

The **Edwin J. Cooper, Sr. Estate**, by and thru Edwin Cooper and Lydia Cooper of the City of Monrovia Plaintiff-in-Error versus His Honor **Yussif D. Kaba**, Assigned Circuit Judge, Sixth Judicial Circuit, and the **Liberian Bank for Development and Investment (LBDI)**, by and thru its President, Francis Dennis Defendants-in-Error

PETITION FOR A WRIT OF ERROR FROM A FINAL JUDGMENT OF THE
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY

Heard: 25 October 2006 Decided: 22 December 2006

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

Edwin J. Cooper, Sr., at one time a citizen of Liberia and resident of Monrovia, Montserrado County, died on 1 May 1972 in Monrovia. He was survived by line children: Charlotte Cooper-Farhat, Ernestine Cooper-Harris, Edwin J. Cooper, Jr., Kenneth A. Cooper, Sr., Lydia Cooper-Guilao, Lucinda C. Cooper-Canton, Edwin J. Cooper, Henry J. Cooper and Samuel J. Cooper.

On 18 October 1988, Edwin J. Cooper, Jr. and Lydia Cooper-Guilao, two of the children, representing themselves to be executors of the intestate estate of their late father, entered into an Overdraft Agreement not to exceed Sixteen Thousand United States Dollars (US\$16,000.00) with the Liberian Bank for Development and investment.

As collateral for the off-shore revolving line of credit loan, the petitioners executed a mortgage deed in favor of the Liberian Bank for Development and Investment. The preamble and clause one of the mortgage deed read as follows:

"This Indenture of Mortgage made and entered into this 18th day of October, A.D. 1988, by and between Edwin J. Cooper, Jr. and Lydia Cooper-Guilao, both of the City of Monrovia, County of Montserrado, Republic of Liberia, hereinafter known and referred to as the "Mortgagor(s)," which term shall extend to and include their heirs, assigns, executors and/or administrators, and the Liberian Bank for Development and Investment (LBDI), a financial institution organized and existing under the laws of the Republic of Liberia, represented by and thru its duly authorized officers, of the City of Monrovia, Liberia, hereinafter known and referred to as "Mortgagee," which term shall extend to and include its assigns, representatives and successors-in-business, hereby:

WITNESSETH:

"1. Know all men by these presents that, for and in consideration of a Sixteen Thousand United States Dollars (US\$16,000.00) off-shore revolving line of credit loan granted or to be granted *Edwin J. Cooper, Sr. estate*, represented by and through Edwin J. Cooper, Jr. and Lydia Cooper-Guilao, the Mortgagee pursuant to the terms of a certain Promissory Note concluded by and between the parties hereto dated 18th day of October, A.D. 1988, which is herewith acknowledged, the Mortgagor(s) hereby pledge, *mortgage*, sell, give, bargain, transfer and convey unto the Mortgagee, all that parcel of land situated and lying in the City of Monrovia, (Sinkor), County of Montserrado, Republic of Liberia, the number part of Block no. 6 and bounded and described as follows, to wit:

"Commencing at South-West corner of the two and half lots owned by Edwin Barclay, and running 66 feet on a bearing South 36 degrees West to a point on an alley which is between Russell Avenue and Payne Avenue then turning 90 degrees and running 82.5 feet along said alley on a bearing North 54 degrees West to another point, thence turning 90 degrees and running 66 feet on a bearing North 36 degrees East to another point, thence turning 90 degrees and running 82.5 feet on a bearing South 54 degrees East back to the point of commencement and containing one-eight (1/8) acres of land and no more."

"To have and to hold the above described premises together with all and singular the buildings, tenements, hereditaments and appurtenances thereof and thereto belonging and appertaining." (Emphasis supplied).

The mortgage deed is signed by Edwin J. Cooper, Jr. and Lydia Cooper-Guilao, for the mortgagors.

