Claim No. PT-2019-000886

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES

PROPERTY TRUSTS AND PROBATE LIST (Ch D)

IN THE ESTATE OF Mr. HUAN LIU DECEASED

7th October 2020

Before DEPUTY MASTER LINWOOD

BETWEEN:

PU LIU (Claimant)

-v-

TIBOR MATYAS (Defendant)

MR D McCOMBE (instructed by Lu Oliphant Solicitors LLP) **appeared on behalf of the Claimant**

THE DEFENDANT appeared in Person

JUDGMENT

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DEPUTY MASTER LINWOOD:

1. This is my judgment on the disposal hearing of this Part 8 claim brought by Mr Pu Liu of Chengdu City, People's Republic of China, represented by Mr McCombe of counsel, instructed by Lu Oliphant solicitors. The defendant is Mr Tibor Matyas, who lives in London and who has represented himself in these proceedings, with, I must say, some considerable skill. He has also had advice and assistance from solicitors and counsel at different times.

2. The claimant, Mr Liu, in his Part 8 claim form issued on 29th October 2019, claims:

"(1) Pursuant to a will dated 28 May 2015, the claimant and defendant are executors of the estate of Mr Huan Liu, who died on 10 April 2017. The original will is enclosed with this claim form.

(2) By an email dated 20 April 2017 the defendant intermeddled in the estate by acknowledging his role as an executor, saying "I understand I am one of the executors, I want and of course I will be involved in the procedure".

(3) The defendant further intermeddled in the estate by an email dated 31 July 2017, where he stated "I emphasise clearly and unambiguously that I am the executor of my lost partner's will, and I will be fully involved in the legal process once the grieving process allows".

(4) However the defendant has since then refused to participate in taking out a grant of probate.

(5) Accordingly the claimant seeks orders pursuant to section 15 of the Administration of Justice Act 1985, alternatively section 116 of the Senior Courts Act 1981, a) removing the defendant as a personal representative of Huan Liu, b) alternatively substituting Mr

Peter Daniel, Collyer Bristow LLP for the claimant and defendant as personal representative of Huan Liu.

(6) The claimant also seeks an order that the defendant pay the claimant's costs of these proceedings, alternatively, that the claimant's costs of these proceedings be paid out of the Estate."

3. That Part 8 claim form was accompanied by Mr Liu's first statement, dated 4th October 2019. Mr Matyas entered an acknowledgement of service on 9th December 2019, saying that he would contest the claim. He then filed and served his first statement, dated 23rd December 2019. Subsequent to that here have been numerous statements filed by and for both parties, to which I will refer as necessary.

Background.

4. This is a sad case involving the death at an early age of the claimant's brother, Huan Liu, who took the first name Chris, on 10th April 2017 at the age of 47. He and Mr Matyas had been in a relationship for about 14 years, both as partners in a business - they designed luxury goods under the trading name Chris&Tibor - and also in life. The latter appears not to have been known to the deceased's parents until after he died. The death of Mr Huan Liu resulted in Mr Matyas suffering substantial distress and grief, which he has set out in detail in his statements, including correspondence setting out the devastating effect this has had. He also in that correspondence at length criticises the actions of the claimant, his solicitors, and counsel.

The will.

5. The will of the deceased was drafted by a firm known as Quality Solicitors Martin Tolhurst. The relevant provisions of the will provide:

"2. *I appoint Tibor Matyas...and my brother, Pu Liu ...hereafter called my trustees to be the executors and trustees of my will.*

*3. I give free of tax 41 Kinetica Apartments", aforesaid, [*his home address] *"to such of the said Pu Liu and my father, Den Him Liu, and my mother, Lan Lon Yan, both of"* *[*their address in Xingyang Province, Republic of China] *"as survive me, and if more than one in equal shares.*

4. I give free of tax, Flat 4, 13 Atkins Square, London E8 1FA, to such said Pu Lu, and said Den Him Liu and said Lan Lon Yan and said Tibor Matyas as shall survive me and if more than one in equal shares.

