

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CASE NO. 5001

Dept. II

143408

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

ORDER FOR PARTIAL
DISTRIBUTION

IN THE MATTER OF THE ESTATE OF
GEORGE TOMERA, AKA TOM TOMERA,

Deceased.

MATTHEWS AND WINES, P.C., filed herein their petition for
Partial Distribution, and Notice of Hearing of said petition having
been given as required by law, the court hereby finds:

1. That Decedent, GEORGE TOMERA died testate on February 29,
1992.
2. That on March 29, 1992, MATTHEWS AND WINES, P.C. was
appointed as, and qualified as, Executor of the Estate.

3. That Notice was given to all creditors, both by mailing
to those creditors who were known, and by publication to those who
were unknown. The final date for all creditors to file claims
against the Estate expired on July 6, 1992. One creditor filed a
claim, in the total sum of \$26,76. The Executor paid this claim on
July 16, 1992, and obtained a receipt from the creditor, which is
on file herein.

4. That on July 13, 1992, the Executor filed a Record of

BOOK 243 PAGE 09

1

FILED

92 DEC 14 P2:47

KAREN VASQUEZ

Karen Vasquez
DEPUTY

1 Value and Appraisal of Assets. This Record of Value discloses
2 liquid assets on the date of death at \$1,090,973.00, together with
3 other items of property owned by the Estate.

4 5. That because of the recently concluded will contest, it

5 has not been possible for the estate tax return to be completed and
6 filed before this time. The Executor, based upon advice from the
7 accountant, anticipates that this Estate will not be in a condition
8 to close for in excess of one year from the date hereof. The

9 Executor also believes that it is necessary to do a partial
10 distribution of the Estate assets at this time both because of the
11 agreement settling will contest, and because the equities require
12 that a partial distribution be made to the special devisees, who

13 will no longer be interested in the Estate, and to the residuary
14 devisees in order to reduce the future expenses to the Estate.

15 6. That the accountant has prepared the Federal Estate Tax
16 return for this Estate, and has estimated that the total tax due
17 and owing, and which must be paid in full on or before November 29,
18 1992 is \$278,185.00. The Executor has advised the Court that the
19 Return has been filed and the tax paid.

20 7. That the Estate's year end is rapidly approaching, and it

21 is not cost effective to file an accounting at the current time.
22 It also is not possible to prepare an accounting which can be filed
23 with this court within the time required by the will contest
24 settlement agreement. An annual accounting shall be filed
25 following the Estate's year end, and all income and expenses
26 incurred shall be disclosed to the court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 That Decedent's Last Will and Testament, dated December
 2 30, 1987, and admitted to probate herein, provides, at Paragraph 3,
 3 for a charitable contribution to Northern Nevada Community College
 4 Foundation in the sum of \$10,000.00. Said provision requires that
 5 the sum be used for a scholarship "for a graduate of Carlin High
 6 School, Carlin, Nevada, in further education at the Community
 7 College. First preference shall be given to a student who is
 8 pursuing a career in agriculture." This language is similar to the
 9 language contained in the Last Will and Testament of Battista
 10 Tomera, deceased, which caused some interpretation problems after
 11 distribution. It is therefore requested that this court clarify
 12 the language, and instruct the Foundation as follows:

13 The scholarship shall be awarded annually to an otherwise
 14 qualified graduate of Carlin High School who shall be
 15 attending Northern Nevada Community College. If more than one
 16 person from Carlin High School shall apply for the
 17 scholarship, the Foundation shall determine whether any of the
 18 applicants are pursuing a career in agriculture. This
 19 language shall not be limited to students in "Agriculture",
 20 but rather, it shall be interpreted and applied to students
 21 who are from an agrarian background and intend to apply their
 22 education to agriculture; the actual education can be in any
 23 field related to agriculture, including, but not limited to,
 24 industrial and mechanical arts, computer, marketing, or
 25 business.

26 It is further requested that the above should be made a
 27 permanent part of the scholarship file and the Foundation should be
 28 instructed to grant the scholarship pursuant to the provisions
 29 described herein.

30 9. That in addition to the charitable contribution above
 31 described, the Decedent also provided for numerous specific
 32 devices, as follows:

28
27
26
25
24
23
22
21
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- A. To Peter Tomera, the sum of \$35,000.00.
- B. To Lucy Guidici, the sum of \$35,000.00.
- C. To Julian Tomera, the sum of \$50,000.00.
- D. To Juliana Diaz, the sum of \$10,000.00.
- E. To Thomas J. Tomera, saddles and tack.

Ed Tomera, Jr., a.k.a. Sam Tomera, predeceased decedent GEORGE TOMERA, and pursuant to the provisions of the will, the gift set forth in the will at paragraph Fourth C, has lapsed. Decedent's will also specifically devises the Decedent's interest in the mineral estate, which will be hereinafter addressed. Finally, Decedent's will provides for the forgiveness of an indebtedness to Thomas J. Tomera and Peter Tomera, which is ineffective. The debt which is forgiven and canceled is not an asset of this Estate, having been paid in full during 1988.

