Representation re Estate of Shumka 30-Aug-12

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats Fisher, Nicolle
Judgment Date:	30 August 2012
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Text

[2012] JRC 159

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, **Esq., Commissioner and**Jurats Fisher**and**Nicolle.

In The Matter Of The Representation Of Alan Roy Green And Denise Amanda Wright As Executors Of The Late Barbara Shumka (Deceased)
and
In The Matter Of The Moveable Estate Situated Outside The Province Of Ontario, Canada

Advocate R. J. Michel **for the Executors**.

Authorities

In the Estate of Vautier (nee Boyle) [2000] JLR 351 .

Estate — application to rectify a Will.

THE COMMISSIONER:

1 This is an application to rectify the Will of the late Barbara Shumka, who we will refer to as the "Deceased". The Deceased died domiciled in Canada on 16 th November, 2010, leaving two Wills, the first limited to her assets in Canada, and the second to her assets in the United Kingdom. The applicants are the executors under both Wills.

2 The Deceased used the firm of Charles Russell to draft and update her Wills in relation to her assets in the United Kingdom and initially the Channel Islands. Historically she had held assets in both the United Kingdom and the Channel Islands and her Will of 31 st December, 1993, refers specifically to both sets of jurisdictions. In 2006, when reviewing her Wills, she confirmed to Charles Russell that she no longer held assets in the Channel Islands and her Will of 26 th January, 2006, and the current Will which she updated, therefore made no reference to the Channel Islands. Furthermore, the 2006 Will, in the usual way, revoked all her previous Wills in so far as they related to the United Kingdom and the Channel Islands.

3 The Deceased owned shares in GUS plc and, unbeknownst to her, in late October 2006 that company through a demerger, became Experian Group plc, a company incorporated in Jersey. The result is therefore that she has died intestate in so far as her assets in Jersey are concerned.

4 The evidence before us comprises an affidavit from Suzanna Marriott of Charles Russell and affidavits from the executors. We are satisfied from that evidence:-

(i) the Deceased died without leaving issue, parents or siblings; if the position remains as it is, her property will most likely become *"bona vacantia"* and vest in the Receiver General;

(ii) she was unaware that her holding in GUS plc had transformed itself into a holding in shares in a Jersey registered company;

(iii) she was a person whose testamentary affairs were kept in good order with regular reviews conducted through her lawyers, Charles Russell; it is unlikely in the extreme that she would have intentionally left assets to be dealt with on intestacy in this way.

5 The Court has the power to rectify wills, the leading authority is *In the Estate of Vautier (nee Boyle)* [2000] JLR 351 where the Court held:-

> ***"(2) The Court had the power to rectify a will whether by deleting, substituting, or adding words.*** Although there was no Jersey authority supporting this view, courts of several countries had asserted a jurisdiction to delete words from a will before accepting it for probate. As there was no justification for drawing a distinction between a deletion and any other change, the court could make any change which would correct a manifest error and make a will accord with the testator's clear intentions. The inability of the English courts to go beyond the power to delete was based upon the wording of the Wills Act, which was of no application in Jersey and there were no Jersey precedents which denied a power of rectification."

In his judgment, Birt, then Deputy Bailiff said this at page 361, line 27:-

> ***"In the case of wills, the remedy of rectification is one which must be used sparingly and with extreme caution.*** The testator is no longer present to tell the court what he intended. The parties before the court may have reasons of their own for seeking to "change" the wording used by the testator. The court must, therefore, be very careful before ordering the words used by the testator. However, where it is satisfied by clear and compelling evidence that a mistake has been made and that the words used do not reflect the testator's intentions, the court may grant the discretionary remedy of rectification so as to alter the wording (whether by deletion, substitution or addition) so as to carry out those intentions. As in the case of trusts, any applicant would have to make full and frank disclosure of all the material facts."

6 The evidence before us is both clear and compelling that a mistake was made in the drafting of the current Will and that it should have been extended, as previously, to cover assets held in the Channel Islands, specifically Jersey. As presently drafted it does not reflect the deceased's intentions. Furthermore we are satisfied that full and frank disclosure has been made.

7 We therefore grant the prayer and order the rectification of the Will so that clause 1.1 of the Will will read as follows:-

> *"This is my last Will in respect of my property in the United Kingdom and the Bailiwick of Jersey and extends only to such property."*

8 Finally we order that the costs of and incidental to the representation will be borne out of the gross of the deceased's personal estate situated in Jersey.