



Neutral Citation Number: [2023] EWHC 2780 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

No. PT-2023-000516

Rolls Building
Fetter Lane
London EC4A 1NL

Tuesday, 10 October 2023

Before:

MASTER McQUAIL

B E T W E E N :

WITHERS TRUST CORPORATION LIMITED

Claimant

- and -

THE ESTATE OF HANNAH GOODMAN

Defendant

MR A HOLDEN (instructed by Withers LLP) appeared on behalf of the Claimant.

MISS B RICH (instructed by Mercers Law LLP) appeared on behalf of the Defendant.

J U D G M E N T

MASTER McQUAIL:

- 1 This is the disposal hearing of a Part 8 claim form which was issued on 23 June of this year. The Claimant is Withers Trust Corporation Limited being the Executor of the Estate of the late Adrian Berry. The main Defendant is the Estate of the late Hannah Goodman by an order I made earlier in the hearing. I dealt with the question of appointing a person to represent that Estate, and appointed Mr Peter Hopkins of Mercers Law LLP to that role.
- 2 Hannah Goodman died on 14 July 2020. Adrian was Hannah's husband, and he himself died on 11 June 2022. As I saw, Withers Trust Corporation was the Executor appointed by Adrian Berry's last will, which was dated 2 November 2020.
- 3 By a claim, the Claimant seeks an order pursuant to section 2 of the Forfeiture Act 1982, that the application of the forfeiture rule to Adrian's interest in Hannah's Estate and to his interest in jointly owned assets be modified, and that Adrian be given full relief from forfeiture. The matter of the appointment of Mr Hopkins is also dealt with in the claim form, as are matters of costs.
- 4 The claim is supported by the witness statement of Mr Paul Hewitt of Withers dated 22 June 2023. I will at this stage record the chronology of relevant matters so far as they are known. Hannah was born on 24 March 1950, Adrian was born on 5 October of the same year. They married (I do not think I know when from the evidence, but I do know that they never had children). Adrian's career was as a computer manager and Hannah's was as a management consultant. In 2006 they purchased a property, Armiger House, Battle, East Sussex, and they lived there together for the rest of their lives. That house remains registered in their joint names.

5 In October 2017, Hannah was diagnosed with lung cancer. It is apparent from her medical records that by April or May 2020, matters were terminal. A palliative care anticipatory medicine box was issued in April, and the records confirm that chemotherapy, which had been taking place at Guy's, was stopped because it was not working any more. The notes for the rest of the summer months of 2020 indicate Hannah suffering from pain and various other side effects of her cancer and the treatment she was receiving, none of which seems to have been pleasant or comfortable for her. On 4 July 2020 Dr McNeilly from Hannah's GP practice recorded, following a telephone call, that Hannah had said to him, "We're in the end game, aren't we?" On 13 July 2020, a Dr Sewell from the same practice, paid a visit to Hannah and Adrian at home. The record of the visit records that Hannah was struggling with pain and also with fear or terror. The note records that the couple, both Adrian and Hannah, were struggling with Hannah's long decline. The note records that there had already been increases in doses of morphine being given over the weekend immediately preceding. The note refers to a previous plan for attending Dignitas to have been made impossible by the Covid pandemic, and there is a record in the note also of a conversation instigated by Hannah, in which both Hannah and Adrian were involved, about the effect of increased doses of morphine. The note records also that they were struggling as their wish to "end it all" was not possible. On 14 July 2020, according to her death certificate, Hannah died at home. The cause of her death was given as lung cancer. It was Adrian who reported the death by telephone, and Adrian recorded himself as having been present at the death. It does not appear from anything in the evidence that any doctor attended that day.

6 On 14 August 2020, Adrian took out a grant of probate to Hannah's Estate. He was appointed the Executor by her will dated 4 February 2016, and on its face was sole beneficiary as the survivor of the couple. If that gift to him were to fail, the will provided a

substitutionary gift to Hannah's trustees to hold residue on discretionary charitable trust, as to which she gave directions in a letter of wishes dated 5 February 2016.

