IN THE HIGH COURT OF JUSTICE Claim no. E30BS753

BUSINESS & PROPERTY COURTS IN BRISTOL
Property, trusts, and probate list (Ch D)
In the estates of Jean Madge Allen Fernandez deceased and Dr Alexander Fernandez deceased

Between

JULIAN LINDSAY FERNANDEZ

Claimant

-and-

(1) LEESSA KAREN FERNANDEZ
(2) GRAEME NICHOLAS FERNANDEZ

Defendants

(1) VANESSA ANNE FERNANDEZ
(2) THE ESTATE OF NIGEL ANTHONY GREYSTONE FERNANDEZ
(3) TAMSIN FERNANDEZ
(4) DAISY FERNANDEZ
(5) PATRICK FERNANDEZ
(6) PHILIP GEORGE

Part 20 Defendants

JUDGMENT

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1. This is my judgment following the hearing at Bristol Civil Justice Centre on 16 September 2024 of the Defendants' application, amongst other things, for:

   (1) The removal of the Claimant as executor of the estate of Jean, and as executor of the estate of Alexander under section 50 of the Administration of Justice Act 1985;

   (2) The removal of the Claimant as trustee of a settlement known as the St James' Place Trust 2008 ('SJP Trust') under section 41 of the Trustee Act 1925;

   (3) The appointment of an independent executor/trustee in the Claimant's place.

2. The background to this hearing is as follows:

   (1) Jean and Alexander were married for many years, and in their later life lived at Seathrift, Greenway, Lyme Regis, Dorset DT7 3EY ('Seathrift'). Jean died on 29

March 2010, and Alexander died 14 October 2013. They were survived by 5 children: the Claimant ('Julian'), the First Defendant ('Leessa'), the Second Defendant ('Nick'), the First part 20 Defendant ('Vanessa') and the Second part 20 Defendant ('Nigel'). Vanessa has a daughter, Tamsin, and Nick has 3 children: Patrick, Daisy, and Felix.

(2) Sadly, Nigel died in Germany on 18 October 2022.

(3) On 1 October 1996 Jean and Alexander executed homemade wills, by which they appointed each other and Julian as executors, made pecuniary legacies totalling £200,000 to their children and grandchildren, and gifted the residue to one another. These wills necessarily led to a partial intestacy upon the death of the survivor, and effectively provided for the children and grandchildren to receive an identical pecuniary legacy on the death of each of Jean and Alexander.

(4) On 24 June 2008, Jean and Alexander settled a discretionary discounted gift trust (the 'SJP Trust') naming their 5 children as the default beneficiaries in equal shares, and Leessa and Nick as the lives assured.

(5) Following her death on 29 March 2010, it was thought by the family that Jean had died intestate. Leessa and Nick extracted letters of administration in her estate on 14 June 2013. Her estate included her interest in Flat 3, 15a Courtfield Road, London SW7 4DA ('Courtfield Road') and cash, shares, and investments. Courtfield Road was and remains occupied by Vanessa.

(6) Following Alexander's death on 14 October 2013, it was thought that he had also died intestate, but in June 2014 (following the grant of administration of Jean's estate to Nick and Leessa) Julian found Alexander's homemade will and proceeded to take a grant of probate which he obtained on 25 January 2016. The gross estate is valued at £2m by the grant.

(7) On 7 September 2015, Nick executed a deed of variation which assigned his interest in Alexander's estate to his children Patrick, Daisy, and Felix. Julian did not know about this deed at the time that it was made.

(8) In February 2018, Julian found Jean's 1996 will, and issued these proceedings on 10 July 2018 seeking to revoke the letters of administration granted to Leessa and Nick in 2013, and obtain a grant in solemn form of the 1996 will in his name.

(9) Leessa and Nick defended the probate claim giving notice pursuant to CPR 57.7(5) requiring Julian to prove the will, and also brought a counterclaim seeking the removal of Julian and the appointment of professionals to administer both estates and the SJP Trust. Vanessa, Nigel, and the grandchildren were joined as part 20 Defendants to the counterclaim. In addition, Philip George, the other trustee of the SJP Trust appointed by Julian, was joined as the 6th part 20 Defendant.

