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**IN THE CIRCUIT COURT OF THE 10TH JUDICIAL
CIRCUIT, IN AND FOR POLK COUNTY, FLORIDA**

PROBATE DIVISION

IN RE: ESTATE OF File No. 2019CP000629

MARGA K. ANDRES,

Deceased.

ORDER DETERMINING HOMESTEAD STATUS OF REAL PROPERTY

THIS CAUSE came before the court on the 9th day of October, 2020, upon Hoerner Bank's Petition to Determine Homestead Status of Real Property. An Objection was filed by the Personal Representative of the Estate. The Court has reviewed the pleadings, considered the Memoranda of Law filed by the respective sides, and the arguments presented.

In October, 2017, Marga K. Andres, domiciled in Collier County, was the subject of an Emergency Temporary Guardianship. A plenary ETG Guardian, Lisa Abel, who is also the Personal Representative of the decedent's estate, was appointed. Court approval was obtained by Lisa Abel to move the Ward to a nursing facility in Polk County, Florida, so the Ward could be closer to Ms. Abel, her cousin. In January, 2018, the ETG was converted to a plenary guardianship. Lisa Abel continued to serve as plenary guardian. The following month, Marga Andres was moved to a different Polk County facility where she remained until her death in February, 2019. Marga Andres was not survived by a spouse or children, but thirteen heirs, eight of whom live in Europe.

In March, 2019, a Petition for Administration was filed and Lisa Abel eventually appointed Personal Representative. The Petition for Administration named some, but not all, of Marga Andres' intestate heirs. Hoerner Bank AG subsequently located a number of European beneficiaries and obtained partial assignments in its favor from six heirs. Hoerner Bank filed an Amended Petition for Determination of Beneficiaries and Their Respective Shares, and an Order was subsequently entered on April 28, 2020, establishing the distributees of the estate .

On March 23, 2020, Hoerner Bank filed a Petition to Determine Homestead Status of Real Property, to which the Personal Representative objected, claiming the Ward voluntarily abandoned her homestead when she was moved from Collier County to skilled nursing facility in Polk County, Florida. The Personal Representative claimed Marga Andres voluntarily abandoned her homestead and was unable to return to her Collier County condominium due to the skill level needed to maintain health care services

unavailable within the home setting. The Personal Representative's asserts Marga Andres was unable to return to her home and since there was no expectation of return, such actions constituted abandonment. The parties do not dispute the Collier County condominium was Marga Andres' homestead at the time the guardianship proceedings were initiated.

Once homestead status is acquired, it continues until the homestead is abandoned or alienated in the manner provided by law. Coy v. Mango Bay Property and Investments, Inc., 963 So.2d 873, 878 (Fla. 4th DCA 2007). Homestead is accorded special status under Florida law and, as such, the Florida Constitution's homestead provisions are liberally construed. JBK Assocs. Inc. v. Sill Bros., Inc., 160 So.3d 94, 96 (Fla. 4th DCA 2015). Consistent with the special status of Florida homestead, a finding of abandonment requires a "strong showing" of the owner's intent not to return to the homestead. In Re Herr, 197 B.R. 939, 941 (Bankr. S.D. Fla 1996). Florida courts have consistently held a property is not abandoned for the purpose of homestead protection when the owner involuntarily ceases to reside on the property. In Re Estate of Melisi, 440 So.2d 584 (Fla. 4th DCA 1983). The homestead was not abandoned even though the owner of the property had been adjudged insane and committed to a state institution. Stokes v. Whidden, 122 So. 566 (Fla. 1929).

Courts have upheld protections even when a property has been left completely unoccupied. The homeowner had been absent from the homestead property for around two years after being placed in a nursing home in a vegetative state; nothing was done with the property during that period. Crain v. Putnam, 687 So.2d 1325 (Fla. 4th DCA 1997). Given her condition, Crain could not "communicate any intention regarding her residence or her plans to maintain her residence". Crain at 1325. Homestead protections are not subject to a physical presence requirement, nor are they forfeited when a homeowner involuntarily changes her residence. Id. at 1326. Yost-Rudge v. A to Z Properties, Inc., 263 So.3d 95 (Fla. 4th DCA 2019).

There is nothing in the record to indicate that Marga Andres voluntarily abandoned her homestead in Collier County. As a plenary ward, she lacked the capacity to knowingly and intelligently voluntarily abandon her homestead. Florida Statute 744.3215 makes no provision a guardian has the

delegated right to determine a ward has abandoned the homestead protections as granted under Article X, Section 4 of the Florida Constitution.

The Personal Representative's arguments the Petition for Administration states the decedent was domiciled in Polk County, Florida, is unavailing. Also unavailing was the claim of the guardian that the ward intended to abandon her homestead. Also unavailing were the Personal Representative's attempt to convince the Collier County Property Appraiser to reconsider the homestead exemption status nor the amendment of the death certificate to alter the decedent's place of residence. Such matters are ultimately for determination by the Courts, not the Personal Representative.

The Court having reviewed the Petition for Determination of Homestead Status of Real Property, and the Court finding that all interested parties have been provided notice, have waived notice or represented by counsel, the Court finds as follows:

1. The decedent died intestate and was domiciled in Collier County, Florida.
2. The decedent was survived by one or more heirs at law who are neither a spouse nor a lineal descendant of the decedent.
3. At the time of decedent's death, the decedent owned and resided on the property described in the Petition, it is therefore

ADJUDGED that the following described "Property":

Unit No. 201, Building E, Phase 7 of THE FAIRWAYS AT EMERALD GREENS, a Condominium, according to the Declaration of Condominium dated August 27, 1991, and recorded September 3, 1991, in Official Records Book 1644, page 1368, et seq., Public Records of Collier County, Florida, as amended, together with an undivided share in the common elements appurtenant thereto.

a/k/a 1070 Woodshire Lane, Apt. E201, Naples, FL 34105

constituted the homestead of the decedent within the meaning of Section 4 of Article X of the Constitution of the State of Florida.

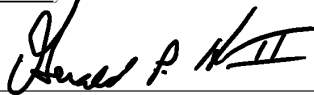
ADJUDGED FURTHER that, as of decedent's death, title to the Property descended and the constitutional exemption from the claims of decedent's creditors inured to the following

beneficiaries of decedent's estate:

BENEFICIARY NAME	RELATIONSHIP	SHARE
Hans-Jurgen Kuhnle	Maternal First Cousin Once Removed	1/36
Lukas Kuhnle	Maternal First Cousin Twice Removed	1/72
Florian Kuhnle	Maternal First Cousin Twice Removed	1/72
Christian Kuhnle	Maternal First Cousin Once Removed	1/36
Claus Karl Wolf	Maternal First Cousin	1/12
Sabine Grunert	Maternal First Cousin Once Removed	1/36
Stefan Grunert	Maternal First Cousin Once Removed	1/36
Natascha Grunert	Maternal First Cousin Once Removed	1/36
Lisa K. Abel	Maternal First Cousin	1/8
Heinz Braschos	Maternal First Cousin	1/8
Cynthia G. Javorecky	Paternal First Cousin Once Removed	1/6
Laura K. Brooks	Paternal First Cousin Once Removed	1/6
Rachel Garrett	Paternal First Cousin Once Removed	1/6

ADJUDGED FURTHER that the personal representative is authorized and directed to surrender all of the Property which may be in the possession or control of the personal representative to the person named above and the personal representative shall have no further responsibility with respect to it.

DONE AND ORDERED on November 13, 2020.



Gerald P. Hill, II
CIRCUIT JUDGE

Copies furnished:

Lawrence W. Livoti, Esq.
Lenore Schiller, Esq.