



Neutral Citation Number: [2021] EWHC 3485 (Ch)

Case No: PT-2021-000713

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
PROPERTY TRUST AND PROBATE] LIST (ChD)

**IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND
DEPENDANTS) ACT 1975
AND IN THE ESTATE OF MICHAEL CAMERON TUCKER DECEASED)**

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

21 December 2021

Before :
Deputy Master McQuail

Between :

BEATRICE CECILIA TUCKER
(a child by Chartirose Tucker, her litigation friend
- and -

Claimant

(1) VIRGINIA HOPKINS RYLATT PURLE
(2) PETER ROBIN TEICHMAN DERVILLE
(as executors of Michael Cameron Tucker)
(3) CHIE LEE TUCKER
(4) ADRIAN CAMERON TUCKER

Defendant

Edward Hewitt (instructed by Payne Hicks Beach LLP) for the Claimant
Virginia Rylatt of Rylatt Chubb LLP for the First and Second Defendants
Nicola Phillipson (instructed by Lyons Davidson) for the Fourth Defendant

Hearing date: 20 October 2021

APPROVED JUDGMENT

Crown Copyright ©

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand down is deemed to be 21 December 2021 at 12.00 pm

Deputy Master McQuail:

1. This is not a judgment given upon hearing this claim, but a short statement of the reasons why I consider that the compromise that has been reached between the adult parties is in the interests of the minor claimant and should be approved. I have used the names of the family members by which I understand they are known for convenience and without intending any disrespect.
2. The claim is brought by Part 8 Claim Form dated 13 August 2021 by Beatrice Tucker (“Beatrice”), acting by Chartirose Tucker (“Ging”), her mother and litigation friend, and seeks reasonable financial provision from the estate of her father, Michael Tucker (“Michael”), under the Inheritance (Provision for Family and Dependents) Act 1975.
3. The First and Second Defendants to the claim are Michael’s executors. The Third Defendant, Chie Lee Tucker (“Chie”), is Beatrice’s adult half-sister, and the Fourth Defendant, Adrian Cameron Tucker (“Adrian”), her adult brother.
4. An application seeking the Court’s approval of a proposed compromise was issued on the same day as the claim form.
5. The claim is supported by the witness statement of Ging dated 12 August 2021. The application is supported by a witness statement of Jessica Hanson of Payne Hicks Beach, who act for Beatrice on Ging’s instructions. Included in the exhibit to that witness statement is the confidential opinion of counsel for Beatrice dated 7 July 2021.
6. The matter was considered on the papers by Chief Master Shuman in August 2021. She directed that further evidence should be filed dealing in more detail with Beatrice’s needs, the financial needs and resources of the other beneficiaries and the support provided by Ging. As a result, Ging filed a further witness statement dated 8 October 2021.
7. I heard the application for approval on 20 October 2021.

8. At the conclusion of that hearing I directed that Ging be permitted to file further evidence in support of the application and that she also be permitted to file a further confidential note or opinion from counsel.

9. Ging filed a further witness statement dated 17 November 2021. Her counsel filed an addendum to his confidential opinion dated 30 November 2021 and brief submissions on costs.

Factual Background

10. Beatrice was born on 12 February 2006.

11. Michael was born on 22 December 1944 and died on 1 May 2018. His daughter Chie is in her early 50s. Michael and Ging met in Thailand in 1988 and married in England on 18 July 1992. Their three children are Adrian born on 28 May 1991; Harriet, who is not a party to these proceedings, born on 6 February 1993 and Beatrice.

12. Michael and Ging were divorced in 2013. The divorce appears, from the judgment of 9 November 2012 of DJ White who heard Ging's financial relief applications, to have been acrimonious and the financial aspect hard fought. The upshot was that DJ White made an order on 20 March 2013 the most financially significant terms of which were that the Deceased was to pay (i) Ging £493,400 to effect a clean break between the couple and (ii) £10,000 a year for Beatrice's maintenance until the age of 18.

13. Michael left a will dated 21 September 2014 ("the Will") by the main terms of which he:

- (i) appointed the First and Second Defendants as executors;
- (ii) appointed Chie and Adrian trustees of a fund intended for Beatrice;
- (iii) left free of tax The Old Cottage and 25% of his interest in Cameron Farm to Adrian;
- (iv) left free of tax 75% of his interest in Cameron Farm to Chie;
- (v) left £50,000 to Harriet;
- (iv) sought to dispose of benefits under his SIPP;
- (v) left £400,000 to the fund for Beatrice; and
- (vi) divided residue between Chie as to 75% to and Adrian as to 25%.

