BRIEFING NOTE

St John's CHAMBERS

RSPCA v. Sharp [2010] EWCA Civ 1474

Introduction

On 21 December 2010 the Court of Appeal handed down its judgment in RSPCA v Sharp [2010] EWCA Civ 1474. The case concerns the proper construction of a will, but it also raises the wider question of whether it is appropriate for charities to pursue claims of this nature.

Facts

The case arose as a result of the provisions of the will of Mr George Mason ("the Deceased"), who died on 18 June 2007. The relevant provisions of his will, dated 19 January 2005, were as follows:-

a. the Deceased appointed the First and Second Defendants, Mr and Mrs Sharp, as his Executors and Trustees;

b. by clause 3 of the will, the Deceased bequeathed "the amount which at my death equals the maximum which I can give to them by this my will without Inheritance Tax becoming payable in respect of this gift", to his brother and Mr and Mrs Sharp in defined percentages, i.e. a nil-rate band legacy ("the NRB legacy");

c. by clause 4 of the will, the Deceased gave his property ("the Property") to Mr and Mrs Sharp, subject to a direction that the Inheritance Tax ("IHT"), if any, payable in respect of the Property should be paid out of the residuary estate;

d. by clause 6, the Deceased nominated the RSPCA as his residuary beneficiary.

The Deceased's estate was valued at nearly £1million. At the time of the Deceased's death, the amount which a testator could bequeath by his will without IHT becoming payable was £300,000, i.e. the nil-rate band. Clearly the residuary gift to the RSPCA was exempt from IHT as a gift to a charity.

The issue of construction was whether the NRB legacy was for the full allowable amount of £300,000 in addition to the value of the Property, or whether it merely gifted the balance of the nil-rate band after taking into account the value of the Property. The Property had been valued at £169,000.

Mr and Mrs Sharp, as executors, construed the NRB legacy as being additional to the gift of the Property. This resulted in the estate incurring IHT of £112,667 in respect of the Property, thereby reducing the amount of the gift of the residue to the RSPCA.

The RSPCA issued proceedings, alleging that the NRB legacy comprised only the balance of the unused NRB remaining after the Property had been taken into account. The RSPCA accepted that it was possible (although this was not the case on the facts) that, on its construction of the will, the NRB legacy under the will could be reduced to nil depending on the value of the Property.

On the RSPCA's construction of the will, HMRC would receive no IHT in respect of the Deceased's will.

The First Instance Decision

In the High Court, Peter Smith J held that Mr and Mrs Sharp had correctly construed the will and the RSPCA's claim was dismissed.

Significantly, Peter Smith J vehemently criticised the RSPCA for bringing the action. He recognised that the RSPCA's trustees are under a duty to maximise the return for the charity. However, he noted that the proceedings had caused

significant distress to the Deceased's friends and relatives. Further, in his judgment, the Deceased would have been unhappy to see the RSPCA attempting to erode the gifts he had made to his family and life-long friends. He concluded by stating:

> "This action has plainly caused distress to the Defendants and in my view ought not to have been brought" [26].

In light of this criticism, he awarded indemnity costs against the RSPCA and refused it leave to appeal.

The Court of Appeal Decision

Notwithstanding the initial refusal of permission, the RSPCA was able to appeal at a later date. The Court of Appeal allowed its appeal.

The leading judgment was given by Patten LJ who stated that it was "largely speculation" to say (as Peter Smith J had done) that the Deceased would not have intended to reduce or eliminate the gifts of money to his brother and Mr and Mrs Sharp. Patten LJ made clear that it was dangerous to approach the assessment of the Deceased's intentions other than through the language of his will. Some emphasis was placed on the fact that the will had been professionally drafted by solicitors.

Patten LJ preferred the RSPCA's submissions for four main reasons. First, on the RSPCA's construction the will was tax efficient. It was likely that this was the testator's intention given that the will disclosed some knowledge and understanding of IHT.

Second, it was held that the phrase "the maximum which I can give to them by this my Will without Inheritance Tax becoming payable in respect of this gift" must contemplate a calculation of the NRB by reference to all transfers of value made "by this my Will". It should therefore take into account the value of the

Property. It if it were otherwise, clause 3 would have to be re-drafted to be read as referring to a sum equal to the NRB from time to time.

Third, some reliance was placed on the fact that clause 4 of the will specified that the IHT payable "in respect of the property" should be paid out of the residuary estate, whereas clause 3 did not. The absence of that phrase from clause 3 was odd if the draftsman contemplated the gift in that clause giving rise to an IHT liability.

Fourth, on the RSPCA's construction, the words "if any" in clause 4 were appropriate because no IHT could ever become payable as a result of the pecuniary legacies but tax would become chargeable on the property if the value exceeded the NRB. The executors' argument that the words "if any" were inserted to deal with possible future legislative changes was rejected.

The only other reasoned judgment was given by Lord Neuberger MR, who admitted that his initial impression was that the NRB legacy should be additional to the value of the Property. That impression was derived from a sequential reading of the will, with clause 4 being subordinate to clause 3.

Ultimately, however, the Master of the Rolls concluded that the RSPCA's construction was preferable, firstly because the other clauses in the will did not operate sequentially. Secondly, there was the general point that "a will is to be construed as a whole, and clear words are required before one construes one clause as being subject or subordinate to another, simply because it is later in the Will than the other clause".

The order for indemnity costs was set aside as the appeal was allowed. However, Patten LJ went further than this and noted that "an order for indemnity costs remains an exceptional order and ... I do not believe that it was justified in this case" [27].

Mr and Mrs Sharp's application for permission to appeal to the Supreme Court was refused.

Discussion

It is interesting to see the different approaches of each judge to the principles of will construction. Patten LJ cited the classic guidance of the House of Lords in Perrin v. Morgan [1943] AC 399, 406, where it was stated that a will must be construed so as to find:-

> "...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 his will, but what the written words he uses mean in the particular case - what are the "expressed intentions" of the testator."

In contrast, the Master of the Rolls stated that the court's approach to the interpretation of wills is, in practice, very similar to its approach to the interpretation of contracts as set out in the House of Lord's decision in Investors Compensation Scheme Ltd v. West Bromwich BS [1998] 1 WLR 896. One difference, however, is that a will is a unilateral document where the testator has no interest in obscurity. The parties to a contract may be content with obscurity where it represents an acceptable compromise.

The decision brings into sharp focus the issue of whether it is appropriate for charities to pursue claims against family beneficiaries. Should charities be grateful for any gift which they are given under a will and not protest, even if the will has been incorrectly interpreted?

Following the High Court decision, the RSPCA defended its decision to commence proceedings on the basis that it was simply trying to uphold what was the Deceased's clear intention, i.e. that no-one should pay IHT under the will. It does not seem correct that charities should be in a weaker position than

any other beneficiary under a will, when the personal representatives have administered the estate incorrectly.

The case illustrates and reinforces the need for clear drafting of wills. In theory, as long as the wills are clear, there should be no issues regarding testators leaving residue to charity. Whereas the High Court decision may have discouraged testators from doing so and/or discouraged charities from seeking to maximise their gifts arising out of wills, the Court of Appeal decision seems to have put matters back on an even keel. It remains to be seen whether prudent testators will now prefer to leave gifts of specific amounts to charities, as opposed to gifts of residue.

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