ENTRY: 198-07

JUSTICE WRITING THE OPINION: OYDEN ORTEGA DURAN

HILDA ANTONIA PIZA BLONDET FILES AN APPEAL FOR REVERSAL IN THE TESTAMENTARY SUCCESSION PROCEEDING OF WILSON CHARLES LUCOM (R.I.P.) FILED BY RICHARD SAM LEHMAN

SUPREME COURT OF JUSTICE – CIVIL DIVISION – PANAMA, AUGUST SIX (6) TWO THOUSAND TEN (2010)

HAVING CONSIDERED:

The law firm INFANTE & PEREZ ALMILLANO, acting as legal counsel for Mrs. HILDA ANTONIA PIZA BLONDET, formally filed an Appeal for Reversal on the Decision dated May fourth (4) two thousand seven (2007), issued by the First Superior Court for the First Judicial District, which modifies Order No. 1025/173-06 dated July fifth (5) two thousand six (2006), issued by the Fourth Civil Circuit Court for the First Judicial Circuit of Panama, both issued in the Testamentary Succession Proceeding of WILSON CHARLES LUCOM (R.I.P.).

This Civil Division, pursuant to the Decision dated December seventh (7) 2007, at pages 259 to 260 of the record, admitted the Appeal for Reversal filed by the Appellant.

After verifying that the allegations phase was finalized, which the Appellant and legal counsel for Mr. RICHARD LEHMAN used well, this Court then proceeds to decide on the merits of the Appeal based on the considerations set forth hereunder.

Inasmuch as this Appeal for Reversal is in the substantive allegations phase, Attorney DORIS SERRANO BATISTA, acting for and on behalf of the ROCHESTER,

MINNESOTA MAYO CLINIC, filed a Motion to declare the nullity of all proceedings as of the Order dated December seventh (7) two thousand seven (2007), issued by this Court and which decided to admit the Appeal for Reversal object of this review.

Inasmuch as this Appeal for Reversal is in the decision phase and based on the Principle of Procedural Economy, this Court shall proceed to decide both the Motion to Nullify filed by Attorney Doris Serrano Batista and this Appeal.

MOTION TO NULLIFY

Attorney DORIS SERRANO BATISTA, acting for and on behalf of the ROCHESTER, MINNESOTA MAYO CLINIC, who is a legatee in the will of Mr. Wilson Charles Lucom (R.I.P.), and has been recognized as such by the Appellate Court in the challenged Decision, filed a motion to nullify all proceedings as of the Order dated December 7, 2007, which ordered the admission of the Appeal for Reversal filed by Hilda Antonia Piza Blondet inasmuch as the Moving Party considers that this Court was barred at that procedural juncture from deciding on the admissibility of the Appeal for Reversal since compliance with a court order issued by the Substantiating Judge was pending, "and that according to the right to a defense which assists her principal, as provided in the Political Constitution and by operation of Law" the process should have been stayed.

The Court notes that Attorney Doris Serrano has filed the Motion to Nullify with this Appeal for Reversal in violation of provisions in Article 1191 of the Judicial Code,

which stipulates:

> *"Article 1191: During substantiation of the appeal, no motions other than for recusal shall be admitted."*

Article 1191 of the Judicial Code transcribed above, clearly indicates that during substantiation of the Appeal for Reversal, no incidental proceeding is appropriate, except for a recusal, wherefor this Court cannot proceed in any manner other than to flatly reject the Motion to Nullify filed by Attorney Doris Serrano on behalf of the ROCHESTER, MINNESOTA MAYO CLINIC because it is not in accordance with law.

BACKGROUND:

Through legal counsel, Mr. RICHARD SAM LEHMAN moves for the Testamentary Succession Proceeding of who, while living, was WILSON CHARLES LUCOM (R.I.P.), attaching a brief of the request, public deeds containing the nuncupative will of the decedent and by virtue thereof, moving the Court to appoint him as the executor of the estate together with Messrs. Christopher Rudy and Hilda Piza Lucom, according to the moving party, in keeping with the will of the decedent.

