Woodland Warfare – a recent case on the construction of wills

Adam Carvalho / 2 June 2015

Readers will remember the widely reported case of RSPCA v Sharp where the Court of Appeal upheld the RSPCA's appeal against a ruling on the interpretation of a Will. In doing so, it preferred the interests of a charity beneficiary over those of the testator's relative and friends when determining what the testator's intention had been. However, in the recent decision of *Woodland Trust v Loring*, which also concerned the interpretation of a Will, the Court of Appeal preferred the interests of relatives to the detriment of the charity beneficiary and dismissed the latter's appeal. This briefing outlines the facts and findings in both those cases and sets out some reflections on them.

1. Royal Society for the Prevention of Cruelty to Animals v Sharp & others [2010]

George Mason died in 2007 leaving an estate of almost £1 million. Under Clause 3 of his Will, Mr Mason left "the maximum" that can be left free of inheritance tax to his brother (22%) and to his executors, Mr and Mrs Sharp (78%). Under clause 4, he bequeathed his property in Hampshire to Mr and Mrs Sharp, with a direction that inheritance tax (if any) on that property should be paid from his residuary estate. Under clause 6, his residuary estate was left to the RSPCA.

At the time of Mr Mason's death, the inheritance tax threshold was £300,000 (the nil-rate band), and so that sum was the maximum amount that could be left free of tax. The executors administered Mr Mason's estate on the basis that the "maximum" free of tax meant £300,000, regardless of the value of the Hampshire property, which was £169,000. Consequently, Mr and Mrs Sharp distributed to Mr Mason's brother £66,000 and, to themselves £234,000 as well as transferring the property to themselves free of IHT. On this interpretation of the Will, inheritance tax of £112,667 was payable. This was paid from the residuary estate, with the residue left being paid to the RSPCA.

The RSPCA disputed the executors' interpretation of the Will, contending that the gift in clause 3 meant the amount that could be left free of tax *after* payment of the £112,667 inheritance tax. On this interpretation Mr Mason's brother would receive the lesser amount of approximately £29,000 and Mr and Mrs Sharp of £102,000, along with and the Hampshire property. However, a consequence of interpreting the Will in this way was that no inheritance tax was payable at all on Mr Mason's estate - the RSPCA's charitable status rendering it exempt from inheritance tax.

As Patten LJ noted "the difference between the parties really turns on whether the testator intended to make a tax-efficient disposition of his estate, i.e. one which avoided IHT entirely by limiting the totality in value of the gifts under clauses 3 and 4 to the nil-rate band and leaving the entire residue to charity".

Peter Smith J. dismissed the RSPCA's challenge to the executors' interpretation. His decision was subsequently overturned by the Court of Appeal, who unanimously

held (in agreement with the RSPCA) that the testator had intended to avoid inheritance tax entirely by limiting the totality of the value of the gifts under clauses 3 and 4. In determining the true intention of Mr Mason, the parties agreed that extrinsic evidence was not admissible. This meant that the actual instructions given by Mr Mason to his solicitor were not considered by the Court. The Court of Appeal emphasised that in determining a testator's intention the necessity to consider the wording of the Will as a whole and not on a clause by clause basis.

2. The Woodland Trust v Loring & Others [2014]

Valerie Smith died in 2011 leaving an estate in excess of £680,000. She had executed a Will in 2001. Under clause 5 of that Will, she gifted the amount she could leave free of inheritance tax (her nil-rate band) to her grandchildren. This gift was worded as "*such sum as is at the* date *of my death the amount of my unused nil-rate band for Inheritance Tax*". The Woodland Trust, a charity engaged in the preservation of Woodland, was a beneficiary of Mrs Smith's residuary estate.

At the time of Mrs Smith's death, the inheritance tax threshold was £325,000. She had not used any of her tax free allowance (nil-rate band) and so could gift the full £325,000. Mrs Smith's husband had died in the 1980s. None of his tax free allowance (nil-rate band) had been used on his death. The Finance Act 2008 introduced the so-called "transferrable nil-rate band". This permits a transfer of the percentage of any unused nil-rate band from a spouse (or civil partner) who is first to die, to the surviving spouse (or civil partner), on the latter's death. Since Mrs Smith's husband had not used any of his nil-rate band, her executors made an election under s.8A of the Finance Act 2008 for a 100% increase of Mrs Smith's nil-rate band.

A dispute arose as to the interpretation of clause 5 of the Will and whether, as a result of the executor's election, "*the amount of* my *nil-rate band*" was £325,000 or £650,000. If it was the latter, the Woodland Trust inherited just over £30,000. The Woodland Trust argued that the amount of Mrs Smith's unused nil-rate band at the date of her death was £325,000. The executors' claim under the Finance Act could not alter that – the effect of their claim was merely to increase the nil-rate band for the purpose of determining the estate's IHT liability. The charity also contended that Mrs Smith's reference to "*my*" unused nil-rate band was an indication that the intended legacy was limited to £325,000.

Asplin J. rejected the charity's interpretation and held that the natural meaning of the key words in clause 5 included an increase in Mrs Smith nil-rate band arising from a s.8A election. On appeal, the Court of Appeal did not find the construction of the Will an easy task. It took a broad purposive approach to interpreting it. Lewison L.J. referred to "*the facts known or assumed by the parties at the time that the document was executed*" and that to find the answer the Court has to look at the purposes and values which are expressed or implicit in the Will's wording.

Having adopted this approach the Court of Appeal concluded that the clear inference from clause 5 was that Mrs Smith knew the amount of her unused nil-rate band might be different at the date of her death from what it was at the date of her Will (and probably larger). Her implicit intention was to give as much as she could to her family without incurring inheritance tax and to give the remaining estate to the charity. The appeal was therefore dismissed. Mrs Smith's grandchildren were entitled to £650,000 and the charity was entitled to the very small residuary estate.

3. Conclusion

In *RSPCA*, Peter Smith J. expressed the opinion that it was "*a matter of regret*" that the case had been issued at all and ordered costs against the charity on the indemnity basis. A certain amount of criticism of the charity followed in the national press. This appeared to reflect a sentiment that a charity should not attempt to maximise its entitlement under a Will where that could reduce the entitlement of individuals – even where it was acting on advice.

The Court of Appeal in *RSPCA* found that an indemnity costs order had not been justified. The Master of the Rolls further commented that "*on the basis of Peter Smith J's conclusions on the meaning of the will, all the RSPCA had done was to take a point on the interpretation of the will which was wrong. There was no more, and no less, to it than that*".

Charity trustees do not, in general, have a duty to litigate but they must protect the trust assets and act in the charity's best interests and have an obligation to ensure that the charity receives funds that are due to it. The cost / benefit reputation analysis involved in deciding whether to dispute an entitlement will be carried out by reference to the merits of the potential claim. The two cases outlined above demonstrate that the construction of Wills is often far from straightforward.

Further, *Woodland Trust* demonstrates that the approach of the courts to the interpretation of Wills continues to evolve – the recognition in that case of Mrs Smith's "*implicit intention*" appears to be a further step towards the purposive contractual construction of wills and away from the traditional literal approach.

In *Woodland Trust* the Court agreed a construction which benefitted the testatrix's relatives to the detriment of the charity. It may be that where the interests of a charity in an estate conflict with those of the family the family's interests are favoured. However, there appears also to be growing recognition that testators are likely to intend for the IHT liabilities on their death to be as small as possible. It is likely that further cases will explore these tensions.

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