Staccia Jr. met with Attorney John Juergens, legal counsel to the Decedent for many years, to discuss the

Decedent's estate. However, no estate proceedings were commenced. There is conflicting testimony on this point. Juergens claims he delayed this commencement pending the resolution of the nature and extent of the Decedent's real estate holdings by Staccia Jr., who was claiming partial ownership in the same by virtue of an alleged partnership with the Decedent. Staccia Jr. claims that he, believing Juergens had filed the necessary paperwork, was at work disposing of all of the estate assets at the direction of Juergens.

No estate proceedings were commenced in Clark County over the course of the next five years; and no Letters of Authority issued. Nevertheless, during this time, Staccia Jr. engaged in a number of transactions which disposed of the Decedent's property---including parcels of real estate---which yielded hundreds of thousands of dollars. To date, there has been no accounting filed with this Court concerning these transactions.

Apparently, these events raised no suspicion until the spring of 2008, when Gregory Staccia, by and through counsel, complained to this Court that he had not received his share of the Decedent's estate. This led to the appointment of Attorney Daniel Harkins as the Special Administrator, charged with investigating the matter. Attorney Harkins did so and filed an interim report with this Court on August 5, 2008. Subsequently, Attorney Harkins was appointed by this Court as the Administrator WWA. Pursuant to that authority, Attorney Harkins filed his Inventory with this Court on October 16, 2008. It is to that Inventory and Appraisement that certain Exceptions were filed, which then led to the Hearing at bar.[1]

During this Hearing, this Court received the testimony of thirteen witnesses, and admitted into evidence one hundred forty-eight exhibits, totally several thousands of pages. The Court has

[1] The Court, pursuant to statute, assigned the matter for Hearing on November 13th. At the instance of counsel, the hearing was reassigned for December 3rd. On December 1st, this Court received Notice from the Ohio Supreme Court that an Affidavit of Disqualification had been filed seeking this Court's removal from presiding over this matter. Chief Justice Moyer rendered his written Decision denying this Affidavit on January 21st, 2009.

reviewed and considered the same; and now renders the following Decision with respect to the nature of the assets owned by the Decedent on the date of his death, and the value of the same. To this end, the Court has considered each item of the Inventory individually in light of any Exceptions which may have been filed to a particular item. It is the Exceptors to the Inventory who bear the burden of proving, by clear and convincing evidence, that the Inventory is incorrect.

Credibility

The Court begins by noting the somewhat unusual and unfortunate challenges impeding an efficient determination of the Inventory and Appraisement of this estate. It has become apparent that the Decedent, as well as a number of the interested parties hereto, either intentionally or negligently, ignored the dictates of the law, as well as good business practices, over the past twenty-seven years. Legal transactions occurred, but no records kept. Land Contracts were executed, but never recorded. Partnerships were claimed, but never memorialized. Gifts were allegedly tendered, but no legal title transferred. Legal work was performed, but few or no records or work product maintained. Corporations were placed in names other than the owners so as to avoid spousal support obligations. Corporate records were manufactured.[2] Corporate records are missing. Tax returns were prepared erroneously, but never corrected. Probate estate proceedings were necessary, but not commenced. And for five years, no one complained — a mess indeed.

Compounding the problem is that the credibility of the witnesses and the exhibits is problematic. Witnesses did not keep records of transactions, yet asked this Court to honor the contents of those records. Witness testimony was often self-serving. Witnesses waffled during

[2] Christina Staccia conceded that Roger Banyon's name was listed as attending corporate meetings, even though he was not present.

their testimony. In addition, a fair amount of testimony, quite frankly, was a bit challenging to believe. The Court affords, only by way of examples, the following:

- On a loan application dated July 2, 2002, the Decedent declared his gross income from A2Z Corporation as $165,000 per year. (Ex. 4-W). However, his 2001 Federal Income Tax Return claims no A2Z corporate income (Ex. 2-W); and his 2002 Federal Income Tax Return (prepared by Staccia Jr.) claims only $40,090 (Ex. 2-L).

- Staccia Jr. testified that whenever the name "Donald A. Staccia" appeared in a legal document, it referred to both he and his father *simultaneously*; or, in the alternative, that "Donald A. Staccia" referred to a partnership between he and the Decedent. Per his testimony, those deeds naming "Donald A. Staccia" as the Grantee actually conveyed title to both of them, or to their partnership. Strangely, when the Administrator introduced a 1985 Separation Agreement (Ex. 3-U) between the *Decedent* and his wife—which agreement addressed the distribution of property between the two parties in the divorce—Staccia Jr. maintained that when the Agreement referred to "Donald Staccia", he still could not acknowledge to whom it was referring: Staccia Jr. (clearly not a party to the divorce) or the Decedent.

- Staccia Jr. testified that he was the author of Exhibit M—a statement of his and the Decedent's percentage interests in various properties prepared shortly after the Decedent's death. He testified that he now believes he was mistaken when he attributed full ownership of five of those properties to his father, the Decedent. In Court, he testified that he, Staccia Jr., was actually half owner of all of those properties. Despite his claim that he contributed half of the purchase price of each property, he could produce no cancelled checks, no check registers, no bank statements, no receipts, and / or no contracts in support thereof.

- The day after the Decedent died, Staccia Jr. removed $30,000 from the Decedent's Key Bank account and deposited the funds into his personal Bank One Account. He repeated this days later, withdrawing $9,500 from this account. In neither instance was Staccia Jr. a signatory on the account. Though he received a Masters in Business degree, he testified that he believed he had the authority to do this pursuant to a Power of Attorney, even though the principal had died. He also testified that he believed he had the authority as executor of the Decedent's Will, even though he had not seen the Will or secured any letters of authority.

- Exhibit 2-G purports to be an email train between Attorney John Juergens and Staccia Jr. in March of 2004—one year after the Decedent's death. Within the same, Staccia Jr. asks to "finalize" Dad's estate; while Juergens asks for a "list" of assets. Juergens testified that he prepared "paperwork" to open an estate, and had received "waivers" from all of the heirs, but was never "engaged" as the estate attorney. Exhibit 3-F, purporting to be a letter from Juergens to another attorney, seems to support his position that he did not believe he was the estate attorney as of June 9, 2003. However, in March of 2006,

Juergens paid Doug Paden $500 for an appraisal conducted on all of the Decedent's real property thought to be in the estate. (Ex. Staccia-10I).

- Christina and Staccia Jr. suggest that Gregory waived his interest in the Decedent's estate in return for a refrigerator (Ex. Staccia-99). Gregory, opining that he was probably under the influence of alcohol, thought he was merely borrowing one hundred dollars.

- Staccia Jr. could not determine whether Exhibit 5-D was his or the Decedent's 2003 Federal Tax Return. Despite Staccia Jr.'s admission that he had prepared this return, he could not explain $69,500 in expenditures which he claimed on Schedule C rental properties. Indeed, he could not explain the source of the depreciation and basis he claimed on the property on his 2006 Tax Return—or even the date the properties were acquired. (See Ex. 5-G) His only explanation: he "would have to consult with an accountant."

