

# SUPREME COURT OF LOUISIANA

*No. 97-CC-1718*

## IN RE: HOWARD MARSHALL CHARITABLE REMAINDER ANNUITY TRUST

LEMMON, J., Dissenting from Denial of Rehearing

The real issue presented in this case is whether Louisiana has in rem jurisdiction over property belonging to the succession of the decedent, a Texas domiciliary, on the basis that the asset is located in Louisiana. The succession asset at issue is a debt due to the decedent by the trust which he established and of which he was an income beneficiary. The trust derived its income from mineral royalties.

In rem jurisdiction is governed by La. Code Civ. Proc. art. 8, which provides that "[a] court which is otherwise competent under the laws of this state has jurisdiction to enforce a right in, to, or against property having a situs in this state, claimed or owned by a nonresident."<sup>1</sup> (emphasis added). Since jurisdiction in rem is based upon the legal situs of the property, the court applies the rules with respect to situs in each particular case. With regard to incorporeals, the term "situs" is simply a shorthand for the place whose law is for independent reasons applicable to one set of facts or another. Robert A. Leflar et al., American Conflicts Law §183 (4th Ed. 1988).<sup>2</sup>

The situs of incorporeal movable property, if not evidenced by a negotiable

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<sup>1</sup>La. Code Civ. Proc. art. 5251 broadly defines property as "all classes of property recognized under the laws of this state: movable or immovable, corporeal or incorporeal."

<sup>2</sup>Professor Leflar further notes that "[a] simple debt owed to a decedent is deemed to be an asset having a situs where the debtor is located, for the purpose of sustaining administration of the decedent's estate at that place," and, an "[a]ction can be brought on such a claim by the local administrator at any place where jurisdiction can be acquired over the debtor." Id. at §206 n. 1.

instrument or corporation stock certificate, is the state having jurisdiction over the debtor." La. Code Civ. Proc. art. 8, Official Revision Comment (c) citing Restatement of Conflict of Laws §§108, 51 cmt. (b) (1934). This comment to Article 8 closely tracks the language in the Uniform Probate Code, which deems a debt to be domiciled where the debtor resides.<sup>3</sup> Because of the complex issues presented, most jurisdictions, either by statute or jurisprudentially, have recognized the principle set forth in the Uniform Probate Code that the situs of an intangible debt for succession purposes is the debtor's domicile.

The need to recognize the debtor's domicile as a proper jurisdiction for an ancillary succession is supported by several factors. First, if a foreign succession representative would seek to enforce the debt in any jurisdiction other than the debtor's

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<sup>3</sup>Uniform Probate Code §3-201 provides:

(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(1) in the [county] where the decedent had his domicile at the time of his death; or

(2) if the decedent was not domiciled in this state, in any [county] where property of the decedent was located at the time of his death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the Court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in Section 1-303 or (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the Court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued. (emphasis added).

domicile, the effort generally would be met with an exception of lack of personal jurisdiction. Second, a debt is only of value to the extent it can be enforced and collected; the law of the jurisdiction that governs such enforcement should be applied in determining its situs for jurisdictional purposes. Third, the state in which a debt is collected has a taxable interest for the purpose of applying its inheritance tax laws, and the power to tax should likewise be accompanied with the power to apply that state's laws and to exercise jurisdiction. See Hildebrand v. City of New Orleans, 549 So. 2d 1218, 1226-27 (La. 1989) (discussing potential of multijurisdictional problems presented by intangibles); Leflar, supra, (noting the United States Supreme Court's view that a debt has a taxable situs at the domicile of the debtor).

Given these factors, the application of the ancient doctrine of mobilia sequuntur personam relied on by the original opinion in this matter to find that a Louisiana court lacked jurisdiction over an intangible debt having strong Louisiana connections is erroneous. Indeed, application of that ancient principle overlooks the reality of the modern debtor-creditor relationship. See Leflar, supra, (pointing out the antiquated nature of the concept mobilia sequuntur personam).

In the present case, the debt owed by the Calcasieu trust to the Texas- domiciled decedent constitutes incorporeal movable property having a situs in this state and "claimed" by a non-resident, and thus falls within the ambit of La. Code Civ. Proc. art. 8. The absence of a provision in La. Code Civ. Proc. art. 2811's succession-specific application of Article 8 does not preclude the exercise of in rem jurisdiction. Article 2811 is simply a venue provision; Article 8 is the jurisdiction provision, and Article 8 controls. Under Article 8, in rem jurisdiction exists in Louisiana.