

IN THE SUPREME COURT OF GUAM

**IN THE MATTER OF THE ESTATE OF
VICENTE P. PEREZ, Deceased.**

OPINION

Filed: December 30, 2005

Cite as: 2005 Guam 27

Supreme Court Case No.: CVA04-027
Superior Court Case No.: PR0126-01

Appeal from the Superior Court of Guam
Argued and submitted on August 16, 2005
Hagåtña, Guam

Appearing for Appellant:

David J. Highsmith, Esq.
The Law Office of David Highsmith, P.C.
Suite 209, Union Bank of California Bldg.
194 Hernan Cortes Ave.
Hagåtña, GU 96910

Appearing for Appellee:

Joaquin C. Arriola, Jr., Esq.
ARRIOLA COWAN & ARRIOLA
259 Martyr St., Ste. 201
P.O. Box X
Hagåtña, GU 96910

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; ROBERT J. TORRES, JR., Associate Justice.

TORRES, J.:

[1] This matter comes before the court on appeal from an Order for Final Distribution of the estate of Vicente P. Perez issued by the Superior Court of Guam. Appellant Felicita Perez, a co-administrator and the surviving spouse of the decedent, alleges that the Superior Court exceeded its jurisdiction by failing to adhere to its statutory authority during the administration of the decedent's estate. Specifically, Felicita argues that the Superior Court erred in its Order for Final Distribution because the Order (i) required the heirs to assume certain debts and to pay administration expenses, (ii) denied reimbursement to Felicita for money she asserts was expended on behalf of the estate, and (iii) determined that a sale of real property of the estate was not necessary.

[2] We hold that the estate was not in a proper condition to be closed and the Superior Court lacked statutory authority to distribute the assets of the estate among the persons entitled when there were debts of the decedent remaining unpaid and no agreement to assume responsibility for those debts. The court also erred when it ordered the apportionment of the decedent's debts and the expenses of administration to be proportionate to the distribution of the decedent's separate property and allocated responsibility to pay such debts and expenses amongst the surviving spouse and children. We further hold that Felicita's failure to file a creditor's claim prior to the time limit of sixty calendar days after the first publication of the notice to creditors, does not bar her from seeking reimbursement for payments of the debts of the decedent which were justly due and paid in good faith. Finally, the Superior Court abused its discretion in determining that a sale of estate property was not necessary to pay the decedent's debts or expenses of administration since the estate had no funds available to make such payments and the necessity of a sale was not removed by the children's offer to pay a portion of such expenses. Accordingly, we reverse and remand.

I.

[3] Vicente P. Perez, a resident of Guam, died intestate on October 12, 2000, survived by Felicita P. Perez, his wife, and eight children from a previous marriage, namely Dora P. Fausto, Norma P. Perez, Joann P. Arriola, Vicente P. Perez, Jr., Lawrence P. Perez, Linda P. Perez, Eugene P. Perez, and Eric P. Perez. Lawrence was initially appointed Administrator of the estate and Felicita was later appointed Co-Administrator of the estate. At the time of Vicente's death, the following pieces of real property were registered in his name:


- i. Lot 90-7-1-R1, Municipality of Yona, together with a house thereon (Windward Hills)
- ii. Lot T305 B8 L1, Municipality of Yona, together with a house thereon (Baza Gardens)
- iii. Lot 31, Block 10, Tract 232, Municipality of Sinajana.
- iv. Lot 3265-5, Municipality of Sinajana.

Although the Sinajana properties were still registered to Vicente, he deeded the Sinajana properties during his lifetime to his daughter, Linda, (Lot 31, Block 10, Tract 232) and to his son and daughter-in-law, Vicente Jr. and Charlene T. Perez (Lot 3265-5). Neither of these deeds was recorded with the Office of the Recorder, Department of Land Management, during Vicente's lifetime. No other assets were listed in the Inventory and Appraisal filed by Lawrence.