- He claims that during the year in which he negotiated and sold the Plum St. properties to the City of Springfield, he nevertheless spent $105,274 on repairs to the same—properties for which he had not, according to income tax returns, enjoyed a profit for years. (See Ex. Gregory 1 re: 2006 income tax return).[3]

Partnership

The pivotal issue in this matter is whether or not the Decedent was in a partnership relationship with Staccia Jr.; and whether, then, that partnership, as opposed to the Decedent, owned the property currently listed as estate property on the Inventory.[4] As to this issue, the Court received the testimony of a number of family members acknowledging the existence of such a partnership. Staccia Jr. testified that he had been in a 50 – 50 partnership with the Decedent since 1981; that he had contributed equally[5] to the purchase of all of the real property; and that this partnership owned all of the real property listed in the Inventory.

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[3] A net loss was declared on all rental properties during the tax year 2000 for -$22,722 (Ex. 2-V), 2001 for -$20,777 (Ex. 2-W), 2002 for -$4,700 (Ex. 2-L), 2003 for -$1,770 (Ex. 5-D), and 2006 for -$79,934 (Ex. 5-G). The Court did not review tax years 2004 and 2005.

[4] The Court here notes that this discussion concerns the *real* property interests of the Decedent. There is, for instance, little doubt that the Decedent was a partner in a business known as "ACOSEP", discussed later as Item 11 on the Inventory.

[5] Staccia Jr. testified that he and the Decedent contributed equally to each property, but he did not have any independent knowledge of, nor could he produce any competent records showing, dates, times, or sales prices of any of the properties. Additionally, the Court notes that Staccia Jr. could afford no evidence that any property was purchased with "partnership funds." Had he been able to demonstrate such a purchase, RC 1775.07 provides that:

In its most basic form, a partnership "is an association of two or more persons to carry on as co-owners a business for profit..." R.C. 1775.05 As one might expect, there are many factors properly to be considered, nevertheless, when determining the existence of a partnership. For instance, the receipt by a person of a share of the profits of a business would be prima- facie evidence that he is a partner in the business. (RC 1775.06(D)) On the other hand, holding property in common, or part ownership, would not in and of itself establish a partnership. (R.C. 1775.06(B)).

It would appear that while the existence of the partnership was accepted as common knowledge amongst some of those in the family who testified, no one outside the family—including the decedent's attorney—knew much, if anything at all, about it. Reference was made to a "written partnership agreement." However, no one claimed to be able to produce the original or copy of the same. Indeed, it was not clear when it was prepared or who prepared it. In fact, no one claimed to know any other details about this "agreement" except that it called for an equal distribution of the profits.

Moreover, surprisingly little public representation of the existence of a partnership was made. Many doing business with the Decedent do not recall ever having heard of a partnership.[6] Of all of the deeds in evidence before this Court, none make direct reference to a partnership. Most are made out in the name of "Donald A. Staccia", and list the Decedent's residence.[7]

"[u]nless the contrary intention appears, property acquired with partnership funds is partnership property." The most he could say, however, was that on a couple of properties, he remembers paying money to the Decedent. He never could afford this Court with any details about the amount he contributed or any voucher for the same.

[6] Michael Talbert, who sold 12 different properties to the Decedent, never heard of any partnership. Sandra Swonger, the Decedent's accountant who prepared his tax returns, testified that she never heard of "Staccia & Associates;" —either from the Decedent nor Staccia Jr.— nor did she ever receive any Form K-1s regarding the Decedent. Lucille Lichtinger, the Decedent's office manager, heard of "Staccia & Associates"; but believed the Decedent was the sole owner of the same.

[7] Staccia Jr. asserts, however, that the deed alone cannot serve as the sole basis of determining the existence of a partnership, citing this Court to *Cloud v. Baldwin* (Feb.13, 1997), 8th Dist. No. 70795, at 3, 1997 WL67757. Also,

Merely four make reference to "Staccia and Associates."[8] However, there is no document to explain what "Staccia and Associates" is. No tax return makes reference to the existence of a partnership. No Schedule K-1 tax forms[9], designed to be used regarding partnership tax records, were filed between 1985 and 2003. No Certificate of Partnership was filed with the Clark or Champaign County Recorders' offices. (Ex. 2-Y, 4-L).

Staccia Jr. testified that he was *the* "associate" of "Staccia & Associates".[10] Staccia Jr. asks this Court to excuse the dearth of evidence of a partnership, explaining that "family members often deal with each other casually." See *In re Estate of Nuss* (1994), 97 Ohio App.3d 191. This Court recognizes that tendency. The *Nuss* court maintained, however, in finding that a partnership had not been established, that it was appropriate for the trier of fact to consider many other factors, in addition to a family's propensity toward informality. Interestingly enough, *Nuss*, to which Staccia Jr. cites this Court, considered many of the same circumstances as are present in the case at bar: the lack of strong evidence of the intention of the parties to operate as a

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Harvey v. Harvey (1993), 91 Ohio App.3d 404. The reason for this is that RC 1775.06 specifically states that tenancy in common or joint ownership in real estate does not, of itself, establish a partnership. In other words, the fact that a deed lists two individuals as the grantees cannot lead a court to conclude that a partnership exists. The *Cloud* case merely echoes the general understanding that courts must look at all of the circumstances to determine the existence of a partnership —that different partnerships afford different circumstances to consider. On the other hand, the fact that a deed does not mention more than one person as the grantee, or further describe the nature of the grantee, is significant evidence for a court to consider against the existence of a partnership.

[8] Staccia Jr. also advances that the fact that real property may be titled solely in the Decedent's name does not defeat the partnership theory. Citing R.C. 1775.09, along with a number of cases, Staccia Jr. claims that real partnership property can be titled only in the name of one partner. Actually, this section merely governs the manner of conveyance of partnership property. The cases conclude, by inference, that the section authorizes title in the name of but one partner. These cases, nevertheless, leave open the ultimate question of whether a particular parcel of property is partnership property. See, e.g., *State ex rel. Ross v.O'Grady* (1994), 10th Dist. No. 94APD03-443, 1994 WL 532056.

[9] Staccia Jr. further asserts that filing partnership tax returns, and forms, such as Schedule K-1s, would not have affected the tax status of the partnership insofar as the Decedent paid all taxes due and owing. This failure, however, was not introduced to show a tax liability; but rather as more evidence that the parties, themselves, did not treat this relationship as a partnership.

[10] He could not produce any formal communication signed by the Decedent referencing any partnership.

partnership; the lack of joint business records; the lack of sharing of the profits; the deposit of profits into an account to which a "partner" lacked access as a signatory.