The controversy that intends to be decided in this Appeal for Reversal which is the object of our review at this time, arises by virtue of the fact that the will of the decedent is divided in three separate public deeds, while the first clause is the one that pertains to the appointment of the executors, which has given rise to the proceeding which this Court must decide, wherefor we find it is necessary to

describe the contents of the different Public Deeds:

1. Public Deed No. 6646 dated June 20, 2005, "whereby Wilson Charles Lucom grants [his] will," consisting of four clauses, and the text in the first clauses indicates:

> *"**FIRST:** I, Wilson C. Lucom, a resident in Panama City, Republic of Panama, of sound will and mind, make this my last will and testament, which revokes all previous provisions and codicils. As Executors, I appoint Richard Lehman from Boca Raton, Florida, USA; Ruben Carles from Panama, in the Republic of Panama and my beloved wife Hilda Piza Lucom, formerly Hilda Piza Arias, daughter-in-law of Harmodio Arias, former president of the Republic of Panama, and the niece of Mireya Moscoso, former president of the Republic of Panama. In the event Mr. Ruben Carles cannot continue as an Executor for any reason, I appoint Mr. Christopher Rudy as the Executor in his stead."*

2. Public Deed No, 11191 dated October 29, 2005, "whereby Wilson Charles Lucom grants [his] will," consisting of three clauses, where the second clause addresses modifying the first clause in the aforementioned public deed No. 6646, in order that its first clause will read as follows:

> *"**FIRST:** I, Wilson C. Lucom, a resident in Panama City, Republic of Panama, being of sound will and mind, make the following codicil to the will granted previously. As Executors, I appoint Richard Lehman of Boca Raton, Florida, USA; Christopher Rudy of Florida, USA, and my beloved wife Hilda Piza Lucom, formerly Hilda Piza Arias, daughter-in-law of Harmodio Arias, former president of the Republic of Panama, and the niece of Mireya Moscoso, former president of the Republic of Panama."*

3. Public Deed No. 1131 dated February 3, 2006, "whereby Wilson Charles Lucom grants [his] will", consisting of three clauses, which, like the foregoing codicil, only and exclusively state his intention to modify the first clause in the original will

as recorded in the aforementioned public deed No. 6646, only that in this instance, he makes no reference to the executors and the entire text as to how, according to his will, the referenced first clause should read, he states:

> *"FIRST CLAUSE: I, Wilson C. Lucom, a resident in Panama City, Republic of Panama, being of sound will and mind, make the second codicil to the will granted previously. I bequeath to **ISRAEL DEL CARMEN TEJADA CUERVO,** personal identity card No. eight – two hundred thirty-three– six hundred sixty-eight (8-233-668), a Panamanian national, plot number one hundred ten thousand forty-one (110041), a house and a lot, with the precedent that he remain in my employ until I die. The property, duly registered with the Public Registry is described as follows: ------------- Property number one hundred ten thousand forty-one (110041), Roll seven thousand one hundred seventy-two (7172), Document five (5) in the Property Section, duly registered at the Civil Registry, Province of Panama, which consists of a house located in Altos de la Pulida, lot number M-3, San Miguelito District and whose measurements and boundaries are registered in the property section at the Public Registry in the Province of Panama. ---------------- If Israel Tejada is not employed by me at the time of my death, the condition precedent controls and no part of property number one hundred ten thousand forty-one (110041) shall be bequeathed to him; furthermore, he must move out of the said property within sixty days. Additionally, Mr. Tejada shall no have past or future interest in property one hundred ten thousand forty-one (110041). ------- In the event Mr. Tejada is not working for me, he will not receive this property as a bequest, and therefore will not own it and the aforementioned property will go to the END WAR TRUS . In the event the condition precedent is fulfilled and Mr. Tejada is employed by Mr. Lucom until the time of his death, Mr. Tejada shall freely own the said property. ------ It is irrelevant that Mr. Tejada remain employed by Mrs. HILDA LUCOM at the time of Mr. LUCOM'S death. -------- The foregoing condition has immediate force and effect.*

The Fourth Civil Circuit Court in Panama, to rule as to how the three aforementioned public deeds should be construed, and consequently to appoint an executor in the testamentary succession proceeding, substantiates her opinion

based on the opinions stated by the Second Notary Public for the Circuit of Panama, which were incorporated into the proceeding by legal counsel for Mr. Lehman. Therefore, the dispositive part of her order, specifically states:

