[2018] EWHC 3904 (Fam)
IN THE HIGH COURT OF JUSTICE – FAMILY DIVISION

Case No: FD18F00020

Courtroom No. 34

1st Mezzanine, Queen's Building
Royal Courts of Justice
Strand
London
WC2A 2LL

11.38am – 12.30pm
Tuesday, 18th December 2018

Before:
THE HONOURABLE MR JUSTICE WILLIAMS

B E T W E E N:

LOUISA MARIE SIMONETTA
ALEXANDER NICODEMO TOMON
JULIAN MATTHEW TOMON

and

RUBY GEETHA LOVELL-TOMON
NEW QUADRANT TRUST CORPORATION

MS M K MCGREGORY appeared on behalf of the Applicant
The Respondents are not represented

APPROVED JUDGMENT

This judgment was delivered in public. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

MR JUSTICE WILLIAMS:

1. I am dealing today with a claim made under the Inheritance (Provision for Family and Dependants) Act 1975. The claimants in that action are Louisa Marie Simonetta and two children, Alexander Nicodemo Tomon and Julian Matthew Tomon. They are represented by Ms Kennedy McGregor, who attends today alone in terms of counsel but attended by solicitors and a trainee from her instructing solicitors.
2. The first claimant is not formally represented. The first defendant is Ruby Geetha Lovell-Tomon, who is the widow of Matthew Lovell-Tomon. The second defendants are the New Quadrant Trust Corporation Limited.
3. Louisa Simonetta is the first wife of Matthew Lovell-Tomon and Alexander and Julian are his children by that marriage. The first defendant is his second wife and widow and New Quadrant, the second defendant are the administrators of his Estate.
4. The claim itself was issued on 4 April 2018 seeking an order pursuant to Section 1 of the Inheritance (Provision for Family and Dependants) Act 1975, that such reasonable provision as the Court thinks fit be made for the claimants out of the net Estate of the deceased and secondly for an order that the proceeds of sale of a company, Greenfields Technology Limited be included in the estate. Civil Procedure Rules 57.15 provides that an application under the Inheritance Act may be brought either in the Chancery Division or in the Family Division; it was issued in this Division but the Civil Procedure Rules apply.
5. The application actually before me today is one to approve a compromise of the action. That compromise covers the first claimant, Louisa Simonetta but the application is for the Court's approval of a compromise on behalf of the two children, Alexander and Julian.
6. In evaluating their claim the Court would have regard to the provisions of Section 3 of the Inheritance Act and when considering the approval of an infant compromise, the Court has to ask whether the compromise is for the real benefit of the child, the task being approached with a fair, cautions and enquiring mind.
7. In *Wright and Gates* [2012] 1 WLR 882 Norris J said that the Court will ask whether if the person on whose behalf consent is to be given were themselves competent and reasonable, the bargain is one they would enter. One way of approaching the test, in particular having regard to non-financial benefits would be to ask whether a prudent adult motivated by intelligent self-interest and after sustained consideration of the position, would be likely to accept the proposal.
8. These proceedings as they are proceeding under the Civil Procedure Rules are held in public and there is no application for anonymity in respect of any of the parties.
9. The compromise itself which I will return to, was reached following extensive discussions between the parties including I think in the context of mediation and now the basis of it is recorded in an order and Tomlin Agreement, which again I shall turn to in a moment, but to set the scene of how we have arrived at where we are today, the position is as follows.
10. The first claimant Louisa is Australian and the deceased Matthew Lovell-Tomon was an American citizen. Louisa and Matt were work colleagues from about 2001 and started to co-habit, I think in London in December 2003. They started a company together, Greenfield in 2005 and both initially worked together in it but Matt retained 100% of the shares.
11. In 2007, they got married and Julian was born in January 2008. Thereafter, Louisa remained at home to look after Julian whilst Matt continued to work and apparently to work very hard, within the business.
12. The second child, Alexander was born in December 2009 and the pattern of life of the family continued. The evidence suggests that Louisa, Matt and the children lived fairly frugally, so that the money the company was making could be retained in it in order to build it up.
13. In March 2012 when the children were four and two, Matt told Louisa that he had met Ruby Geetha and wanted a divorce and divorce proceedings ensued fairly rapidly. A decree nisi was granted on 25 January 2013.

