

Publications

Case Note: *A. Bogar v. Mark Baker, et al*: When Language Is Ambiguous, Don't Forget the Testator's Intent

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CLIENT ALERT | 10.3.2017

"Together with all contents of said real estate." It sounds straightforward. But what happens when the "real estate" is a farm and the "contents" in question include trucks and farm machinery?

The Seventh District Court of Appeals recently addressed this issue in *Bogar v. Baker, 2017-Ohio-7766*. Thomas Bogar died testate on June 20, 2014. His last will and testament contained only two bequests, one specific and one residual. The specific request read:

"I give, devise and bequeath to my brother, Charles A. Bogar, if he shall survive me, the real estate at 13300 Diagonal Road, Salem, Ohio, **together will all contents of said real estate**, if owned by me at the time of my death."

The residual clause read:

"All the rest, residue and remainder of my property whether real, personal or mixed and wheresoever situated which I may own or have the right to dispose of at the time of my death, I give, devise and bequeath to..."

Analyzing these two clauses, the Mahoning County Probate Court found an ambiguity as to the meaning of the term "contents of said real estate." The court determined that the trucks and farm machinery located at 13300 Diagonal Road were personally to be distributed pursuant the residual clause. The probate court defined "contents of said real estate" to mean "all household goods, personal property furnishing [sic], including all contents of the outbuildings which are typically found in a home environment." Motor vehicles, specialized farm vehicles and equipment were excluded from the specific bequest "because they were of 'increased value' and because of 'the ability to title' these items." The probate court relied on *McAlpin v. Obenour*, 75 Ohio App. 268, 61 N.E.2d 820 (1944) that held a specific bequest of "all my personal property located in the room now occupied by me" did not include certificates of deposit or checks, even though the certificates and checks themselves were found in that room after the death of the

testatrix.

The Seventh District overturned the probate court, noting that the lower court's interpretation of the words "contents of said real estate," did not appear to consider the intent of the testator. The matter was remanded back to the probate court for an evidentiary hearing. Although the Seventh District did not offer its own interpretation of what "contents of said real estate" means, it did send a clear signal that potentially ambiguous language such as this should be thoroughly assessed to determine the testator's intent.

Whether you are a beneficiary, executor or administrator of estates who has questions about potentially ambiguous language, or an attorney with questions about what this decision means for your practice and your clients, contact a Vorys attorney regarding this decision.