> *"Declares open this Testamentary Succession Proceeding of Mr. WILSON CHARLES LUCOM (R.I.P.) who died on June 2, 2006.*
>
> 1. *His legatees are, without prejudice to third parties, Mrs. HILDA PIZA LUCOM, ISABEL MARIA CLARK, ROBERT CLARK, I.D. NO. 224-1307992, ALEXANDER CLARK, I.D. NO. 230-13-7714, LANNY CLARK, I.D. NO 552-69-3776, CASSANDRA CLARK, I.D. No 557-75-8741, ROCHESTER, MINNESOTA MAYO CLINIC, MELINDA MORRICE, HILDA ABDELNOUR, MADELINE ARIAS, GILBERTO ARIAS ALLISON, NORA GARNER, JAMES GIBBONS, ANN SMITH, WALTER GARNER, GABY ELKINS, CHRISTOPHER RUDDY, DR. PETER HIBBERD, MARIO BOYD, ANDREA OSPINA, TANYA RAMOS, ISRAEL TEJADA, EDILBERTO SOTO. CONDITIONAL: END WAR TRUS FOUNDATION. FUNDACION WILSON C. LUCOM TRUST FUND is the heir.*
>
> 2. *APPOINTED as Executor of the estate is Mr. RICHARD LEHMAN, a United States citizen, identification number L 550-757-44-081-0, who must appear before the Court to be sworn in.*
>
> 3. *All persons who have any interest therein are ORDERED TO APPEAR, and POST and PUBLISH the summons as provided in Article 1526 of the Judicial Code.*

In compliance with his rights and authority to represent, counsel for Mrs. Hilda Antonia Piza Blondet filed a Motion to Appeal on the aforementioned Order, and the First Court, in deciding the appeal pursuant to the Decision dated May fourth (4) two thousand seven (2007), the dispositive part states:

> *FINDS:*
>
> 1. *The Testamentary Succession Proceeding of WILSON CHARLES LUCOM, who died on June 2, 6006, is open;*

2. *His legatees are, without prejudice to third parties, Mrs. HILDA PIZA LUCOM, ISABEL MARIA CLARK, CASSANDRA CLARK, ROCHESTER, MINNESOTA MAYO CLINIC, MELINDA MORRICE, HILDA ABDELNOUR, MADELINE ARIAS, GILBERTO ARIAS, MARGARITA ARIAS ALLISON, NORA GARNER, JAMES GIBBONS, ANN SMITH, WALTER GARNER, GABY ELKINS, CHRISTOPHER RUDDY, DR. PETER HIBBERD, MARIO BOYD, ANDREA OSPINA, TANYA RAMOS, EDILBERTO SOTO and ISRAEL TEJADA.*

3. *APPOINTED as EXECUTORS and TRUSTEES of the estate are Messrs. RICHARD LEHMAN, CHRISTOPHER RUDDY and HILDA PIZA LUCOM, to jointly, in accordance with Articles 857 and 858 of the Civil Code, perform duties as executors and trustees, who must appear before the Court to be installed.*

4. *All persons who have any interest therein are ORDERED TO APPEAR, and POST and PUBLISH the summons as provided in Article 1526 of the Judicial Code.*

...

The Court of Appeals substantiates the decision set forth in the Decision challenged in this Appeal for Reversal by considering, contrary to statements by the lower court, that the testator made a mistake in numbering by referring to the first clause in Public Deed No. 6646 inasmuch as through Public Deed No. 1131, his intention was to modify the bequest which he set forth immediately thereafter. In that sense, [the Court] decided the dilemma regarding the appointment of the

executors, further stating that, in her judgment, it was closest to the will and intent of the testator since, according to the Appeals Court, it was "obvious that the intent of the testator was to have executors inasmuch as from several clauses in the will, one gleans that the assets of the estate should be managed, distributed and in some instances sold by executors, who were indicated how they should manage the assets entrusted to them and disposition thereof, including mention of the fees the executors would earn"; therefor, the last executors appointed by the decedent in the referenced public deed No. 1191 should have been appointed by lower court.

The Appellant has filed the Appeal for Reversal against this Decision, which this Court will now entertain and decide.

APPEAL FOR REVERSAL

The Appeal for Reversal in the instant case is substantially, inasmuch as the only ground that has been invoked is the "violation of substantive legal provisions on account of the direct violation that has substantially influenced the dispositive part of the appealed decision", which is substantiated pursuant to five Reasons, which we transcribe hereunder:

> *"FIRST: While the judgment issued by the Superior Court recognizes that Mr. Wilson Charles Lucom (R.I.P.) granted a nuncupative will on June 20, 2005, pursuant to Public Deed No. 6646 before the Second Notary Public for the Circuit of Panama, whose first clause was modified with respect to the appointment of executors pursuant to Public Deed 11191 dated October 20, 2005, and that likewise, such clause was modified pursuant to Public Deed No. 1131 dated February 3, 2006, [the decision] concludes that the second clause, which*

modifies the first clause of the will granted in Public Deed No. 6646 does not allude to the executors at any time whatsoever, thereby violating the substantive legal precept that indicates to the judge that testamentary provisions must be understood as literally set forth in the wording upon finding that the modification had no effect whatsoever on the issue of the executors; all as a result of not requiring that the literal meaning of the wording in the will prevail, or the will of the testator when he expressly modified the first clause of the will, as was his will, explicitly.

