IN THE SUPERIOR COURT OF GUAM

IN THE MATTER OF THE ESTATE OF MARIA MAFNAS TAITANO, Decedent.	**PROBATE CASE NO. PR0144-25** **DECISION AND ORDER DENYING PETITION FOR PROBATE OF WILL**

Paul V.M. Taitano petitions the Court to admit a photocopy of Decedent Maria M. Taitano's will to probate as a lost will under 15 GCA § 1525. The Court concludes that Paul has not proved either the will's physical existence at the time of death or its provisions through the sworn testimony of two credible witnesses, as the statute requires, and therefore DENIES admission of the will to probate.

I. FACTUAL AND PROCEDURAL BACKGROUND

Maria died in Guam on November 11, 2009, leaving six adult children (including Paul) as her sole heirs. At that time, her children possessed photocopies of an original Last Will and Testament executed on December 12, 1991, which Maria signed before three witnesses and a notary. Pet. Prob. Will Letters Test. Will Ann. (Sep. 15, 2025). At her death, Maria did not have the original Will in her possession.

Maria's heirs petitioned this Court to admit the Will to probate. Attached as an exhibit to the Petition was a photocopy of Maria's Will, which had an attached Affidavit of Subscribing Witnesses, both dated December 12, 1991. *Id.*, Ex. B. Paul also submitted a Declaration by one of the witnesses to the Will. Proof of Subscribing Witness (Oct. 16, 2025).

At the hearing on the Petition, the Court inquired about the whereabouts of the original Will. Upon learning that its location was unknown, the Court appointed Paul as a special administrator with limited authority to investigate where the original Will had been kept. Hr'g at 10:58 (Oct. 22, 2025).

At a continued hearing on the Petition, the Court entertained testimony regarding the original Will. Paul reported that, despite his investigation, he could not locate the original Will but noted that he had a declaration from a subscribing witness. Hr'g at 10:50 (Dec. 10, 2025). Maria's daughter, Marie Taitano, testified that although she did not personally witness the Will's execution, she drove her mother to Guam Legal Services Corporation (GLSC) to finalize the Will, discussed its contents with her afterward, and understood that GLSC would file the Will with the Court. *Id.* at 11:02. Paul testified that his mother made him "aware of the Will" but that he had not seen it, and no other family member witnessed the signing to his knowledge. *Id.* at 11:05. Marie and Paul both testified they knew their mother's intent within the Will, *i.e.*, that their brothers would regain parcels of land they had previously conveyed to her, and that Marie would make sure it was done. *Id.* The Court took the issue of the lost will under advisement and granted Paul full authority as the Administrator of Maria's Estate. Order Apptg. Adm'r. (Dec. 11, 2025).

II. LAW AND DISCUSSION

Guam law imposes specific requirements for proving a lost or destroyed will. Title 15 GCA § 1525(a) provides the backdrop for whether a will qualifies as a "lost will" eligible for probate:

> No will shall be proved as a lost or destroyed will unless
>
> (1) Such will is proved to have been in physical existence at the time of the testator's death; or

> (2) Such will is proved to have been destroyed by public calamity or destroyed fraudulently during the testator's life, without the testator's knowledge.

Moreover, section 1525(b) establishes a procedure for proving a lost will: "[N]o will shall be proved as a lost or destroyed will unless its provisions are clearly and distinctly proved by the sworn testimony of at least two (2) credible witnesses in open court." The source of law noted after sections 1525(a) and (b) is California Probate Code § 350.

Guam's probate statutes mirror California probate provisions, making California authority persuasive. Under California Probate Code § 6124, when a will last known to be in the testator's possession cannot be found at death, a presumption arises that the testator destroyed it with intent to revoke. California law also requires proof of a lost will's contents, historically through sworn statement of two witnesses under former California Probate Code § 350 and, under current law, through affidavit evidence from at least one subscribing witness. *See* Cal. Prob. Code §§ 8220, 8223. This framework informs the analysis of whether the Will here was in physical existence at Ms. Taitano's death, and if it was not, whether the lost will was clearly and distinctly proved.

A. Paul does not prove that the will physically existed at the time of her death.

The Court first considers whether Paul has proved that the Will physically existed at the time of Maria's death under 15 GCA § 1525(a). Because the record contains no indication that the Will was destroyed by public calamity or by fraud without the testator's knowledge, the Court dispenses with section 1525(a)(2) and considers only subsection (1). To satisfy subsection (1), Paul must show that an original or a duplicate original Will was in existence when Maria died, as a duplicate original has the same legal effect as the original document. *See* Duplicate,

Black's Law Dictionary (12th ed. 2024); Fed. R. Evid. 101(4). The record contains no such proof.