7 On 2 November 2020, Adrian made his last will appointing the Claimant in the proceedings as his Executor, and by the terms of that will he left his residue to charity, and by reason of the definition section of that will, the charity was to be a charity qualifying as one exempt under section 23 of the IHTA 1984.

8 On 14 December 2020, Adrian wrote a note to his solicitor, Patricia Milner of Withers, attaching a letter of wishes, and also wishes for his Estate. The covering letter gave directions as to how he might be found in the new garage in the garden of the property, apparently anticipating that he would have taken his own life there. The document indicated that Adrian was about to embark upon a last drive, again implicitly contemplating him committing suicide. The note recorded his anger at the NHS in respect of its care for Hannah towards the end of her life, and the difficulties that the Covid pandemic had produced. He described what he said was the only home visit by the GP, which must have been the one on 13 July 2020, and the GP's apparent failure to offer constructive help when Hannah refused to go into a hospice, as he says she did, and also records a complaint that the doctor could not really cope or react appropriately when he was told that Hannah "wanted to be gone", and was told that Adrian would have no option but to take the law into his own hands.

9 The note concludes in this way:

"And so it was that that evening Adrian did what Hannah wanted, and what he was later to regret to the bottom of his heart, not only ending the life of another human being which was bad enough, but to have killed his best and only friend proved to be an action which he just

could not bear. So putting Hannah's and his affairs in as best a condition as he could, he took his final drive. All the more poignant was the fact that neither he nor Hannah actually believed in a hereafter, so the journey he was about to make could not have a happy ending in the reunion with his soul mate, but just a cold emptiness."

10 On receipt of the letter and the note, Withers, unsurprisingly, contacted the police, who attended at the property, where Adrian was found alive and unharmed, but in a very sad space.

11 In May 2022, Adrian wrote to a local funeral director, including instructions for his funeral, and a document which was effectively a self-composed eulogy. In that document he wrote:

"I do not think that Adrian was lonely as both he and Hannah had spent many times on their own when one or the other was away on a project and they both coped well with that isolation. No, I think that what he had was an issue with how to make future plans that did not include his soul mate. Being of a very shy nature, Adrian found it very hard to strike up friendships, but with Hannah he had found his true soul mate. Many times you will have heard the two of them being described as a 'team', and that is what they were, the ideal supportive team. Because of this perhaps we can understand why Adrian found the last months so hard to bear on his own, especially so because Adrian felt that it was by his own hand that he had released Hannah at her own wish from the impossible burden of dying of cancer."

Also in the letter to the undertakers he gave instructions for death notices, which would be placed in particular newspapers which were, on his instructions, to record that he had died of a broken heart.

12 On 1 June 2022, Adrian signed a letter of wishes in which he explained that he hoped the charity beneficiary of his will should be the Armiger Foundation, if established in the future. In fact, it had already been established. On 11 June 2022, Adrian took his own life by

carbon monoxide poisoning. No grant of probate has yet been taken out, and Withers act, as it were, as the intending Executor.

- 13 I just record for completeness the dealings there have been with third parties in relation to the Estates of Hannah and Adrian. Withers wrote to the NCA regarding the possibility of any POCA problem arising from the situation. The NCA confirmed in a letter of 2 November 2022 that there was available a defence, and therefore there was no such problem. There were also dealings with Standard Life, with whom Hannah had had a SIPP, which would fall outside of her Estate, but which became available to Adrian for draw down after Hannah's death. Adrian did not, in fact, draw down monies from the SIPP, but what happened was that Withers wrote to Standard Life pointing out the situation and the various legal complications, and as a result of that Standard Life Trustees exercised their discretion to appoint the funds in the SIPP in accordance with Adrian's wishes to the Armiger Foundation.
- 14 There was also contact, or attempted contact made with HMRC. HMRC were chased a couple of times asking whether they wished to respond in any way to the present proceedings or be involved. No response has been received. The Attorney General was also contacted, given the charitable interest within the Estates, and the response from the Treasury Solicitor of 11 July was that the Attorney General had no wish to be involved.
- 15 The next section will discuss the application and effect of the forfeiture rule. If, as appears, Adrian assisted Hannah to commit suicide, or ended her life at her request, the rule of public policy that debars someone who has unlawfully killed another from benefiting from their Estate would apply – that is the forfeiture rule. Since Hannah's Estate has been fully administered, the Claimant, as Executor, would hold the proceeds of Hannah's Estate and