SECOND: While the challenged decision recognized that the first clause of the original will was modified and that the will of the testator must be literally understood, [the decision] fails to consider basic considerations which, in accordance with substantive law, should have been taken into account for purposes of establishing the force and effect of the appointment of the executors. In the first place, the Court gave no importance to the last modification to the will and set forth in Public Deed No. 1131 when [the testator] expressly stated that he reiterate the force and effect of the clauses in the will granted in Public Deed No. 6646, with the only exception of the contents of the first clause which was changed completely. Ignoring this truth allows us to state that the appealed judgment incurred in a direct violation of the legal provision that governs the meaning and scope that must be given to the will of the testator and, therefor, if the decedent's intent had been construed literally, the effectiveness of the appointment of the executors should not have been recognized.

THIRD: The direct violation of the substantive law by the Superior Court has caused that the effectiveness granted to the appointment of the executors remove itself completely from provisions in substantive law for purposes of understanding the will of the testator as to the fact that what appears to agree most with the will of the testator as gleaned from the will itself; however, the Court not only understands that the will of the testator was to have executors, but that a mistake in numbering was made upon referring to the first clause of the will remaining as stated in the modification that appears established in Public Deed No. 1131, thereby setting aside the literal meaning and intention of the testator, as provided by the legal provision that regulates the matter since the literal reference was to the first clause and not the third clause of the will.

FOURTH: In the challenged decision, the Court incurs in a direct violation of the law by establishing that HILDA PIZA LUCOM has not been established as the universal heir, inasmuch as the will of the testator provided that his beloved wife would be a legatee, when his intent or will as set forth in Public Deed No. 6646 was none other than to leave to his legitimate wife as the heir of 50% of his assets wherever she existed, therefor the will of the testator is clear regarding this title and aside from not having used the word heir, the will set forth in the last will and testament is noted, that the disposition given by the decedent to the spouse was made on universal title or inheritance and not as a legatee.

FIFTH: The direct violation of substantive law incurred by the Superior Court has been the principal cause for granting force and effect to the appointment of three executors, notwithstanding the fact that, based on the literal meaning of the testamentary provisions, or observing the will or intent of the testator, effects contrary to the rule are produced when the result should have been only to find that the executors had been removed by an express modification by the testator. And, on the other hand, that [the Court] would have found that Hilda P. Lucom was a legatee instead of holding her as the universal heir, as was the will of the decedent when he grants her the right over fifty percent of his assets."

As allegedly violated legal provisions, the Appellant indicates Articles 707, 771 and 700 of the Civil Code, which literally provide:

"Article 700: The testator may dispose of his assets as an inheritance or bequest.
Upon any doubt, although the testator may not have used the word heir, if his will is clear regarding this concept, the provision shall be valid as though made on universal title or inheritance.

Article 707: All testamentary provisions must be construed literally unless it is clearly apparent that the will of the testator was different. In the event of doubt, what appears to be closest to the intent of the testator shall be observed, according to the tenor of the will itself.

Article 771: All testamentary provisions are basically revocable, although the testator may state in his will his will or decision not to revoke them.
Clauses that revoke future provisions and those whereby the testator

> *orders that revocation of the will shall not be valid if not set forth with certain words or signals shall be deemed not to have been included."*

CONCLUSION

Of the first, second, third and fifth reasons in support of the Appeal for Reversal that is entertained, this court finds only one charge of illegality attributable by the Appellant to the appealed Decision, which is that the Appeals Court recognizes that the last modification by the decedent to the will recorded in the referenced Public Deed No. 6646 was made in the aforementioned Public Deed No. 1131; wherein he did not refer to the appointment of Executors, but expressly modified the clause that appointed them, and referred only to the bequest, setting aside the appointment of executors. However, nonetheless, the Appeals Court found that this modification did not affect the appointment of executors in the Public Deed before the last will of the decedent, failing to make the literal meaning of the statement in the will prevail.

Likewise, in arguing the charge of illegality, the appellant, complaining that the Appeals Court gave no importance to the will of the decedent when in the last modification to his will, expressly stated that he reiterated the force and effect of the clauses in the will granted pursuant to the aforementioned Public Deed No. 6646, with the only exception of the contents in the first clause, which was changed completely, addressing only the bequest and setting aside the appointment of executors, wherefor the challenged Decision incurs in a direct violation of the legal provision that governs the meaning and scope to be given to the will of the

testator.

