

Does New Jersey Have Jurisdiction When an Estate's Executor is in New Jersey, the Appointed Agent is in the UK, and the Sale of Real Property in India is in Dispute?

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In our trusts and estates practice, we frequently review estates wherein executors, appointed agents (attorneys-in-fact), real property and other assets may be located beyond New Jersey. A recent Appellate Division case, *Gulbir Kaur Anand, Executor of the Estate of Amrit Kaur Anand v. Upkar Anand, Jasjot Anand and Kiran Gulati*, addressed the issue of New Jersey's jurisdiction in a case involving an executor based in New Jersey, a decedent's power of attorney based in the United Kingdom, and the sale of the decedent's real property in India. The case is important in its instruction regarding the need for discovery so that a court can evaluate jurisdiction and venue.

The Estate's International Agents and Assets

The plaintiff in this matter is a Bergen County resident and the executor of an estate. Her claim, brought in New Jersey's judicial system, centered on the sale of a decedent's property in India. Prior to the decedent's death, she executed a power of attorney in the United Kingdom. The defendant, in his role as power of attorney, sold the decedent's real property, but according to the plaintiff/executor, he improperly distributed a portion of the sale proceeds to the other two co-defendants and, following the death of the decedent, despite repeated requests, he refused to provide the executor with an accounting of the sale proceeds.

The Trial Court Dismissed Executor's Complaint Due to Improper Venue

The executor's complaint alleged that the defendants improperly benefited from the sale of the decedent's real property. Along with claims of breach of fiduciary duty, unjust enrichment and conversion, the executor requested an accounting.

The defendants moved to dismiss the executor's complaint, arguing that the trial court did not have jurisdiction because the power of attorney was executed in the United Kingdom, the real property was located in India, sale proceeds were located in banks in India, and the decedent's Last Will & Testament was probated in the United Kingdom. The defendants failed to submit any affidavits or certifications in support of the motion.

The trial court ruled in favor of the defendants, dismissing the executor's complaint on the basis of improper venue and *forum non conveniens*. The court reasoned that "the real property at issue is located in India and all of the transactions at issue took place in the United Kingdom[, and] the only nexus to Bergen County is that the defendants reside here. This nexus is not enough to sustain [the] court's jurisdiction."

Appellate Court Remanded for Discovery to Determine Jurisdiction and Venue

On appeal, the executor argued that Bergen County was the appropriate venue under Rule 4:3-2(a)(3), which provides that venue "shall be laid in the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement."

In its decision to remand the matter to the trial court, the Appellate Division reasoned that the trial court failed to consider that the executor was merely seeking an accounting as the executor of the decedent's estate, and was not disputing the defendant's authority in his role as decedent's power of attorney to sell decedent's property, nor was she disputing the validity of the sale. The Appellate Division further reasoned that in the defendant's answer, they failed to support their factual assertions with certifications or affidavits, and as such, the trial court should have allowed for a period of discovery and converted the matter to a motion for summary judgment, as provided by Rule 4:46.

The Appellate Division further clarified its position that a period of discovery was necessary in order for the trial court to determine whether New Jersey properly has jurisdiction over the parties' dispute. If the trial court determines that it does have jurisdiction, it will then need to determine whether *forum non conveniens* applies, allowing the court to "decline jurisdiction where there is available another forum where trial will best serve the convenience of the parties and the ends of justice."

The facts in this case demonstrate that in a world where families and businesses are not circumscribed by territorial boundaries, it is important to retain the services of an attorney in a firm such as ours with the experience to advise clients how to properly proceed to obtain their desired results. Each estate plan is unique, and our estate planning group is available to consult on complex estate planning and probate matters involving both domestic and international elements.