- 14 Probate was granted to the First and Second Defendants on 23 November 2018.
15. It has now apparent that:
- (i) the SIPP benefits were held on trust outside Michael's estate and nominated by him to pass equally to Chie, Adrian and Beatice;
 - (ii) a one-third share of the SIPP of around £548,65, which has now increased to some £625,000, is held in a pension plan for Beatrice;
 - (iii) after payment of IHT the legacies to the fund for Beatrice and to Harriet abated;
 - (iv) Cameron Farm was sold in June 2019 for around £1.7m; and
 - (v) Adrian has moved to live at The Old Cottage, valued at some £875,000 but subject to a mortgage of some £250,000.
16. The terms of the proposed compromise envisage that the following sums will be paid into a trust for Beatrice's benefit, of which Harriet and Christopher Thomas, a family friend, will be trustees:
- (i) £100,000 from the share of the estate otherwise passing to Chie; and
 - (ii) £72,015.67 from the share of the estate otherwise passing to Adrian (calculated as £100,000 plus £18,000 as a contribution towards costs, but less £45,984.33 which Adrian has already provided for Beatrice's benefit since the Deceased's death).
17. By reason of CPR 21.10(1) a compromise of a child's claim will only be valid if approved by the Court. Since the purpose of that rule is to protect the child's interests the Court must be satisfied that any proposed compromise is, in fact, in the child's interests.
18. Counsel's confidential opinion sets out the relevant parts of the 1975 Act, the two stage test established by case law to be applied to a claim and the case law relevant to claims brought after the six month time limit for claims prescribed by the 1975 Act.
19. A schedule of Beatrice's financial needs shows a projected total financial need of some £370,000 between now and finishing university at age 21. The schedule anticipates that Beatrice will attend a fee-paying boarding school for her sixth form years. The schedule also includes as a need the £45,000 sum said to be repayable to Adrian. Adrian's counsel pointed out the contrast between the Deceased's actual lifetime provision of £10,000 per annum for

Beatrice with the standard of maintenance now claimed for Beatrice and described the schedule as “overinflated” as well as pointing out that it is not supported by documentary evidence.

20. Beatrice’s resources are the £625,000 pension plan and a junior ISA worth some £27,000.

21. There are no other applicants for provision.

22. Chie and Adrian have not put their own financial needs in issue. They will each have received from the SIPP a sum equivalent to that received by Beatrice and will share value of something over £1,000,000 from the Deceased’s estate, after allowing for administration and litigation costs and the payment agreed to be made for Beatrice.

23. At the time of the Deceased’s death Beatrice was his only dependent minor child, entitled to provision of £10,000 per year by way of maintenance.

24. The distributable estate is some £1.38m.

25. No party suffers from a disability.

26. It appears from Ging’s second and third witness statements that she owns the house in which she and Beatrice live in Buckinghamshire, now likely to be worth in excess of £500,000, mortgage-free. She also owns a property in Thailand, but she says it is in a poor state of repair and she cannot afford to carry out the necessary works of repair to enable it either to be sold or rented out. Ging has not always been in paid employment recently, in part because of the pandemic, but she is now working part time to fit with Beatrice’s school hours earning some £11,000 to £12,000 per year.

27. On the basis of the limited information that is before me I consider it to be more likely than not that if this claim were to proceed Beatrice would be granted permission to bring her 1975 Act claim out of time.

28. The Deceased was not in life maintaining Beatrice at the level at which her claim is made. While the terms of the Deceased’s will indicate that he intended to make substantial

provision for Beatrice from his estate, the same document indicates his intention to make, in priority to that provision, specific and tax free gifts of two properties of a significantly greater total value to Adrian and Chie, notwithstanding that they are independent adults. In the case of each of Beatrice, Adrian and Chie they benefit to a substantial extent, as the Deceased would appear to have intended, from the Deceased's SIPP.

29. Taken at their highest Beatrice's needs until she reaches the age of 21 total £321,000 (excluding the liability to Adrian). Beatrice herself presently has resources of over £650,000.

30. I consider that it is more likely than not that Beatrice would succeed in arguing that reasonable financial provision was not made for her by the Deceased's will, as matters turned out, but I do not regard it as certain. The extent of the appropriate provision for Beatrice's maintenance is also not certain and would seem likely to be a highly contentious matter.

30. I am reassured by the second and third witness statements filed by Ging that Beatrice's housing need during her school and university years is secure and that Ging's earning ability, although modest, is real.

31. It became apparent during the course of the hearing that Beatrice lived with Adrian for some weeks after the last school summer holidays, when Ging was unable to return from a visit to Thailand because of travel restrictions. In addition Adrian has assisted Beatrice financially on a temporary basis, since the Deceased's death. Both those matters indicate that the relationships between, at least, Adrian, Beatrice and Ging are reasonably healthy at the present time. Continuation of this litigation and the accompanying argument about the schedule of Beatrice's claimed maintenance needs would inevitably put those relationships under strain, which would not be beneficial to Beatrice.

32. Further litigation would also inevitably increase the legal costs incurred by all parties and the depletion of the Deceased's estate.

33. I conclude therefore that the proposed compromise whereby Beatrice's s available resources are increased by some £172,000, less the amount of her assessed costs, is for Beatrice's overall benefit and should be approved.

34. This judgment will be handed down remotely and without attendance. The draft order submitted with the application for approval was agreed between the parties. It will need to be updated to expressly record that there is to be no order for costs of the approval application and to record the need for an assessment of Beatrice's costs, which I understand not to be contentious matters. I anticipate the parties will be able to agree a final form of order, if they are not, a consequential hearing will be listed on a separate occasion.