*In this sense, this Court finds that the Appeals Court exceeded its authority by expressing, as a statement, in the considerations in the appealed Decision, that "**the testator made a mistake in numbering** by referring to the first clause to modify the bequest set forth thereafter and such doubt must be decided as closely to the will and intent of the testator" (our emphasis).*

This is correct, because stating that the decedent make a numbering mistake in the will, keeping the provisions prior to his last will, lead to stating a situation as if there were total certainty; when, contrary thereto, in this case under consideration, this certainty does not exist because the express will of the decedent is not clear.

The last will expressed by Mr. Wilson Charles Lucom (R.I.P.) is set forth in the aforementioned Public Deed No. 1131 and which has triggered the problem in its interpretation with the appointment of executors, in spite of the fact that this Public Deed, that consists of three clauses, makes no appointment of executors whatsoever. In fact, the decedent, in the first clause, expresses his wish to retain the force and effect of all clauses in Public Deed No. 6646, also aforementioned, except the contents in the first clause which he subsequently describes in the second clause of the Public Deed that contains his last modification; therefore, this first clause will not contain a bequest that has already been transcribed by this Court and not an appointment of the executors.

The Court calls attention to the fact that the lower Court appointed Mr. Richard Lehman as the executor of the estate. Notwithstanding, in ruling on this same appointment, the Appeals Court appointed Messrs. Richard Lehman Christopher Ruddy and Hilda Piza Lucom (Hilda Antonia Piza Blondet) as executors and trustees of the estate; reason wherefor, this must be an aspect that must merit special consideration.

The issue of testamentary interpretation is a sensitive subject inasmuch as, for someone to be responsible for doing so, [the person] must investigate and strictly adhere to the "footprints" its creator has left when he made a statement of his will, and who cannot clarify doubts with respect thereto, in those events in which the literal meaning is not clear.

Doctrine has provided several theories or principles for interpreting wills for the purpose of attempting to establish what was the true will of the decedent regarding the disposition of his assets more precisely.

Our body of laws, in establishing rules for interpreting testamentary provisions which are set forth in Article 707 of the Civil Code, transcribed above, was based wholly and literally on Article 675 of the Spanish Civil Code, which original provisions provide a reference if we wish to review this doctrine which has attempted to dismember the main basic elements for application thereof. Therefore, we feel it is appropriate to refer to Spanish doctrine through Manuel Albadalejo, one of its most recognized jurists, who in his "Course on Civil Law" refers to the issue of

interpreting the Will as follows:

> *"**1. Interpretation of the will.-** On interpreting specific testamentary provisions, the Code has some articles (747, 749, 751, etc., already seen) and they must be abided by in such specific cases, which are each treated in the place where the matter of reference is examined.*
> *Furthermore, in general (and also including those cases, except as to what pertains to those specific precepts), in interpreting wills, it would almost be enough to simply remit to what has already been studied under the general part on interpretation of legal concerns. Nonetheless, I prefer to refer to certain extremes on the subject here:*
>
> ***2. Subjective interpretation must prevail.** With the common opinion of jurisprudence and doctrine, I believe that in interpreting the will, the subjective criterion must prevail, consisting of, while possible, in attributing to the statement the meaning presumably given thereto by the testator.*
>
> ***3. Any clarifying element or information may be used in searching for the spirit of the testamentary statement, in or beyond the will.** To seek the true meaning in the testamentary provision, it is possible to resort to what is said in the will, but to any elements and data not set forth therein, so that the meaning thus found can be understood as stated in the statement of the will set forth in the will.*
>
> *This is correct because since it involves a solemn affair, only what has been stated is valid to be the object of interpretation, in keeping with the essential required form. But that is one thing; different to investigating the meaning that formal statement has, one may resort – as can be done – to information that will clarify it even if they are beyond the will.*
>
> ***4. The will that is one seeks to establish is the one the grantor had when he testated. –** The will that is sought, that is, the spirit that one seeks to find is the one the testator wished to set forth when he made the statement upon testating.*
> *Then, it does not involve an attempt to know what the deceased wanted when he died, but what his purpose was when he granted the will.*
>
> ***5. Integrating the will of the testator.** - In principle, the supplementary legal provision is applied to what is not regulated in the will . But since what the deceased has provided cannot contain the entire necessary regulation therefor and, however, imply the exclusion of the pertinent legal regulation for the remainder, deciding each presumption that is stated very carefully if whatever legal rule is appropriate for what is left blank, or otherwise, a different rule, coherent with the decedent's provision that was stated. When this happens, interpretation of the will extends to also seeking what*

