



Neutral Citation Number: [2019] EWHC 2442 (Ch) Case Number: PT-2019-000101

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (Ch)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 18/09/2019

Before :

MASTER TEVERSON

IN THE ESTATE OF JAGIR SINGH DHILLON

Between :

SATBIR SINGH DHILLON
(As executor of the estate of the late Jagir Singh Dhillon)

Claimant

- and -

(1) SARBHJIT SINGH DHILLON
(2) DALJIT SINGH DHILLON

Defendants

Annie Ward of counsel (instructed by **Barrett & Co solicitors**) for the **Claimant**
Maurice Rifat of counsel (instructed by **Shergill & Co solicitors**) for the **Defendants**

Hearing date: 10 June 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MASTER TEVERSON

MASTER TEVERSON:-

1. This is a *Re Beddoe*¹ application. The application is made by the Claimant as one of the named executors of the estate of his late father Jagir Singh Dhillon (“the Deceased”).
2. The Deceased died on 21 May 2015 aged 88 having been predeceased by his wife Harbahajan Kaur Dhillon on 15 May 2004. By his will dated 16 November 2000 the Deceased in the event, as happened, that his wife predeceased him appointed his three sons, the Claimant, the First Defendant and the Second Defendant to be his executors and trustees and left his estate to be divided between his three sons in equal shares.
3. The main relief sought on this application by the Claimant is permission to issue the claim form which is attached to his witness statement (“the main claim”). The Claimant also seeks disclosure based on a request for information contained in a letter sent by his former solicitors Blandy & Blandy on 1 June 2017 to Debidins Solicitors who were then acting for the First Defendant and his wife.
4. The main claim seeks a declaration and consequential remedies that sums totalling £532,875 were removed from the Deceased’s accounts during and after his lifetime by the First Defendant and his wife. He says this was procured by undue influence and in one instance by forging the Claimant’s signature on an investment withdrawal form. I shall refer to this as “the undue influence claim”. The second claim is that the payments were in breach of obligations created by mutual wills executed by the Deceased and his wife and that the funds transferred are held on trust for the intended beneficiaries (“the mutual wills claim”). The third claim seeks an order removing the First and Second Defendants as executors and replacing them with a professional executor (“the s.50 Administration of Justice Act 1985 claim”).
5. The Claimant seeks an order authorising him on behalf of the estate of the Deceased to bring proceedings against the First Defendant and his wife Gurmit Kaur Dhillon to recover sums totalling £532,875.70 transferred to them before and after the death of the Deceased. The Claimant relies particularly on the fact that in just one week 21 April 2015 to 27 April 2015 £353,450.43 was transferred to a GE Direct account in the name of the First Defendant’s wife.
6. There is as yet no grant of probate to the estate. This does not in my view prevent the court from granting *Beddoe* relief on behalf of the Claimant but it does make it appropriate and necessary for any relief granted to be limited and on terms. In particular it will be necessary for a grant of probate to be obtained by the Claimant as soon as possible before or after the claim is issued.

¹ *Re Beddoe*, *Downes v Cottam* [1893] 1 Ch 547

7. The Claimant says that from 2010 onwards, the Deceased's health declined although he remained living in his home at 5 Wayne Avenue, Cranford, Middlesex.
8. The Claimant says there was no reason why the Deceased should want to give away all his remaining liquid assets to one son when he had three sons. As evidence of the Deceased's wish to treat his three sons equally, the Claimant says that on 17 August 2004 the Deceased gifted 75% of 5 Wayne Avenue to his three sons so that they each held 25% each of the beneficial interest.
9. The Claimant seeks permission on behalf of the Deceased's estate to pursue a claim that the payments totalling £532,875.70 were procured by undue influence on the part of the First Defendant and his wife and should be set aside. The Claimant claims that one of the transactions by which the Deceased's investments were encashed was obtained by fraud in that the Claimant's signature was forged on an investment withdrawal form.
10. In support of his case that the transactions call for an explanation and are presumed to be tainted by undue influence, the Claimant claims that in May 2014 the Deceased lent the First Defendant and his wife money at a time when they had financial difficulties arising out of a pizza business that failed. The Claimant says the Deceased insisted that this sum was secured by way of a charge against the home of the First Defendant and his wife which home is in the name of the First Defendant's wife. The Claimant argues that this is inconsistent with the pattern of giving that the First Defendant and his wife seek to rely upon.
11. The Claimant says that the presumption of undue influence is engaged because the Deceased was elderly and in poor health and needed considerable support in order to remain living in his home. The Claimant says the transactions call for an explanation in view of the amounts involved and the fact that £371,429.99 was moved in the 8 weeks preceding the Deceased's death. The Claimant points to the fact that the monies were transferred by online transfers, which the Claimant says the Deceased was incapable of executing for himself.
12. Further or in the alternative, the Claimant submits that the doctrine of mutual wills is engaged in this case. He claims that the Deceased and his wife executed mutual wills on 16 November 2000. The Deceased's will contains a recital that:-

"Whereas my wife and I have agreed with one another to execute wills of even date and in similar terms and have further agreed that such respective wills shall not hereafter be revoked or altered either during our joint lives or by the survivor after the death of one of us now in reliance upon such agreement I hereby give all my real and personal propertyupon the following trusts".

