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## Court to estate litigants: Jurisdiction over real estate does not assure jurisdiction over all aspects of a case

Questions of jurisdiction and conflict of laws are complicated at the best of times, let alone in the context of estate litigation.

*Park v. Myong*, 2015 ONSC 2287, a recent decision of Ontario's Divisional Court, has clarified that even if a court has jurisdiction over one aspect of a case (for example real property) that does not necessarily mean the court will assume jurisdiction over all aspects of the case.

The general rule regarding disputes in respect of real property is that only the country where the property is situated has jurisdiction. However, the application of this rule has its limits. In the context of estate litigation, the necessity of first determining the intention of the testator is among them.

*Park v. Myong* arose from an increasingly common scenario in today's highly mobile society: the deceased held assets in Ontario and California, including various interests in real estate in both jurisdictions. Unfortunately, the deceased's Will did not adequately provide for distribution of the estate, including failing to include a residuary clause.

A potential residuary beneficiary commenced an application in Ontario seeking rectification of the Will and a declaration that the estate's administrator held the Ontario assets in trust, for her. The latter relief was based partially on a claim that the lack of a residuary clause in her favour was a drafting error, and partially based on claims apart from entitlement under the Will, including a trust over the real estate that may or may not be valid, and a claim that the deceased purchased her assets using the potential beneficiary's money.

However, the estate administrator had already filed a petition in California to deal with entitlement to estate distribution, including the residue. He filed a cross-application to stay the Ontario application pending the outcome of the California petition.

At first instance, Justice Penny granted the administrator's cross-application on the basis that California was the most convenient forum.

The potential beneficiary sought leave to appeal the order on the grounds that the general rule on jurisdiction over real estate-based disputes is so strict that it precludes a convenient forum argument altogether. That is, all issues related to a case follow the Ontario real estate to the Ontario courts.

Justice Lederer, writing for the Divisional Court, disagreed.

- The issue of ownership of the Ontario real estate did not drive the issues before the courts; it flowed from the questions concerning the Will. Rectification was the key issue. Depending on the outcome of that issue, proceedings related to title might be resolved.
- There was no basis for tying all the matters together. There were two issues to address, one in respect of the Will and one in respect of the ownership of real estate. They were based on different facts and easily separated.
- In any event, the general rule could not be applied properly. If all matters were dealt with in Ontario, as the applicant proposed, the issue regarding jurisdiction over real property would merely shift from California to Ontario; the California real estate (and nearly \$4 million in personal property) would be determined in the wrong forum.

The solution was just as Justice Penny ordered: each jurisdiction would deal with the issues it was best suited to consider. California would deal with the rectification issue first. That was where the Will was probated and where the drafting solicitor, whose evidence was crucial, resided. Following that, if required, the issue of ownership of the Ontario real estate would be considered in Ontario.

*Park v. Myong* is a nuanced decision dealing with complex issues but it appears that first principles reign supreme: first ascertain the intention of the testator, then address the property at stake.