> *presumably is his will (coherently with what is stated) in addition to the meaning of what the testator ordered to the extent he left no specific rule. This may be called integration of the testamentary will.*
>
> ***6. General precept in the Code for interpreting the will.*** *Article 675, 1 of the Code provides: "Every testamentary provision must be interpreted with the literal meaning of its wording, unless it is clearly apparent that the will of the testator was different. In the event of doubt, what appears closest to the intent of the testator according to the tenor of the will itself will be observed.*
>
> *I believe this precept supports everything I have stated in the foregoing paragraphs on the interpretation of a will. It clearly shows that the meaning that must be given to the testamentary statement is the one the testator would have wished to state therein, provided it fits within the tenor of the will, and one must presume, unless it clearly appears otherwise, that the will of the testator is literally what he said." (ALBADALEJO, Manuel, Course on Spanish Civil Law", Volume V, Testamentary Law, Bosch-Ronda Universitaria Bookstore, 11, Barcelona, Spain, 1982, pages 343-346). (Our underlining)*

From the foregoing transcription we then conclude that, in application of Article 707 of the Civil Code, one must always try to clearly give preeminence to the true will of the decedent, and the Court presiding over the matter must establish the true scope of the testamentary clauses.

That is correct inasmuch as the referenced rule gives priority to the will of the testator over the literal meaning of the statement without undermining the fact that, in principle, the court or interpreter must adhere to the strict meaning, provided the intent of the decedent with the words he used is clear; inasmuch as if they are not clear and on the contrary are obscure, ambiguous or contradictory, and a simple reading does not suffice to determine the intent of the testator, it will then be necessary to resort to other interpretative elements from which his true will can be deduced.

It is evident to this Court that the decedent was clear in stating that it was his will to comprehensively retain the force and effect of all clauses that comprise Public Deed No. 6646, which is his original will, prior to his subsequent modifications, except for provisions in the first clause which addresses the appointment of executors. Therefrom, one can consider that this Public Deed (6646), which must prevail for purposes of truly establishing what the true meaning of the will of the decedent is for any interpretation of the will of the decedent.

From the review of the aforementioned Public Deed No. 6646, we then see that it consists of four clauses, of which the first appoints three executors; the second, contains instructions for the executors, which consist of paying expenses of his last illness, funeral, taxes and others; in the third clause, he lists his legatees, as well as certain duties of the executors, who also must be trustees in fulfilling his wish to leave a very unusual bequest, which deserves special mention inasmuch as its execution requires essential management. With regard thereto, the last testamentary instruction set forth in the third clause in the aforementioned Public Deed No. 6646 provides the following:

> *The executors must also be trustees of* **FUNDACIÓN WILSON C. LUCOM TRUST FUND**, *with an initial salary of* **FIVE THOUSAND DOLLARS (US$ 5,000.00)** *per month, or* **SIXTY THOUSAND DOLLARS (US$ 60,000.00)** *per year, and the necessary expenses. -----------------------*
> *The main objective of the* **FUNDACIÓN WILSON C. LUCOM TRUST FUND** *is to feed needy children in Panama. I instruct my trustees to find an area where there are children's schools that don't have meals for lunch, and lack the usual needs and those provided by schools where lunch is provided. ---*
> *It is my wish that directors of schools form groups of volunteers with*

> *parents and others, and that they plant gardens with seed provided by the **WILSON C. LUCOM TRUST FUND** foundation. ------------------------*
>
> *One of the parents, or any other person, must provide some hectares for these gardens, at no cost. Many plantings must be sown to feed the children and to sell at market, in such a manner that there will be no need to provide seeds more than two (2) times, per school, and that these will continue the plantation process in these gardens and their own sale with the product of its own benefit." (Page 10)*

On its part, the fourth clause addresses the decedent's wish to expressly revoke any testamentary provision prior to Public Deed No. 6646.

Therefore, this Court coincides with the opinion of the Appeals Court as to the fact that the intent of the testator as to have one or more executors, inasmuch as the established bequests required management, further indicating their fees, since fulfillment thereof would be otherwise impossible.

However, it is also evident to this Court that with respect to the issue of appointing the executors, the testator was not completely sure since the only modifications he made to his testamentary provisions addressed changing his executors, as can be noted in the modifications set forth in the also aforementioned Public Deed No. 11191 and in the also referenced Public Deed No. 1131.

Reviewing together all Public Deeds that comprise the last will of the testator, the governing element that gives rise to the problem in this Appeal as to the interpretation of the will of Mr. Wilson Charles Lucom (R.I.P.), as we stated before, is the appointment of the executors. With respect thereto, it is important to note that an executor is the person appointed by the testator to enforce compliance

with his last will and testament provisions, wherefor this person, in principle, should be entirely trusted by the decedent.

