

Woman plunders estate – charity gets criticised

31 OCTOBER 2017

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Shah v Forsters LLP is a professional negligence claim against solicitors in which the National Trust played no part and yet the Daily Express' headline 'Elderly dementia sufferer's fortune goes to National Trust even though he DESPISES them' is not untypical of the press coverage inviting antagonism towards charities which receive legacies.

The question is why.

Mrs Collins' executors sued Forsters LLP because her jointly owned assets passed to Mr Collins rather than passing under her Will. But, during the course of the trial, it became clear that Mrs Collins had improperly transferred hugely valuable shares, a major part of her husband's wealth, into her own name. Her husband, as the Daily Express headline indicates, suffers dementia. Mr Collins' will leaves his estate to the National Trust.

Interestingly the Judge appears to have made no direction to respect Mr Collins' privacy by anonymising any reporting (even though it is clear from the Judgment that leading counsel for the executors articulated concern about confidentiality).

Background

Mr Collins' 1990 Will left his share in the couple's London property (valued at £5 million in May 2015) to his wife outright, and his residuary estate, worth many millions, to her for life and thereafter to the National Trust.

He was first diagnosed with dementia at a relatively early age in 2003.

In 2005 the National Trust proposed building a bird hide at its Sherborne Estate in Gloucestershire, which neighboured the Collins' country residence (valued at circa £1 million). The Judge accepted the executors' evidence that Mr and Mrs Collins were strongly opposed to this proposal and that this gave rise to a 'deep rooted antipathy' towards the National Trust.

In 2007 Mr Collins' condition deteriorated. He executed an Enduring Power of Attorney in favour of Mrs Collins in July 2007.

It appears that around this time Mrs Collins' became aware of the terms of the 1990 Will. In September 2007 she and Mr Collins saw solicitors who concluded that he lacked capacity to make a new Will.

Mrs Collins therefore brought an application for a statutory Will. Quite properly that application was scrutinised. The Judgment records that Mrs Collins '*objected to the extent of the enquiries then being made of her, at the behest of the Official Solicitor*'.

Mrs Collins withdrew the application. However the Judgment makes clear that, concurrent with the decision to withdraw the statutory Will application, Mrs Collins, with the assistance of her accountant, Mr Shah, had transferred Mr Collins' shares in his property companies to her outright. It appears those shares were worth approximately £12 million. Mr Collins signed the forms (although it is evident that he could not have had the capacity to understand the transaction) and the Judge observes that:

'This was the very day upon which instructions were given ... as to not proceeding with the statutory Will; which might suggest that with the share transfers accomplished, Mrs Collins was rather more relaxed about securing the properties.'

The complaint about Forsters

Some time later Mrs Collins went to Forsters in 2011 with a view to ensuring, in the words of one witness, that the National Trust 'did not get

anything'.

Mr Collins by this stage is described in the Judgment as being thin and weak and suffering from Parkinson's disease.

Mrs Collins and the Forsters' solicitor discussed severing of the joint tenancies and the apparent risk that, if Mrs Collins did sever, she would not take the benefit of the properties by survivorship when her husband died. It appears the solicitor failed to realise that in respect of the London property, which was by far the more valuable, Mr Collins' share would pass to Mrs Collins under the terms of his Will if she did sever.

There was a discussion about post-death severance – though in practice that can only be done by a deed of variation and would necessarily involve the Court of Protection given Mr Collins' lack of capacity.

The upshot was that Mrs Collins gave instructions for a new Will but not to sever the joint tenancies. She executed the Will but 'never did return for the follow-up meeting'.

In May 2014 after a very short illness, Mrs Collins passed away.

Having not severed the joint tenancies of the London or Gloucestershire properties, both passed by survivorship to Mr Collins.

Mrs Collins' executors issued proceedings in professional negligence against Forsters LLP alleging that Forsters had breached their duty to consider severance of the joint tenancies and the impact of severance so that testamentary wishes could be fulfilled.

The law

It is important to identify the distinction between 'joint tenancy' and 'tenancy in common'. These have nothing to do with landlord and tenant but are the two ways in which beneficial interests in property can be held.

Joint tenancy means that, on the death of the first of co-owners, the survivor(s) takes the benefit of the deceased co-owner's share in the property.

The alternative, tenancy in common, means that each co-owner has an identifiable share. So when a co-owner dies, the benefit of his or her interest passes to his estate.

The leading decision on the scope of a solicitor's duty of care in relation to jointly owned property and Will making is *Carr-Glynn v Frearsons*.

There a testatrix had executed a Will leaving her share in a property to her niece. She owned the property as joint tenants with her nephew. However she died without severing the joint tenancy. If she had severed the joint tenancy her share would have passed as she intended to her niece. As she did not, her share automatically passed to the nephew by survivorship.

The niece sued the solicitors alleging they had negligently failed to advise her aunt of the need to sever the joint tenancy in order for the gift in the will to take effect. The Court of Appeal agreed with her.

Severing a joint tenancy can be done very simply by providing notice in writing. A letter to the co-owner will suffice.

Decision

The Judge in *Shah v Forsters LLP* held there was no doubt that Forsters owed a duty to explain the effect of the joint tenancies and the effect that non-severance would have. Moreover there was a duty to take care that effect was given to her testamentary intentions 'absent instructions to the contrary'.

The Judge concluded there was no breach of duty. He went further and also concluded that, even if there had been a failure to advise properly, that was not the cause of Mrs Collins' decision not to sever the joint tenancies. She had at the very least decided to put the question of severance off for the time being.

Can you trust what you read in the papers?

The Daily Express article says that 'The National Trust stands to inherit the pair's entire estate' which completely misses the point that Mrs Collins has executed a valid Will and that the bulk of the couple's assets, thanks to the shenanigans referred to above, pass under her Will to other charitable causes!

The Sunday Mail ran the story 'National Trust to inherit millions from businessman with dementia who cannot change his will'.

The Times' report inaccurately suggested that the share in the two properties passed to Mr Collins' estate because 'they never had children'. The Times too failed to mention Mrs Collins' plundering of her husband's estate referring to '£1million in legacies and the remainder of her estate to the Glyndbourne Opera House and the National Theatre'.

The answer may be self-evident. When press coverage paints charities in an adverse light bear in mind the true story may well be very different.

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