Executors and trustees - knowing when to retire gracefully

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It can be an honour to be appointed executor/trustee; that someone trusts you to look after their assets and act in the best interests of their loved ones. But it can also be a poisoned chalice. Tensions can easily arise with beneficiaries given it is them who stand to lose if the estate/trust is managed poorly, but the executors/trustees who wield control.

Some executors/trustees may wish to throw in the towel at the slightest whiff of a complaint, but this too can lead to criticism. Others may hold on to their position longer than they should out of a misplaced sense of duty or misguided desire to protect their reputation.

The recent case of Long v Rodman suggests holding on in the face of hostility may be ill-advised.

An estate poisoned from the outset?

Norman Rodman married Arline in 1952 and they had four daughters.

Norman was a wealthy man, with an estimated estate when he died in 2008 of over US$130m.

On their father’s death, the daughters, subsequently claiming to have been unaware of his Will, distributed his estate as they saw fit.

The Will, which left his entire estate to Arline, was discovered in 2009.

That same year, Arline was diagnosed with Alzheimer’s. The Court appointed a London solicitor, Mr Long, to manage her property and finances. He later obtained a grant to administer Norman’s estate.

Norman left his estate with substantial tax liabilities to HMRC and the IRS. Mr Long dealt with HMRC but shied away from dealing with the IRS for fear of incurring personal liability. When he eventually took US tax advice and filed a US tax return, he did so without telling the daughters and on an allegedly unfavourable basis for the estate.

Arline died in 2015 and two of her daughters obtained a grant to administer her English estate.

The removal application

More than 8 years after he obtained the grant to administer Norman’s estate, with the estate largely complete, the daughters applied to remove Mr Long and replace him with the two of them.

Mr Long ‘firmly opposed the application’. He claimed there was ‘nothing of substance left for administrators to undertake’ and that the two daughters were unsuitable replacements.

Underlying the application were the daughters’ threatened claims against Mr Long and his firm. One allegation was that he had failed to file accurate US tax returns. A particular focus of attack was the level of his legal costs – over £6 million by the time of the hearing.

The decision

The Judge made clear that the issues of whether Mr Long should be replaced and, if so, by whom should not be conflated.
He agreed with Mr Long that the two daughters were not suitable appointees. Their behaviour in initially distributing Norman’s estate as they saw fit was ‘highly questionable’ and potentially ‘reckless’. But he also said it was ‘odd’ that Mr Long had opposed the application ‘with such vigour’.

He said it is not the role of the court to make findings of wrongdoing: ‘where the beneficiaries are able to make out complaints that warrant further investigation, the continued tenure of the administrator becomes untenable unless the complaints are trivial.’ He found the complaints against Mr Long met that threshold and ordered the removal of Mr Long as executor.

In closing submissions, the daughters had suggested that they act alongside one of their lawyers. The Judge had concerns that the lawyer would not be able to perform his role as the daughters would not provide him with the necessary information. Ultimately, the Judge appointed the lawyer to act alone.

A final word?

The Judge may have criticised both sides, but ultimately Mr Long was removed. In a complex estate where the executor had been in office for a considerable time, this is a notable decision and a warning to executors/trustees that beneficiaries’ grumblings may not simply be dismissed.