

VERMONT SUPERIOR COURT  
Grand Isle Unit  
PO Box 7  
North Hero VT 05474  
802-372-8350  
www.vermontjudiciary.org



CIVIL DIVISION  
Case No. 22-CV-01344

**Timothy Harris v. Rick Harris et al**

## ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 2)  
Filer: Rick Harris  
Filed Date: May 12, 2022

### DECISION ON DEFENDANTS' MOTION TO DISMISS

This matter is before the civil division to consider Defendants Rick Harris, Sr.'s and Rick Harris, Sr. in his capacity as Executor the Estate of Georgianna S. Harris's motion to dismiss for lack of subject matter jurisdiction pursuant V.R.C.P. 12(b)(1). Mot. Dismiss Under V.R.C.P. 12(b)(1) for Lack of Subject Matter Jurisdiction (filed May 12, 2022) [hereinafter Mot. to Dismiss].

Plaintiff alleges four claims against Rick Harris and/or the Estate—adverse possession, boundary by acquisition, breach of contract, and fraud—and seeks, among other things, declaratory judgment from this court affirming that he has acquired title to the house located at 11 Sunset View Road in South Hero.

Defendant asserts that the Probate Court has exclusive jurisdiction over this property because the disputed parcel is owned by an estate currently the subject of probate proceedings. Mot. to Dismiss at 1 (citing 4 V.S.A. § 35); see *Estate of Georgianna S. Harris*, Dkt. No. 21-4-18 Gipr.

Plaintiff Timothy Harris opposes the motion. Pl. Opp. to Def.'s Mot. to Dismiss (filed June 10, 2022). While Plaintiff concedes that the Probate Division of the Superior Court has exclusive jurisdiction over the settlement of the estate itself, he argues that this matter raises claims outside the settlement of the estate so that the Civil Division's jurisdiction is proper. *Id.* at 3–4.

### *Conclusions of Law*

“Subject matter jurisdiction’ refers to the power of a court to hear and determine a general class or category of cases.” *Lamell Lumber Corp. v. Newstress Int'l, Inc.*, 2007 VT 83, ¶ 6, 182 Vt. 282. The Civil Division of the Vermont Superior Court is a court of general jurisdiction. *Quinlan v. Five-Town Health Alliance, Inc.*, 2018 VT 53, ¶ 27, 207 Vt. 503; see also *Maier v. Maier*, 2021 VT 88, ¶ 35 (same); 4 V.S.A. § 31 (vesting the civil division with “original and exclusive jurisdiction of all original civil actions”

subject to statutory exceptions). Therefore, the court will presume subject matter jurisdiction “unless a showing is made to the contrary.” *Maier*, 2021 VT 88, ¶ 35 (quoting *Lamell Lumber Corp.*, 2007 VT 83, ¶ 6).

The Civil Division of the Superior Court normally has subject matter jurisdiction over the kinds of claims raised in this case. 4 V.S.A. § 31; see cf. *Roy v. Woodstock Cmty. Tr., Inc.*, 2013 VT 100A, 195 Vt. 427 (2014) (civil division hearing adverse possession and boundary by acquiescence claims); see cf. *Wark v. Zucker*, 2021 VT 37 (2021) (civil division hearing breach of contract and fraud claims, where plaintiff was seeking specific performance as to real property). Here, the question of jurisdiction is complicated only by one of the named defendant’s being an estate, and the primary issue’s requiring the court to determine which party holds title to the disputed parcel.

Defendant argues that this court does not have jurisdiction over Plaintiff’s claims in these proceedings because the probate division of the superior court has exclusive jurisdiction of “the settlement of estates” and “the issuance of declaratory judgments.” 4 V.S.A. § 35(2), (19) (eff. July 1, 2010); but see Declaratory Judgment Act, 12 V.S.A. §§ 4711–4725 (giving the Superior Courts each the authority to issue declaratory judgments within their jurisdictions). Plaintiff argues that this matter raises claims outside the typical estate settlement such that the Civil Division’s jurisdiction is proper. See *In re Allen’s Estate*, 129 Vt. 107, 111–12 (1970) (“The appellants assert that adverse possession is a matter for a trial court and not the probate court. In the absence of [specific facts contemplated in 14 V.S.A. §§ 1801–1804] this would be so.”).

The Vermont Supreme Court found that adverse possession is a matter for the civil court, and not the probate court, unless “limited . . . special and specific factual circumstances” are met. See *In re Allen’s Estate*, 129 Vt. at 110; see also *Lysak v. Grull*, 174 Vt. 523, 525 (2002) (quoting the same). In *In re Allen’s Estate*, possessors of property filed adverse possession petitions to determine their rights to the disputed parcel pursuant 14 V.S.A. §§ 1801–1804. 129 Vt. at 107–08. The Probate Division found in favor of the petitioners, and appointed an administrator for the estate to convey the record title to the petitioners. *Id.* at 109. Critical to the determination were the undisputed facts that Allen had “been dead for more than seven years and that during his lifetime he never conveyed the disputed premises to another, nor was the estate . . . ever administered in the probate court as far as the real estate was concerned.” *Id.* at 108. Heirs to the property appealed the probate court’s findings, arguing that the court had erred in denying their motion to dismiss for want to jurisdiction.