10. That pursuant to the provisions of the will contest settlement agreement, confirmed by this court on November 2, 1992, two additional distributions are required. They are as follows:

- A. To Lois Bispo, the sum of \$25,000.00.
- B. To Joann Rood, the sum of \$25,000.00.

Pursuant to instructions received from the attorney for Bispo and Rood, the distribution will be made payable to each of the individuals, and the checks and receipts shall be forwarded to their attorney, Gary E. Digrazia. Bispo and Rood shall execute and return to the Executor the receipts, and shall execute and return the other documents required by the settlement agreement.

11. That the total amount of the specific devises and

1 distributions set forth above is \$190,000.00. Payment of these
2 charges and payment of the Estate tax due leaves a substantial sum
3 for further distribution.

4 12. That pursuant to the provisions of Paragraph Fourth G,
5 and Paragraph Sixth, the rest, residue and remainder of the Estate
6 is to be distributed to Thomas J. Tomera and Patsy Sue Tomera.
7 Pursuant to the provisions thereof, the Executors have petitioned
8 this Court for distribution of the following assets from the
9 residue of the Estate:

10 A. Any and all of Decedent's right, title and interest
11 in and to any minerals or mineral estates, including existing
12 mineral, oil and gas, mining or other similar leases and all
13 proceeds therefrom. A description of the real property in which
14 Decedent held a mineral interest is attached to the Petition as
15 "Exhibit 1".

16 B. All livestock, together with all hay and feed on
17 hand.
18 C. All automobiles, motor vehicles, ranch equipment and
19 household furniture.

20 D. The unpaid sums due and owing pursuant to that
21 certain promissory note payable, wherein Tomera Brothers is the
22 payee and Julian Tomera Ranches, Inc., Stonehouse Division is the
23 maker, together with all interest in the Deed of Trust given as
24 security for the note receivable.

25 E. A partial distribution of the cash residue in the
26 amount of \$250,000.00.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. That the Executor has engaged McMullen, McPhee and company to act as accountants for the Estate and to file the estate tax return. The accountants have estimated a fee for preparation of the estate tax return of \$12,000.00. The Executor has petitioned this Court for authorization to pay to the accountant one half of the estimated fee, or the sum of \$6,000.00.

14. That the Executor is also acting in the capacity of attorney for the Estate. The Executor has previously filed a Waiver of Payment of Fees as Executor, reserving payment as the attorney for the Estate. In connection with the will contest, the Executor engaged independent counsel, BIBLE, HOY, TRACHOK, WADHAMS and ZIVE, who have submitted a billing for services rendered in connection with the will contest in the sum of \$1,683.48. A copy of the billing, dated October 1, 1992, is attached to the Petition as Exhibit "2". The Executors should be authorized to pay these fees as extraordinary fees. In addition, MATTHEWS AND WINES, P.C., have rendered services on behalf of this Estate both in the ordinary course of administration and in the course of litigation of the will contest. MATTHEWS AND WINES, P.C., is entitled to partial payment of attorney fees on behalf of this Estate in the sum of \$27,432.00, which this Court finds reasonable and appropriate.

15. That after payment of the distributions above set forth, all devisees, legatees and heirs-at-law, with the exception of the residuary devisees, will no longer be entitled to object to estate matters. Petitioners have requested that this Court order that all

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 business.

2 This language shall become a permanent part of the Foundation

3 Scholarship file and the Foundation is instructed to grant the

4 scholarship provided hereby in accordance with the instructions set

5 forth in this paragraph.

6 4. The Executor is hereby authorized and instructed to pay

7 the following sums of money or to distribute the following items of

8 property to the following named devisees as soon as possible after

9 entry of this order:

10 A. To Peter Tomera, the sum of \$35,000.00.

11 B. To Lucy Guidici, the sum of \$35,000.00.

12 C. To Julian Tomera, the sum of \$50,000.00.

13 D. To Juliana Diaz, the sum of \$10,000.00.

14 E. To Thomas J. Tomera, saddles and tack.

15 F. To Lois Bispo, the sum of \$25,000.00.

16 G. To Joann Rood, the sum of \$25,000.00.

17 5. The Executor is hereby authorized and instructed to make

18 the following partial distribution, whether said asset is a

19 specific devise or from the residue of the Estate, to the residuary

20 devisees, Thomas J. Tomera and Patsy Sue Tomera. That the

21 following specific items and money should be distributed pursuant

22 to this Order of Partial Distribution to Thomas J. Tomera and Patsy

23 Sue Tomera:

24 A. Any and all of Decedent's right, title and interest

25 in and to any minerals or mineral Estates, including existing

26 mineral, oil and gas, mining or other similar leases and all

1 special devisees and heirs-at-law shall be eliminated from the
2 mailing list, and notice shall be given only to those persons who
3 continue to have an interest in this Estate.

4 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

5 1. That due and legal notice of this hearing has been given
6 for the time and in the manner required by law.