Hannah's share of joint assets on trust for the substitutionary legacies under her will.

Substitutionary legacies, as I have said, are a discretionary charitable trust. In Hannah's letter of wishes she referred to her own wish to establish a charitable foundation with a charitable status so that IHT would not be paid on her Estate, and also explained that her wish was to benefit those with an interest in the classic car industry with the aim of providing apprenticeships for 16 to 25 year olds.

- 16 On the other hand, were the rule not to apply, or were full relief to be granted, the primary gift under Adrian's Estate is to a discretionary charitable trust, the Armiger Foundation, which has the purpose of promoting education about classic and historical vehicles by promoting knowledge of their repair and maintenance and the provision of apprenticeships and training in such matters for young persons. It is submitted, and I accept, that the wishes are so close that the difference is *de minimis*.
- 17 However, there is a significant difference because of the tax treatment of the gift in Hannah's documentation. Hannah's gift, as worded, means that such a charitable purpose as she has left her Estate to, would not qualify for charitable exemption under the HMRC criterion because it is not restricted to, roughly speaking the European Economic Area, and is potentially of worldwide application. On the other hand, the drafting of Adrian's documentation means that a gift via his Estate does definitely attract the exemption under section 23 of the 1984 Act. Mr Hewitt's witness statement explains the tax difference is of an order of just over £200,000, plus interest and penalties. At that point, I refer to having been referred myself to the judgment of Morritt LJ (as he was) in *Re Goodchild (Deceased)* [1997] 1 WLR 1216, where, in a slightly different context, but not a context different for the purpose of the relevance of the observation made, which is this:

“If the order made is properly within the jurisdiction of the court the fact that it was sought with the motive of seeking to achieve a better tax position is usually irrelevant. *Re Sainsbury's Settlement* [1967] 1 WLR 476. But where the effect of the order is to confer a substantial advantage on the parties at the expense of the Revenue it is in my view important that the court should be satisfied that the order is not only within its jurisdiction but also one which may properly be made.”

18 At this point I refer to certain sections of the Forfeiture Act 1982, as follows:

“1 The ‘forfeiture rule’

(1) In this Act, the ‘forfeiture rule’ means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.

2 Power to modify the rule.

(1) Where a court determines that the forfeiture rule has precluded a person (in this section referred to as “the offender”) who has unlawfully killed another from acquiring any interest in property mentioned in subsection (4) below, the court may make an order under this section modifying or excluding the effect of that rule.

(2) The court shall not make an order under this section modifying or excluding the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified or excluded in that case.

...

(4) The interests in property referred to in subsection (1) above are—

(a) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired—

(i) under the deceased’s will (including, as respects Scotland, any writing having testamentary effect) or the law relating to intestacy or by way of *ius relictī, ius relictæ* or *legitim*;

(b) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired in

consequence of the death of the deceased, being property which, before the death, was held on trust for any person.

- (5) An order under this section may modify or exclude the effect of the forfeiture rule in respect of any interest in property to which the determination referred to in subsection (1) above relates and may do so in either or both of the following ways, that is—
- (a) where there is more than one such interest, by excluding the application of the rule in respect of any (but not all) or all of those interests; and
 - (b) in the case of any such interest in property, by excluding the application of the rule in respect of all or any part of the property.”

That is the statute under which I am asked now to exercise my discretion.