Staccia Jr. concedes that the Decedent held 100% of the profits[11], deposited all of the profits into an account to which Staccia Jr. was not a signatory, and that he could not recall any distributions of those profits. He explains that this was merely part of their agreement.[12] He cites this Court to *Rivercrest Farm, In. v. Taber* (June 10, 1998), 1998 WL 305362 (Ohio App. 3 Dist.) in support of his position that it is not necessary that there be any sharing of the profits between the parties in order to establish a partnership.[13] However, *Rivercrest* merely restated that the handling of profits was but *one* factor in determining the existence of a partnership. In point of fact, in *Rivercrest*, the parties had not realized any "profit" at all —but kept separately their "gross returns". The *Rivercrest* court noted the separation of records and contributions of the parties as *one* basis for finding the *non*-existence of a partnership in that case. Likewise, in the case at bar, there is no evidence that the Decedent and Staccia Jr. shared or divided anything.

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[11] A review of the evidence reveals, indeed, that the Decedent claimed all profits and losses regarding all of the rental property on his federal 1040 tax returns. (See Ex. 2-L for 2002) Specifically, the Decedent listed the properties: 205 N. Plum, 209 N. Plum, 325 N. Plum, 401 N. Plum, 414 N. Plum, 507 N. Plum, 1320 Maiden Lane, 217 Rawson, 1539 W. Main, Middle Urbana Rd. Ex. 2-V for 2000.

[12] Even, however, if this Court were to accept Staccia Jr.'s proposition that it was agreed that the Decedent would hold 100 percent of the profits, the Court would normally expect to see, at some point during this 22 year partnership, some sort of distribution of money to Staccia Jr., as a partner, or at least some sort of written accounting. The record is remarkably devoid of any evidence of such a distribution or accounting.

[13] Staccia Jr. also cites this Court to *Albanese v. Grossen* (Feb. 25, 1998), 9th Dist. No.18568, 1998 SL 103328 regarding the absence of profits. Albanese suggests four factors to be considered: 1) the sharing of profits; 2) the filing of partnership tax returns; 3) co-ownership of a capital account; and 4) mutual authority to bind the business. None of these factors are present here. As to the fourth factor, Staccia Jr. failed to present an example of his conduct to bind the business.

Indeed their conduct was *inconsistent* with the existence of a partnership arrangement.[14] They filed individual, as opposed to partnership, tax returns. The Decedent claimed all of the profits and losses on his personal tax returns. The Decedent and Staccia Jr. established no joint bank account or otherwise co-mingled money from a partnership. No accounting was ever conducted or memorialized. A home owners insurance policy was issued for 1997-1998—years during the midst of the alleged partnership—solely in the name of the Decedent "PhD", insuring properties in question, and not listing Staccia Jr. as an owner. (Ex. 3-J) The weight of the evidence is that the Decedent handled the rental property as a sole proprietorship.

The Court notes other facts. In 1998, the Decedent entered into a written management agreement with Tony Staccia to manage his rentals which described the *Decedent* as the "owner". (Ex. 5-J) It is also instructive that the Decedent felt obliged to execute a document naming Staccia Jr. as his Power of Attorney on October 16, 1999—nearly 17 years after the alleged partnership was established. (Ex. Staccia -- 94)—an act seemingly unnecessary if a partnership was in existence. The Decedent's attorney of nearly 20 years compiled a list of the Decedent's assets shortly after his death—with Staccia Jr.'s assistance—which fairly well resembled the Administrator's Inventory. His notes do not suggest any partnership. (Ex. 5-B pp. 50-51).

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[14] The Administrator has opined that as there is no written agreement, that the Statue of Frauds should apply to discount the partnership. The City suggests, to the contrary, that the Statue of Frauds has no application to this case, as partnerships may operate on an oral basis. RC 1335.04 provides:

"No lease, estate, or interest, either of freehold or term of years, or any uncertain interest of, in or out of lands, tenements, or hereditaments, shall be assigned or granted except by deed, or note in writing, signed by the party assigning or granting it, or his agent thereunto lawfully authorized, by writing, or by act and operation of law."

Further, R.C. 1335.05 states:

"No action shall be brought...upon a contract or sale of lands, tenements, or hereditaments, or interest in or concerning them...unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized."

Certain parties ask this Court to excuse the alleged partnership herein from the operation of the statute of frauds. At least one Ohio Court of Appeals has rejected such an invitation saying: "the relationship as a partnership does not alter the applicability of the statute of frauds." *In re Estate of Brunswick*, 2007-Ohio-5396. This Court finds the lack of a written partnership agreement to be one of many factors against the existence of a partnership.

This Court finds, after due consideration, that there was not a formal partnership arrangement between the Decedent and Staccia Jr. with respect to the bulk of the real property listed on the Inventory. In most purchases, the Decedent acted alone. That having been said, the Court finds that there were certain purchases which could better be described as "joint ventures" between the Decedent and Staccia Jr., which those parties entered during the last years of the Decedent's life. Generally, joint ventures are treated and considered as partnerships concerning the object of the venture. In this case, this Court finds that the Decedent loosely used the name "Staccia and Associates" to signify two different entities: before 1999, as himself solely "doing business as" Staccia and Associates; and after 1999, as an informal partnership with his son, Staccia Jr.

Consistent with this conclusion is the fact that the Decedent's attorney of nearly twenty years did not recall preparing *formal* partnership papers and believed the Decedent was the sole owner of and doing business as "Staccia & Associates." And so it would not be a surprise that Exhibit V[15] —one of the few documents which bears the signature of both the Decedent and Staccia Jr. identifying the name on an account as "Donald A. Staccia DBA Staccia & Associates" and characterizing Staccia Jr. *not* as a "partner" but merely as an "agent". Indeed, the stated purpose of the document was to clarify that the owner of the account was not "Staccia Associates"—which might invite the implication of the existence of a partnership—but rather "DBA", that is, "doing business as"—which, of course, signifies a sole proprietorship. Moreover, it uses only the Decedent's social security number ("282-30-6119" per Ex. Y) and references only his residential address.

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[15] The Court finds this exhibit—a signatory document concerning a bank account at Society Bank and penned March 1st, 1996—instructive as it affords a glimpse of the Decedent's interpretation of his business relationship with Staccia Jr.

Conversely, after 2000, we find Exhibit C. Exhibit C, the Decedent's personal financial statement dated 12/19/02, represents that he was a "*partner*" in "Staccia & Associates", and further implies that this partnership concerned "rentals".

The net result is that this Court finds that the Decedent owned certain real property; and that the Decedent and Staccia Jr. owned certain other real property as "Staccia and Associates." To this end, the Court declines the invitation of Staccia Jr. to find that all deeds in the name of "Donald A. Staccia" are owned by a partnership. However, the Court is willing to find that those properties titled in the name of "Staccia and Associates" are part of an informal partnership between the two.

