



PUMP COURT

CHAMBERS

Inheritance Act Update

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Cases of interest:

- Sismey v Salandron [2021] 10 WLUK 372
- Ramus v Holt [2022] EWHC 2309 (Ch)
- Antonio v Williams [2022] EWHC 2383 (Ch)
- Hirachand v Hirachand [2021] EWCA Civ 1498

Sismey v Salandron

“First judicial consideration of section 11 on contracts to leave property by will”

Background

- Deed entered into during the course of a divorce.
- Deceased was David Sismey. He married his first wife Sheila Sismey in 1988 and in 1996 they had a son Thomas Sismey .
- David began a relationship with Marissa in 2002 and told Sheila in 2005. David and Sheila separated as a result and Sheila left the former matrimonial home (‘FHM’) with Thomas and moved into a property she had purchased from her mother’s inheritance.
- Marissa initially lived in the Philippines and had a son with David in 2008. The son was called John.

Sismey v Salandron

Background

- In 2013 a decree nisi was granted on the basis of David's petition.
- Sheila and David negotiated their own financial settlement with assistance from lawyers.
- A Consent Order was approved on 3rd February 2017 and the recital contained David's undertaking to "*irrevocably execute forthwith a Deed in the form annexed to this order covenanting with [Sheila] to leave by will to [Thomas] [the FMH] so as to be binding upon [David's] personal representatives.*"
- Marissa signed the Order confirming that she had no interest in the FMH.

Sismey v Salandron

Background

- On 3rd February 2017 David executed a Deed to give effect to the Consent Order.
- David executed a Will dated 12th March 2017 leaving the FMH to Thomas.
- David was diagnosed with terminal cancer in July 2019, married Marissa on 9th October 2019 and died 28th January 2020 without making another will.
- Modest estate totaling £213,000 of which £190,000 was made up of the FMH.

Sismey v Salandron

Proceedings

Two separate claims heard together:

- Application by Thomas for specific performance of the Deed or alternatively for a Declaration that FMH was held for him on constructive trust; and
- A Claim under the 1975 Act by Marissa in the event that Thomas's claim(s) succeeded.

Sismey v Salandron

Key Issues

- Was the Deed enforceable taking into account the requirements of section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989?
 - made in writing;
 - signed by the parties; and
 - incorporating all the terms expressly agreed in one document, which can occur by setting out all the express terms within that document or referring to another document
 - “*pursuant to*”
 - “*supplemental to*”

Sismey v Salandron

Key Issues

- Could Thomas rely upon the Deed when he was not a party?
 - Contracts (Rights of Third Parties) Act 1999
 - express provision that he may enforce; or
 - a term purports to confer a benefit on him.

Sismey v Salandron

Key Issues

- Are the conditions of section 11(2) of the 1975 Act made out?
 - Purpose of section 11
 - Did the Deceased make the Deed with the intention of defeating an application for financial provision (section 11(2)(b))?
 - careful factual consideration of correspondence and David's solicitor's divorce file; and
 - not the sole or main purpose.

Sismey v Salandron

Key Issues

- Are the conditions of section 11(2) of the 1975 Act made out?
 - When the Deed was made was full valuable consideration given or promised by Sheila or any other person (section 11(2)(c))?
 - Approved by Court Order as part of the financial remedies proceedings.
 - Guided by section 339 of the Insolvency Act 1986 and *Hill v Haines [2007] EWCA 1284*.
 - Fraud, misrepresentation, mistake or collusion?
 - Due to presence of collusion Court undertook a careful analysis of the divorce settlement.
 - Condition 11(2)(c) not proved and so contract survived.

Sismey v Salandron

Lessons?

The multi-disciplinary nature of 1975 Act claims.

Background

- Christopher Ramus married Elizabeth in 1972 and had two children, namely Claire and Alistair.
- Christopher and Elizabeth separated in 2019 but continued to live in the FMH which they placed on the market and sold.
- Shortly before moving out of the FMH Christopher took his own life. Elizabeth was 74 at the time.
- The FMH was sold and Elizabeth received half the proceeds.

The Will and Discretionary Trust

- Christopher's will was subject to a number of codicils. It provided that his residual estate be held on discretionary trust for Elizabeth for life.
- The trustees included her daughter Claire. The Trustees had the power to terminate all and any interest that Elizabeth had under the trust.
- There was a letter of intention signed by Christopher.
- Elizabeth's relationship with Clair was poor and strained.
- Elizabeth was concerned about her financial security being left in the hands of the trustees and made a 1975 Act Claim for a guaranteed income for life and the removal of the trustees.

Decision

- Elizabeth had considerable assets of £1,630,000 without any input from Christopher's estate and Christopher's will did not leave her without reasonable financial provision.
- There was no jurisdiction to remove trustees under the 1975 Act.

Antonio v Williams

Background

- Claimant was a 12 year old boy called Ryan acting through his uncle as Litigation Friend.
- Ryan's mother had abandoned him at birth and his father was unable to care for him.
- Ryan was raised by his aunty Sharon who died aged 53 on 11th February 2016.
- Sharon had left a will one day before she died. She made provision for Ryan out of properties in which she had joint interests and so they passed by succession leaving Ryan with nothing under the terms of the will.

Antonio v Williams

Administration of the Estate

- The family met to read the will and there was a significant falling out.
- The executors did not want to become involved and renounced.
- Sharon's son (Jamaal) obtained Letters of Administration.
- At the first hearing the Deputy Master revoked the Letters of Administration and required Jamaal to apply for a grant of probate or letters with the will annexed. Jamaal did not do so.

Antonio v Williams

The Trial

- The Judge considered all the facts and awarded a sum of £50,000.
- The issue arose as to whether or not an award can be made without a grant or representation order:
 - the White Book appeared to say “No”
 - but the Judge said “Yes”

Hirachand v Hirachand

Background

- Court of Appeal decision.
- The deceased was called Navinchandra and was married to Nalini. A 1975 Act claim was issued by their estranged adult daughter Sheila.
- The Judge at first instance had concluded that the deceased's will did not make reasonable financial provision and awarded Sheila £138,918.
- This sum included £16,750 to meet Sheila's CFA mark up which was based on what the first instance judge considered to be a fair uplift of 25%. He had not seen the agreement and did not know about any CPR Part 36 offers.

Hirachand v Hirachand

Can the Court include an element of award to cover or contribute toward a CFA uplift?

- Staring point is section 58A(6) of the Courts and Legal Services Act 1990 which provides that a costs order “*may not include provision requiring the payment by one party of all or part of a success fee payable by another party under a conditional fee agreement.*”
- *Re Clarke [2019] EWHC 1193* Deputy Master Linwood declines to make such an award.
- *Bullock v Denton [2020] Lexis Citation 191*, unreported decision of HHJ Gosnell who did provide such an award.

Hirachand v Hirachand

The Court of Appeal concluded that an award can include an element for a CFA uplift but stressed:

“It is unlikely that an award will include a sum representing part of the success fee unless the judge is satisfied that the only way in which the claimant had been able to litigate was by entering into a CFA arrangement and consideration will no doubt be given to the extent to which the claimant has ‘succeeded’ in his or her claim. Further, an order will only be made to the extent necessary in order to ensure reasonable provision is made. It does not mean that it can have no impact whatsoever upon the standard of living that the applicant would otherwise be afforded by the maintenance award” [59]

Thank you