

1. For Publication

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4. **IN THE SUPERIOR COURT**  
5. **OF THE**  
6. **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7. **IN RE THE ESTATE OF**  
8. **MARIA PIERE MALUS,**  
9. **Deceased.**

**CIVIL ACTION NO. 99-0769**

**ORDER CONCERNING FUNDS**  
**MISAPPROPRIATED FROM THE**  
**ESTATE**

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10. Magdalena and Juan Kaipat, heirs to the Estate of Maria Pierce Malus (the "Estate"), brought  
11. motions for the following: (1) immediate accounting of estate lease income proceeds; (2) partial  
12. distribution; (3) removal of estate administrator and substitution of Jeffrey Kaipat. Oral arguments  
13. were held July 18, 2005, with Robert Torres representing Movants, and Reynaldo Yana representing  
14. the Administrator, Crispin Kaipat.  
15.

16. **I. BACKGROUND**

17. In July 2002, Crispin Kaipat substituted for Joaquin Sablan as Administrator for the Estate.  
18. With the Court's permission, Administrator renegotiated a lease of the Estate's property in Garapan  
19. (Lot 009 D 59) to Kim, Yu-Jung and Kim, Ji-Young. Pursuant to the new lease, the Estate was to  
20. receive \$16,000 in September 2002 and \$20,000 in December 2002.  
21.

22. Administrator never filed an accounting of the lease income proceeds, nor has he  
23. communicated with any of the other heirs until now. Movants brought the instant motions after  
24. learning that the lease income proceeds were not in the Estate's trust account.

25. At the hearing, Administrator informed the Court and opposing counsel that he had taken the  
26. money for his own personal use. Administrator's counsel stated that he was previously unaware of  
27. the existence of the lease and his client's misuse of Estate funds.

1. Administrator testified that he was the only person responsible for the removal of funds, and  
2. that he had exhausted the funds by 2004.

3. Counsel for Movants then sought an order compelling Administrator to reimburse the Estate  
4. by depositing \$750 per month into the Court's registry.

## 5. **II. OPINION**

6. The Court is gravely disappointed with what it has learned in this proceeding. The  
7. Administrator is the Clerk of the Supreme Court. The violation of a fiduciary duty that he agreed to  
8. take upon himself is inexcusable.

9. The Administrator's counsel may not be without blame. It is the responsibility of the  
10. administrator's attorney to ascertain the full extent of the estate's assets. It is also the attorney's  
11. responsibility to ensure that estate funds are safeguarded in a trust account to which only the  
12. attorney has access. If the attorney is aware of a lease transaction involving the estate and fails to  
13. inquire as to the status of the proceeds, then the attorney has not fulfilled his obligations as an  
14. officer of the Court. If the attorney learns of a transaction in which funds are inappropriately  
15. diverted from the estate, then it is the attorney's duty to withdraw.

16. The Court observes that, in spite of Mr. Yana's professed ignorance of the lease, he included  
17. the Garapan property in a partial inventory dated September 11, 2002. (It was the only property  
18. listed.) Further, on December 27, 2004, Mr. Yana received a letter from Mr. Torres describing the  
19. lease and asking about the proceeds. At minimum, Counsel should have been aware that there was  
20. an accounting problem, and should have brought this problem to the attention of the Court.

## 21. **III. CONCLUSION**

22. The Administrator's confession moots the motion for an immediate accounting of estate  
23. lease income proceeds. The motion for partial distribution must be taken off calendar as there are no  
24. lease proceeds to distribute at this time.

1. The motion to remove the Administrator and substitute Jeffrey Kaipat is granted. Crispin  
2. Kaipat is hereby released from his role as administrator, although he will be held liable for any  
3. misdeeds in the course of his service as administrator.

4. Crispin Kaipat is ordered to submit to the Court an affidavit of his income and expenses by  
5. July 25, 2006. Payments of an amount to be determined by the Court will commence on August 15,  
6. 2006.

7. It will be the responsibility of Mr. Torres, counsel for the new administrator, to vindicate the  
8. interests of the estate by taking the proper actions against the former administrator. A motion to  
9. determine the total liability of the former administrator is in order, as well as a proper motion for  
10. contempt.  
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12.  
13. SO ORDERED this 19th day of July, 2006.

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15. /s/  
16. Juan T. Lizama  
17. Associate Judge, Superior Court  
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