The necessary ramification of this is that upon the Decedent's death, the partnership dissolved. R.C. 1775.30(D). Consequently, as to these parcels of real property, the Court agrees that his interest should be deemed to be personal property rather than in real property. R.C. 1775.25. Moreover, this Court believes that, pursuant to R.C. 1775.39 and 1775.41, the representative of a deceased partner is not merely entitled to a fifty-fifty division. For upon a dissolution of a partnership, there must be a discharge of partnership liabilities, followed by a distribution of the surplus to the partners or their legal representatives. R.C. 1775.39 provides that "(B) The liabilities of the partnership shall rank in order of payment, as follows :...(3) Those owing to partners in respect of capital; [then] (4) Those owing to partners in respect of profits...." (Court added the brackets). Accordingly, the Decedent's representative would be entitled first to have the value of his capital contribution toward those parcels of real property returned to him. Then his representative would be entitled to a fifty-fifty division of the profits. See also, *Fisher v. Fisher* (July, 1997), 3rd Dist. No. 12-96-13, 1997 WL 407853.

With this in mind, the Court now, with more particularity, addresses the various items and appraisements of the Inventory.

Discussion of the Inventory

Item 1: 1986 Pearson Sailboat ("Anna-O")

The testimony was unrebutted that at the time of his death, the Decedent owned a 1986 Pearson sailboat known as the "Anna-O" which was titled in Clark County, Ohio. (Ex. F) The Decedent had purchased the boat on June 26th, 1995. Exceptor, Scott Ginesi, by way of counsel, argues that as the sailboat was found in Florida at the time of the Decedent's death, that its "actual situs" was outside of the State of Ohio and that it should not be included on the Inventory as it is not subject to Ohio Estate Tax. See RC Sec. 5731.01. Exhibit Ginesi – 2 p. 3 suggests the Decedent's intention to register the boat outside the State of Ohio. However, it appears that this did not happen.

This Court is of the opinion that what constitutes "estate assets" for estate tax purposes is very different than what constitutes "estate assets" for purposes of the Inventory. Consider, for example, life insurance proceeds and POD accounts—both considered for tax purposes; neither considered for Inventory purposes.

Also, the Administrator correctly observes the distinction between the situs of real property and personal property for purposes of determining those assets to be included in the Inventory. R.C. 2115.02 distinguishes between real property located within the State of Ohio and that located without the State. It makes no such distinction with respect to personal property. This Court believes the general assembly intended for an inventory to include all personal property therein, whether or not located within the boundaries of this State.[16]

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[16] If situs did matter with respect to personal property, consider the resulting confusion had the property been bank accounts located throughout the fifty states. The Administrator's citation of the Supreme Court case of *Swearingen v. Morris* (1863), 14 Ohio St. 424 is still appropriate despite Ginesi's contention that this Court should not consider

Ginesi also suggests that the sailboat has no "value" inasmuch as he has made more improvements in the sailboat than what it was worth. On this point, Ginesi directs this Court's attention to *Wobsner v. Tanner*(1979), 60 Ohio St.2d 28, for the proposition that the estate should not benefit unjustly from the improvements to the sailboat made at his instance. However, this Court reminds the parties that what is germane to this hearing is the value of the asset at the time of death—not subsequent thereto. What becomes of the sailboat is another matter; and more properly addressed at a later time. This Court finds that the best evidence of the sailboat's value at the date of death is its sale price shortly thereafter, to wit: $36,000.

Item 2: 1970 Chevrolet Malibu Convertible

On May 4, 1993, the Decedent purchased a green 1970 Chevrolet Malibu from the Estate of Geraldine Cooper for $3,000. (Ex. O and Q).

Staccia Jr. has filed an exception to the Administrator's inclusion of this vehicle in the Inventory. He presented testimony that the Decedent had gifted the vehicle to him as a belated "wedding gift", even though he was divorced by the time of this "gift". He supports this position with evidence that he was in possession of the vehicle at the date of death; and had been in possession of the same since the mid 1990s. Bonnie Webb, the Decedent's confidant of 16 years, was never aware of any such gift; but did recall the Decedent giving Staccia Jr. a *boat* for their wedding. On the other hand, Lucille Lichtinger, the Decedent's office manager, does believe the Decedent gave this vehicle to Staccia Jr.

Staccia Jr. testified that he paid for the insurance on this vehicle, and for items of repair. Unfortunately, he was unable to produce any insurance records substantiating this claim. And the sole proof of any repair was a purported repair bill for this vehicle from May 1st, 1998. (Ex.

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such an old case to interpret more recent case law. To the contrary, this Court believes it appropriate to assume that the General Assembly was aware of established case law about the situs of personal property and, again, intended that there not be an exception with respect to inclusion within Inventories of out of state personal property.

Staccia 3) It remains unclear to this Court why securing insurance records might prove to be such an insurmountable task. A repair bill, while it may be germane to possession, is not significant for purposes of ownership.[17]

This notwithstanding, it is not at all clear to this Court that there was ever an intended gift of the Chevrolet Malibu. To the contrary, it appears that the vehicle was an investment and that Staccia Jr.'s role was merely to store and protect this investment. After all, there was no evidence that anyone ever drove this vehicle. Nor is their any paperwork evidencing any gift of the vehicle. Even the characterization of the vehicle as a "wedding gift" is somewhat suspect, insofar as it was supposedly given after Staccia Jr. was divorced.

This notwithstanding, Ohio law holds that a gift of a motor vehicle cannot be established where the donor does not give the donee the certificate of title. *Hiple v. Skolmatch* (1950), 88 Ohio App. 529. This position is codified in R.C. 4505.04, which states in pertinent part: "No person acquiring a motor vehicle from its owner....shall acquire any right, title, claim, or interest in or to the motor vehicle until there is issued to the person a certificate of title to the motor vehicle..." Indeed, pursuant to RC 4501.01(V), the legal owner of a vehicle is deemed to be that person who "has title" to the vehicle. It remains undisputed that at the time of his death, the Decedent held legal title to this vehicle in his name alone.

Staccia Jr., however, first directs this Court to two appellate court decisions which suggest that equitable considerations may trump a certificate of title: *Howard v. Himmelrick*, 10th Dist. No. 03AP-1034, 2004-Ohio-3309; and *State v. Wegmiller* (1993), 88 Ohio App.3d 68. Those cases seem to have evolved from the Ohio Supreme Court's Decision in *State v. Schimits* (1984) 10 Ohio St.3d 83, which permitted the forfeiture of a vehicle despite the fact that the

[17] Also, the Court finds it curious that Staccia Jr. might be able to produce a random car repair bill from 1998, but unable to produce records of import concerning much else in this matter.

vehicle was titled to a third person. He contends that these cases permit this Court to consider his gift theory despite the fact that the vehicle was titled to the Decedent.

The *Schimits* Court reasoned that R.C. 4505.04 was designed merely to "protect title as between true and fraudulent title claimants and to create an instrument evidencing title to and ownership of motor vehicles." *Schimits* at p. 85. The Court was willing to carve out a "narrowly drawn" exception to permit an "equitable" ownership to facilitate a forfeiture by the State. A closer examination of *Schimits*, however, suggests that its reasoning regarding title ownership of a vehicle was, for all intents and purposes, dicta— essentially deciding the outcome of the forfeiture on other grounds.