Inasmuch as, we repeat, the insecurity stated by the testator as to the appointment of his executors is evident, which can be determined from his last modification by not naming specifically who the person or persons that would hold said position would be; however, likewise, the Decedent's wish that to ensure his will is fulfilled, there must be one or more executors.

Therefore, this Court must weigh, based on the testator's will and provisions set forth in Article 873 of the Civil Code, the appointment of who can serve as executor to administer the establish in the case at hand; with respect thereto, the referenced provision provides the following:

> *"Article 873: In cases [involving] the foregoing article and if there is no executor accepted in the position,* ***the heirs shall execute the will of the testator."*** *(Our highlighting)*

Within the text contained in Public Deed No. 6646, one clearly gleans that the Decedent's trusted person for compliance with his will is the Appellant. That is why one can conclude without any mistake whatsoever, that in this case it is "the beloved wife", as the decedent called his wife, Mrs. HILDA ANTONIA PIZA BLONDET, who he also repeatedly appointed as an executor.

Other parts of the will have assisted this Court in establishing that, in absence of a certain wish of the decedent for appointing one of more executors in the will, it is MRS. HILDA ANTONIA PIZA BLONDET who must remain as the executor of his will,

*specifically when therein he states the following: "The bequest to my wife **HILDA PIZA LUCOM** is to be for her comfort, health, support and well-being, including all expenses owed for her current standard of living (the wife of a wealthy man)," which, we repeat, is evident of the affection and trust deposited in her, a situation that is not in keeping with other interpretations by the Courts of first and second instance.*

Likewise, the aforementioned Public Deed No 6646 retains, except for the first clause on the appointment of executor [sic], the full force and effect of the last three clauses which leads us to conclude that in absence of a specific appointment of an executor, the only executor is Mrs. HILDA ANTONIA PIZA BLONDET, furthermore the legatee of 50% of the decedent's joint accounts, and therefore, the legatee of 50% of the liquid assets left by the decedent, who likewise bequeathed the apartment where they lived to her.

As we noted above, the unusual bequest of the Decedent to the WILSON C. LUCOM TRUST FUND FOUNDATION, which was previously transcribed, provides for performance of activities in coordination with schools and other organizations to provide meals to school children in rural areas, and after the donation of a plot of land therefor by the interested parties; a situation that constitute a specific and very unusual wish of the Decedent, which will be executed best by the person who shared his life and to whom he, undisputably, states his affection and trust.

Now then, another charge of illegality stated in this Appeal for Cassation is

set forth in the fourth reason, the Appellant complaining of the violation of the substantive provision when the Appeals Court did not interpret the will of decedent WILSON CHARLES LUCOM (R.I.P.) In his last will, as set forth in Public Deed No. 6646 with its due subsequent modifications, of determining his wife, Mrs. HILDA ANTONIA PIZA BLONDET is the universal heir of the assets of the estate.

In fact, as noted by the Appellant in the fourth reason, the fact that in the will the word heir is not used does not prevent clearly establishing said condition after the pertinent interpretation of the will. It would be a similar situation if the testator, within his will, names a person as a legatee when in fact the same [person] is his heir, while it must be understood that this fact would not be an impediment for the trier of facts to attribute the condition of heir to such legatee.

Our legal system considers the fact that the testator has the power to appoint executors, while these can likewise be heirs, or be beyond the estate, as set forth in Article 854 of the Civil Code in concurrence with Article 1583 of the Judicial Code.

With regard thereto, this Court shares the assertion by the Appellant in developing the charge set forth in the fourth Reason, when it states that Mrs. HILDA PIZA DE LUCOM, as we have stated, is the executor appointed by the Decedent, and it must also be understood that with the Testamentary Proceeding, the condition of heir under universal title of Mr. WILSON CHARLES LUCOM extends to her, with all powers and authority under by substantive law for said determination.

This determination as to Mrs. HILDA PIZA DE LUCOM as the universal heir in the Testamentary Succession proceeding of WILSON CHARLES LUCOM arises from the interpretation given to the acts contemporary with or previous to granting the will by the Decedent, interpreting together what his wish most in keeping with his intent has been, in compliance with provisions set forth in Article 707 of the Civil Code. And this is correct inasmuch as Mrs. HILDA PIZA DE LUCOM enjoyed a very special position over the rest of the legatees, inasmuch as the testator himself stated she was his "beloved wife, a condition that is not explicit for the remainder of the persons listed in the will.