7 2. That this petition shall be allowed to the extent
8 provided herein without the requirement that the Executor file a
9 First Accounting at this time. The Executor shall file a First
10 Accounting, which shall include an accounting for all distributions
11 authorized hereby as soon as possible after the close of the Estate
12 income tax year.

13 3. The Executor is hereby authorized and instructed to pay

14 to Northern Nevada Community College Foundation the charitable
15 distribution in the sum of \$10,000.00; said sum shall be used for
16 a scholarship "for a graduate of Carlin High School, Carlin,
17 Nevada, in further education at the Community College. First
18 preference shall be given to a student who is pursuing a career in
19 agriculture." The Foundation is further instructed to interpret
20 and apply this language as follows:

21 The scholarship shall be awarded annually to an otherwise
22 qualified graduate of Carlin High School who shall be
23 attending Northern Nevada Community College. If more than one
24 person from Carlin High School shall apply for the
25 scholarship, the Foundation shall determine whether any of the
26 applicants are pursuing a career in agriculture. This
27 language shall not be limited to students in "Agriculture",
28 but rather, it shall be interpreted and applied to students
29 who are from an agrarian background and intend to apply their
30 education to agriculture; the actual education can be in any
31 field related to agriculture, including, but not limited to,
32 industrial and mechanical arts, computer, marketing, or

1 proceeds therefrom in and to that certain the real property
 2 described in Exhibit "1" which is attached to the Petition. The
 3 Executor shall execute and record a quit Claim Deed on behalf of
 4 the Estate.
 5 B. All livestock together with all hay and feed on
 6 hand.
 7 C. All automobiles, motor vehicles and ranch equipment,
 8 more particularly described as follows:
 9 i. One (1) 1986 Chevrolet automobile, VIN
 10 1G1BN69H3G9128642.
 11 ii. One (1) 1991 Lincoln Automobile, VIN
 12 1LNCM81W7MY648988.
 13 iii. One (1) KB Gooseneck trailer, VIN SMG7208285.
 14 iv. Decedent's interest in all remaining farm
 15 machinery.
 16 The Executor is hereby authorized to execute and deliver any
 17 and all titles relating to the above and to pay such expenses as
 18 shall be necessary to complete the transactions.
 19 D. The Executor is hereby authorized and instructed to
 20 deliver all of Decedent's household goods and furniture.
 21 E. The Executor is hereby authorized and instructed to
 22 forgive the unpaid sums due and owing pursuant to that certain
 23 Promissory Note payable, wherein Tomera Brothers is the payee and
 24 Julian Tomera Ranches, Inc., Stonehouse Division is the maker; the
 25 Executor should be instructed to assign all interest in the Deed of
 26 Trust given as security for the note receivable. Any and all
 27
 28

1 forgiveness of debt pursuant hereto shall be effective February 29,

2 1992. The Executor shall execute such assignments, demands and

3 other writings as shall be necessary.

4 F. The Executor is hereby authorized and instructed to

5 make a partial distribution from the cash residue of the Estate in

6 the amount of \$250,000.00.

7 6. The Executor is hereby authorized and instructed to pay

8 to McMULLEN MCPHEE & CO., a partial accountant fee in the sum of

9 \$6,000.00.

10 7. The Executor is hereby authorized and instructed to pay

11 extraordinary attorney fees to BIBLE, HOY, TRACHOK, WADHAMS and

12 ZIVE in the sum of \$1,683.48.

13 8. The Executor is hereby authorized and instructed to pay

14 partial attorney fees to MATTHEWS AND WINES, P.C., in the sum of

15 \$27,432.00.

16 9. IT IS HEREBY FURTHER ORDERED that all future notices

17 shall eliminate all devisees and heirs-at-law, and all notices

18 shall be mailed only to those persons who continue to have an

19 interest in the Estate.

20 10. The Executor is instructed to record all necessary orders

21 and documents in both Elko County and Eureka County as shall be

22 necessary.

23 DONE IN OPEN COURT this 14 day of December, 1992.

24 /s/ Jack B. Ames

25 DISTRICT JUDGE

26

27 BOOK 243 PAGE 018

CERTIFICATION OF COPY

STATE OF NEVADA
COUNTY OF ELKO (SS)

TERESA VASQUEZ, COUNTY CLERK AND EX-OFFICIO
CLERK OF THE DISTRICT COURT OF THE FOURTH

DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF ELKO, DO HEREBY CERTIFY THAT THE

INSTRUMENT IS A FULL, TRUE AND CORRECT COPY OF
THE INSTRUMENT AS THE SAME APPEARS ON FILE OF

ALTERNATE OFFICE

- Witness my hand and the seal of said court affixed this

17 day of Dec, A.D. 1992

KAREN VASQUEZ - County Clerk

By *Karen Vasquez*
Deputy Clerk

BOOK 243 PAGE 009

OFFICIAL RECORDS

RECORDED AT THE REQUEST OF

Mathew & Wynn

92 DEC 16 AM 11:19

EUREKA COUNTY, NEVADA

M. N. REBELEATI, RECORDER

FILE NO. *1500*

143408

BOOK 243 PAGE 19