Staccia Jr. then cites this Court to the Ohio Supreme Court case of *Smith v. Nationwide Mutual Insurance Company* (1988), 37 Ohio St.3d 150. At first glance, it might appear that the *Smith* Court also ruled to ignore the directives of titled ownership of motor vehicles under R.C. 4505.04. Indeed, that Court stated that the statute was "irrelevant to all issues of ownership except those regarding the importation of vehicles, rights as between lienholders, rights of bona-fide purchasers, and instruments evidencing title and ownership." *Smith* at P. 153. The *Smith* Court, however, then limited the import of its decision, ruling that R.C. 1302.42(B) of the Uniform Commercial Code would control regarding the issue of ownership, but only "for purposes of determining insurance coverage in case of an accident." *Smith* at P. 153.

The *Howard* and *Wegmiller* cases, cited by Staccia Jr. as authority for his position that the vehicle was gifted to him, relied on the *Smith* and *Schimits* decisions. As counsel knows, this Court is not bound by these two appellate decisions. This Court chooses not to adhere to their rulings, finding the same not to be well-reasoned. As just discussed, the Supreme Court in *Smith* was limiting its decision to instances involving *purchases* of vehicles and resulting insurance

coverage. Its decision in *Schimits* was in response to a criminal defendant trying to avoid forfeiture of his vehicle by titling it to a third person. The *Howard* and *Wegmiller* appellate courts gleaned therefrom that *equitable* considerations could be utilized to set aside the operation of R.C. 4505.04 in those cases wherein a gift of a vehicle was alleged to have been made. This Court does not find this to be good law.

This Court finds that no gift was ever intended; and that title to the Chevrolet Malibu was in the name of the Decedent at the date of his death. Accordingly, this vehicle was properly listed as an estate asset on the Inventory. The uncontroverted evidence is that this vehicle had a date of death value of $10,000 (Ex. E).

Item 3: 1997 Dodge Intrepid

This vehicle was withdrawn from the Inventory per the request of the Administrator, who represented that this motor vehicle was not an asset of the Decedent at the time of his death.

Item 4: 1988 Cadillac

No evidence was presented rebutting the position of the Administrator that the Decedent died owning a 1988 Cadillac. Indeed, Staccia Jr. admitted as much and testified that he sold this vehicle for $500.00. This testimony was buttressed by Lucille Lichtinger.

Item 5: Key Bank Account # XXX0239

The Court finds that the Decedent opened this account on July 8, 1981 in his name "dba Staccia and Associates." (Aff. Of Glen Carr). The sole evidence presented regarding this account, noted as Inventory Item 5, is that at the time of the Decedent's death, the account was in his name and revealed a zero balance ($0.00). Accordingly, this item is deleted from the Inventory.

Items 6, 7, 8: Key Bank Accounts # XXX0582, # XXX1963, and #XXX3405

Key Bank, one of the Exceptors to these accounts, stipulated that on the date of death, the Key Bank Accounts numbered XXX0852, XXX1963, and XXX3405, were solely in the name of the Decedent, and with the following balances on said date:

XXX0582 = $2,735.21;
XXX1963 = $37,387.34;
XXX3405 = $21,297.72.

Staccia Jr. withdrew his exception to XXX0582. As to the latter two accounts, he testified that he deposited all of the money found therein. He cannot produce, however, any documentation in support of this. The Court does not find this claim credible. Accordingly, the Court finds the Administrator included these accounts in the above stated values within the Inventory.

Item 9: McDonald Account #XXX4348

The evidence as to this account suggests that the same was a POD Account naming Staccia Jr. as the primary beneficiary. (See Ex. Key Bank 9, 10). Accordingly, and at the request of the Administrator, the same is removed from the Inventory.

Item 10: Insurance Policy (Ramirez)

The testimony suggests that an insurance policy on the life of Joan Ramirez was given to the Decedent in lieu of payment for services accorded her by the Decedent. No evidence suggests that this policy was ever cashed in or transferred. Attorney Juergens testified that Ms. Ramirez had died. Staccia Jr. testified that he believed she was still living. Staccia Jr. represented that he had not received any of the proceeds from such a policy; and that he believed the policy was owned by the Decedent at the time of his death. As such, it is properly included in the Inventory. While there was some testimony suggesting a policy amount of $50,000, the actual value of the

policy remains unclear. The Court will permit the Administrator to file an amended Inventory once the value is specifically ascertained.

Item 11: ACOSEP

No parties filed exceptions to this asset. Accordingly, it is properly included in the Inventory. Not surprisingly, there do not appear to be any corporate records in existence. The Court finds this to be an entity incorporated in 1986 (Ex. 2-H) for the purpose of operating monthly OMVI intervention programs. The program has been defunct for many years. As such, the Court finds that this asset had no value at the date of death.

Item 12: A2Z Careers

The Administrator claims that the Decedent owned 49% of a corporation known as A2Z Careers at the date of his death. Christina Staccia, another share holder in this corporation, testified that when the company was registered in 1999, 49% of the stock issued in the name of the Decedent rather than Staccia Jr.—the true owner— to avoid attachment of this asset by Staccia Jr.'s ex-wife for support. Despite the fact that the Decedent was principally a consultant and employee, he continued to hold this stock in his name. Ms. Staccia contends that the Decedent transferred his ownership shares to Staccia Jr. before he died.

It may not come as a surprise that there appear to be no documents memorializing this history; and no documents which purport to transfer the Decedent's 49% interest to any other person. Ms. Staccia maintains that Board *minutes* and a *Resolution* of the corporation, as well as a typed statement, reveal the Decedent's *intention* to transfer his interest. (Ex. Christina 1 and 2) Nevertheless, the task was never accomplished.[18]

[18] Ms. Staccia could not produce the original of these documents. Moreover, the signature purporting to be the Decedent's on this typed statement in Exhibit Christina 2 was apparently merely copied from a computer disc. This notwithstanding, the statement suggests the Decedent's intention to transfer his shares not to Staccia Jr., but rather into the name of the name of Roger Banyon, Ms. Staccia's uncle—also an act never accomplished.

Despite Ms. Staccia's assertion, the Court finds that certain items of evidence tend to suggest, to the contrary, that the Decedent still owned this interest at the time of his death. Exhibit C, the personal financial statement prepared by the Decedent on 12/19/02, and Exhibit 2-I, a list of assets prepared by counsel shortly after the date of death, both make reference to this 49% ownership interest. Even Decedent's 2002 Tax Return, prepared and signed by Staccia Jr. in 2007, admits income to the Decedent from A2Z of $40,000. (Ex. 2-L) A review of A2Z's 2003 Tax Return states that the Decedent owned 36.7% and Roger Banyon owed 12.3% (Ex. Christina 8)[19] Christina maintained that 2003 tax year distributions would have been made to her, her husband, and Banyon—the named shareholders—but could produce no records of any distributions. Staccia Jr. could not produce any certificates of stock in his name proving ownership.