Paul has not shown either an original or a duplicate original Will in existence at the time of death. Paul urges that 15 GCA § 1521 should apply here, which allows a duly authenticated copy of a will when the will is located outside of Guam at the time of death. Hr'g at 11:09 (Dec. 10, 2025). However, that provision presupposes proof that an original will existed elsewhere at the time of death. That proof is absent here. Because Paul offers only a photocopy and no evidence that an original or duplicate existed at Maria's death, the Court cannot treat the photocopy as satisfying section 1521(a)(1).[1]

California courts distinguish sharply between duplicate originals and mere photocopies of a will. In *Lauermann v. Superior Court*, the court distinguished between when a testator has an original will and its duplicate original, versus there being mere photocopies of a will. "[I]f a testator has personally executed duplicate originals, there is little likelihood of fraud when one copy is available for probate even if the second cannot be found." 26 Cal. Rptr. 3d 258, 261 (Ct. App 2005). On the other hand, a

> testator may make several photocopies of his or her will, perhaps to send to relatives or other beneficiaries, or to retain for the purpose of drafting possible changes. It would be unreasonable to expect a testator to track down and destroy all such copies before giving effect to his intended revocation... [T]he simplicity of their creation stands in stark contrast to the considerable formalities surrounding the execution of a will. Given the importance placed upon the creation and execution of an original will, we do not think that a reasonable testator would believe that a photocopy would be legally effective in place of the original document.

[1] *E.g.*, *In re Estate of Perez*, PR0068-23 (Jan. 3, 2024) (denying probate of lost will for failure to prove existence at death despite photocopy and one witness declaration); *In re Estates of Chang*, PR0191-24 (May 22, 2005) (denying probate of lost wills lacking two open-court witnesses).

Id. at 261–62.

Because Paul has not shown that an original or duplicate original Will existed at Maria's death, the presumption remains that she revoked the Will by destroying it .

B. Paul has not furnished a second live witness regarding the contents of the Will.

Even if Paul could establish the Will's physical existence at the time of Maria's death, the Will must also be proved by clearly and distinctly establishing its provisions through two credible witnesses under 15 GCA § 1525(b). The California courts have explained why this requirement is needed when a proponent seeks to admit a lost will.

> In this age of the ubiquitous duplicating machine, the common photostat seems to appeal to the eye of the beholder with the hallmark of its own authenticity. However wide may be the acceptance of the copier and quite apart from the obvious risk that its sophisticated process may be used improperly, the clear mandate of the statute governing lost wills precludes it from abrogating the two witness rule. To hold otherwise would be in effect to make the machine the witness.

In re Ruben's Estate, 36 Cal. Rptr. 752, 760 (Dist. Ct. App. 1964).

Here, Paul presents a declaration by just one subscribing witness. *See* Proof of Subscribing Witness. The next question is whether any additional testimony qualifies as that of a second credible witness regarding the Will's provisions.

Neither Marie nor Paul supplied the type of testimony that section 1525(b) contemplates. Marie testified that she did not witness the Will's execution; she only drove her mother to GLSC and later discussed the Will's contents with her. Paul testified that his mother made him "aware of the Will," but that he had never seen the original; thus, he could not establish the provisions as a witness to it. Because only one witness in this case can provide sworn testimony as to the Will's provisions at the time of signing, Paul has not met the two-witness requirement of section 1525(b), and the Court must consider whether circumstantial evidence can fill that gap.

California decisions recognize that circumstantial evidence may prove a will's existence and contents, but only where that evidence is abundant and consistent. In *In re Sitton's Estate*, the court considered the type of proof required under section 350, when it held, "[D]irect proof is not necessary. The existence of a will at the testator's death is to be proved as any other question to which the general rules of evidence apply. It may be proved by circumstantial evidence and the inferences which may reasonably be drawn therefrom." 307 P.2d 654, 656 (Cal. Dist. Ct. App. 1957). In both cases, the subscribing witnesses and other testimony collectively detailed the testator's statements about their wills, and extensive circumstantial evidence suggested fraudulent destruction rather than revocation. The record here contains no similar circumstantial showing.

The circumstantial evidence in this case falls short of that described in *Sitton*. Nothing in the record indicates that Maria's Will was lost through fraud or calamity; instead, the evidence concerns her intent regarding specific parcels of land. As noted above, both Paul and Marie testified that their mother wished to return specific parcels of land to two of her sons, who had conveyed them to her prior to their divorces. Yet Maria stated in her Will that she intentionally left her six sons out of her Will because they all "have property of their own." Pet. Prob. Will Letters Test. Will Ann., Ex. B. Those statements support an inference that Maria may have intended to change or revoke her prior Will to ensure that these particular sons regained their parcels. This evidence, again, does not overcome the presumption of revocation.

III. CONCLUSION AND ORDER

Paul has failed to prove that the Will physically existed at the time of Maria's death or that its provisions were clearly and distinctly established through the sworn testimony of two

credible witnesses, as required by 15 GCA § 1525. The Court therefore DENIES Paul's request to admit the Will to probate.

SO ORDERED, 14 January 2026.

HON. ELYZE M. IRIARTE
Judge, Superior Court of Guam

Appearing Attorney:
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