A corresponding recital was it is averred contained in the will of the Deceased's wife. The Claimant says if, contrary to his primary case, the Deceased intended to make the impugned lifetime dispositions in favour of the First Defendant and his wife, that was in breach of the Deceased's agreement with his wife to benefit their three sons in equal shares. The Claimant claims the sums transferred are subject to a trust in favour of the intended beneficiaries.

13. The First Defendant in his witness statement of 12 March 2019 in response to this *Beddoe* application does not dispute that the sums were transferred to him and his wife. He alleges however that the Claimant was aware of the transactions and the reasons for them. He says that the Claimant himself received substantial sums of money from the Deceased during his lifetime. He describes the Claimant as being “*a devious individual who is motivated by his own greed and desire to take money from me and my other brother, Daljit*”. The First Defendant says that the Deceased gave him and his wife substantial sums before he died because he knew that he had to treat his sons equally and that by gifting him large sums of money he put the First Defendant on an equal footing with the Claimant and the Second Defendant.
14. The Second Defendant has made a short witness statement in response to the Claimant’s application. He says he has seen a copy of the First Defendant’s witness statement dated 12 March 2019 and confirms that the contents, where they apply to him, are true. I take this to mean that where the First Defendant refers to the Deceased as having given both the Claimant and the Second Defendant large sums of money the Second Defendant confirms he was himself in receipt of significant sums from the Deceased. The Second Defendant exhibits to his statement copies of cheques given by the Deceased to him for his benefit. They are not well copied but appear to be dated in 2005.
15. The Claimant also says that in November 2014 the First and Second Defendants took the Deceased to India. He alleges that whilst in India the First and Second Defendants made the Deceased change the terms of his Indian will to exclude the Claimant. The Claimant says that there are separate ongoing proceedings in India about the Indian will and the land which forms the Deceased’s Indian estate. He says that the timing of the changed Indian will is part of the factual background to the claim.
16. The Claimant says that he should be permitted to bring this claim on behalf of the Deceased’s estate because if the claim succeeds, the estate’s value will swell from £74000, the amount secured by the charge over the home of the First Defendant and his wife, to £606,000. He says this will benefit the Second Defendant (and First Defendant) as well as himself and is clearly in the interests of the estate.
17. The First and Second Defendants submit that this is essentially a contentious beneficiary dispute and that a *Beddoe* application is inappropriate and misconceived. This is not a beneficiary dispute in the sense referred to by Lightman J. in *Alsop Wilkinson v Neary* [1996] 1 WLR 1220. It is not a dispute between a trustee on the one hand and a beneficiary on the other relating to actions taken or omitted to be taken by the trustee. The proposed undue influence claims relates principally to events in the lifetime of the Deceased before the will trusts came into effect. The claim to set aside the transactions based on undue influence is a claim proposed to be brought on behalf of the estate against the First Defendant and his wife as persons to whom sums belonging to the Deceased were transferred in his lifetime. In that respect the claim resembles a third party dispute.
18. It is a beneficiary dispute only in the looser and wider sense that the Claimant and the First and Second Defendants are all beneficiaries and they disagree as to whether the proposed claims should be pursued on behalf of the estate.

19. In a case whether the proposed claim is against a person who is a beneficiary then the court has to be alert to the potential for unfairness in the event that the claim fails and costs protection is given to another person who is both named as an executor and is a beneficiary. On behalf of the Defendants it is submitted that it would be monstrously unfair for the Claimant to be able to hide behind *Beddoe* protection should the undue influence claim fail.
20. As stated by Nourse LJ in *Evans v Evans* [1986] 1 FLR 319 at 323, first and foremost, every application of this kind depends on its own facts and is essentially a matter for the discretion of the master or judge who hears it. In distinguishing *Re Dallaway (Deceased)* [1982] 1 WLR 756, Nourse LJ said that the merits of the action were a most important consideration. In an often quoted passage, Nourse LJ said:-