14. At around the time of the separation, Louisa's brother, Anthony had joined the family from Australia, but tragically on 13 June 2013, he committed suicide and Louisa found his body. A funeral was held in London and at around that time, Matt pressed Louisa to agree to the divorce, so that, she was apparently told, a property could be bought by Matt and Ruby. Louisa agreed and the decree absolute was granted on 10 July 2013. Matt and Ruby married the following month.
15. After the divorce, Matt continued to support the family and remained on good terms with Louisa and with the children.
16. At some point after the divorce, Louisa and the children returned to Australia in order to assist with the maternal grandparents, in particular the maternal grandfather, who was a paraplegic and Louisa returned so that she could help her mother in particular to nurse her father.
17. It appears as if the company continued to grow because Matt was in communication with Louisa, promising to buy them "a massive, amazing house" and to pay for the children to be privately educated, and to maintain both the children and Louisa while she retrained as a teacher.
18. In December 2015, Matt sold Greenfields. The total sale value was around £6 million with a retention of about three-quarters of a million and the whole of the proceeds which were actually received by, or which would have been received by Matt in fact, were paid into a bank account in the sole name of his wife, Ruby; she receiving the sum of £5,195,866.11.
19. Tragically, in May 2016 Matt died suddenly, without having made a will and without having finalised the financial provision that he had previously promised for Louisa and the children. His widow, obviously, was in possession of the vast majority of the assets which might potentially have comprised his estate and it seems as if at that point then, discussions ensued about Louisa's potential claim and that of the children.
20. I have not immersed myself in the to-ing and fro-ing because I think, as sometimes happens, the issuing of the claim itself was deferred by agreement between the parties, but it certainly became apparent that the claim on behalf of the children, was likely to be hotly contested in certain aspects. Firstly, Matt's widow indicated that she did not accept that Matt was domiciled in the UK. Domicile is of course a precondition for a claim to be brought under the Inheritance Act and, without an established domicile, any claim would potentially have had to be brought in the USA in the state of Pennsylvania, which I believe was Matt's domicile of origin. Therefore, although it appears that Matt had made his home in the UK since around 2001 and for 15-plus years, there was a live issue as to domicile, in particular, his widow asserted that they had brought a property in the Bahamas, which indeed they had and that their plans were to leave the UK, notwithstanding I think, that the widow and her children had a home in England, and to relocate to either Barbados or to the United States, so that was the first hurdle that was thrown up.
21. Perhaps more significantly, and indeed more surprisingly, the widow asserted that the payment into her account of the proceeds of sale of Greenfields was an outright gift to her, and that Matt had not intended to retain any interest in that sum. Therefore, in order to bring any value in to the estate, Louisa and the children would have to demonstrate that that was not a gift but rather that Matt's widow held the sum as a bare trustee for Matt as the beneficial owner of it.
22. Further difficulties emerged, in particular in relation to the value of the estate because as a United States citizen, Matt had an obligation to pay tax to the IRS and it appeared that since he had left the US he had almost certainly not done that, so there was a potential claim that the IRS might have brought in respect of unpaid income tax.
23. There was also the issue of potential tax consequences, either of the disposal of Matt's shares in Greenfields Technologies or indeed, gift tax issues, if part or the whole of the £5 million plus had been a gift.
24. Thus, those advising Louisa and the children had to confront a number of legal and accountancy issues in valuing the claim. I should also note that there were two properties

also in London, one of which, I think, the larger, was 99% held in Louisa's name with a value of about £600,000-700,000 and Matt only retaining a 1% share in that and there was another property which was, I think, was held as tenants in common on a 50/50 basis. In relation to the 99% held property, there was of course, potentially an argument open to the estate that in fact although expressed at being owned 99% by Louisa, that in fact it was owned 50/50 as it was, I think, the former matrimonial home.

25. Therefore, there were a series of obstacles facing the claim. Depending on whether those hurdles were surmounted or whether they tripped the claimants, they would potentially have significant consequences to the sums that they might recover. If the Court concluded that Matt was in fact, not domiciled in the UK, no claim would have been possible at all. Louisa may have had her own claims in respect of the properties under the Trusts of Land Act, but in terms of the children's claims under the Inheritance Act, they would not have been capable of being pursued in this jurisdiction, but rather they would have had to contemplate a claim in Pennsylvania.

26. Secondly, if Ruby Geetha Lovell-Tomon had succeeded in establishing that the £5 million plus had in fact been an outright gift to her, that would have rendered the estate essentially insolvent, such that there would have been nothing to distribute to the children from the estate, or nothing of any significance.

27. There were other issues to do with accounting, to do with how much money of the £5 million had in fact already been spent in meeting Matt and his widow's and his step-children's living expenses, either prior to his death or subsequently, such that the net value of the estate was unclear.