On the same day, Edwin J. Cooper, Jr. and Lydia Cooper-Guilao executed two additional instruments, all on behalf of the Edwin J. Cooper, Sr. estate: (a) a Promissory Note, secured by an off-shore lease assignment from USAID and the mortgage deed; and (b) an Assignment of Lease Proceeds. The preamble to a third document executed the same day, an Overdraft Agreement, represents that it is "between Edwin J. Cooper Sr. estate represented by and through its executors, Edwin J. Cooper, Jr. and Lydia Cooper-Guilao; yet only Edwin J. Cooper, Jr. signed the document. Lydia Cooper-Guilao witnessed the signature of Edwin J. Cooper, Jr. only.

Seemingly Edwin J. Cooper, Jr. and Lydia Cooper-Guilao, as mortgagors, defaulted on their loan; for, a statement of account dated 30 September 1998 showed an

outstanding balance of Forty Six Thousand Six Hundred Fifty Nine United States Dollars and three cents (US\$46,659.03).

On 25 November 1999, the Liberian Bank for Development and Investment (LBDI) filed a Petition for Foreclosure of Mortgage Proceedings before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The Returns to both the Writ of Summons and the Writ of Re-summons indicate they were not served. Service by publication was then made.

There were two trials in this case: one before His Honor Judge J. Boima Kontoe in February 2000, and the other before His Honor Yussif D. Kaba in October 2004. This petition for a writ of error grows out of the final judgment entered by His Honor Judge Kaba.

Several issues have been raised in the several pleadings which have been filed, and which have occasioned the two trials. Because of the decision we have taken in this case, however, we shall address only one issue: Whether Edwin J. Cooper, Jr. and Lydia Cooper-Guilao had authority to dispose of real property of the Edwin J. Cooper, Sr. estate without an order from the Monthly and Probate Court for Montserrado County.

Although Edwin J. Cooper, Jr. and Lydia Cooper-Guilao represented to the Liberian Bank for Development and Investment, co-defendant-in-error, and in the several documents they executed, that they were executors of the Edwin J. Cooper, Sr. estate, the Bank did not attach to any of the pleadings it filed a copy of the letters testamentary which had allegedly been issued in favor of Edwin J. Cooper, Jr. and Lydia Cooper-Guilao by the Monthly and Probate Court for Montserrado County. And the reasons the Bank did not are simple: Firstly, Edwin J. Cooper, Jr. and Lydia Cooper-Guilao were never issued letters testamentary by the Probate Court for Montserrado County to administer the Edwin J. Cooper, Sr. estate. Secondly, Edwin J. Cooper, Sr. died intestate. *X-Change Facilitators, Inc. v. the Intestate Estate of the late Edwin J. Cooper, Sr.* decided by this Court during its March 2006 Term.

In the absence of having been issued letters testamentary by the Probate Court for Montserrado County, it was deceptive for Edwin J. Cooper, Jr. and Lydia Cooper-Guilao to present themselves as executors of the Edwin J. Cooper, Sr. estate, and attempt to dispose of real property of the estate. We wonder whether the Bank, with its battery of lawyers and very detailed procedures for granting loans, simply turned a blind eye to this deception.

An executor is "any person to whom letters testamentary have been issued to administer the estate of a decedent who died testate." Decedents Estates Law, L.C.L.Rev., tit. 8, § 101.11(s) (1972).

Even if Edwin J. Cooper, Jr. and Lydia Cooper-Guilao had been granted letters testamentary to administer the Edwin J. Cooper, Sr. estate, they could not dispose of the real property of the estate without an order of the Monthly and Probate Court for Montserrado County.

The following provisions of the Decedents Estates Law, L.C.L.Rev., tit. 8 (1972) govern the disposition of real property of a decedent:

"Section 117.1. Disposition of real property for particular purposes authorized; 'disposition' and 'fiduciary' as used in chapter defined.