[4] The decedent also had outstanding debts when he passed away. The decedent's separate debts included a loan with Note World Contract Services (NWCS) with an approximate balance of \$46,000.00, secured by a mortgage on the Windward Hills property; and a loan with Bank of Guam (BOG) with a balance of approximately \$88,000.00, secured by a mortgage on one of the two Sinajana properties (Lot 31, Block 10, Tract 232). A loan with First Hawaiian Bank (FHB) valued at \$11,000.00 and secured by a mortgage on the Baza Gardens property was the community debt of Felicita and the decedent incurred during their marriage.

[5] Nearly two years after her appointment as co-administrator, Felicita filed a Motion to Sell Real Property, requesting the court's permission to sell the Baza Gardens property. Felicita argued the sale was necessary because the estate lacked any liquid assets to pay the costs of administration and other expenses, but Lawrence opposed the sale. At the second hearing held on the Motion to Sell, the court gave the parties sixty days to come to an agreement.

[6] Before the expiration of the sixty day settlement period, Co-Administrator Lawrence filed a Petition for Final Distribution. Felicita filed objections to the Co-Administrator's Petition for Final Distribution on the grounds, *inter alia*, that (i) the estate had no funds to pay administration expenses and (ii) the proposed distribution was not in accordance with the statutorily mandated succession for intestate estates and failed to reimburse her for payments she made on behalf of the estate. While the petition was pending and more than sixty days after the first publication of the required notice to the creditors of the decedent, Felicita filed claims against the estate for renovation and repairs made on estate property and for payments she made towards the NWCS debt secured by the Windward Hills mortgage. Co-Administrator Lawrence rejected both of her claims, contending that they were time barred by Title 15 GCA § 2507 and the estate was not liable for the debts. Felicita moved to strike the Notice of Rejection filed by Lawrence arguing that, pursuant to Title 15 GCA § 2509, only the court could evaluate Felicita's claims and Lawrence had no authority to reject the claims.


[7] The Superior Court subsequently issued its Order for Final Distribution. In the order, the Superior Court endorsed Lawrence's rejections of the claims made by Felicita against the estate as being time-barred. Also, the court determined Felicita and the decedent's eight children to be heirs at law. Applying Title 15 GCA § 903(b), 

the Superior Court ordered the assets of the estate to be distributed one-third to Felicita as the surviving spouse and two-thirds to be shared equally among the children.

[8] In identifying the assets of the estate, the Superior Court determined all four properties registered in the name of the decedent at the time of his death to be includible in the estate, and purported to distribute the two Sinajana properties in accordance with the decedent's lifetime conveyances. The court did not, however, include these lots when valuing the assets of the estate. 

The Superior Court held, based on the values of the property, that it was fair and reasonable and in the best interest of the estate to distribute Baza Gardens to Felicita and Windward Hills to the children.

[9] The Superior Court further found the FHB loan secured by the Baza Gardens mortgage to be the community debt of Felicita and the decedent and held Felicita liable for the entire community debt under Title 15 GCA § 1009. In addition, the Superior Court relied on Title 15 GCA § 2714 in concluding that the liability for the separate debt of the estate should be proportionate to the distribution of the separate property. Consequently, the Superior Court required Felicita to be liable for one-third of both the NWCS loan and the BOG loan and the children to be liable for two-thirds of these debts. In light of its earlier distribution of the estate's separate property, the court further held it was fair and reasonable and in the best interest of the estate for Felicita to assume all of the Windward Hills mortgage with NWCS and the children to assume the entire Sinajana mortgage with BOG. The Superior Court also ordered \$10,199.30 to be distributed to Felicita from the estate, or if there were no funds in the estate, from the decedent's children, in order to ensure that Felicita received her intestate share of the estate and to "effectuate a fair distribution without having

to resort to selling all the real property of the estate and dividing funds among the heirs.” 

Appellant’s Excerpts of Record (“ER”), p. 35 (Order for Final Distribution).

[10] Finally, the court ordered the heirs to pay the administrative costs of the estate and attorney’s fees according to the proportion of their interest in the estate.

[11] Felicita filed a timely Notice of Appeal from the Order for Final Distribution.

II.