- 19 Helpful guidance is provided in the judgment of Mummery LJ in the case of *Dunbar v Plant*, which guidance has been applied subsequently in a number of cases, and what Mummery LJ there said is that the following list of factors may be relevant in the exercise of the court’s discretion:

“The court is entitled to take into account a whole range of circumstances relevant to the discretion, quite apart from the conduct of the offender and the deceased: the relationship between them; the degree of moral culpability for what has happened; the nature and gravity of the offence; the intentions of the deceased; the size of the Estate and the value of the property in dispute; the financial position of the offender, and the moral claims and wishes of those who would be entitled to take the property on the application of the forfeiture rule.”

- 20 I was referred also to the judgment of Phillips LJ in the same case, where at page 438, he observed that:

“The first, and paramount consideration, must be whether the culpability attending the beneficiary's criminal conduct was such as to justify the application of the forfeiture rule at all.”

- 21 I was referred also to the case of *Ninian (Deceased)*, a decision of Chief Master Marsh. In that case the Chief Master regarded it as helpful to have regard to the DPP's policy statement relating to prosecution in relation to assisting a suicide, which was the matter with which he was concerned in the *Ninian* case, and decisions on whether or not to prosecute. The Chief Master pointed out that, although the decisions whether to prosecute and whether or not to give relief under the Forfeiture Act are different, they both involve consideration of moral culpability and the offender's motivation.
- 22 So I must be satisfied on the balance of probabilities that there has been an unlawful killing or assistance in a suicide. I must then consider my power under section 2(1) of the Forfeiture Act, applying the criterion under section 2(2). That is; I must have regard to the conduct of the offender, the conduct of the deceased, and such other circumstances as appear to me to be material to determine whether the justice of the case requires modification of the rule.
- 23 As regards the first question, whether there has been an unlawful killing or an assisting with suicide, it is not possible, on the evidence, for me to decide as between those matters, but I am satisfied from Adrian's own records as contained in his note and his eulogy that he either assisted Hannah to commit suicide or ended her life himself, and that there was an unlawful killing, so the provisions of the Act are engaged. Mr Holden addressed me on the matters to which I should give consideration in four categories, and I adopt his helpful breaking down of matters in that way, the first category being Adrian's conduct. As I have decided, it is plain that he was in words not so fortunate of the Act an "offender", having unlawfully killed Hannah. It is absolutely clear from the note and the eulogy that this was done by him with extreme reluctance, and as an act of desperation and as a last resort to

which he was driven by there being no other apparent help in bringing any other possibility of Hannah being able to end her life and her suffering. It clearly caused him unimaginable distress and he was unable to go on ultimately living with what he had done, and as his intended death notices were to say, he considered that he, himself, had died as a result of a broken heart. I can only conclude that what he did was done only with compassionate intent and, as I say, as a last resort.

24 Looking then at Hannah's conduct, the medical notes demonstrate her own wish and intention to end her life, and that she had formed by 13 July 2020 a settled intention that that was what she wished to happen. As I have said, it is impossible to say exactly what happened, but it is apparent that the ending of her life was at least consistent with her clear and settled intention.

25 Then I need to consider the effect of an order granting relief, and for the reasons I have explained in considering the different possible routes by which Hannah and Adrian's Estates would be administered the effect of granting relief would be that the charitable foundation, the Armiger Foundation, with purposes that are entirely consistent with the wishes as expressed by both Hannah and Adrian for their residuary Estates, it is apparent that that Foundation would receive something of the order of £200,000 towards its objectives, more than if no relief were granted. As it is said in the *Goodchild* case, the fact that the tax saving may have been the motive for the application which would not perhaps have needed to have been brought if Hannah's will had been drafted in slightly different terms, the fact is that the motive is not relevant provided that the order is properly made within the court's jurisdiction, and that the tax saving result is achieved for the charity assists and supports me in a conclusion that the justice of the case would require relief if I am satisfied on other matters.