5.I give free of tax all shares, stocks, debentures, stock debts and other holdings of the (inaudible) in Chris & Tibor Limited, which I own at the date of my death to my trustees, to hold on trust to the said Tibor Matyas".

6. Then there is the standard paragraph as to the trustees collecting in the assets, and at clause 7 as to the residuary estate:

"*My trustees shall stand possessed of my residual estate upon trust as to both capital and income for the said Lan Lon Yan and said Den Him Liu as shall survive, and if more than one in equal shares. 8. If the said Lan Lon Yan and said Den Him Liu shall die in my lifetime, then my trustees shall hold my residual estate upon trust absolutely for the said Pu Liu".*

It is therefore a simple will, with no complicated or unusual provisions.

The assets.

7. Mr Matyas has exhibited at TM4 to his first witness statement a helpful schedule, headed "IHT estimates" that he prepared in the summer of 2017. The assets comprise of, and I take them from the columns which list the asset, the owner and the value less any

debt. The first is the flat, which I will call Kinetica, owned by the deceased, as is also the garage, which according to Mr Matyas, from his researches on Zoopla, have a combined value of £597,000. Secondly, the flat at Atkins Square, owned solely by the deceased, value £437,000, loan debt £237,000. Three, Thornberry, this I understand is a another buy to let flat, as is the one at Atkins Square, in the East of London, owned by both the deceased and Mr Matyas, full value £471,000, loan debt £226,000. At the outset of today's hearing I asked Mr Matyas about the properties. He told me that he currently lives in Kinetica and both Atkins Square and Thornberry are empty.

8. Then, continuing the description of assets, there are four bank accounts, sums therein to be confirmed, likewise any linked debts. Six, the company Mr Matyas says has no value. As to the deceased's car the loan debt is literally a few pounds off the book value, so it has no value. Household and personal goods owned by the deceased are estimated at £500. Mr Matyas has therefore said the above totals approximately £920,000 and there may possibly be tax to pay of some £238,000. The key points are that item two, Atkins Square, according to the will was to be divided between four, as I have explained, with one share to Mr Matyas, and Mr Matyas has a half share in Thornberry. He has no interest in the other assets, save the company Chris & Tibor Ltd.

The course of this Part 8 claim.

9. I think it necessary I set out the background in view of the way the issues have changed. There have been two judgments to date, one by Master Kaye and another one by me, following a directions hearing I called last Wednesday. Master Kaye made an order on the papers on 6th April 2020. After provision for service of evidence, paragraph 5 provides that if either party wishes a witness to attend a trial of this matter for cross-examination, they shall inform the other party no less than 21 days before the date the trial

is due to commence, and at the same time notify the court. Paragraph 6 provides the trial of this matter shall be listed for an in person hearing before a Master on the first available date after 1st July 2020, with a time estimate of one day, and Master's pre reading time of half a day.

10. Mr Matyas applied to set that order aside in its entirety. Master Kaye heard the parties on 24th April 2020. She dismissed the application of Mr Matyas and varied somewhat the directions in her order of 6 April, mainly by extending the dates. She also ordered Mr Matyas to pay the claimant's costs on his failed set aside application in the sum of £5,000.

11. Deputy Master Lloyd then on 1st July 2020 extended, on Mr Matyas' application, certain time limits, and at paragraph 3 ordered that any party wishing a witness to attend a trial of this matter for cross-examination shall inform the other party of this fact by 21 September 2020, and at the same time notify the court. By this time there were quite a few witness statements by different deponents, and there was the potential for a relatively large number of witnesses, if notified or required to give oral evidence. Oral evidence in an application of this nature is unusual, as the court does not have to find wrong-doing or fault on the part of an executor as a condition of removal.

12. There was then a substantial change of position by Mr Matyas set out in his witness statement of 10th July 2020, which was filed and served after he had had the benefit of legal advice from Russell Cooke solicitors. This was not the first time he had had legal advice; he explained how he had taken legal advice back in May 2020, but in any event Russell Cooke were briefly on the court record for Mr Matyas, and at paragraphs 9 – 13 of his statement he says:

"However, following receipt of advice from my solicitors, in respect of which my privilege is preserved, my position in relation to the claimant's claim has altered.