[12] This court has jurisdiction over this appeal from a final judgment rendered by the Superior Court pursuant to 48 U.S.C. § 1424-1(a)(2) (Westlaw through Pub. L. 109-127 (2005)) and Title 7 GCA §§ 3107, 3108(a) (2005). An additional basis for this court’s jurisdiction is provided by Title 7 GCA § 25102(k) (2005), which states that, “[a]n appeal in a civil action or proceeding may be taken from the Superior Court . . . [f]rom an order or decree made appealable by the Provisions of the Probate Code (Title 15 of this Code).” The Probate Code makes appealable “an order of the Superior Court of Guam . . . directing or authorizing the sale or conveyance or confirming the sale of property; settling an account of an . . . administrator . . . ; directing or allowing the payment of a debt, claim, legacy, commission or attorney’s fee; . . . distributing property; [or] refusing to make any order heretofore mentioned in this Section.” Title 15 GCA § 3433 (2005).

III.

[13] The standard of review for an order of final distribution is abuse of discretion. “In ruling upon a petition for settlement of an executor’s account or final distribution of an estate, the probate court is vested with broad jurisdiction which will not be disturbed on appeal except when abused.” *Estate of Lock*, 176 Cal. Rptr. 358, 365 (Ct. App. 1981). The Superior Court’s denial of a Motion to Sell is likewise reviewed for an abuse of discretion. *Estate of Barthelmess*, 243 Cal. Rptr. 832, 837 (Ct. App. 1988). A probate court’s determination of what are proper charges against the estate will not be disturbed in the absence of an abuse of discretion. *In re Hartnett’s Estate*, 318 P.2d 79, 81 (Cal. Dist. Ct. App. 1957). A court abuses its discretion when its “decision is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision.” [Guam United Warehouse Corp. v. DeWitt Transp. Servs. of Guam, Inc.](#), 2003 Guam 20 ¶ 45 (quoting [B. M. Co. v. Avery](#), 2001 Guam 27 ¶ 20).


[14] This case also involves questions of statutory interpretation, which are reviewed *de novo*. [Carlson v. Guam Tel. Auth.](#), 2002 Guam 15 ¶ 16.


IV.

[15] In the Order for Final Distribution, the Superior Court essentially: (i) distributed the estate property; (ii) apportioned the decedent’s debts and expenses of administration and allocated responsibility for their payment; (iii) denied Felicita’s claims for renovations and repairs to estate property and for payments made on the decedent’s separate debt; and (iv) determined that a sale of the estate property was not necessary. We consider each of these decisions in evaluating the arguments presented on appeal.

A. Distribution of estate property

[16] Turning first to the distribution of estate property, the Superior Court found that Felicita, as the surviving spouse, and the eight children were the heirs at law. The Superior Court correctly applied Title 15 GCA § 903(b)(1) in specifying that the decedent’s separate estate goes one-third to the decedent’s surviving spouse, Felicita, and the remainder in equal shares to the decedent’s children. The court identified Windward Hills, Baza Gardens and the two Sinajana properties as assets of the estate and distributed Windward Hills to the eight children, Baza Gardens to Felicita, Lot 31 Sinajana to Linda, and Lot 3265-5 Sinajana to Vicente Jr. and Charlene.

[17] Although both Sinajana properties were listed as part of the real property of the decedent’s estate, they were not listed in the Inventory and Appraisal submitted by Lawrence or included in the court’s valuation of the estate property. As the court noted, the decedent delivered deeds conveying these properties to his children during his lifetime. The conveyance by the decedent, despite the failure to record the deeds, constituted an effective lifetime transfer of the properties under Title 21 GCA §§ 4101 and 4102. 

Furthermore, the failure to record the deeds during the decedent’s life does not affect the transfer in the instant case. “Every grant of an estate in real property is conclusive against the grantor, also every one subsequently claiming under him, except a purchaser or encumbrance who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.” Title 21 GCA § 4204 (2005). The Sinajana properties should not therefore have been includible in the estate. 
The court’s action in identifying the Sinajana property as estate assets, distributing them in accordance with the decedent’s lifetime conveyances yet not including them in the estate valuation is inconsistent, but harmless error, and we affirm the valuation of the

assets of the estate.