28. Thus, negotiations led to a compromise. The proposed distribution is as follows: Ruby will make a payment on behalf of the estate of £950,000 within I think, 28 days of the order being approved, (if it is approved) to the second and third claimants, thus Alexander and Julian would receive £475,000 each, in respect of their claims. This compares with I think, the maximum sum that they might have received if the £5 million plus was held not to be a gift, the maximum that they might have received would have been £1.346 million between them. However, at the bottom end of the scale if domicile was not established or if the £5 million were an outright gift the sum would be zero, so £950,000 is a significant percentage of their best-valued claim.

29. In addition, and this, I think, is in respect of the first claimant, Louisa, she will receive not only the half-share of the property, which is owned 50-50 with Matt, but will also receive the other 1% of the Burntwood property and will not face the potential argument by the estate to seek to recoup another 49% of that property. That property is worth, I think between £600,000-700,000 so Louisa will receive that outright, together with, I think a total sum of £300,000 in respect of the other London property.

30. The net effect of that in terms of the children's lives is, I am told that it will enable Louisa to buy in Australia a house for them to live in, whether it is the "massive, amazing house" that Matt promised them, who knows? Perhaps the difference in property prices between Australia and London and the sums they get will enable them to get that massive, amazing house that their dad wanted them to have.

31. I am also told that the sums will enable the two boys to be privately educated, which apparently was something that Matt also wanted. I am told that Julian has some emotional difficulties, which are probably attributable to the extraordinary losses that he has suffered in his young life.

32. These sums, I am told will also enable Louisa to retrain as a teacher and to assist in maintaining them through their minority.

33. Of course, that is only the financial side of the picture. These children have lost their uncle, their father, and their grandfather all in fairly quick succession, as well as, I believe as their paternal grandmother and grandfather. The closest relatives they have are their mother and their grandmother and, against that backdrop of losses, it is hardly a surprise that their mother

and grandmother should wish to focus their energies on the boys and providing the very best they can for them in Australia rather than fighting hotly-contested litigation in this jurisdiction and/or America.

34. I have been told, and from what I have read of the witness statements including that of the first defendant, were this action to continue it has sadly all the hallmarks of a case that would be contested up hill and down dale; something which, no doubt would have caused Matt considerable sadness, but such is one of the consequences of failing to make provision in the form of a will or otherwise for your family. But of course, for Louisa and the boys, the reality would be months extending into years no doubt, of litigation. A huge emotional cost to be paid by Louisa, a huge distraction from the priority of caring for the boys, and a significant, either actual financial liability or a contingent liability, that would rest upon her until proceedings concluded successfully.

35. Therefore, looking from the children's positions, both taking into account the financial value of the settlement, but also the incalculable non-financial benefits to them of having their mother able to focus exclusively on their welfare, the combination of those two satisfies me that this compromise is indeed a compromise for their benefit. In addition, it is a reasonable and sensible compromise, both in value terms and in ancillary benefits terms.

36. I had originally declined to deal with this matter on paper because I was concerned about the backdrop to the case. In particular the assertion of the first defendant, that the proceeds of sale of Greenfield Technologies were an outright gift to her. I suppose this case shows the value of a hearing in the more complex cases such as this, where the nature of the arguments behind the compromise can be more fully explored in a hearing. The terms of the compromise are unchanged from when they were put before me on paper but having seen more of the paperwork in support of it and had the benefit of the written skeleton and the supplemental advocacy of Ms Kennedy McGregor, I now fully understand why the compromise has been reached as it has been and agree, that it is a proper compromise on behalf of these two infants.

37. Therefore, I will approve the order in the terms drafted save at, I think, paragraph 8 of the schedule which should be amended to state 'with the intention', rather that the words, 'to the intent'.

38. I am also asked to deal with the costs of today's hearing. I have been provided with a statement of costs, which shows the total costs in respect of today's hearing, which has been listed I think for half a day or two hours, are just under £10,000. This cost appears to me to be an entirely reasonable sum, both in respect of the solicitor's costs and Miss Kennedy McGregor's costs as counsel, for the documents she has prepared and for the fee for the hearing. Therefore, I will order that the estate pays the costs of the claimants in respect of today's hearing summarily assessed in the sum of £9,985.

39. I will also order that a transcript of the judgment is prepared at public expense.

40. That is my judgment.

End of Judgment

Transcript from a recording by Ubiqus
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This transcript has been approved by the judge.