Neutral Citation Number: [2020] EWHC 1063 (Ch)

Case No: PT-2019-CDF-000030

IN THE HIGH COURT OF JUSTICE
BUSINEE AND PROPERTY COURTS IN WALES
PROPERTY TRUSTS AND PROBABTE LIST (ChD)
IN THE ESTATE OF ROYSTON LEONARD AMOS DECEASED

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 30 April 2020

Before :

HIS HONOUR JUDGE JARMAN QC
Sitting as a judge of the High Court
Between:

SANDRA ANNA AMOS	**Claimant**
- and -	
(1) BEVERLY MANCINI	**Defendants**
(2) SULLIMAN KHAN	
(3) NIKKI MANCINI	

Ms Angharad Davis (instructed by **Harrison Clark Rickerbys**) for the **claimant**
None of the defendants appeared or was represented

Hearing dates: 27 April 2020
Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and released to Bailii. The date and time for hand-down is deemed to be 10.00 am 30 April 2020.

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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HIS HONOUR JUDGE JARMAN QC

HH JUDGE JARMAN QC :

1 The claimant, Mrs Amos, claims a declaration as to whether the forfeiture rule applies to her and if so, applies for modification of the effect of that rule under section 2 of the Forfeiture Act 1982 (the 1982 Act).

2 The circumstances in which the need to make the claim arises are tragic. On 7 January 2019, Mrs Amos and her late husband, then 81 years old, set off from their home at Pany y Bas, Pentrefelin, Llandeilo to drive to the funeral of Mr Amos's sister in Canterbury. They set off early, about 6.30 am, and Mrs Amos was driving, as her husband felt unwell. However, when they reached Slough they got lost. Mr Amos said he wanted to return home, and so they headed back. At about 4.30pm when it was raining and starting to get dark, they were approaching the end of the M4 motorway where there is a large roundabout near Pont Abraham Services, which Mrs Amos was familiar with. Mrs Amos was driving in the outside lane and approaching a line of traffic which had come to a stop at the roundabout. Instead of braking, Mrs Amos collided with the vehicle in front, causing a four-vehicle shunt. She lost consciousness and is not able to remember why she did not stop. She and her husband were helped out of the vehicle and initially Mr Amos appeared not to be seriously hurt. They were taken to hospital for a check-up, where Mr Amos died later that evening from multiple traumatic injuries caused in the accident, with his wife at his side.

3 Mrs Amos was charged with causing his death by careless driving under section 2B of the Road Traffic Act 1988, inserted by the Road Safety Act 2006. She pleaded guilty at the first opportunity. On 30 September 2019, when she was 74 years old and of previous clean character, she was sentenced by HH Judge Thomas QC to 32 weeks' imprisonment suspended for 12 months and disqualified from driving for 12 months.

4 Mr Amos left a will dated 29 June 2016 and Mrs Amos obtained probate in June 2019. By clause 4 of that will, he left his residuary estate after payment of expenses and debts to his wife if she survived him. If she did not, then by clause 5 he left £20,000 to the first defendant, his daughter by a previous marriage and his residuary estate between the second defendant, Mrs Amos' son by a previous marriage, and his grand-daughter the third defendant who is the daughter of the first defendant. Mr and Mrs Amos purchased their home in joint names in 1992, which unless the forfeiture rule applies unmodified, passes to Mrs Amos under the doctrine of survivorship.

5 The second and third defendant have not contested this claim. However, the first defendant filed an acknowledgment of service saying she intended to contest the claim. She set out her reasons in an accompanying statement, which did not include a statement of truth. The reasons included that her father had argued with her husband in 2016, but in 2018 her father said he wanted to make up with his son-in-law and that his will was not how he wanted it. On 4 February 2010 District Judge Vernon ordered the first defendant to file and serve any further evidence by 25 February 2020, which should address whether she asserted that the principle of forfeiture applies and if so whether the court should modify the effect of the rule under the 1982 Act and if not why not. The first defendant filed no further evidence and has played no further part in the claim. I heard the application remotely by telephone when counsel Ms Davies represented Mrs Amos, but none of the defendants took part in the hearing.

6 The principle of forfeiture is one of common law which has been recognised by statute in section 1 of the 1982 Act. That provides as follows:

> (1) In this Act, the "forfeiture rule" means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.
>
> (2) References in this Act to a person who has unlawfully killed another include a reference to a person who has unlawfully aided, abetted, counselled or procured the death of that other references in this Act to unlawful killing shall be interpreted accordingly.

7 The first case in which the 1982 Act was considered by the Court of Appeal was *Dunbar v Plant* [1998] Ch 412. Phillips LJ, giving the lead majority judgment, observed at page 429E that the rule as formulated in the 1982 Act was an example of a wider rule that a person cannot benefit from his own criminal act. At page 430D he said that when the rule was first applied by the courts there were only two types of unlawful killing, murder and manslaughter. At page 431E he gave examples of significant changes to the law in relation to unlawful killing to reflect public appreciation of the different degrees of culpability that attend offences which used to be treated as murder, and at the end of that page said this:

> "The change in attitude reflected by the statutory gradation of offences of unlawful killing and, in particular, the mitigation that was sometimes present in case of diminished responsibility or provocation led to justifiable dissatisfaction with the application of the forfeiture rule indiscriminately in every case of unlawful killing."