[18] Based on the appraised values of Baza Gardens and Windward Hills, and the law on intestacy succession to separate property, the court awarded Baza Gardens to Felicita and Windward Hills to the eight children. If there were sufficient funds to pay all debts, and expenses of administration and the estate was in a proper condition to be closed, the Superior Court's distribution of Baza Gardens to Felicita and Windward Hills to the children may not have been an abuse of its discretion. While it is true under our statute that title to a decedent's real property passes immediately to the persons who would succeed to the decedent's estate, title vests subject to conditions imposed by the statute, such as possession of the personal representative and control of the Superior Court for the purpose of administration, sale or other disposition, including appropriation to the payment of the debts of the decedent and expenses of administration. Title 15 GCA § 1401 (2005); *see also In re Porter's Estate*, 61 P. 659, 660 (Cal. 1900). When heirs entitled to distribution of real property have not agreed among themselves to a partition, allotment or other division thereof, any one of them or the personal representative may petition the court to make such a partition, allotment or division as will be equitable to avoid distribution of undivided interests. Title 15 GCA § 2911 (2005). The Superior Court does have authority to partition, allot and divide the property of the estate so that each party shall receive property of a proportionate value to his interest in the whole estate. Title 15 GCA § 2917 (2005).

[19] Although Lawrence had petitioned, before distribution, to have the Baza Gardens property distributed to Felicita and the Windward Hills property to the children, the record does not reflect compliance with the service and citation requirements of Title 15 GCA § 2913. *See* Title 15 GCA § 2913 (2005). Moreover, there were debts of the decedent and expenses of administration which needed to be paid but no estate funds were available to make such payments. This begs the question of whether the estate was in a condition to be closed and distributed. Our review of whether the estate was in a proper condition to be closed reveals a glaring omission in the administration of this estate: the failure to file an account required by Title 15 GCA § 2705. This section provides in part:

The personal representative must render a full and verified account and report of his administration, which shall include all of the matters referred to in Section 2703 

of this Title. The personal representative must render a final account, and pray a settlement of his administration, whenever there are sufficient funds in his hands for the payment of all debts and the estate is in a proper condition to be closed. . . . Title 15 GCA § 2705 (2005). When an account is rendered for settlement, notice thereof must be given, and if the account is for final settlement and a petition for final distribution is filed with the account, the notice of settlement must so state and on the settlement of the account, distribution of the estate to those entitled thereto may be had. Title 15 GCA § 2713 (2005).

[20] Neither Lawrence nor Felicita filed an account for settlement or assert that there were sufficient funds for the payment of all debts. "One of the principal objects of administration is the payment of the debts of the deceased." *In re Washburn's Estate*, 82 P. 671 (Cal. 1905). Title 15 GCA § 2727 (2005) provides the order in which expenses, charges, and other debts of the estate should be paid:

Expenses, Charges and Debts; Order of Payment. The debts of the decedent, the expenses of administration and the charges against the estate shall be paid in the following order:


1. Expenses of administration;
2. Funeral expenses;
3. Expenses of last illness;
4. Family allowance;
5. Debts to the Government of Guam;
6. Wages . . .
7. Mortgages . . . in order of their priority, so far as they are paid out of the proceeds of the encumbered property. If such proceeds are insufficient for that purpose, the part of the debt remaining unsatisfied shall be classed with general demands against the estate;
8. Judgments that are not liens rendered against the decedent in his lifetime and all other demands against the estate, without preference or priority on over another.

[21] In the instant case, there were debts remaining unpaid at the time the Superior Court issued the Order for Final Distribution. The NWCS loan, the BOG loan and the FHB loan all had outstanding balances at the time of distribution. Two of the loans, NWCS and FHB, were secured by mortgages on estate property while the third loan, BOG, was a separate debt of the decedent. In addition to the outstanding debts, the expenses of administration were not paid prior to distribution. The Superior Court did not adequately address the order of the payment of these expenses and debts in accordance with 15 GCA § 2727. Further guidance on whether the Superior Court should have continued the administration is found in Title 15 GCA § 2739 (2005) which provides:

Closing or Continuing Administration After First Order for Payment. If all of the debts have been paid by the first order


for payment, the Superior Court of Guam must direct the payment of legacies and the distribution of the estate among the persons entitled, as provided in Chapter 30 of this Title; *but if there are debts remaining unpaid*, or if, for other reasons, *the estate is not in a condition to be closed, the administration may be continued for such time as may be reasonable*.

