

NO. 09-0269

In the Supreme Court of Texas
Austin, Texas

JEFFERSON STATE BANK,

Petitioner,

v.

CHRISTA C. LENK, Administratrix of
the Estate of Mickey Carl Marcus,

Respondent.

FROM THE COURT OF APPEALS FOR THE FOURTH COURT OF APPEALS DISTRICT OF TEXAS

REPLY TO RESPONSE TO PETITION FOR REVIEW

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TO THE HONORABLE JUDGES OF THE COURT:

NOW COMES Jefferson State Bank (“Jefferson”), petitioner in the above-referenced matter, and files this reply to respondent Christa C. Lenk’s (“Lenk’s”) response to Jefferson’s petition for review.

ARGUMENT AND AUTHORITIES

I. Jefferson Asserts That The Letters Of Administration Facially Complied With The Statutory Requisites, Not That They Were Actually Authorized By The Probate Court.

Lenk's response to Jefferson's petition for review is primarily an attack on Jefferson's presentation of the facts. But Lenk either misreads or misrepresents significant aspects of Jefferson's presentation. For example, Lenk repeatedly accuses Jefferson of arguing that the letters of administration provided by Mel Spillman ("the Letters") were actually valid. Jefferson makes no such argument. On the contrary, it clearly states in its petition for review that "Spillman created or obtained *false* letters of administration dated April 10, 2000." *Petition* at 2 (emphasis added). The gist of Jefferson's argument is that the Letters had every *appearance* of validity because they contained the information required by Section 183, what appeared to be (and may actually have been) the signature of a deputy probate clerk, and the court's official seal. *See* TEX. PROB. CODE ANN. § 183 (Vernon 2003).

Lenk also accuses Jefferson of attempting to show the Letters were valid by omitting testimony from Probate Clerk Gerry Rickhoff to the effect that he would have recognized that the Letters were false. First, Jefferson properly cited Rickhoff's testimony that the seal contained on the Letters appeared to be an official seal, that the name signed on the Letters was the name of a deputy clerk, and that he could not say that the signature was a forgery. *See Petition* at 9 (citing *CR 4:679-81*). Second, Rickhoff's testimony that he would have recognized the Letters to be fake based on their typeset and

font is immaterial.¹ Rickhoff is the Clerk of the Probate Court and is presumably in charge of or, at the very least, intimately familiar with the form of documents produced by his office. His knowledge is not the appropriate measuring stick against which to gauge whether particular letters would appear to a bank, or any other third party, to be valid. This is especially true given Rickhoff's testimony that his office periodically changes the font and format of its documents without notifying the general public, the legal community, or the banking community. *CR 2:258-61*.

Jefferson does not contend that the Letters were actually authorized by the probate court. Jefferson's point is that the Letters gave every *appearance* of being validly issued and in compliance with Section 183. Thus, under Section 186, Jefferson was entitled to rely on them as evidencing Spillman's authority to access the account. *See TEX. PROB. CODE ANN. § 186* (Vernon 2003). If Jefferson is not entitled to rely on the appearance of letters of administration, but is required to verify with the court the actual validity of such letters, then Section 186 is rendered meaningless. This argument is more fully explained in Jefferson's petition for review and need not be repeated here.

Finally, Lenk argues, somewhat disingenuously, that Jefferson is attempting to carve out immunity for relying on even obviously fake letters of administration. Jefferson is attempting no such thing. Its argument is that the Letters were facially valid – that they appeared on their face to comply with the statute and to have been issued by

¹ At appendix tab 5, Lenk provides a copy of record page 676 from Rickhoff's deposition testimony. She highlights a statement at lines 14 through 16 that the typeset on letters that Rickhoff recognized to be forged was not consistent with the format used by the clerk's office. But the letters to which Rickhoff was referring were not the letters at issue in this case; they were letters received by a bank in another state. *See CR 4:676*.

the court. No fair reading of this argument could lead one to conclude that Jefferson is advocating immunity for reliance on obviously fake letters.

II. The Conduct Of An Out-Of-State Bank Is Of No Consequence.

Lenk repeatedly points out that Spillman's scheme unraveled because an out-of-state bank sent an inquiry to the probate court concerning the validity of letters of administration it had received. The implication is that Jefferson – and any other bank who received letters of administration from Spillman – should also have made such an inquiry.

The fact that an out-of-state bank inquired about the validity of Spillman's letters is of no consequence to the issue before this Court. The issue is whether Jefferson was required to inquire so that its failure to do so renders it liable for Spillman's misconduct, or whether it was entitled to rely on the Letters and Section 186 so that it is shielded from liability for Spillman's misconduct. Inquiry by the out-of-state bank has no bearing on this issue. A Texas probate court would not have jurisdiction over estate assets located in another state. The laws of that state would control what documents are required for recognition of a foreign will or letters of administration. For example, by analogy, the Texas Probate Code establishes a separate procedure for recognizing foreign wills and letters testamentary. *See* TEX. PROB. CODE ANN. §§ 95, 105 (Vernon 2003). Similarly, the record does not show whether the unidentified state has laws comparable to Sections 95, 105, or 186, or whether the courts of that state have construed any such statute to require inquiry. Finally, there is no showing that the letters of administration that were

presented to the out-of-state bank had the same indicia of validity as the Letters presented to Jefferson.