8 He referred at page 432B to the first time the courts manifested a desire to avoid the rigour of the rule, in *Tinline v White Cross Insurance Association Co* [1921] 3 KB 327. In that case it was held that the rule did not debar a driver found guilty of manslaughter by reckless driving from relying upon a certificate of insurance. Phillips LJ said that and other similar cases of unlawful killing by the manner of driving a motor vehicle could be justified on the basis of public policy requiring there to be valid insurance for the benefit of the family of the victim.

9 At page 433G he cited Salmon LJ in Grey v Parr [1971] 2 QB 554, 581 as saying:

> "Manslaughter is a crime which varies infinitely in its seriousness. It may come very near to murder or amount to little more than inadvertence."

10 After reviewing the authorities, Phillips LJ at page 435D said this:

> "It is time to pause to take stock. Thus far, apart from the motor cases, there has been no instance of the court failing to apply the forfeiture rule to a case of unlawful killing. So far as the rule is concerned, I cannot see any logical basis for not applying it to all cases of manslaughter…in the crime of manslaughter the actus reus is causing the death of another. That actus reus is rendered criminal if it occurs in one of the various circumstances that are prescribed by law. Anyone guilty of manslaughter has…caused the death of another by criminal conduct. It is in such circumstances that the rule…applies."

11 At page 437 H, he concluded:

> "The appropriate course where the application of the rule appears to conflict with the ends of justice is to exercise the powers given by the [1982] Act."

12 In subsequent cases the courts have held that the rule applied to all cases of manslaughter, namely *Re Land Deceased* [2007] 1 All ER 324, *Dalton v Latham* [2003] EWHC 796 (Ch) and *Chadwick v Collinson* [2014] EWHC 305. In the latter case HHJ Pelling QC said this:

> "24. The Claimant contends that the Forfeiture Rule is of no application to at least some cases of manslaughter and that it ought not to apply in this case given the medical evidence concerning the mental health of the Claimant on 9 April 2013 when he unlawfully killed his partner and son.
>
> 25. In my judgment the effect of the decision of the majority of the Court of Appeal in Dunbar v. Plant (ante) and the authorities that followed that decision (Dalton v. Latham (ante) and Re Land Deceased (ante)) render that submission entirely unarguable. Philips LJ could not have been clearer in his view that since the passage into law of the Forfeiture Act 1982 there was now *"…no reason for the court to attempt to modify the forfeiture rule. The appropriate course where the application of the rule appears to conflict with the ends of justice is to exercise the powers given by the Act".* As Judge Norris QC observed in Re Land Deceased (ante), that reasoning must be regarded as part of the ratio of the majority. As Patten J put it in Dalton v. Latham (ante), the decision of the majority in Dunbar v. Plant (ante) *"…must now be taken to be a binding statement of the law as to the application of the rule of public policy. It applies to all cases of unlawful killing including manslaughter by reason of diminished responsibility …"* I could depart from this analysis only if I considered that both Judge Norris QC and Patten J were plainly wrong. Not merely do I not consider that

> either was plainly wrong but in my judgment they were both entirely correct.

13 Ms Davies, whilst accepting that an offence under section 2B of the 1988 Act amounts to unlawful killing for the purposes of section 1 of the 1982 Act, nevertheless submits that the phrase "in certain circumstances" means that not every circumstance of unlawful killing attracts the rule and that such an offence should not do so.

14 There is no direct authority on the point. Ms Davies relies upon the remarks of Mummery LJ in his dissenting judgment in *Dunbar* at 425C, where he said this:

> "It is sufficient that a serious crime has been committed deliberately and intentionally. … the important point is that the crime that had fatal consequences was committed with a guilty mind (deliberately and intentionally). The particular means used to commit the crime (whether violent or non-violent) are not a necessary ingredient of the rule."

15 Ms Davies submits that in this case, Mrs Amos' offence was not deliberate or intentional. She also relies upon commentaries in two of the leading textbooks. In Williams, Sunnucks and Mortimer states at 68-04 this is said:

> "Although it is doubtful whether Dunbar v Plant is strictly authority for the proposition that all cases of manslaughter attract forfeiture, it has been treated as binding, and the judicial consensus is now clearly that the forfeiture rule does not admit manslaughter exceptions, and that relief is available only under the provisions of the Forfeiture Act 1982."

16 But the commentary continues in the following paragraph:

> "The presence or absence of moral culpability is irrelevant to the application of the rule. It does not appear that causing death by dangerous driving, although this is unlawful killing, has attracted forfeiture." [And in a footnote] "Given the inflexibility of the rule as it applies to manslaughter, it is not clear whether there is any sustainable logic to this distinction."

17 In Parry and Kerridge, Law of Succession (13th Edition), the authors state at 14-64:

> "It is probable - although not certain - that the forfeiture rule does not apply to other cases of unlawful killing; for example, to cases where there is a conviction for causing death by dangerous driving." [And in a footnote] "There appear to be no reported cases where it has been suggested that the rule applies to causing death by dangerous driving. Section 20 of the Road Safety Act 2006, which came into force in 2008, created an additional offence of "causing death by careless or

> inconsiderate driving". It is virtually certain that the forfeiture rule does not apply to someone convicted of this new offence."