"1. Purposes for which real property is subject to disposition. The court may authorize or direct the disposition of a decedent's real property or any interest therein for any or all of the following purposes; subject to the limitations set forth in § 117.2:

- (a) For the payment of funeral expenses;
- (b) For the payment of the expenses of administration;
- (c) For the payment of any taxes;
- (d) For the payment of the debts of the decedent, including judgments or other liens, excepting mortgage liens, existing thereon at the time of the death;
- (e) For the payment of any debt or legacy charged thereupon
- (f) For the payment and distribution of their respective shares to the persons entitled thereto;
- (g) For any other purpose the court deems necessary for the best interests of estate.

"2. 'Disposition' defined. Disposition of the real property of a decedent within the meaning of this chapter includes:

(a) Sale;

(b) *Mortgage*;

(c) Exchange;

(d) Lease;

(e) Confirmation of a prior lease made without court approval;

(f) Release of the right to an award for the taking of real property by eminent domain;
and

(g) Transfer to a spouse or other beneficiary in full or partial satisfaction of the interest or share of such person in the decedent's estate. (Emphasis supplied).

3. "Fiduciary" exclusions. The term 'fiduciary' as used in this chapter does not include a trustee, guardian, donee of a power to manage during minority property vested in an infant or a voluntary administrator."

"Section 117.2. The disposition of real property of a decedent under this chapter for any of the following purposes is limited as set forth herein:

(a) Unless a proceeding under this chapter to satisfy a debt of the decedent is brought within 18 months from the date when letters were issued to the original fiduciary and unless such letters were granted within 2 years after the date of the death of the decedent, the title of a purchaser or the lien of a mortgagee from the distributee or devisee of the decedent which was acquired before the proceeding was instituted cannot be affected in any way by the proceeding;

(b) A proceeding under this chapter to satisfy any debt cannot be maintained when the real property is exempted by law from levy and sale by virtue of an execution;

(c) A proceeding under this chapter to satisfy a legacy expressly or impliedly charged on the real property must be instituted within 5 years from the date of the death of the decedent."

"Section 117.3. Petition and process. The following procedural provisions shall govern with respect to initiating proceedings for the disposition of a decedent's real property:

(a) A proceeding under this chapter may be instituted by filing of a verified petition by a fiduciary or any person interested. The petition shall include facts showing the condition of the estate;

(b) If the petition be entertained, process shall issue to all persons interested and also to the creditors if the court so directs;

(c) Upon judicial settlement of the account of a fiduciary any party to the proceeding may show facts which make a disposition of the real property left by the decedent desirable. When such relief is sought upon an accounting notice thereof shall be given in the process;

(d) If any part of the reversion or remainder in the real property or in proceeds of sale thereof is limited in any contingency to the persons who shall compose a certain class upon the termination of any trust or legal life estate, the process shall issue to and be served upon those persons who would be entitled to the reversion, remainder or proceeds if the event upon which the termination of the trust or legal life estate depended had happened immediately before the application was made;

(e) The disposition may be authorized whether any person who may eventually become entitled to the remainders in the real property or to the proceeds of the sale thereof are in being or not, and whether at the time of the disposition the reversion is in the life tenant or in some other person;

(f) The Republic of Liberia may be made a party in the same manner as a private person where it appears that the property may have escheated or where the Republic has a lien of record on the interest of any beneficiary. The petition in that case shall show the nature of the interest of the Republic and the reason or reasons for making the Republic a party to the proceedings. Upon failure to state such facts the proceeding shall be dismissed as to the Republic."

We hold that Edwin J. Cooper, Jr. and Lydia Cooper-Guilao were not executors of the Edwin J. Cooper, Sr. estate, and therefore they had no authority to dispose of real property of the estate. *Caulcrik v. Lewis*, 22 LLR 37, 43 (1973).

In view of the foregoing, the Petition for a Writ of Error is hereby granted, and the Petition for Foreclosure of Mortgage Proceedings instituted by the Liberian Bank for Development and Investment, co-defendant-in-error, against the Edwin J. Cooper, Sr. estate is dismissed and vacated. Costs are ruled against the co-defendant-in-error. It is so ordered.

Petition granted. Proceedings dismissed and vacated