Probate: when section 21 of the Administration of Justice Act 1982 can come to the rescue

By Ashley Blood-Halvorsen

3PB Barristers

Beasant v Royal Commonwealth Society for the Blind & Ors **[2022] EWHC 1319 (Ch) (30 May 2022)**

1. This recent High Court appellant decision of Sir Anthony Mann acts as a reminder of the narrow circumstances when section 21 of the Administration of Justice Act 1982 can come to the rescue.

2. The deceased sadly died on 17 August 2017 leaving a will dated 27 June 2016. The death estate had a probate value before inheritance tax of £3,127,174. The claimant was one of 21 residuary beneficiaries who were all described in the will as charities. Given the number of residuary beneficiaries, the Royal Commonwealth Society for the Blind was appointed under CPR 19.6 to represent all the charities.

3. The defendants were the executors and trustees under the will. The first defendant was the named beneficiary of legacies and a specific devise. The will was drafted by Mr Vučićević of Allestsons Solicitors having taken instructions from the deceased.

4. The issue primarily concerned clause 4 of the will and a gift to the first defendant which was as follows:

> *4. I GIVE the Nil-Rate Sum to my Trustees on trust for my said friend JOHN WAYLAND BEASANT*
>
> *4.1 In this clause 'the Nil-Rate Sum' means the largest sum of cash which could be given on the trusts of this clause without any inheritance tax becoming due in respect of the transfer of the value of my estate which I am deemed to make immediately before my death*

5. The nil-rate band at the date of death was £325,000. It is important to take note that the Nil-Rate Sum was a defined term in the will. There were other provisions in the will:

   5.1. paragraph 5 gave to Mr Beasant '*all such property as may be my only or main residence at my death*', that gift being expressed to be '*free of inheritance tax and free of any mortgage or charge*'.

   5.2. clause 6 gave to Mr Beasant '*free of inheritance tax*' all the deceased's shares in Imperial Brands plc or in any different company or stock which represented the holding of Imperial Brands plc.

   5.3. clause 7 gave to Mr Beasant '*free of inheritance tax absolutely*' all the deceased's personal chattels.

   5.4. clause 8 gave various pecuniary legacies totalling £45,000 to 6 different people, each of them being expressed to be '*free of tax*'.

   5.5. clause 9 gave the residue of the estate '*subject to the payment of my debts and funeral and testamentary expenses and inheritance tax*' to the trustees to divide it between 21 organisations.

6. The value of the assets within the non-charitable gifts in clauses 5 to 8 significantly exceeded the nil-rate inheritance tax band of £325,000.

7. The Royal Commonwealth Society for the Blind contended that clause 4 meant the sum due under it is the sum left, if any, *after* deduction of the value of all other legacies of the will on which IHT is charged at the nil-rate. As the value of the other legacies and devise exceeded the nil-rate limit, there is no sum payable to the first defendant under clause 4.

8. Counsel for Mr Beasant contended that clause 4 should be construed so that there is a tax-free gift of an amount of the nil-rate limit in force at the deceased's death, without reference to the other gifts of the will. The result being that the sum of £325,000 should be paid to Mr Beasant. The first defendant did not bring a claim seeking to rectify the will; his argument rested on construction alone.

9. Chief Master Shuman delivered judgment in favour of the claimants. The decision was appealed (*there were in fact 3 decisions and 2 orders in substance*) which was heard before Sir Anthony Mann. The first oral judgment was given on 5th February 2021 in which Master Shuman determined that she would not admit extrinsic evidence of the intention of

the testatrix under section 21 of the Administration of Justice Act 1982 ('February Judgment').

10. The second order was made on 17th August 2021 after further argument on 5th February. This order formally determined the correct construction of the will in favour of the claimant beneficiaries and against Mr Beasant. The position of Mr Beasant in the appeal was that the main appeal turned on the fate of the oral February Judgment.

The Law

11. Viscount Simon LC said in *Perrin v Morgan* [1943] AC 399 at 406:

> *The fundamental rule in construing the language of a will is to put on the words used the meaning which, having regard to the terms of the will, the testator intended. The question is not, of course, what the testator meant to do when he made the will, but what the written word he uses mean in the particular case – what are the 'expressed intentions' of the testator.*

12. Wills are construed in the same way as any other document. This was confirmed by the Supreme Court in *Marley v Rawlings* [2014] UKSC 2. Lord Neuberger at paragraphs 19 to 22 set out the task for the court when construing a document. That approach had previously been confirmed by the Court of Appeal in *RSPCA v Sharp* [2010] EWCA Civ 1474 cited with approval in *Marley v Rawlings*. The importance of both text and context to the process of construction is usefully summarised by Lord Hodge in *Wood v Capita Insurance Services* [2017] UKSC 24.

13. *RSPCA v Sharp* also concerned the construction of a legacy in a will which had a similar effect. Such gifts work in a tax efficient way where the bulk of the estate goes to tax exempt beneficiaries, and it is desired to gain a tax advantage by giving the nil-rate sum to a non-exempt beneficiary such as Mr Beasant. In *Reading v Reading* [2015] EWHC 946 (Ch) there was an identically worded gift in a different construction context.