26 I turn then to the question of Adrian's moral culpability as being one in Phillips LJ's words of "paramount importance", but certainly, on any view, of very significant importance. I was taken through the CPS guidance on prosecution in homicide cases, which was last updated on 5 October 2023, and in particular to the section "Application at the public interest stage to mercy killings and suicide pacts in the context of mercy killings", which is the equivalent documentation that Chief Master Marsh was taken to in the *Ninian* case. The document section listing 13 factors which would make prosecution likely if any of them were present. I was taken through those factors, and either there is no evidence in relation to them at all, or the evidence points to them not being present. To an extent, and unsurprisingly, they are the mirror of the seven factors listed which are going to mean that a prosecution will be less likely. I will go through those individually, which I do not feel the need to do with the 13 factors the other way, as follows:

- (1) The first factor is the victim had reached a voluntary clear, settled and informed decision that they wished for their life to end. The evidence of what Hannah wished, as I have said, was, on the documentation, that she did have that wish, and it was settled.
- (2) They must have the freedom and capacity to make such a decision. The decision must have been made sufficiently close in time to their death, and independently reached by the victim, not influenced by pressure, control or coercion by the suspect or anyone else. This requires thorough scrutiny and careful examination of the suspect's account on its own and when placed in the context of the evidence as a whole. Prosecutors should consider what access the victim had to healthcare professionals, including discussions about treatment and support options. On the evidence before me I do conclude that Hannah retained capacity and that she did make the decision freely with full capacity,

and although she had some medical attention, she and Adrian considered that it was not going to give them the support or treatment that would enable her to bear increased suffering, and reluctantly, and certainly not by reason of pressure or otherwise, Adrian therefore acted to implement the decision made by Hannah.

- (3) The suspect is motivated by compassion alone, and only in circumstances where the preceding factor is present. Adrian's decision to act, and his actions in whatever he did to assist Hannah's death, were, in my judgment, actions motivated entirely by compassion, and that is evident by the remorse expressed in his later documentation.
- (4) The victim was physically unable to undertake the act to end their own life. That fact cannot be known on the evidence we have, and cannot be established.
- (5) The actions of the suspect may be characterised as reluctant in the face of significant emotional pressure due to the victim's wish for their life. Prosecutors should consider whether this is capable of independent verification by others. Again, the evidence and Adrian's note and eulogy provide and show that he was driven to his action by desperation, and it was not something he did willingly, but did instead reluctantly because there was nothing else available to him.
- (6) The next question is whether the suspect made a genuine attempt to take their own life at the same time. As to that, there is no evidence. What there is is the evidence that Adrian did attempt to take his own life. He certainly succeeded ultimately in taking his own life, and he may have made another attempt to take his life in December of 2020.

(7) The suspect reported the death to the police and fully assisted them in their enquiries into the circumstances and their part in it. Adrian did not, in fact, report the death to the police. What he did do was report the death promptly to the Registrar and obtained the death certificate. Adrian perhaps could be slightly criticised for not having taken the further step of going to the police.

27 Having regard to all those factors, in my judgment, the level of moral culpability here was extremely low, almost as low as any unlawful killer's culpability could have been. It is, so far as I can stand in the shoes of a prosecutor, plain to me that Adrian would not have been prosecuted in the circumstances of this case, and I conclude, as I say, that Adrian had almost no moral culpability for his conduct to warrant a criminal prosecution to warrant me ascribing moral culpability to him, which would prevent me granting relief from forfeiture.

28 Miss Rich was before me for the purpose of representing Mr Hopkins, and she made brief submissions supportive of the relief application. She had also prepared a skeleton argument which demonstrated the careful thought that she and her client had given to the application and their decision to support it.

29 Looking at Adrian's conduct and Hannah's conduct and taking account of the effect which is benefit to a charity that both Adrian and Hannah wished to benefit, and having concluded that there would have been no prosecution because there was insufficient moral culpability to justify prosecution, I conclude that in this case an order for relief is necessary to do justice, and that the justice of the case requires the grant of relief.

30 Thank you.

CERTIFICATE

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