10. I still strongly maintain my position that right up until the time the claimant issued his claim I was willing to take out a grant of probate with the claimant, the principle between us was whether we should act in person or select a specialist probate lawyer to act on our behalf. Unfortunately I did not feel I was able to work with Mr Lu, who had been instructed initially by the claimant, but for this litigation, for the reasons I set out further, I would still be willing to work with the claimant to administer the estate.

11. However, my solicitor has advised me that I may have certain claims against the estate. My solicitor is still considering and investigating these claims, they will be set out in due course in a formal letter of claim. He has told me however that the very fact of these possible claims gives rise to a potential conflict of interest in my acting as an executor of the estate, as I would in effect be required to defend for the benefit of family beneficiaries my own claim.

12. I therefore consider at this juncture it would be appropriate for the court to appoint a specialist probate solicitor as an independent administrator to administer the estate in place of both the claimant and me.

13. My solicitor had not yet identified suitable candidates in a position to take the matter on but will do so and invite the claimant to comment on the same".

13. Then, by email dated 7th September 2020, Mr Matyas sent Lu Oliphant his proposal for a substitute executor, namely a letter from a firm of solicitors, Curzon Green, dated 12th August 2020 which states:

"Dear Mr Matyas, the estate of the late Huan Liu. We confirm Sukhi Bagha, a partner of the firm, would be prepared to act as substitute executor for the estate of the late Huan Liu. Sukhi has over 14 years' experience as a solicitor with a wide range of experience of

property laws and probate. Sukhi would be assisted by Louise Pitts (inaudible). We confirm Sukhi's hourly rate is £250 plus VAT, and Louise's rate is £200 plus VAT. At present, as we do not know what work will be involved, it is difficult to provide an exact estimate of this firm's charges. Yours faithfully Curzon Green".

14. Lu Oliphant objected to this proposal of Ms Bagha in their reply of the same day, 7th September. They say they need to take instructions and then:

"The information attached to your email contains details of your proposing of an executor falls short of the information that our client would require in order to make an informed decision. It does not provide an estimate of the total cost involved, and that is an absolute prerequisite before our client can properly consider your proposal".

Then at numbered paragraph 3 they ask a) what Ms Bagha estimates her firm's total costs would be, b) what work she understands would be involved in administering the estate, upon which the above fee estimate is based, and c) why Ms Bagha was willing to consider be appointed as executor when she did not know what work might be involved. And then at 4, "*We would also be grateful if you would explain why it is not possible simply for you to consent to the appointment of Mr Daniel*".

15. Mr Matyas then replied on 8th September stating Curzon Green's letter complies with the court requirements namely the Chancery Guide at paragraph 29.61, and PD 57.13(2). He says total charges would be calculated on a time basis, and the hourly rate is the most accurate indication of total charges He then refers to Ms Bagha having more years' of experience than Mr Daniel, and her charges are half those of Mr Danile. Finally, he says Mr Daniel is strongly objected to because his and his team's high level value (inaudible).

16. The correspondence continued, in that Lu Oliphant replied immediately in their letter of 9th September, and Mr Matyas replied again to that in the next email, 10th September. Importantly, Lu Oliphant wrote to the court on 15th September 2020, saying as to the time estimate:

"The defendant has now consented to the relief that the claimant was seeking in these proceedings, namely the appointment of an independent solicitor as executor in place of the parties to these proceedings. Accordingly, the hearing on 7th October 2020 is only likely to deal with two points, (1) exercise of the court's discretion as to whom to appoint as executor and (2) costs", that of course being the case. I emphasise the words "*the appointment of an independent solicitor as executor in the place of the parties to the proceedings"*. Up until that date, from my reading of the correspondence, it seems to me that the claimant was still proceeding on the basis that he would remain in position.