“In my view, in a case where the beneficiaries are all adult and sui juris and can make up their own minds as to whether the claim should be resisted or not, there must be countervailing considerations of some weight before it is right for the action to be pursued or defended at the expense of the estate. I would not wish to curtail the discretion of the court in any future case but, as already indicated, those considerations might include the merits of the action.”
21. In my view in the case before me the merits of the claim are sufficiently strong as to make it appropriate for the court to fashion a way in which it can, subject to safeguards and limitations, be brought by the Claimant on behalf of the estate. Substantial amounts were transferred to the First Defendant and his wife including £331,374.56 in a period of 8 weeks prior to the death of the Deceased.
22. In relation to the timing, the First Defendant says this was due to the unexpected death of their father on 21 May 2015 and that nobody could have anticipated their father’s passing on that day. The fact remains the Deceased was an 88 year old man. He was a vulnerable adult. I recognise that there may be a valid explanation for the transfer of at least some sums to the First Defendant and his wife. I note the explanations provided in Debidins letter to Blandy & Blandy dated 20 July 2017. I also note that the First Defendant says in paragraph 22 of his witness statement that the payment of £333,450.43 to his wife’s GE Bank Account was erroneously described by his previous solicitors Debidins as payment for his father’s “*upkeep*” and “*possible future investments*”. The First Defendant in his witness statement says it “*was actually also a gift from my Father and Gurmit to be invested for our son and daughters, his grand-children*”.
23. In my view the substantial sums involved combined with the proximity of the transfers in substantial part to the death of the Deceased make this a claim which merits pursuing at least to the disclosure stage on behalf of the estate. The effect of the transactions was to remove all or virtually all the remaining liquid assets out of the estate
24. I have taken into account that the application is opposed by the Second Defendant as well as the First Defendant. In my view, the Second Defendant cannot be regarded as an independent or impartial beneficiary for the purposes of viewing this application from the point of view of the beneficiaries of the estate as a whole. Both the First and Second Defendants are involved together in the dispute with the Claimant over the Indian will.

25. It was argued on behalf of the Defendants that it would be unjust if the Claimant were allowed to pursue this claim on behalf of the estate because if the claim were to fail with allegations of undue influence and fraud having been made it would be quite wrong for the Claimant to be given any costs protection.
26. In the present case, I do not regard the injustice argument as decisive. In the first place, there can be no question of the claim being funded at the expense of the estate as the estate has no liquid assets within it to fund the claim. The only remaining asset is a charge over the home of the First Defendant and his wife. It is I understand interest free. There is little incentive on them to repay the loan secured by it.
27. Secondly, the injustice argument in this case is in my view outweighed by the merits of the claim. If the claim is successful, the making of a *Beddoe* order will entitle the Claimant to recover his costs out of the estate in the event that the claim is successful but the Claimant is not able to recover costs from the First Defendant and his wife personally. Thirdly, I propose to make my order subject to any order of the trial judge.
28. The undue influence claim is a claim which belongs to the estate and needs to be made on behalf of it. The mutual wills claim were it the only claim is one which might be brought by the Claimant as a beneficiary. It is a secondary or alternative claim to the undue influence claim and in my view should be brought with it and not separately. It too has merit.
29. I take a different view with regard to the s.50 Administration of Justice Act 1985 claim. In my view that claim needs to be determined first. I do not know whether the Defendants intend to contest the s.50 claim. Prima facie, the First Defendant is in a position of conflict of interest with the estate. In joining with the First Defendant in opposing the *Beddoe* application, the Second Defendant has associated himself with that conflict of interest.
30. In the circumstances, I propose to give the Claimant permission to issue and serve the undue influence claim and the mutual wills claim on behalf of the estate. I propose to direct the Claimant to issue a separate claim either under s.50 or under s.116 of the Senior Courts Act 1981 in the event the Defendants do not agree to their appointment as executors being terminated or passed over.
31. I propose to direct that the Claimant is to seek further directions from the court in the event that he has not obtained a grant of probate within 3 months of the date of my order or earlier if probate is granted to some person other than the Claimant.
32. In any event, I propose to direct that the Claimant's permission to pursue the undue influence claim and the mutual wills claim on behalf of the estate is to be reviewed after disclosure and inspection in the main claim.
33. My understanding is that there are no liquid assets within the estate to enable the claim to be funded at the expense of the estate. For the avoidance of doubt I shall direct that prior to judgment or further order the claim is to be funded by the Claimant otherwise than out of the estate.
34. The main practical purpose of granting permission to bring the claim as I see it is to enable the claimant to recover his costs from the estate in the event they cannot be

recovered from the First Defendant and his wife. I propose to make that order subject to the further provision that it is to be subject to any order made by the trial judge.

35. I do not consider it appropriate to make any order for disclosure on this application. I consider disclosure should be dealt with in the usual way in the main claim.