(Emphasis added).


[22] Distribution of the estate property is generally not proper if there are debts of the estate remaining unpaid. 

The court, however, apportioned the decedent's debts and expenses of administration and allocated responsibility for payment amongst Felicita and the children. We must now determine whether the court had authority to do so in the absence of an agreement between the persons entitled to distribution and whether such apportionment and allocation enabled the estate to be in a condition to be closed.

B. Apportionment and allocation of the decedent's debts and expenses of administration

[23] In the Order for Final Distribution, the Superior Court found the children of the decedent to be liable for two-thirds of the decedent's separate debt and Felicita to be liable for the remainder, one-third of the separate debt and the entire community debt. The trial court held, under Title 15 GCA § "2714" (sic), 

the liability of each heir for the separate debt of the decedent is proportionate to his or her share in the estate property and ordered the separate debt of the decedent distributed in the same proportions set forth in Title 15 GCA § 903(b).

[24] We do not read Title 15 GCA § 2741 as providing the authority to allocate responsibility for payment of the separate debts of the decedent proportionate to the distribution of the decedent's separate property. Section 2741 deals primarily with the allocation of responsibility for the debts payable by the estate which are also payable, in whole or in part, by the surviving spouse and the apportionment of such debt to the property of the spouses liable for the debt. 

Title 15 GCA § 2741(e) (2005), which does allow for apportionment of debt to property, provides:

(e) The personal representative and the surviving spouse may provide for allocation by agreement and, upon a determination by the Superior Court that the agreement substantially protects the rights of persons interested in the estate, the allocation provided for in the agreement shall be ordered by the Superior Court. *In the absence of such agreement, each debt shall be apportioned to all of the property of the spouses liable for the debt, as determined by the laws of the territory of Guam, in the proportion determined by the value of the property less any liens and encumbrances at the date of death, and the responsibility to pay the debt shall be allocated accordingly.*

(Emphasis added).

[25] Section 2741, however, allocates responsibility only if the debts payable by the estate are also payable by the surviving spouse. This statute does not govern allocation of responsibility for the separate debts of the decedent. The comment to section 2741 states that the section "like certain other Sections contained in this Title, has been added to rationalize the community property system and to make it sex-neutral." Title 15 GCA § 2741, cmt. The section does not allow the probate court to allocate responsibility for a decedent's debts to someone who would otherwise have no obligation to pay such debts.

[26] Lawrence cannot rely on section 2741 as providing the Superior Court with the authority to distribute the separate debt of the estate. Furthermore, we can find no section within the Guam Code which grants such authority. The heirs are not personally liable for the debts of the decedent, but take subject to those debts. *Graybiel v. Burke*, 268 P.2d 551, 555 (Cal. Dist. Ct. App. 1954); *see also Gordon v. Gilfoil*, 99 U.S. 168 (1878); *O'Malley v. Carrick*, 291 P. 871, 872 (Cal. Dist. Ct. App. 1930) (stating that if an estate is liable for a debt, it should be "collected from that estate, during the course of administration."). Therefore, the liability of heirs or distributees for the debts of their ancestor is limited by, and exists only with respect to, the property received by them by inheritance or succession from that ancestor. *See Graybiel*, 268 P.2d at 555.

[27] Likewise, the court cannot require the persons entitled to distribution of an estate to pay the expenses of administration in the absence of their agreement to do so. *See In re Weaver's Estate*, 322 P.2d 522 (Cal. Dist. Ct. App. 1958) (finding that a distributee's bona fide offer to pay all of the expenses of the administration made the sale of estate property unnecessary).