The Supreme Court affirmed the probate court. The Court noted that while generally “a probate court cannot determine a question of title to real property,” “[t]he Legislature, by its enactment of [14 V.S.A. §§ 1801–1802], has granted the statutory power to a probate court to try and determine the question of title to real estate, but limited to special and specific factual circumstances.” *Id.* at 110. Namely, § 1801 provides that the probate division shall determine title or interest in real estate

[w]hen the record title to real estate or an interest therein stands in the name of a person who has been deceased for more than seven years and the estate of such person has not been administered in the probate court, so far as such real estate is concerned

and the interest of the heirs in such real estate has not been conveyed or has been defectively conveyed . . .

*Id.* at 109 (quoting 14 V.S.A. § 1801 (1970)); see also 14 V.S.A. § 1801 (2022) (same). Absent those specific factual circumstances, however, the Court advised that jurisdiction in the “trial court and not the probate court” was proper. *In re Allen’s Estate*, 129 Vt. at 111 (“The appellants assert that adverse possession is a matter for a trial court and not the probate court. In the absence of the statutes above cited this would be so.”). These specific factual circumstances are not present here, namely, Georgianna Harris died September 3, 2016, just over five and a half years before this suit was filed.

However, since *In re Allen’s Estate* was decided, the Vermont Legislature has repealed and replaced parts of the Decedents Estates chapters, adopting, in part, portions of the Uniform Probate Act, see 1975, No. 240 (Adj. Sess.) [hereinafter “Act 240”], and restructured the Vermont Judiciary, 2009 No. 154 (Adj. Sess.). The court now addresses whether, pursuant any of those subsequent statutory enactments, the court must reach a different conclusion.

Prior to Act 240, Vermont had a system where the probate court would appoint commissioners for an estate, who could, among other things, adjust claims against the deceased and try claims. V.S. 1947 §§ 2899, 2901. However, “[t]he probate court [could not] try such claims; it [could] only accept or reject the report of the commissioners.” *In re Delligan*, 110 Vt. 294, 306 (1939). Thus, historically, a legal controversy over a liability alleged against the estate generally was resolved by the civil court.

Act 240 does not appear to contemplate the probate court resolving the legal substance of liability disputes between claimants and executors where the probate court had no such role before. Act 240 repealed several chapters of Title 14, and amended or added other statutes, including those in the “settlement of claims” chapter. See Act 240, §§ 7, 12; 14 V. S. A. §§ 1201–1216. Claims must now be presented to the executor, 14 V.S.A. § 1204, and the executor may allow or disallow the claim, 14 V.S.A. § 1206. If the claimant disagrees with the executor’s disallowance of the claim, the claimant may sue the executor or risk the claim being barred. 14 V.S.A. § 1206(a). The chapter specifically provides, however, that “[a] judgement in a proceeding *in another court* against an executor or administer to enforce a claim against a decedent’s estate is an allowance of the claim.” 14 V.S.A. § 1206(c) (emphasis added).

“The preliminary purpose of the statutes governing claims against estates is to provide reasonable notice to the administrator of the pending estate of relevant information regarding the claim, with which the administrator can make an informed decision.” 31 Am.Jur.22 Executors and Administrators § 588; see 14 V.S.A. §§ 1201–1216. A role of the executor is to determine whether the claim is more justly and efficiently settled or disputed. “Administrators of an estate have a duty to protect the estate from claims of doubtful legality.” 31 Am.Jur.22 Executors and Administrators § 597; see 14 V.S.A. § 1401. “Objections to a claim may rest on the ground that the claim is barred, that it has been paid, that claimant has not complied with the statutory requirements as to its presentation and authentication, or that the determination of a claim previously asserted that is based on the same liability is pending.” 34 C.J.S. Executors and Administrators § 591 (footnotes omitted); see 14 V.S.A. § 1206.

Under this statutory structure, a probate court could disagree with the executor's decision to disallow a claim because, for example, it was not presented in a timely manner. 14 V.S.A. §§ 1203–1204, 1206. However, it would be for the court with jurisdiction over the parties and the subject matter to determine a good faith dispute over the substance of the underlying liability. See *Maier*, 2021 VT 88, ¶ 36 (“Consistent with the civil division's role as the court of general civil jurisdiction, such suits by executors or administrators of an estate to enforce a contract of the decedent are typically brought in the civil division of the superior court.”). “In the absence of statutory authorization, probate courts have no jurisdiction to try and determine disputed claims against an estate, even with the consent of the parties.” 34 C.J.S. Executors and Administrators § 599 (footnote omitted). Accordingly, Act 240 does not alter or divest the civil court of jurisdiction to hear these claims.