17. On 28th September 2020 when I was reviewing the file in preparation for this disposal hearing, I considered further directions were necessary. I therefore asked the parties to appear before me remotely, by telephone, on 30th September 2020. After hearing submissions I ordered first that the adjournment application Mr Matyas had mentioned so that he could be represented by counsel, was dismissed and secondly there would be no cross-examination at the final hearing of this matter on 7th October 2020. My order concludes with reference to the bundle and production of the transcript of the judgment of Master Kaye.

18. I gave detailed reasons for no cross-examination and no adjournment in my ex-tempore judgment given that afternoon. In short, as to no cross-examination, in my judgment it was clear cross-examination would play no part whatsoever in deciding the

issues before me, which are (1) who should be appointed as substitute executor, as Lu Oliphant in their letter of 15 September 2020 say they are not pursuing continuing the appointment of the claimant but appreciate a single solicitor executor in all the circumstances is best, and (2), costs. I put these two issues to Mr McCombe and Mr Matyas at the outset of the hearing this morning, and they agreed that these are the issues I am to determine.

Issue 1; who should be appointed as solicitor executor of the estate of the late Huan Liu?

19. The claimant has proposed a Mr Daniel. He is a solicitor and a partner in Collyer Bristow. He qualified in 2008, specialises in trusts, tax and estate planning, and has specifically acted for high-net-worth individuals, particularly those with cross jurisdictional affairs, trustees and beneficiaries of UK and overseas trusts, and executors and administrators of estates including those which are high value, complex, contentious and international in nature. He therefore has12 years post qualification experience.

20. Mr Matyas provided the letter from Curzon Green, which I have set out earlier. Both Mr Daniel and Ms Bagha have comparable post qualification experience. Ms Bagha has just two years more but I think it makes no difference. Both are partners in their respective firms. It does however appear that Ms Bagha is not a specialist, as Mr Daniel is, as she also deals with conveyancing and wills. I should emphasise though that Mr Daniel, in his own words, specialises, and I say again, specifically acts for high-net-worth individuals, in cross jurisdictional affairs, trustees and beneficiaries of UK and overseas trusts.

21. The hourly rates are substantially different, £250 and £495 pounds plus VAT, although the rates for the juniors, their assistants, are not so dissimilar. I should also mention for completeness that Mr Daniel first set out his experience in his letter of 17th September 2019, when he wrote to Mr Lu of Lu Oliphant and said "I would be happy to act as the co-executor of your client. I consent to my name being put forward for this role", and "I am the head of private wealth and tax and estate planning at Collyer Bristow, qualified in 2008", and then he set out the same background as above.

22. Then Mr Daniel says, *"Collyer Bristow charges on a time spent basis when administering estates, there is no stand-alone charge for a Collyer Bristow partner acting as executor, and our fees will include that person's time in exercising the executor's duties, and my hourly rate is £490 plus VAT, the hourly rate of Francis Merritt, our probate manager, who will handle much of the work, is £300 plus VAT, more junior colleagues who may assist have hourly rates ranging from £200-275 plus VAT" ... "I understand the estate consists of three properties, no more than four bank or building society accounts and there are no disputes between the beneficiaries on the division of the assets or the validity of the will. On that basis I would estimate that our total fees to administering the estate would be between £8-10,000 plus VAT. It may be necessary to update this estimate when we have full details. Please note this estimate assumes we would not be involved in the application to remove the coexecutor and does included conveyancing fees if the properties in the estate are to be sold".* I think that latter point as to including fees for the sale of three leasehold properties stares off the page as being an extremely low estimate, and later Mr Daniel corrected that to say that a key word, namely 'not', was missing from his letter, so his estimate does not include the conveyancing fees.

23. At the directions hearing last Wednesday, 30th September, I said each of the candidates should file first a statement from a solicitor who knows them, and can attest to them personally and their work, and secondly a statement by the individual him/herself that they know of no conflict and there is no reason why they should not act. These statements are common place in section 50 applications; see the Chancery Guide at paragraph 29.61, and CPR 57 practice direction 13(2). I also provided to Mr Matyas these requirements which my clerk sent to him last Friday, 2nd October.