The Administrator offers no date of death appraisal of the corporation. However, the Administrator properly directs this Court's attention to the corporation's 2002 and 2003 Federal Tax Returns, which state respective net values of the corporation at $91,373 and $156,294 respectively. (Ex. Christina Staccia 7 and 8) Decedent's 49% interest of the mean average of these valuations would be valued at $60,678. No evidence to the contrary was presented.

This Court finds that at the date of his death, the Decedent owned 49% of A2Z Corporation, which was worth $60,678.

Item 13: Copyright to "About Alcoholism: A Common Sense Perspective"

As there were no exceptions filed to this asset, it remains part of the Inventory. However, the Court finds that this book was published in conjunction with the incorporation of ACOSEP (Ex. 2-M), was used as part of the intervention programs, and had no value at the date of death.

Item 14: Debt of Lucille Lichtinger

[19] Christina testified that this was a mistake; but never corrected the return.

The Court received no evidence contrary to the Administrator's representation that Lucille Lichtinger owed $542.00 to the Decedent at the date of his death. Indeed, Ms. Lichtinger admitted as much. To that end, said debt is properly listed on the Inventory.

Items 15, 16, 17, 18, 19, 21, 22, 31, 32, 33: Wheldon Park Addition

The Court considers the following properties together under the umbrella title of the Wheldon Park Addition, insofar as the evidence is the same with respect to all of these parcels:

710-712 Southfield Ave.; 816-818 Mansfield Ave.; 819 Southfield Avenue; 926-928 Southfield Ave.; 1436-1438 Catherine St.; 1518-1520 Logan St.; 1620-1622 Mansfield Ave.; 1626-1628 Cypress St.; 1627-1629 East St.; and 1634-1636 East St.

The Court finds that Michael and Mary Talbert sold these properties to the Decedent on January 17, 2003 for $280,000. (Ex. 2-Q) The properties were deeded in the name of "Donald A. Staccia". The Decedent secured an open-ended mortgage on these properties to Home City Federal Savings Bank on even date in an amount not to exceed $210,000 (Ex. 2-R); and assigned the rents from these rentals to the mortgagee (Ex. 2-S). All documents were executed solely in the name of the Decedent. Staccia Jr. was not involved in these transactions. Indeed, the Decedent made reference at the closing of creating a limited liability corporation for these properties—as opposed to a partnership.

Staccia Jr. introduced Exhibits Staccia 119 and 120—purported to be emails between he and the Decedent about financing this purchase—as proof of his partnership ownership of these properties. However, the emails, if in fact genuine, remain vague and unpersuasive.

The uncontroverted evidence confirms the Administrator's Inventory and Appraisement values regarding these properties as follows (See Ex. E):

Catherine St. $20,000

Cypress St.	30,000
1627 East St.	28,000
1634 East St.	20,000
1518 Logan St.	13,000
816 Mansfield	36,000
1620 Mansfield	36,000
710 Southfield	32,000
819 Southfield	21,000
926 Southfield	35,000

Item 20: 1320 – 1322 Maiden Lane

The Court received very little evidence concerning thisparcel of property. It appears that Exhibit 2-U is the sole piece of physical evidence addressing 1320 – 1322 Maiden Lane. Pursuant to this evidence, the property was transferred solely to "Donald A. Staccia", whose residence is listed as that of the Decedents, on February 21, 1997, from James and Dana Staccia by way of a Quit Claim Deed. No sales price is noted. There was no evidence contrary to this evidence.

The Court finds this property to have been owned solely by the Decedent at the date of death. The uncontroverted evidence is that the appraisal at the date of death was $58,000.

Item 23: 0 Middle Urbana Rd.

The Court finds that this property was purchased for $30,000 from Pete Conley and deeded to "Staccia & Associates" on August 14, 2002. (Ex. 2-X). The Court notes, and believes it to be significant, that four properties, including this Middle Urbana Rd. property, were deeded to "Staccia & Associates" as opposed to "Donald A. Staccia." In light of the evidence, this Court does not believe this to be coincidence; rather the former designates a series of joint ventures between Decedent and Staccia Jr., while the later refers to the Decedent as a sole proprietor.

Accordingly, this Court finds that this property was owned by the two of them through a partnership relationship. As such, this should be characterized as personal property. The date of

death value of the property was $38,000. The Administrator, as the Decedent's representative, is entitled to claim $15,000—representing the Decedent capital contribution (one-half of 30,000 purchase price)—and one-half of the profit: $4,000 (38,000 less 30,000 divided by two).

Item 24: N. Plum 205-207 St.

The Court finds that this property was purchased solely by the Decedent on May 18 1995 for $26,000 from George Hukill and deeded solely in the name of "Donald A. Staccia". (Ex. 2-Z) Staccia Jr. was not involved.[20]

The evidence is uncontroverted that the date of death value of this property was $55,000 (Ex. E). This Court finds the property was owned solely by the Decedent in his individual capacity and is properly an estate asset.

Item 25: 209 N. Plum St.

The Court finds that the Decedent purchased this property for $30,000 on December, 15, 1993 from Michael Talbert (Ex. 3-H) and deeded solely in the name of "Donald A. Staccia, Ph.D." Staccia Jr. was not involved in this transaction. The Court finds that this property was owned solely by the Decedent at the date of his death, and was not partnership property.

The evidence is uncontroverted that the date of death value of this property was $55,000 (Ex. E).

Item 26: 325 Plum St.

The Court finds that John Cantrell conveyed this property to "Donald Staccia" on November 3, 1993. (Ex. 3-K) for $27,000. This was financed, in part, by a loan from Society

[20] The Decedent represented himself to be the owner of the following properties, and also lists the same on his tax return for 2001: 1320 Maiden Lane; 217 Rawson; 205 N. Plum; 209 N. Plum; 325 N. Plum; 401 N. Plum; 414 N. Plum; and 507 N. Plum. (Ex. 2-W). When the Decedent entered into a Land Contract to sell 205-207 N. Plum, 209 - 291/2 N. Plum, 507 N. Plum, and 414 N. Plum, he alone is named as the Vendor (Ex. 3-G). The Court observes that Exhibit M, which Staccia Jr. admitted preparing, declares that the Decedent was the sole owner of 205-207, 209, 325-327, 401, and 414 N. Plum St., as well as 217 Rausen, and 1320 Maiden Lane.

National Bank secured by this property, and taken out solely by the Decedent in his name. (Ex. 3-L).

The Court finds that this property was owned solely by the Decedent at the date of his death and properly appears on the Inventory. The uncontroverted evidence is that the date of death value of this property was $55,000 (Ex. E).

Item 27: 401 N. Plum St.

