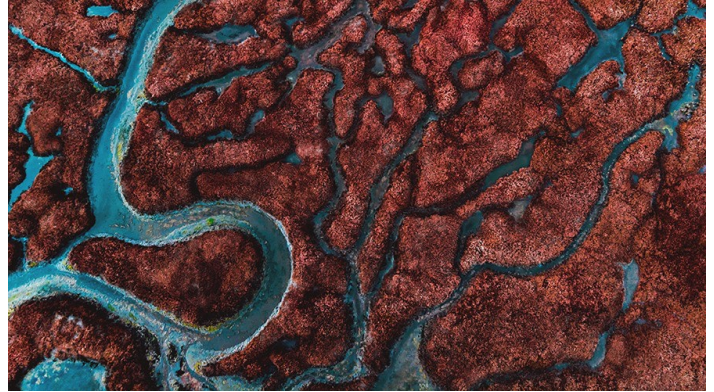


The hero, the villains and the Portuguese Will

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CATEGORY:
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This is a tragic story of 'elder abuse'. A vulnerable woman taken from her home in England to Portugal followed by a will gifting half of her estate to someone it appears she had known for less than a month.

Background

Antonieta Dolan moved from Portugal to England in her late 20s. She made England her home, working in the City, and retiring to Canterbury.

In 2001, she made a Will leaving her residuary estate to Greenpeace. She was passionate about the environment and wanted the funds from her estate to go towards campaigning against environmental abuse. The remainder of her Will conferred life interests in Portuguese properties to close friends. Her estate in the UK totals approximately £600,000.

In 2011, when she was 65 years old, Antonieta was diagnosed with early onset dementia. She deteriorated rapidly and by late 2012 was struggling to carry out day to day tasks such as using the telephone or cash machine. She relied heavily on her neighbours who provided a great deal of support and help; one neighbour was so concerned for her well-being he wrote to her GP.

In December 2012, two women collected Antonieta from her home and took her to Portugal. One of them had been an old school friend of Antonieta's whom she had stayed in touch with over the years, and the other, we believe, was a friend of the school friend.

About a month later Antonieta apparently made another Will in the presence of a notary in Portugal. This Will was very short and left everything to the two women that had brought her to Portugal – one of these women, we believe, she had only known for a month.

The hero

The twist in the tale, and the hero of it, is Antonieta's former husband, Vincent.

Antonieta had contacted him out of the blue in November 2012 having not spoken to him for over a decade to ask whether he knew where her passport was.

The call so concerned Vincent he offered to visit. Realising that Antonieta's health was suffering he helped arrange doctor appointments, spoke to social services etc.

Antonieta was due to have an appointment to prescribe her with the medication she needed, but was taken to Portugal by the two woman shortly before the appointment was scheduled.

Vincent's concern at Antonieta's unexpected travel to Portugal became exacerbated when he was unable to contact her. He visited her GP to raise the alarm. The GP in turn wrote to the British Consulate advising that she was not fit to look after her own affairs and needed significant adult safeguarding procedures in place.

Vincent successfully initiated proceedings in the Court of Protection, the English Court which looks after the affairs of those who do not have capacity, in order to appoint an English solicitor to look after her finances.

Vincent travelled to Portugal to try to locate her – involving the police, journalists etc. Antonieta's story appeared in the Portuguese national news.

Eventually Vincent found Antonieta staying in a care home. The home was in a dilapidated state. Vincent knew that Antonieta had the funds to receive much better quality care and so began Court proceedings in Portugal to arrange this.

Unfortunately, Antonieta passed away before the court hearing.

English proceedings

Following her death, Vincent contacted Greenpeace to tell the charity about the English 2001 Will. He had found out about the Portuguese Will during the Court of Protection proceedings and shared his concern about its validity with Greenpeace.

Greenpeace began court proceedings in London to uphold the English 2001 Will (on the basis that the Portuguese document was invalid).

To do so Greenpeace had to demonstrate that, notwithstanding she was originally from Portugal, Antonieta was domiciled in England for succession purposes and that English law applied to the question of her Will.

Secondly, that Antonieta either did not have capacity to make the Portuguese Will and/or that she did not know and approve its contents. A major difficulty was that the Portuguese Will was notarised (a legal requirement in Portugal). This meant that a legal professional had deemed Antonieta fit to make the Will – setting the bar high to invalidate it.

Neighbours, Antonieta's regular taxi driver, medical practitioners all provided critical witness evidence about Antonieta's domicile ie Antonieta saying England was her home and about the deterioration in her mental health.

Medical and dental notes recorded concerns about Antonieta.

Police records recorded a number of instances where Antonieta had been distressed and needed help.

The well-known testamentary capacity expert, Professor Jacoby, provided an opinion on Antonieta's ability to make a Will. He found that it was likely that she lacked capacity to do so by 2013.

Judgment

The Judge found that Antonieta was domiciled in England. He considered whether her domicile had reverted to that of her native Portugal but found that *'the mere fact that she moved (or was moved) to Portugal in late 2012... is not sufficient to establish a shift in domicile – there has to be something more.'*

He went on to conclude that she did not have capacity to make the Portuguese Will.

He also concluded there were *'numerous matters'* which made the circumstances around the making of the Portuguese will suspicious meaning that Antonieta had lacked the necessary knowledge and approval.

Therefore the 2001 Will is valid and Greenpeace benefits from Antonieta's residuary estate.

Having secured the English estate, Greenpeace is working with lawyers in Portugal to secure the assets in Portugal.


Greenpeace is advised by Paul Hewitt and Julia Schtulman of Withers LLP, and Adam Cloherty of xxiv Old Buildings, and in Portugal by Joana Vicente of Teresa Patrício & Associados – Sociedade de Advogados.

Authors

Julia Shtulman

ASSOCIATE | LONDON

Trust, estate and inheritance disputes


 +44 20 7597 6572


 julia.shtulman@withersworldwide.com

Paul Hewitt

PARTNER | LONDON

Trust, estate and inheritance disputes

 +44 20 7597 6197

 paul.hewitt@withersworldwide.com