How long is too long? Reversing an order 10 years after death

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Reversing a 1975 Act award, 10 years after death

Miss Deeley had lived with her partner Peter Harding for over 40 years at Mr Harding's property, 87 Beckenham Lane. They never married.

Mr Harding died almost 10 years ago on 11 August 2008. It was believed he died intestate. That belief, that he left no Will, and thus had made no provision for Miss Deeley, endured for almost 10 years.

Because Miss Deeley and Mr Harding had never married the intestacy rules make no provision for her. His intestacy meant a number of Mr Harding's cousins inherited his estate instead. Miss Deeley therefore brought a 1975 Act claim seeking financial provision. Those who lived together in the same household 'as man and wife' for at least two years immediately prior to death are able to bring a claim for reasonable provision from their deceased partner's estate as cohabitee.

Even if she did not qualify as a cohabitee, Miss Deeley also had the standing to claim as Mr Harding's dependant.

Background

Miss Deeley was born in 1925 and was 84 when Mr Harding died. They had met in 1946 and became engaged in 1952 but for reasons that are not clear from the evidence they never married. Mr Harding's mother lived at 90 Beckenham Lane until she passed away in 1999 leaving her estate, including 90 Beckenham Lane, to her son. Miss Deeley cared for her and kept house for Mr Harding.

Their home, 87 Beckenham Lane, comprised of a flat with three retail units. Following Mr Harding's death Miss Deeley continued to live there and to collect rent from the retail units. A grant of letters of administration was issued to one of his cousins, Morris John Littlewood, in March 2010. Miss Deeley issued her claim in July 2010.

Mr Littlewood was first defendant. At a directions hearing in August 2010 two further cousins were appointed to represent all the intestacy beneficiaries as second and third defendants.

Mr Harding had taken out a grant of probate of his mother's estate. However, he appears not to have made any progress in administering it and 90 Beckenham Lane remained registered in his mother's name. Mr Littlewood therefore applied for a grant de bonis non to enable him to deal with that property.

The position advanced by the second and third defendants was, broadly, that Miss Deeley should be able to live in 87 Beckenham Lane for the remainder of her life.

In her own evidence Miss Deeley said that she enjoyed collecting rents from the retail units in order to socialise with the tenants. She had filed three detailed witness statements before a mediation at the end of March 2011.

1975 Act cohabitee decisions

In Negus v Bahouse 2008 a cohabitee of just eight years was awarded a capital sum of £200,000 outright in order to provide her with 'long leasehold or freehold property'.

In Webster v Webster 2008 a longstanding cohabitee was awarded the title to his home free of mortgage (the Judge having performed a cross check with a Duxbury calculation, which establishes the value of a one-off lump sum that is equivalent to periodical payments a dependant could expect to receive).

Agreement and order

The upshot of the mediation was an agreement that Miss Deeley have a life interest in 87 Beckenham Road and £25,000 towards repair and replacement costs.

The agreement was embodied in a 19 April 2011 Consent Order. The Order recited the conclusion that Mr Harding's intestacy did not make reasonable financial provision for Miss Deeley and provided for the following:

1. a life interest in 87 Beckenham Lane for Miss Deeley (a declaration of trust was annexed to the Order);

2. payment by Mr Harding's estate for repairs and replacements at the property at 87 Beckenham Lane to a maximum value of £25,000; and

3. payment of all parties' costs from the estate.

The Trust was established on June 2011. Miss Deeley occupied 87 Beckenham Lane until her death in September 2014 at the age of 88.

In contrast to Mr Harding, Miss Deeley died testate, albeit with a very short homemade Will from a law pack precedent. She appointed executors and gifted the residue of her estate equally to five charities, British Red Cross, The Brooke, PDSA, RSPCA, and World Wildlife Fund.

Miss Deeley made that Will only six days before she passed away. Following her death a search of 87 Beckenham Lane unearthed a Will made by Mr Harding as long ago as November 1973. Mr Harding's Will provided inter alia for Miss Deeley to receive 87 Beckenham Lane outright. It was clear he had always intended his partner to get the bulk of his estate.

Miss Deeley's executors obtained an opinion from Counsel that left them pessimistic about their options for correcting the situation. In normal circumstances an appeal should be brought within 21 days. Here almost 6 years had passed. However, the charities took independent advice (from Withers and Richard Wilson QC) and determined that an appeal against the Order was possible and appropriate.

In March 2016, Miss Deeley's personal representatives assigned to the charities the right to advance the appeal.

The application for leave to appeal out of time was issued the following week. The charities applied for leave to appeal on the basis that the agreement between the parties embodied in the Order was reached because of a common mistake and was accordingly void. Contrary to the evidence before the Court, and what the parties believed, Mr Harding did not die intestate but left a valid last Will.

In October 2016 Morris J gave Judgment for the charities. He granted permission to appeal out of time on the basis that an appeal had a real prospect of success on the grounds of common mistake.

Common mistake

The test for common mistake is set out at paragraph 6-015 of Chitty on Contracts.

'Where the mistake is common, that is shared by both parties, there is consensus ad idem, that the law may nullify this consent if the parties are mistaken as to some fact or point of law which lies at the basis of the contract. In summary if: (i) the parties have entered a contract under a shared and self-induced mistake as to the facts or law affecting the contract; (ii) under the expressed or implied terms of the contract neither party is treated as taking the risk of a situation being as it really is; (iii) neither party was responsible for or should have known of the true state of affairs; and (iv) the mistake is so fundamental that it makes the 'contractual adventure' impossible, or makes performance essentially different to what the parties anticipated, the contract would be void.'

In the leading case of Bell v Lever Bros 1932 an employer paid compensation to two employees following termination of their service contracts believing they were entitled. It subsequently transpired that the employees had committed serious breaches of duty and the employer argued that the compensation payments were made as a result of a common mistake.

The Appeal

Unlike *Bell v Lever Bros* the cousins were entirely innocent. However, when the settlement was reached (and the original Order made) everyone mistakenly believed that Miss Deeley had no right to 87 Beckenham Lane.

The perceived lack of entitlement was the very basis of the agreement reached between the parties. Had the parties been aware of the true position, there would have been no claim by Miss Deeley, let alone any settlement of it. Rather than improving her situation, the agreement actually made it worse.

The Judge did face one difficulty. The missing Will had remained at the very property in which Miss Deeley had lived for so many years, including for several years following Mr Harding's death. So arguably Miss Deeley had been the architect of her own misfortune. Counsel for the charities submitted that the obvious inference to be drawn from Miss Deeley bringing proceedings and compromising them on terms which gave her less favourable provision was that Mr Harding had never mentioned the Will's existence to her.

The Respondents did not appear at the appeal hearing and were not represented, although Mr Littlewood attended Court. By then, all of the cousins had agreed that Mr Harding's Will should be respected.

Morris J concluded that the appeal must succeed and the 2011 Order be set aside, save as to the provision for costs to come out of Mr Harding's

estate. That provision had long since been complied with and it would be pointless to set it aside.

Conclusion

For several years Mr Harding's cousins had assumed they would inherit 87 Beckenham Road on Miss Deeley's death. However, when the true situation was explained to them over the course of the appeal, all of them very generously agreed not to oppose the appeal. Although unusual, it is an interesting example of the doctrine of mistake putting right an evident error in the context of 1975 Act claims.

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