On March 23rd, 1982, the Decedent purchased what would serve as his residence, 401 N. Plum St. from Philip Snider (Ex. 3-O), who then was given by the Decedent a mortgage on said property for $11,871.17. Decedent, in his sole capacity, also signed a mortgage to Society Bank for $46,500. (Ex. Staccia-79) On May 11, 1995 and November 7th, 1996, the Decedent, in his sole capacity, granted mortgage deeds to Society Bank to support loans of $24,000 and $72,000, respectively---each time signing as "PhD". (Ex. 3-R and 3-Q)

All transactions were executed solely by and in the name of the Decedent, "Donald A. Staccia". Staccia Jr.'s explanation: "We mortgaged the property and Dad signed." The Court is not persuaded. There is no evidence suggesting joint ownership of this property with Staccia Jr.. As such, this property was properly listed in the Administrator's Inventory as being owned by the Decedent at the time of his death.

The uncontroverted evidence is that the date of death value of this property was $110,000. (Ex. E).

Item 28: 414 N. Plum St.

The Court finds that the Decedent purchased this property for $40,000 on January 23, 1992 from Michael Talbert (Ex. 3-V) after securing a loan and mortgaging this property to Society National Bank. (Ex. 3-L). The deed names only "Donald A. Staccia." Donald Lynam, the

bank officer, testified that it was the Decedent who secured this loan, and no other. Staccia Jr. was not involved in this transaction. Staccia Jr., nevertheless, claims that the deed conveys the property to both he and his father. This Court does not agree. The Court finds this property was owned solely by the Decedent at the date of his death, was not partnership property, and was properly listed on the Inventory.

The uncontroverted evidence is that the date of death value of this property was $55,000. (Ex. E)

Item 29: 507 N. Plum St.

The Court finds that this property was purchased solely by the Decedent on July 31, 1981 from Andrew and Lenora Thompson for $4,000 (Ex. 4-B) and was deeded in the name of "Donald Staccia", who then resided on E. High St. Staccia Jr. was not involved. Indeed, this property was the subject of a Land Contract in 1986 and names the Vendor solely as "Donald A. Staccia, PhD". (Ex. 4-C).

Staccia Jr. claims that he and his father each invested $2,500 into the property. This Court does not find this credible. Staccia Jr. introduced Exhibit 136 as records of investments. However, it is not clear to which property this applies. Moreover, it is not clear who created the records or when they were created. It is remarkable that no other cancelled checks or receipts exist. Additionally, the 1985 Separation Agreement between the Decedent and his wife addresses this property and confirms that it belonged solely to the Decedent as the title owner. Staccia Jr. is not mentioned.

The evidence is uncontroverted that the date of death value of this property was $28,000. This Court finds the property was owned by the Decedent in his individual capacity at the date of his death and is properly an estate asset.

Item 30: 217 Rawson Drive

The Court finds that this property was purchased from John and Mary Staccia—the decedent's parents—by "Staccia & Associates" on or about April 20, 1999 for $38,000. (Ex. 4-E). For the reasons stated above, this Court finds this to be property owned by the Decedent and Staccia Jr. in their joint venture relationship.

The uncontroverted evidence is that the date of death value of this property was $55,000 (Ex. E). As the Administrator is the Decedent's representative, he is entitled to claim $19,000 representing the Decedent's capital investment in this property. He is then entitled to claim one-half of the net value (55,000 less 38,000 = 17,000) which is $8,500.

Item 34: 1539 W. Main St.

The Court finds that this property was purchased from James and Brandi Gevedon and deeded to "Staccia & Associates" on April 11, 2002 for $10,000. (Staccia Ex. 55) Tony Staccia, the nephew of the Decedent, managed this and other properties for the Decedent. Tony testified that Staccia Jr. "put up" the money for this property and the Decedent handled the closing.

For the above stated reasons, this Court finds this to be property owned by the Decedent and Staccia Jr. in their joint venture relationship. The uncontroverted evidence is that the date of death value of this property was $29,000 (Ex. E). As the Administrator is the Decedent's representative, he is entitled to claim $5,000 representing the Decedent's capital investment in this property. He is then entitled to claim one-half of the net value (29,000 less 10,000 = 19,000) which is $9,500.

Item 35: 653 Louden St.

The Court finds that this property was conveyed to "Staccia & Associates" on July 11, 2002 from James and Lisa Music for a purchase price of $20,000. The Decedent alone handled

the transaction. No certificate of partnership regarding Staccia & Associates is on record in the Champaign County Recorder's Office. (Ex. 4-L) However, the Decedent signed the closing statement as "partner" over "Staccia & Assoc." (Ex. Staccia 134). Nine days later, he signed as "partner" for "Staccia & Associates", selling this property on land contract to Todd Brown on Land Contract. (Ex. 4-J) Consistent with this is the email train wherein the Decedent seeks Staccia Jr.'s review of the proposed Land Contract. (Ex. Staccia 117).

The Court finds that this property was owned by the Decedent and Staccia Jr. in their joint venture relationship. The uncontroverted evidence is that the date of death value of this property was $32,000 (Ex. E). As the Decedent's representative, the Administrator is entitled to claim $10,000 as his capital investment in this property. He is then entitled to claim one-half of the net value (32,000 less 20,000 = 12,000) which is $6,000.

Item 36: 4666 Larkhall Lane

The Court finds that the Decedent purchased this Columbus property from David A. Hammer on or about February 7, 1997 for $60,100. (Ex. 4-M) The property was deeded to the Decedent solely in his name, followed by "Sr." This was not partnership property. On June 28, 1998, the Decedent, in his sole capacity as "Donald A. Staccia, Sr.", sold the property on Land Contract to his son, Gregory for $65,000. (Ex. 4-R) On July 19, 2002, Gregory and the Decedent opened an equity account with a $71,000 limit secured by this property. (Ex. 4-N and 4-S) The evidence suggests that the Decedent received $59,000 of this loan as payment in full on the land contract (Ex. Greg Staccia 7). The Decedent co-signed this loan for the reason that Gregory did not have the credit to secure the loan on his own.[21]

[21] The Court notes that the Decedent signed as "PhD".

Gregory testified that he took out an open line of credit so that he could build up his credit and made monthly payments to the Decedent. The agreement, per Gregory, was that if Gregory made the payments for one year, that the Decedent would "turn over" the house to Gregory.[22] Unfortunately, the Decedent died nine months into this arrangement. It appears that Gregory Staccia took no action to enforce his agreement with his father; but rather merely made payments to Staccia Jr.,[23] who had assumed control over all of the Decedent's assets. No explanation was afforded the Court as to why Gregory sat on his claim until 2008.

The Court finds that the Decedent owned this property at the date of his death.[24] The uncontroverted evidence is that the date of death value of the property was $93,000. The Court finds there to be an equitable claim by Gregory ultimately on this property. But the amount has yet to be determined. This property was properly listed on the Inventory; but is appropriately subject to completion of a contract to sell property application pursuant to R.C. 2113.48.