24. As for Mr Daniel, Lu Oliphant filed, on 5th October, the two documents required, and this morning I received the same two documents, but in a less formal but acceptable form, from Ms Bagha, and a certificate of fitness by Mr Green, a partner in her firm. I should also say that Mr Matyas objected at length to Mr Daniel, as to his charges which he said were excessive, and that he made various other remarks as to why he was unfit and criticised Collyer Bristow, the firm. However, those criticisms of Collyer Bristow and various individuals in it and suchlike, and the recitation of certain online reviews, play no part in my decision as I must have regard to Mr Daniel and Ms Bagha as stand-alone solicitors specialising in probate who are able and willing to do this work.

25. Mr Matyas, in his skeleton argument, submits as to who should be appointed that: "It is correct that the applicable principles to be applied by the court when deciding whether to remove executor were summarised by Chief Master Marsh", and then refers to the decision of the Chief Master in *Harris v Earwicker* [2015] EWHC 1915, paragraph 9(6), namely that the additional of costs of replacing some or all of the personal representatives, particularly when it is proposed to appoint professional persons, is a material consideration, and that the size of the estate and scope and cost of the work which will be needed will have to be considered.

26. Mr Matyas continues, *"The defendant asked the court to appoint a professional person to the office with the lowest additional costs, bearing in mind the estate is cashless due to the defendant's future claim it is likely there will be no IHT payable, that means no properties would be sold, all the estate (inaudible) in the benefit or the welfare of all beneficiaries. Defendant asks the court to appoint the person who is described in detail in the bundle. The defendant asks the court to go through these pages in detail, together with all parties during the hearing".* I have been through carefully all the pages Mr Matyas referred me to, as of course I have also been through all that Mr McCombe referred me to.

Exercise of the Court's discretion

27. In my judgment, the court must consider the potential appointees in the round as to which one would be best suited to conduct the administration of this estate in question. This of course is a matter of fact and degree, and in particularly may vary according to the factors involved in the individual estate. It seems to me I should take the following factors into account:

1) Knowledge and experience

28. Both candidates appear to have similar experience, Mr Daniel more so on high value estates involving overseas trusts and such like, which this is not, but Ms Bagha has more conveyancing experience, which, with three leasehold properties, could be helpful here. Both are partners in their respective firms. There appears to be little between them under this factor.

2) Contentious Probate experience

29. Mr McCombe submits that this is an advantage Mr Daniel has over Ms Bagha. I am not so sure. Mr Matyas has not outlined his claim or claims. Such claims if possible, and

I make no determination whatsoever, are not unusual, the law is well developed, and solicitors of this level of expertise, namely Mr Daniel and Ms Bagha, should be able to conduct and advise at the appropriate level or else turn to a litigation colleague and/or counsel. I consider there is no real advantage or difference between Mr Daniel and Ms Bagha here, and Ms Bagha does have conveyancing knowledge.

3) Availability to take on the work

30. There are no indications that either of the candidates would be too busy or otherwise unavailable to act in a timely and efficient manner, and therefore I do not consider this further.

4) Locality

31. There is no need to physically be in central London or for that matter anywhere else. Neither individual can therefore be preferred, especially as this work will be conducted, certainly for the immediate and probably medium term, remotely, by the solicitors concerned. Mr Daniel may work from home, as may Ms Bagha, and it makes no difference in these circumstances.

5) Any special factors

32. These can include the nature of the estate and the number and the personal positions of the beneficiaries - for example some may be minors. There may be difficult or unusual bequests, or substantial or onerous tax liabilities. Here Mr McCombe submits a factor in favour of Mr Daniel is that here is an international dimension to which he is more suited than Ms Bagha. He submits that this is a relevant consideration. I disagree. Mr Daniel does not speak Cantonese or Mandarin, or at least it is not stated on his CV, nor does it appear he is familiar with, for example, probate or tax laws in the People's Republic of

China. I do not consider experience of working with people overseas is relevant or necessary here, as there is no difference, as I put to Mr McCombe this morning, as to whether the parents of the deceased are in Chengdu or Chichester; the key issue is that they cannot read, write and speak English, and therefore they will no doubt rely upon their son, the claimant, in their dealings with the executor. Further, all three are beneficiaries, not clients of the appointed firm. Mr McCombe said another matter in terms of the international dimension may be that there are Chinese tax or probate complications, particularly as the parents are themselves very advanced in age and are not particularly well. I do not think there is a differentiating factor between Mr Daniel and Ms Bagha in this respect. It seems to me they are in the same position in that neither of them are familiar with such matters, they do not speak the appropriate language(s), and in those circumstances I think they are evenly balanced.