14. The extrinsic evidence that was sought to be adduced, which was refused in the February Judgment, was a witness statement from Mr Vučićević. That witness statement had two sorts of evidence. The first was said to be extrinsic evidence of the kind which the court will normally receive as being part of the objective background against which wills are regularly construed. That sort of evidence was also relied on as being evidence which gave rise to an ambiguity within section 21(1)(c) Administration of Justice Act 1982, and which opened the gates of that subsection to evidence of intention. The second sort of

evidence was said to be evidence going to the subjective intention of the testatrix and admissible under section 21.

15. The February Judgment records that the appellant sought to show that there was ambiguity within both paragraphs (b) and (c) within section 21 of the Administration of Justice Act 1982.

Grounds of Appeal and Decision

16. The grounds of appeal were that Chief Master Shuman erred in the February Judgment by refusing to admit the witness statement of Mr Vučićević on the basis that the gateways in section 21 were not satisfied, and that she ought to have held that the will was ambiguous in the light of the surrounding circumstances or on its face. As a result of that the Chief Master erred in holding that on the proper construction of clause 4, in the light of the evidence in the witness statement, the gift to Mr Beasant was nil. Therefore, there were two questions for the appellate court:

    16.1. was the will ambiguous on its face?

    16.2. if not, is it ambiguous in the light of the surrounding circumstances?

17. Counsel for Mr Beaston invited the appellate court to apply the meaning of 'ambiguous' in a broad manner and relied on *Re Huntley* [2014] EWHC 547 (Ch) for that submission. Counsel accepted there was no ambiguity in the use of words; he submitted that there was an ambiguity in the effect of the words used. He submitted that the words used in clause 4 could have the meaning attributed to them by Chief Master Shuman, or they were capable of referring to the sum of £325,000 (*being the nil-rate inheritance tax sum as at the date of the death*). The words used in clause 4.1 were capable of defining the occasion of the charge rather than as giving rise to the computation of the sum passing under the clause.

18. Sir Anthony Mann observed that the concept relied on by Justice Nicholls in *Re Williams* [1985] 1 WLR 905 was not really any different from that considered in *Re Huntley*. There is ambiguity when words in the will can have two or more meanings. The sort of internal inconsistency that was faced in *Re Huntley* is capable of falling within that concept. But one still has to identify the words which are ambiguous, even in the wide sense. This part of the submissions on behalf of Mr Beasant meant that there was a requirement to identify an ambiguity <u>on the face of the language of the will</u> under section 21(1)(b). One is not looking outside that language under that gateway.

19. Ultimately, this head of the Appellant's case failed because it was not demonstrated that any language in the will or clause 4 was ambiguous. The words of the gift made sense as a matter of English and had only one meaning in themselves and in a fiscal context. When placed in the context of the rest of the will they still had only one meaning. That position was not altered by the position of the clause in the will. The following gifts do not make the earlier words potentially bear a second meaning.

20. Counsel for Mr Beaston had an alternative case under section 21(1)(c) based on adding in surrounding circumstances, and those circumstances appeared in the witness statement of Mr Vučićević. In essence, counsel submitted that the evidence showed a misunderstanding as to how inheritance tax works. Counsel demonstrated that on the interpretation of the charities in this case between £68,000 and £80,000 IHT is payable. The calculation of Mr Vučićević (£180,000-£190,000) indicates that he was working on a different calculation, that is to say one in which Mr Beasant got £325,000 as a tax-free gift first, so this was not intended to be the sort of tax efficient will which the charities' case would say it was.

21. Sir Anthony Mann did not see how this gave rise to any ambiguity in clause 4. At most, and if one accepted the unarticulated reasoning which got Mr Vučićević to £180,000-£190,000, it would show error, but not an error which gives rise to *ambiguity*. That sort of point might assist in a rectification claim, but no such claim was made. What Mr Beasant needed was a definition of Nil-Rate Sum which was a complete substitute for the definition provided in clause 4.1. Only rectification could achieve that. The appeal was dismissed.

Commentary

22. It is a little surprising that the first defendant did not bring a claim seeking to rectify the will and run it in the alternative. The arguments were predicated on construction alone which in the end proved to be fatal.

23. This and the decision in *RSPCA* will no doubt be regularly referred to in the future. It reaffirms the high level that is required to satisfy section 21 Administration of Justice Act 1982. This decision will provide certainty, particularly for charities, as to what gifts of the nil rate band mean.

24. The court is remaining loyal to the actual words used in the testamentary document and is not being persuaded to deviate from that. Ambiguity does not arise because a clever

lawyer can look at a clause long enough to be able to claim to extract more than one potential meaning from it; much more is required.

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Ashley Blood-Halvorsen

Barrister
3PB

0330 332 2633
ashley.blood-halvorsen@3pb.co.uk

3pb.co.uk