18 As is apparent from the *Tinline* case, before the introduction of specific offences of causing death by dangerous driving, and then of causing death by careless driving, the unlawful killing of someone by the manner in which a vehicle was driven was dealt with by a charge of manslaughter. Although the offence of causing death by careless driving was not on the statute books at the time of *Dunbar*, it is clear from the passages cited above that Phillips LJ had regard to the changing law as to unlawful killing to reflect different degrees of culpability, and to the fact that manslaughter may involve little more than inadvertence. Yet he could not see any logical basis for not applying the rule to all cases of manslaughter.

19 I cannot see a logical distinction in applying the rule to all cases of manslaughter (including those which involve little more than inadvertence) but not to a case of causing death by careless driving. The observation of Phillips LJ that all cases of manslaughter involves causing the death of someone by criminal conduct applies with equal force in my judgment to an offence of causing death by careless driving. Where in such a case the application of the rule is not just, then the appropriate course is to exercise the powers under the 1982 Act. Accordingly, I conclude that the rule does apply in this case.

20 Those powers are set out in section 2 of the 1982 Act as follows:

> 2. – Power to modify the rule.
> (1) where a court determines that the forfeiture rule has precluded a person (in this section referred to as "the offender") who has unlawfully killed another from acquiring any interest in property mentioned in subsection (4) below, the court may make an order under this section modifying the effect that rule.
> (2) the court shall not make an order under this section modifying the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case.
> (3) in any case where a person stands convicted of an offence of which unlawful killing is an element, the court shall not make an order under this section modifying the effect of the forfeiture rule in that case unless proceedings for the purpose of brought before the expiry of the period of three months beginning with his conviction.
> (4) the interests in property referred to in subsection (1) above are –
> (a) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired –
> (i) under the deceased's will (including, as respects Scotland, any writing having testamentary effect) all the law relating to intestacy or by way of ius relicti, ius relictae or legitim;
> …
> (b) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired in consequence of the death of

> deceased, being property which, before the death, was held on trust for any person.

21 Accordingly, I must have regard to the conduct of Mrs Amos, and of Mr Amos and to other circumstances which I consider are material.

22 In his sentencing remarks, HH Judge Thomas QC said this:

> "It is a tragedy for you as much as anyone else. As a result of what happened that night you have lost your beloved partner of 30 years. Your loss is a devastating one and I have no doubt whatsoever that that is a significant punishment in itself, far exceeding anything that this Court could or would consider passing. However, the simple fact is that the speed that you hit the car ahead was such that it was shunted forward and then the same happened, by reason of that impact, to the two cars ahead in the line of traffic. Two of those drivers also sustained injuries which led them going to hospital. The only possible conclusion, it seems to me, is that your lapse in concentration was a significant one."

23 The judge made reference to his concern that remarks which Mrs Amos made to the police and to the writer of the pre-sentence report gave the impression that she did not fully recognise that her driving was to blame for the accident. Nevertheless, she did plead guilty at the first opportunity and her counsel at the sentencing hearing did not seek to play down her part in the accident.

24 I take into account that Mrs Amos was driving her husband to his sister's funeral but turned back unexpectedly at the request of Mr Amos having become lost. This led to Mrs Amos driving for a very long period, and the accident happened when it was raining and getting dark. The lapse of concentration was significant, but it was nonetheless a lapse of a few moments.

25 So far as Pant y Bas is concerned, when Mr and Mrs Amos purchased it was dilapidated. Mr Amos was a builder and they both worked hard at making it into their dream home. In 2000 they started a B&B business from their home, which they ran until 2017. It was purchased in joint names, I am satisfied, with the intention on the part of each that the survivor would become entitled to it.

26 As for the 2016 will, I can place little if any weight on the first defendant's statement, without a statement of truth, that her father wanted to change his will, especially having regard to her failure to file evidence as directed or her subsequent failure to engage in the proceedings. Whatever her father might have said to her, the fact remains that he did not change is will, which must in the circumstances be taken to contain his intentions at the date of death.

27 It is also significant that the two beneficiaries of the residuary estate if Mrs Amos' gift thereunder is forfeit, Mr Amos' step-son and granddaughter have not contested this claim. The second defendant's wife provided one of the references for her mother-in-law which were handed to HH Judge Thomas QC.

28 I have come to the conclusion that it would be unjust for the forfeiture rule to apply in this case so as to deprive Mrs Amos of her husband's share in their former matrimonial home or the gift in his will. The loss of either would in my judgment be significantly out of proportion to her culpability in the offence in question. Accordingly, I am satisfied that justice requires me to use the powers in section 2 of the 1982 Act to modify the rule so as to allow her take her husband's interest in Pant y Bas and to inherit the gift under her husband's will.

29 I will hand down this judgment in writing remotely. I would be grateful if Ms Davies would submit a draft minute of order within 7 days of handing down.