[28] Therefore, we hold that the Superior Court erred in the Order for Final Distribution when it apportioned the decedent's debts and the expenses of administration to be proportionate to the distribution of the decedent's separate property and allocated responsibility to pay such debts and expenses amongst the Felicita and the children.

C. Reimbursement claims for repairs, renovations and mortgage payments

[29] Felicita challenges the trial court's finding that her reimbursement claims were time-barred arguing that her claims for payments made on the Windward Hills mortgage and for repairs and renovations to the Windward Hills property should be allowed under Title 15 GCA §§ 2513 and 2515. These sections require that personal representatives and surviving spouses file claims anytime before a petition for final distribution. Felicita argues that Title 15 GCA §§ 2503 and 2507, which require that claims against an estate be filed within sixty days of the publication of notice to creditors or alternatively that a creditor file for an extension, do not apply to her because she is a surviving spouse or personal representative rather than an ordinary creditor of the estate. Felicita also asserts that pursuant to Title 15 GCA § 2509, the allowance or rejection of the reimbursement claims must be made by the

judge, and Lawrence had no authority to reject the claims. Co-administrator Lawrence argues that Felicita failed to take advantage of sections of the Guam Code which provide additional protections for the surviving spouse by neglecting to file a claim prior to the submission of a petition for final distribution.

[30] Guam statutes providing additional protections for certain expenditures made by surviving spouses are inapplicable in this context. Title 15 GCA §§ 2513 and 2515, which both Felicita and Lawrence refer to in their briefs, would not apply to Felicita's payment of the mortgages. These sections of the Guam Code concern debt chargeable against community property.

The debt at issue is the separate debt of the decedent which is chargeable against the separate real property of the decedent; as there is no element of community property in the instant case, neither of the sections of the Guam Code would be applicable.

[31] Guam law requires that creditors file a claim against the estate "within sixty (60) calendar days after the first publication of the notice" to creditors. Title 15 GCA § 2503(a) (2005). Any claim "not so filed or presented is barred forever, unless it is made to appear by the affidavit of the claimant to the satisfaction of the Superior Court that the claimant had not received notice, by reason of being physically absent from . . . Guam . . ." Title 15 GCA § 2521(a) (2005). The period within which a personal representative of the estate must present a claim against the estate is the same as for other creditors.

In re Estate of Taylor, 10 Cal. 482 (Cal. 1852); see also *In re Grant's Estate*, 43 P.2d 266 (Cal. 1935). Neither the personal representative nor the court has the authorization to allow a claim which is not timely filed. See *In re Erwin's Estate*, 255 P.2d 97 (Cal. Dist. Ct. App. 1953). Limiting the liability of the estate to claims properly filed and recognized promotes an expeditious determination of the debts of the decedent and facilitates the protection of the rights of the heirs. See *Estate of Sturm*, 246 Cal. Rptr. 852, 854 (Ct. App. 1988).

[32] Though we recognize the general rule that claims against the estate must be filed within sixty days of the first publication of the notice to creditors, we disagree with its applicability to Felicita's claims.

The word "claim" as used in the Probate Code refers "to such debts or demands against the decedent as might . . . have been enforced against him in his lifetime. . . ." *Newberger v. Rifkind*, 104 Cal. Rptr. 663, 668 (Ct. App. 1972) (quoting *Fallon v. Butler*, 21 Cal. 24, 32 (Cal. 1862)). "When a liability arises after the death of the decedent it does not constitute a claim against the estate which is required to be presented for allowance (except funeral expenses and other matters expressly provided in the Probate Code)." *Sperry v. Tammany*, 235 P.2d 847, 849 (Cal. Dist. Ct. App. 1951). Therefore, we address Felicita's claims according to this definition and reject her argument that the procedures set forth in Title 15 GCA § 2509 should have been followed.

Felicita sought compensation for expenditure she made following the death of the decedent and as such her claims for reimbursement could not have been enforced against him during his lifetime. Consequently, we find that the claims filed by Felicita in the instant case are not time-barred due to a failure to file within the sixty day period and the trial court erred in so holding.