The inquiry made by the out-of-state bank arose under circumstances that are significantly different than Jefferson's circumstances, most obviously because the out-of-state bank was presented with letters from a foreign jurisdiction and Jefferson was not. In any event, that bank's inquiry provides no support for Lenk's position that Jefferson was required to inquire into the validity of the Letters. It merely demonstrates that inquiry is possible, not that it is required.

Section 186 is pivotal to the issue here presented. The fact that an out-of-state bank made inquiry does not establish that Jefferson – a Texas bank – was compelled to inquire about the validity of the Letters despite the express provisions of Section 186 – a Texas statute.

III. Lenk's Argument Renders Section 186 Meaningless.

The foundation of Lenk's argument is that Jefferson could not rely on the Letters because they were not, in fact, authorized by the probate court. But all a third party to whom letters are presented can ascertain from the document itself is whether it is facially valid; *i.e.*, whether it contains all of the information required by Section 183, what appears to be the signature of a deputy clerk, and what appears to be the court's official seal. Whether the signature and seal are, in fact, valid, and whether the document was, in fact, authorized by the court can only be ascertained by further inquiry to the court itself. But Section 186 expressly provides that letters of administration "shall be sufficient evidence of the appointment and qualification of the personal representative of an estate

and of the date of qualification.” TEX. PROB. CODE ANN. § 186. Requiring additional inquiry into the validity of such letters means that they are *not* “sufficient evidence” of anything. This construction impermissibly renders Section 186 meaningless and should be avoided. *See Teague v. City Of Jacksboro*, 190 S.W.3d 813, 817 (Tex. App.—Fort Worth 2006, pet. denied) (court should not adopt construction that renders statute meaningless).

IV. Section 188 Does Not Address The Policy Issues Raised In This Case.

Section 188 of the Probate Code provides that the acts of a legally qualified administrator, “in conformity with his authority and the law,” are valid as to innocent third party purchasers even if the acts or authority are subsequently “set aside, annulled, and declared invalid.” TEX. PROB. CODE ANN. § 188 (Vernon 2003). The statute clearly applies only to the acts of administrators who, at the time of the acts, are in fact qualified as such. *Id.* Given that the bulk of Lenk’s argument is that Spillman was *not* in fact qualified as administrator of Mickey Carl Marcus’s estate, it is not at all clear how Section 188 supports her position in this case.²

If Section 188 does apply to the circumstances at hand (perhaps by analogy), it actually supports Jefferson’s argument that it is not liable to Lenk. At the time he withdrew the funds from the Marcus Account, Spillman was acting under what appeared to be – and what Jefferson believed to be – valid letters of administration. It was subsequently revealed that the Letters were not authorized and were, thus, “declared invalid.” Applying the logic of Section 188, the subsequent discovery of the falsity of the

² Further, Lenk did not raise Section 188 in either of the courts below.

Letters would not invalidate the prior actions taken under color of the Letters. *See* TEX. PROB. CODE ANN. § 188.

The policy issue in this case is whether innocent third parties who rely on facially-valid letters of administration will be held liable for damages arising out of that reliance when the letters are subsequently revealed to be invalid. Section 188, which applies only to actions of validly-appointed administrators, has no bearing on that issue.

V. Lenk's Response Simply Raises Potential Fact Issues.

This appeal arises from competing summary judgment motions. For that reason, judgment can be rendered only if there are no genuine issues of material fact. *See* TEX. R. CIV. P. 166a. Much of Lenk's response focuses on whether the seal and the deputy clerk's signature on the Letters were or even appeared to be valid, and whether Jefferson could reasonably have believed, based on the appearance of the Letters as a whole, that they were validly issued. The actual authorization of the deputy clerk's signature or seal and the reasonableness of Jefferson's belief in the validity of the Letters are questions of fact. Thus, if they are material to determining whether Jefferson is liable for the withdrawals made by Spillman, then this case must be remanded to the probate court.

CONCLUSION AND PRAYER

Section 186 provides that letters of administration are sufficient evidence of authority. Requiring a bank, or any third party dealing with an estate administrator, to obtain verification from the courts of the validity of letters that appear to meet all statutory requirements is tantamount to requiring verification of the administrator's authority. Such a requirement renders Section 186 meaningless.

Jefferson is not asking this Court to create law or to usurp the function of the Legislature. On the contrary, Jefferson is asking the Court to respect the function of the Legislature by construing a duly enacted statutory provision in a way that gives it meaning and does not lead to an absurd result.

WHEREFORE, PREMISES CONSIDERED, petitioner Jefferson State Bank respectfully requests that this Court grant its petition for review, order the parties to file briefs on the merits, set the cause for submission, reverse the judgment of the Court of Appeals and affirm the take-nothing judgment of the probate court. Petitioner also requests such further relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply To Response To Petition For Review has been forwarded to all counsel and parties of record, listed below, by certified mail, return receipt requested, on this 15th day of June, 2009.

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