IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:	:
	:
THE ESTATE OF	: C.A. No. 4201-MA
JEFFERSON D. MEEK, JR.,	:
DECEASED	:

MASTER'S REPORT

Date Submitted: April 2, 2009
Draft Report: April 20, 2009
Final Report: September 18, 2009

Roderick L. Johnson, Sr., 37 Spectrum Drive, Newark, DE 19713
Petitioner

And

Olynthia Meek, 42 Willow Walk, Camden, NJ 08104,
Marrol Meek, 1064 Haddon Avenue, 2nd Fl., Camden, NJ 08103,
Alma L. Meek, 2601 N. Jefferson St., Apt. C-43, Wilmington, DE 19802,
Felicia Meek, 2553 S. 8th St., Apt. N9, Camden, NJ 08104,
Reginald Garnell Johnson, Jr., 8600 Glen Myrtle Ave., Apt. 1415, Norfolk, VA 23505-5408,
Charlene Triplett, 260 Christiana Road U-9, New Castle, DE 19720, and
Kevin Triplett, 23 Beech Avenue, Elsmere, DE 19805
Interested Parties

And

Gary R. Spritz, Esquire, Suite 211 Wilson Building, Concord Plaza, 3511 Silverside Road, Wilmington, DE 19810
Guardian *Ad Litem*

AYVAZIAN, Master

Before me is a Petition for Advice and Instruction filed by Roderick L. Johnson, Sr., executor of the Estate of Jefferson D. Meek, Jr. Petitioner is seeking instruction from the Court to determine the testator's intention as to the sale of the testator's home. At issue is whether the testator intended the executor to sell the testator's home located at 217 W. Monroe Avenue, New Castle, Delaware, 19720, in order to divide the proceeds equally among the beneficiaries of the estate, and to establish trusts for the benefit of those beneficiaries who are minors or incompetent. This is my draft report interpreting the Last Will and Testament of Jefferson D. Meek, Jr. (the "Will") as containing an implicit direction to the executor to sell the above real property.

Jefferson D. Meek, Jr. passed away on August 15, 2008, a resident of New Castle County, Delaware. His Will, which was executed on August 3, 2005, was duly probated on August 25, 2008, and letters testamentary were granted to Petitioner by the Office of the Register of Wills in New Castle County. The testator left some specific bequests to his son and stepson, but the relevant portions of the Will are found in section IV which states:

> ALL REMAINING PROPERTY; RESIDUARY CLAUSE: I give, devise, and bequeath all money wherever located, to include all money following the sale of my home after payment of any just debts to those listed (see attached notarized list) in equal shares, provided that they survive me. If none of my named beneficiaries survives me, then the rest and residue of my estate shall pass according to the order of intestate succession in the State of Delaware[,]

and section V which provides:

> ADDITIONAL POWERS OF THE EXECUTOR: My Executor shall have the following additional powers with respect to my estate, to be exercised from time to time at my Executor's discretion without further license or order of any court:
>
> To liquidate any and all remaining property and divide it in equal shares among those on the above stated notarized list. To see that trust [sic] are established for any and all minor or incompetent grandchildren until the age of majority; to ensure that first and foremost any funds are to be used for the furtherance of their education, and or secondly their welfare.

A notarized list of beneficiaries, which testator executed on the same date as his Will and attached thereto, contains the names of testator's sister, four great-grandchildren, and three grandsons. The four great-grandchildren are minors, and one of the grandsons was adjudicated a disabled person by this Court in 1999.[1]

---

[1]In an apparent effort to expedite matters and avoid a hearing, Petitioner has obtained from all of the competent adult beneficiaries signed waivers of notice and consent to Court approval of the Accounting pursuant to 12 Del. C. § 2302. I am not aware, however, of any estate accounting having been filed with the Register of Wills. Likewise, Petitioner has obtained from the minor beneficiaries' mothers and the court-appointed guardian of the adult disabled beneficiary signed waivers of notice and consent to Petitioner's appointment as guardian of the person and/or property of the four minor beneficiaries and the

"It is well settled in Delaware that the title to real estate descends to the heirs or vests in the devisees immediately upon the death of the testator subject to be divested if it be necessary to sell it for the payment of debts of the deceased." *In re Harris' Estate*, 44 A.2d 18, 19 (Del. Orph. 1945), as quoted in *In re Estate of Morrell*, 1995 WL 783075, at *4 (Del. Ch. Dec. 26, 1995). As a result, when real estate is left to named individuals, an executor does not have the power to sell the real estate without a court order to do so unless there is "an explicit order (or command or direction) in the will itself to sell specific property." *Morrell*, final report at *4, *supra*. *See also Parson v. Garrison*, 1979 WL 178570, at *1 (Del. Ch. Sept. 17, 1979).

In the residuary clause, the testator used the following language, "I give, devise, and bequeath," when referring to the money he was giving the residuary legatees. The money specifically included "all money following the sale of my home." The testator also gave the executor the express power "[t]o liquidate any and all remaining property and to divide it in equal shares among those listed on the above stated notarized list." Finally, the testator also gave the executor the power to establish trusts for the minor or incompetent grandchildren.

It is apparent from the language of this will that the testator intended to direct the sale of the real property, which constituted a part of his residuary estate, to convert it into personal property, i.e., cash, in order to divide the money in equal shares among the beneficiaries named on the attached list. The residuary clause refers to the specific real property, i.e., "my home," and thereafter in a clause entitled "Additional Powers of the Executor", the testator specifically directs the executor to "liquidate" any and all remaining property. *See Esser v. Chimel*, 30 A.2d 685, 687 (Del. Ch. 1943) ("The words 'to liquidate' may not always mean to sell, but when considered in connection with the context of the will, it is apparent that the testatrix used them in that sense.") (citation omitted). Thus, although the Will does not expressly direct the executor to sell the real estate, the executor's so-called "additional" powers to liquidate any and all remaining property, and to establish trusts for the benefit of any and all minor and incompetent grandchildren, can only be fully exercised, and the general scheme of the Will accomplished, if an implied power to sell the real estate is found within the language of the residuary clause, which gives all of testator's money wherever located, ***including all money following the sale of testator's home***, in equal shares to the named beneficiaries. The testator clearly intended that his real property should be converted to personalty, and that his beneficiaries should receive money and not land. In order to carry out the testator's directions, therefore, the executor must sell the real property. *See id.*

Accordingly, when this report becomes final, Petitioner, as executor of the estate of Jefferson D. Meek, Jr., shall be directed to sell the real estate belonging to Jefferson D. Meek, Jr. at the time of his death and known as 217 W. Monroe Avenue, New Castle

---

adult disabled beneficiary. To my knowledge, Petitioner has not filed any petitions seeking appointment as guardian of the property of the minor beneficiaries or as successor guardian of the person and property of the adult disabled beneficiary.

Delaware 19720, with the proceeds of the sale to be distributed pursuant to the Last Will and Testament of Jefferson D. Meek, Jr.