[33] On remand, the trial court should address the claims filed by Felicita when settling the account of the administrators in preparation for distribution of the estate. As discussed *supra*, there was no accounting filed during the course of administration of this estate.

Though labeled claims when filed with the Superior Court, Felicita's claims are more properly categorized as expenditures made by a personal representative.

See Title 15 GCA §§ 2703, 2705. Generally, it is advisable that a personal representative seek court approval for expenditures. Since a court will allow only expenditures which it determines are made in good faith and necessary in the administration of the estate, "[p]ayments made without a court order at made at the peril of the personal representative." *In re Fulmer's Estate*, 265 P. 920, 922 (Cal. 1928). To eliminate the risk that an expenditure will be disallowed, a personal representative may request guidance pursuant to Title 15 GCA § 2221 (2205) which provides:


§ 2221 Personal Representatives May Seek Guidance From Court on Investment, etc., of Estate Funds; Petition; Procedure. The Superior Court of Guam on the petition of the personal representatives may from time to time *instruct and direct the personal representatives as to administration of the estate and the disposition, management, operation, investment, care, protection or preservation of the estate or any property thereof*. The Clerk of the Superior Court of Guam shall set such petition for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.


(Emphasis added). By obtaining prior approval from the court, a personal representative ensures that the expenditure will be allowed upon the settling of the account. *In re Fulmer's Estate*, 265 P. at 922. In the instant case, Felicita failed to seek court approval prior to any of the expenditures she made on behalf of the estate. However, failure to obtain court permission does not necessarily render expenditures improper. *Id.*

[34] On remand, Felicita's claims should be treated as expenditures made by the personal representative for which she seeks credit in an accounting. In determining whether to allow reimbursement of the amounts paid by Felicita, the court must consider Title 15 GCA § 2719 (2005) which provides:

Debts Paid Without Filing or Presenting Proper Claims; Allowance on Accounting. If it appears that debts of the decedent have been paid without verified claims having been filed or presented and allowed and approved, and it shall be proven that such debts were *justly due*, were paid in *good faith*, that the amount paid was the true amount of such

indebtedness over and above all payments or setoffs, and that the *estate is solvent*, the Superior Court, in settling the account, shall allow the sums paid.

(Emphasis added). This section of the Guam Code was adopted from former section 929 of the California Probate Code. Interpreting section 929, the California Supreme Court held that “[w]here the legal representative, in *good faith*, makes proper expenditures for the estate, either from his own funds or from estate funds, without order of court, he is entitled to credit.” *In re Lindauer’s Estate*, 127 P.2d 589 (Cal. 1942) (emphasis added). In *Lindauer*, the court affirmed an accounting which reimbursed the legal representative for covering certain costs of the estate, including mortgages which were paid off. *Id.* at 590. In order to be allowable estate expenditures, it is required that the representative must prove that the payments were justly due and paid in good faith. 

In re Estate of Cross, 123 Cal. Rptr. 825, 827 (Ct. App. 1975). Whether the estate is solvent and the mortgage payments were made in good faith and on debts which were justly due will need to be proved on remand. 

[35] In the settlement of the account, the probate court should allow the personal representative reimbursement for proper expenditures. *In re Hartnett’s Estate*, 318 P.2d at 81. California has held that reimbursement should be allowed where the estate benefited from the expenditure. *In re Clos’ Estate*, 42 P. 971 (Cal. 1895); *see also In re Estate of Carpenter*, 80 P. 1072, 1074 (Cal. 1905). Furthermore, if the expenditures were necessary to preserve estate assets, it is only equitable that the personal representative be reimbursed for them. *Id.* Therefore, reimbursement for the costs of repairs and renovations to estate property paid following Felicita’s appointment as co-administrator should be allowed if the court finds they were necessary for the protection of estate assets and benefited the estate.

[36] Accordingly, we hold that the Superior Court erred in finding Felicita’s claims to be time barred and we remand for further proceedings consistent with this opinion.