Item Addendum: Life Insurance Policies

The Court finds that there was one life insurance policy on the life of the Decedent which remained in effect on the date of his death: Policy # 8574134 with Omaha Life Ins. Co. It appears to be undisputed that this life insurance policy designates Staccia Jr. as the sole beneficiary. (Ex. 4-Z) As such, the proceeds therefrom would be deemed to pass outside the estate as a non-probate asset.

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[22] The Decedent declared this income from Gregory Staccia on his 2000 Tax Return (Ex. 2-V) and his 2001 Tax Return (Ex. 2-W). It is interesting to note, however, that on the Decedent's 2002 Tax Return—filled out by Staccia Jr. —no income is noted from Larkhall Lane. (Ex. 2-L).

[23] Staccia Jr. conceded that any mortgage payments he made were with money he received from Gregory.

[24] The Court recalls, as well, that Gregory Staccia admitted on the stand that this property was properly listed on the Inventory as being owned by the Decedent at the date of death.

This notwithstanding, the proceeds apparently are in the possession of the Administrator. This Court will permit the Administrator to attach these proceeds pending final resolution of this estate.

Summary

It might be gleaned from a reading of this Decision that this matter was a convoluted mess. A case could be made that what we have here is a loosely planned scheme to avoid probate. Attorney Juergens testified that Staccia Jr. told him: "I don't need you to open an estate." At some point, it became clear to Staccia Jr. that the assets of the Decedent were in the name of Donald A. Staccia—which, of course, was Staccia Jr.'s legal name as well. Perhaps it struck Staccia Jr. as easy enough to claim ownership of all assets by asserting that the name "Donald A. Staccia" meant and referred to Staccia Jr. This might explain his testimony that when any documents presented the name "Donald A. Staccia", it meant both Staccia Jr. and his father, the Decedent, simultaneously. Attorney Juergens added that Staccia Jr. told him that "when the properties were purchased, they were purchased for me." In fact, Staccia Jr.'s 2004 Tax Return describes himself as sole owner of all of the properties, and their respective incomes and expenses. (Ex. 5-E)

Moreover, the complete dearth of any documentation or records affords the "plausible deniability" defense; or, in this case, a "plausible claim ability." Even in those instances wherein deeds were produced—and the Court has noted that no original deeds were ever produced by any of the family—and the named grantee was the Decedent, it is still contended that the Decedent was not the owner of the same. The lack of documentation would seem to arise at the convenience of the survivors.

This approach generally worked. Staccia Jr. was able to liquidate the real property and the accounts. He gave his siblings their share "outside the courts" (See Ex. 4-Y p.5), kept Greg's share protected from Bankruptcy (Ex. 4-0 and 4-P)[25] and assumed management and ownership of the assets for five years. Indeed all seemed to work until Gregory Staccia complained to this Court. This may well explain the context of Staccia Jr.'s email to Attorney Juergens: "...my brother has really botched this whole thing." (Ex. 4-Y p. 5).

Whatever the motivation, the estate was indeed "botched" between 2003 and 2008. It was left to the Administrator to attempt to repair the damage and to navigate the matter through the proper probate channels. This Court applauds his efforts thus far and generally affirms his Inventory.

After due consideration the Court, then, summarizes the foregoing discussion and declares the following to be the property and appraisement of the Decedent at the time of his death, to wit:

Item 1:	1986 Pearson Sailboat	$36,000
Item 2:	1970 Chevy Malibu Convertible	$10,000
Item 3:	Deleted	
Item 4:	1988 Cadillac	$500
Item 5:	Deleted	
Item 6	Key Bank - Advantage MM Checking Account No. XXXXX0582	$2,735.21
Item 7:	Key Bank -Advantage Major Saver MM Acct. No. XXXXXXXX1963	$37,387.34
Item 8:	Key Bank Advantage Major Saver MM Acct. No. XXXXXXXX3405	$21,297.92
Item 9:	Deleted	
Item 10:	Insurance Policy - Certificate No. 6339622	To Be Determined
Item 11:	ACOSEP, Inc. - 100% shareholder interest	$0
Item 12:	A2Z Careers - 49% shareholder interest	$60,678
Item 13:	Copyright to "About Alcoholism: A Common Sense Perspective"	$0
Item 14:	Debt due from Lucille Lichtinger	$542

[25] It would appear that Gregory Staccia denied any interest in any estate or trust when he filed for Bankruptcy in July of 2007 (Ex. 4-O, Schedule B, line 20).

Item 15:	Real Estate Located at 1436 Catherine Street, Springfield, Ohio	$20,000
Item 16:	Real Estate Located at 1626 Cypress Street, Springfield, Ohio	$30,000
Item 17:	Real Estate Located at 1627 East Street, Springfield, Ohio	$28,000
Item 18:	Real Estate Located at 1634 East Street Springfield, Ohio	$20,000
Item 19:	Real Estate Located at 1518 Logan Avenue, Springfield, Ohio	$13,000
Item 20:	Real Estate Located at 1320 – 1322 Maiden Lane	$58,000
Item 21:	Real Estate Located at 816 Mansfield Avenue, Springfield, Ohio	$36,000
Item 22:	Real Estate Located at 1620 Mansfield Avenue, Springfield, Ohio	$36,000
Item 23:	Interest in Joint Venture Re: 0 Middle Urbana Road, Springfield, Ohio	$19,000
Item 24:	Real Estate Located at 205-207 North Plum Street, Springfield, Ohio	$55,000
Item 25:	Real Estate Located at 209 North Plum Street, Springfield, Ohio	$55,000
Item 26:	Real Estated Located at 325 North Plum Street, Springfield, Ohio	$55,000
Item 27:	Real Estate Located at 401 North Plum Street, Springfield, Ohio	$110,000
Item 28:	Real Estate Located at 414 North Plum Street, Springfield, Ohio	$55,000
Item 29:	Real Estate Located at 507 North Plum Street, Springfield, Ohio	$28,000
Item 30:	Interest in Joint Venture Re: 217 Rawson Drive New Carlisle, Ohio	$27,500
Item 31:	Real Estate Located at 710 Southfield Avenue, Springfield, Ohio	$32,000
Item 32:	Real Estate Located at 819 Southfield Avenue, Springfield, Ohio	$21,000
Item 33:	Real Estate Located at 926 Southfield Avenue, Springfield, Ohio	$35,000
Item 34:	Interest in Joint Venture Re: 1539 West Main Street, Springfield, Ohio	$14,500
Item 35:	Interest in Joint Venture Re; 653 Louden Street, Urbana, Ohio	$16,000
Item 36:	Real Estate Located at 4666 Larkhall Lane, Columbus, Ohio	$93,000
Item Addendum	Not Included	

IT IS SO ORDERED.

FILED
CLARK COUNTY PROBATE COURT
MAY 8 2009
RICHARD P. CAREY
PROBATE JUDGE

RICHARD P. CAREY, PROBATE JUDGE

"FINAL APPEALABLE ORDER"

cc:

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