6) The value and complexity of the Estate, including assets and liabilities by number and value

33. This is not a complex or especially high value estate; it consists in the main of three properties, and a few bank accounts. I am very aware that its proper administration is a matter of substantial importance to the beneficiaries, but I am unaware as to what liabilities are relevant in respect of the company Chris & Tibor Ltd that the deceased ran and owned with Mr Matyas. Mr Matyas said the company has not prospered as the deceased had to stop work due to his illness, and so did Mr Matyas to care for him. Apart from that there is no evidence of substantial or difficult or unusual liabilities. The assets appear, from the schedule Mr Matyas has produced, to be simple and straight forward to administer. There does not appear to be anything out of the ordinary, requiring especial expertise.

7) Administration of ongoing trusts

34. There are none here.

8) Continuing relationships

35. By this I mean, for example, executors who are involved in the continuation of a business in which they are either directors or else the beneficiaries are or will be. There are no such factors here, and in terms of the company, as I have explained, from the terms of his will the deceased gave it all to Mr Matyas.

9) The wishes of the beneficiaries

36. There is a clear division between the claimant, Mr Pu Liu, and possibly his father and mother, and Mr Matyas. There are letters in a Chinese script with translations in Mr Pu Liu's first witness statement, saying that they supported their son's Part 8 application, but that was for the removal of Mr Matyas, which is now not in issue. I do not know, and in fact I must proceed on the basis that they are not aware, because they certainly have not given their views as to the difference between the candidates. I should say Mr Pu Liu appears to receive a larger share of the estate than Mr Matyas and his parents an even greater share, the majority in fact, but there is no evidence as to who they would prefer as executor. This factor may tip the balance in certain situations, if beneficiaries by number and by value prefer one executor, but I do not think it does here, in the absence of evidence from the father and mother of the deceased, and in view of the more important factor I think which affects all beneficiaries, namely costs.

10) Costs

37. Mr Daniel's hourly rate is £490 and that of Ms Bagha is £250, both excluding VAT. Mr McCombe submits that the fees of Mr Daniel are reasonable, some £8-10,000 to

administer the estate excluding the properties. There is no overall estimate, as I have said, from Ms Bagha, due apparently to lack of information. Mr McCombe says that although the hourly rate of Ms Bagha is less, there is no guarantee her firm will be cheaper, which is correct. I fully appreciate that hourly rates are not the be all and end all in such circumstances. In considering cost budgets I always look first at the cost per phase to see if it is reasonable and proportionate and then whether it is comparable, first as to work to be done and secondly as to estimated costs with that of the opposing party. Here I cannot do that as there is no direct comparable, because the scope of the work was not agreed between the parties and put to each solicitor for a more accurate and properly comparable estimate. I therefore am thrown back on the hourly rates.

38. Ms Bagha is based in High Wycombe, Mr Daniel in the City of London. There is no need in the circumstances of this probate, for a city lawyer, with large back up teams and commensurate resources and overheads, and hence higher costs due to hourly rates.
On the basis that knowledge and experience are in effect the same, there appears to me to be a financial advantage to the estate to instruct Ms Bagha. Cost is a relevant factor; see *Harris v Earwicker*, at paragraph 9(6).
Here, the executorship of this relatively modest and simple estate with three properties, and several bank accounts, and little if anything more means that the hourly rate is more of a determining factor when other factors are equal, or else otherwise not influential. In all those circumstances and for those reasons I therefore appoint Ms Bagha as professional solicitor executor of the estate of the deceased.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.