The Vermont Judiciary was later restructured in 2010, wherein the Legislature vested the Civil Division “original and exclusive jurisdiction of all original civil actions, except as otherwise provided in sections 2, 32, 33, 34, 35, and 1102” of that title. 4 V.S.A. § 31(1), (5); 2009 No. 154 (Adj. Sess.). Section 35 of that title vests the Probate Division of the Superior Court with subject matter jurisdiction over “the settlement of estates,” including the authority to issue declaratory judgments. 4 V.S.A. § 35(2), (19). “The settlement of estates” is not defined by Vermont statute but is generally codified in 14 V.S.A. §§ 902–1971 (Administration and Settlement of Decedents’ Estates). Within those statutory provisions, only 14 V.S.A. §§ 1801–1804 discussed above directly contemplates the probate court’s authority to determine title to property, and only in limited special and specific factual circumstances. While other sections within that chapter indirectly contemplate the limitations and manner of presenting these claims, they do not appear to divest this court of jurisdiction, but rather appear to contemplate notice to the probate court. See 14 V.S.A. § 1204 (requiring a claimant to “file a *copy* of the claim with the Probate Division of the Superior Court” but otherwise authorizing that claimant to “commence a proceeding against the executor or administrator in *any* court where the executor or administrator may be subjected to jurisdiction”).

Moreover, the court cannot conclude that vesting the Probate Division with exclusive jurisdiction over “the settlement of estates” divested the Civil Court of its jurisdiction over these claims. The uniform probate code, which Vermont has adopted in part, defines “settlement, in reference to a decedent’s estate,” as “the full process of administration, distribution and closing.” Unif. Probate Code § 1-201(44); see Act 240 (adopting parts of the Uniform Probate Code). Black’s Law Dictionary provides that the “[a]dministration of an estate involves *realizing* the movable assets and paying out of them any debts and other claims against the estate.” ADMINISTRATION, Black's Law Dictionary (11th ed. 2019). “Realizing” here likely means converting the noncash assets into cash assets. See REALIZATION, Black's Law Dictionary (11th ed. 2019). Deciding disputes as to the title holder to real property does not fit within this plain meaning of “settlement of estates.” Determining whether the executor breached a contract he entered in his capacity as the executor of the estate or whether Rick Harris is liable to Tim Harris for fraud is even further outside the plain meaning of the “settlement of estates.”

The conclusion that this court has subject matter jurisdiction is consistently applied across each of these statutory eras, and into the present. See, e.g., *In re Allen’s Estate*, 129 Vt. at 11 (1970) (concluding that generally “a probate court cannot determine a question of title to real property”); *In re*

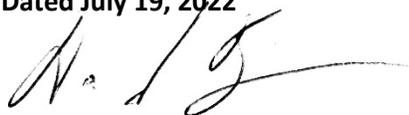
*Est. of Stratton*, 165 Vt. 7, 7 (1996) (“Trust Company [Estate] sued Peisch [Executor] in the Chittenden Superior Court for malpractice as executor and attorney for the same estate.”); *Est. of Kuhling by Kuhling v. Glaze*, 2018 VT 75, 208 Vt. 273 (involving suit filed in civil division by estate against decedent's surviving niece for breach of contract); *Maier*, 2021 VT 88, ¶ 36 (“suits by executors or administrators of an estate to enforce a contract of the decedent are typically brought in the civil division of the superior court”); *Baldauf v. Vt. State Treasurer*, 2021 VT 29 (involving suit filed in civil division by wife as administrator of deceased husband's estate alleging breach of contract); *Benson v. MVP Health Plan, Inc.*, 2009 VT 57, 186 Vt. 97 (involving suit filed in civil division by administrator of estate alleging breach of contract against health insurer).

Defendant has not directed this court to any other statutory provision that would divest the civil division of its jurisdiction to entertain the adverse possession, boundary by acquisition, breach of contract, or fraud claims in this case. Thus, because the presumption is that the Civil Division has subject matter jurisdiction “unless a showing is made to the contrary,” this court finds that it has subject matter jurisdiction. *Maier*, 2021 VT 88, ¶ 35 (quoting *Lamell Lumber Corp.*, 2007 VT 83, ¶ 6). However, the court does not make a finding that the probate court does not have jurisdiction over the issue. See *In re Allen’s Estate*, 129 Vt. at 110 (“a probate court cannot determine a question of title to real property unless such question arises collaterally as a necessary incident to the determination of other matters within the probate jurisdiction.”); see also *In re Estate of Piche*, 166 Vt. 479 (1997) (“We hold that the probate court has jurisdiction to determine title to *personal* property where the issue is necessary and incidental to the determination of other matters within the probate court's jurisdiction.”). However, Plaintiff does not only bring claims disputing title to real property, but also brings a tort and contract claim as well against the executor in his individual capacity arising from agreements to the same property. See Compl. Plaintiff chose to bring the action in this court and this court imposes no judgment on whether that was the only or most efficient means to hear the action, only that this court has the authority to hear it. 14 V.S.A. § 1204 (“The claimant may commence a proceeding against the executor or administrator in any court where the executor or administrator may be subjected to jurisdiction . . .”).

*Order*

For the reasons stated above, the Court *DENIES* Defendant’s motion to dismiss.

**Dated July 19, 2022**



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**David Barra**  
**Vermont Superior Court Judge**  
**Electronically signed**