It is appropriate to specify that our body of laws echoes a concept in former Roman Law such as the succession that granted title to the persons closets or related to the citizens, where the succession had greater relevance as to the person, over all estate-related conditions. That is how the Napoleonic Code establishes provisions directed to establishing the will of the Decedent, based or facts or acts arising form the document itself that contain the testator's last will (will) and that the testator's intention will serve to clarify doubts regarding the terms that were used for purposes of considering a person is an heir without enjoying such condition, could enforce this person's determination under universal title or inheritance. Our civil laws also include this under Article 700, which expressly sets forth in the second paragraph that in view of doubt, "although the testator may not have used the word heir, if his will is clear regarding this concept, the provision

will be valid as made under universal title or inheritance."

Thus, it is clear to this Court, after a detailed review of the will and its exhibits that, undoubtedly, Mrs. HILDA PIZA DE LUCOM enjoyed a privileged position with the Decedent, upon being the "beloved wife", which even after the death of the Decedent, gave rise to his concern for her well-being even after his death and the socioeconomic position of the person who, at the time of his death, was his spouse, a situation that cannot be inferred a Foundation could have, which in the end happened to be a Trust and, that for purposes of this judgment, we share the opinion stated by the Superior Court, when it correctly and conclusively ruled that the aforementioned Foundation was not a person, but a contract without any possibility of being a party in a proceeding or enjoying the legal capacity to inherit; wherefor, any provision with regard thereto must be understood to null and void, while the heir must assume the obligations the will imposed for compliance with the will of the testator.

Based on the foregoing consideration, this Court find the charge of illegality affirmed by the Appellant has been substantiated with regard to the direct violation of Article 707 of the Civil Code, which provides the general rule for interpreting testamentary provisions, wherefor it must so be decided.

Based on the foregoing, the Supreme Court of Justice, ***CIVIL DIVISION,*** *administering justice on behalf of the Republic and as vested by Law,* ***FLATLY REJECTS*** *the Motion to Nullify the Proceedings filed by Attorney DORIS SERRANO*

BATISTA because it is not in accordance with law; and ***ANNULS*** *the Civil Order dated May fourth (4) two thousand seven (2007), issued by the First Superior Court for the First Judicial District which modifies Order No. 1025/173-06 dated July fifth (5) two thousand six (2006) issued by the Fourth Civil Circuit Court for the First Judicial Circuit of Panama, all within the Testamentary Succession Proceeding of WILSON CHARLES LUCOM (R.I.P.) in such a manner that the tenor of the dispositive part will be the following:*

MODIFIES Order No. 1025/173-06 dated July 5, 2006, issued by the Fourth Civil Circuit Court for the First Judicial Circuit of Panama, in such a manner that its dispositive part will read:

1. That the testamentary Succession Proceeding of WILSON CHARLES LUCOM (R.I.P.), who died on June 2, 2006, is open.

2. DECLARE Mrs. HILDA PIZA LUCOM is the UNIVERSAL HEIR.

3. HIS LEGATEES ARE, without prejudice to third parties, ISABEL MARIA CLARK, ROBERT CLARK, ALEXANDER CLARK, LANNY CLARK, CASSANDRA CLARK, ROCHESTER, MINNESOTA MAYO CLINIC, MELINDA MORRICE, HILDA ABDELNOUR, MADELINE ARIAS, GILBERTO ARIAS, MARGARITA ARIAS ALLISON, NORAH GARNER, JAMES GIBBONS, ANN SMITH, WALTER GARNER, GABY ELKINS, CHRISTOPHER RUDDY, DR. PETER HIBBERD, MARIO BOYD, ANDREA OSPINA, TANYA RAMOS, ISRAEL TEJADA and EDILBERTO SOTO.

4. Mr. HILDA ANTONIA PIZA BLONDET is APPOINTED as the EXECUTOR and TRUSTEE of the estate so that in accordance with Article 864 of the Civil Code, she will perform the position of executor and trustee, who must appear before the Court to be installed; and

5. All persons with any interest therein ARE ORDERED TO APPEAR, and POST AND PUBLISH the summons as provided in Article 1526 of the Judicial Code.

Copy and Serve,

JUST. OYDEN ORTEGA DURAN

JUST. ALBERTO CIGARRUISTA C. **JUST. HARLEY J. MITCHELL D.**

ATTY. SONIA F. DE CASTROVERDE
CLERK, CIVIL DIVISION

[Stamp:] Illegible
FIRST CIVIL DIVISION
Panama, *August 6, 2010*
I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL.
/s/ Illegible
Clerk