

Application by executors to rectify a will

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In the matter of re Estate of Shumka [2012] JRC 159

Application by executors to rectify a will to include provisions which were revoked from the deceased's previous will.

Background

The deceased, a resident of Canada, who formerly held assets in Canada, the United Kingdom and the Channel Islands, died in November 2010 leaving two wills. The first will spoke to the deceased's assets in Canada and the second will dated 31 December 1993, to the assets in the United Kingdom and the Channel Islands. In January 2006, having confirmed that assets were no longer held in the Channel Islands, a will dated 26 January 2006 was drafted making no reference to the Channel Islands. Consequently, the deceased's 2006 will revoked the previous wills in so far as they spoke to the United Kingdom and the Channel Islands. Upon the deceased's death, it was discovered that in late October 2006, unknown to the deceased, shares which were owned by the deceased in GUS plc through a demerger became Experian Group plc, a company incorporated in Jersey, Channel Islands. This resulted in the intestacy of the Channel Islands' assets. The executors of the deceased's estate then sought to have the will of the deceased rectified to include the assets of the Channel Islands. Two issues arose for the Court to decide - did the Court have jurisdiction to rectify wills; and were the circumstances sufficient for the award of such a remedy?

Decisions

1. Does the Court have jurisdiction to rectify a will?

Rectification of a will speaks to the deletion, substitution and/or addition of words to allow for the

true intentions of the testator to be carried out. However, in most common law jurisdictions, such as England and New Zealand, the rectification of a will is restricted to the deletion of words from a will which were included by mistake.

The Court cited the case of *In the Estate of Vautier (nee Boyle)* [2000] JLR 351 which provided Jersey with its own precedent in allowing for the rectification of wills to be achieved either by the deletion, substitution and/or addition of words. In *Vautier* it was made clear however, that in the case of wills, the remedy of rectification must be used sparingly and with extreme caution in light of the testator no longer being present to inform the court of his intentions.

2. What is the test for rectification of wills to be awarded?

The Court adopted the test laid down by *Vautier* as follows.

- (i) There must be clear and compelling evidence that a mistake was made in relation to the will;
- (ii) The words in the will must be contrary to the testator's intentions; and,
- (iii) The applicant must have made full and frank disclosure of all the material facts.

3. The Court's Discretion

The Court was satisfied that the testator was unaware as to the new developments of her holding in GUS plc; and in light of the way the testator kept her testamentary affairs, it was extremely unlikely that the testator would intentionally leave the assets to devolve on intestacy. It was evident therefore that a mistake had been made when the Jersey assets were excluded from the testator's current will.

Thus, the Court found that the current will did not reflect the testator's intentions. In addition to the Court being satisfied that the applicants had made full and frank disclosure, the rectification of the Will was allowed.

Conclusion and Comments

This case makes clear that the rectification of wills ought not to be restricted to the mere deletion of words within a will but the substitution and/or addition of words. As was stated by the Court in *Vautier*, "if the court can make [a deletion] so as to correct a manifest error and make the will accord with the testator's clear intentions, why should it not be able to make another type of change [such as a substitution or addition] to achieve exactly the same result?" The Court in this case sensibly applied the *Vautier* case and the deceased's clear intentions were put into effect.

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