D. Necessity to sell estate property

[37] Finally, we consider whether it was necessary to sell estate property. On February 12, 2004, Felicita filed a Motion to Sell Real Property with the Superior Court. In her motion, Felicita argued that the estate’s lack of cash assets with which to pay the expenses and costs of administration and the debts of the decedent made the sale of Baza Gardens necessary. Lawrence opposed the sale arguing that the sale was unnecessary because the children were willing to pay their pro-rata share of the costs of administration and contribute towards payment of the decedent’s separate debt.

[38] Under Guam law, the personal representative is authorized to sell property of the estate under certain circumstances. Title 15 GCA § 2311 (2005) provides, in relevant part:

Sales in general: Sale to Pay Debts, Legacies, Family Allowance or Expenses; Selection of Property; Manner of Sale; Interest Which may be Sold.

(a) In selling property of an estate to pay debts, legacies, family allowance or expenses, there shall be no priority as between personal and real property.

(b) When a sale of property of an estate is necessary for any of the purposes set forth in subsection (a) of this Section, or when it is for the advantage, benefit and best interests of an estate and those interested therein that any property of such estate be sold, the personal representative may sell the same,...using his discretion as to which property to sell first . . .

The statutory language of Title 15 GCA § 2311 was derived from former § 754 of the California Probate Code. California has held that the probate court has wide discretion in determining whether or not to order the sale of property. *In re Pavert’s Estate*, 170 P. 827 (Cal. 1918). In reviewing a decision made by the trial court for an abuse of discretion, we will reverse the trial court where there is no evidence on the record on which the decision could be based. [Guam United Warehouse Corp.](#), 2003 Guam 20 ¶ 45.

[39] In the Order for Final Distribution, the estate was chargeable with \$6891.50 in attorneys’ fees, \$6,891.50 in compensation for the administrators, and \$3,330 in closing costs. The Superior Court authorized payment of the attorneys’ fees and court closing costs out of the funds of the estate (even though the Inventory and Appraisal showed no funds available) “to be paid in proportion to the heirs interest in the Estate, to wit, a one-third interest to be paid by Felicita . . . and the remaining two-thirds to be paid by the decedent’s children. . .” but the trial court failed to indicate a source from which the administrators would be paid. Appellant’s ER, p. 37 (Order for Final Distribution). The Superior Court failed to cite any statutory authority when it ordered the heirs to pay their pro-rata share of certain costs, nor do we find any such authority. The Order for Final Distribution also authorized the payment to Felicita of \$10,199.30 from the estate or from the children of the decedent should there be no funds remaining in the estate. According to the court this amount was “required to bring the distribution of the estate’s real property and the assumption of the estate’s debt in compliance with Guam’s law without having to resort to a sale of the (sic) all the real property of the estate”. The Superior Court, however, did not explain further.

[40] It is undisputed that the estate contained no assets besides the pieces of real property. Furthermore, there were numerous

expenses and costs involved in the administration of the estate. Though the children of the decedent offered to pay their portion of the expenses, there was no authority to require Felicita to pay and no alternative source from which to pay the balance. Therefore, we hold that the trial court erred in denying Felicita's motion.

[41] Our holding does not mandate the sale of property in every case to pay debts or expenses. Instead, the interested parties are free to come to an agreement in order to obviate the necessity of a sale. In the instant case, the sale of property would not have been necessary if the children of the decedent or Felicita had agreed to pay all of the costs and expenses of the administration and the debts of the estate. A bona fide offer to pay the expenses and costs of administration may remove the necessity of the sale of property when such a sale is necessary only to pay those costs and expenses. *In re Estate of Weaver*, 322 P.2d 522. The necessity to sell estate property was not removed here because the children offered only to pay their pro-rata share of the expenses of administration, and there were also outstanding debts which needed to be paid since Felicita was not required to be personally liable for the decedent's separate debt.

IV.

[42] We hold that the estate was not in a condition to be closed or the assets distributed. We hold that the trial court erred in apportioning and allocating responsibility for the separate debts of the decedent. Furthermore, we hold that trial court erred in denying Felicita's Motion to Sell Real Property. We also hold that Felicita's claims for reimbursement were not time barred. Accordingly, we **REVERSE** and **REMAND**.