(10) The original proceedings were case managed by District Judge Watson, who identified the probate claim as a preliminary issue for trial. The claim was heard in June 2019 and on 22 July 2019 District Judge Watson handed down judgment propounding Jean's 1996 will. At a further hearing on 3 September 2019, District Judge Watson ordered Leessa and Nick to pay the Claimant's costs of the claim to be assessed, and to pay £10,000 on account. At that same hearing directions were given leading to a proposed 4-day trial of the counterclaim. These directions included amended pleadings, extended disclosure, the exchange of witness statements and costs management.

(11) A grant of probate of Jean's estate was granted on 21 November 2019, which valued Jean's gross estate at £1.6m.

(12) So far as I am aware, those directions were not complied with by the parties, and the costs liability never assessed. Instead, the parties sought to negotiate a solution and by their consent the proceedings were stayed. Several consent orders for successive stays were granted between October 2019 and 2023. It is pertinent to note that Nigel died during this period.

(13) Against that background, the administration of the estate by Julian continued, and in November 2021 Julian sold part of Seathrift for £1.3m with the benefit of planning permission that he had obtained on behalf of the estate. For tax reasons, the development plot was appropriated to the beneficiaries prior to sale. It was during this process that Julian first discovered Nick's deed of variation.

(14) Julian then set about selling the remainder of Seathrift. Some time was spent by Julian considering whether some mechanism for securing overage or similar should be adopted. In the event, the property was first marketed in early 2023.

(15) On 29 June 2023, HHJ Paul Matthews considered a further consent application for a stay and dismissed the application, giving written reasons. In summary, the learned Judge explained that enough was enough, that it was now over 13 years since Jean's death, and 5 years since the commencement of proceedings, and if the parties could not agree they must litigate in accordance with the CPR i.e. expeditiously.

(16) By September 2023, Seathrift had not sold, and Julian replaced the agent.

(17) Fresh directions were made by District Judge Taylor on 30 November 2023, which provided for initial disclosure but deferring any application for extended disclosure, exchange of witness statements and a 4-day trial before HHJ Paul Matthews with an additional day for judgment writing. Time for compliance with that order was extended by District Judge Taylor on 22 December 2023.

(18) After disclosue and exchange of witness statements, Leessa and Nick made the application in hand on 28 March 2024, seeking a 1-day hearing before a High

Court Judge. HHJ Paul Matthews remitted the matter to be heard by me.

(19) Seathrift was sold by Julian in May 2024 for £1m, with no overage/ransom.

(20) Courtfield Road is yet to be sold, and remains occupied by Vanessa.

3. At the hearing Leessa & Nick were represented by Mr Bishop of counsel and Julian was represented by Mr Reed of counsel. No other parties actively participated in the hearing, although many of the family members were present in court. Mr George has not taken any active role in the proceedings and did not attend and was not represented.

4. The evidence before the court comprised the written evidence in the original probate claim, together with more recent witness statements relating to the counterclaim and the application in hand. These were Vanessa's witness statement of 1 February 2024, Julian's witness statement of 1 February 2024, Nick's witness statement of 6 February 2024, Leessa's second witness statement of 6 February 2024 and Peter Williams' witness statement of 6 February 2024. I also had the signed written consent and terms of business of the proposed professional executor/trustee Thomson Snell & Passmore Trust Corporation Limited. The trial bundle included the core documents in the dispute, and voluminous correspondence and documentation relating to the administration of the estates.

The position of Nigel's estate

5. Pursuant to CPR 19.12(1) the court must appoint a person to represent Nigel's estate or order that the claim proceed in the absence of any representative. No grant of representation has yet been obtained in respect of Nigel's estate. By all accounts he died intestate, and consequently his remaining interest in the estate(s), net of any liabilities, falls to be shared between his siblings in equal shares. All those who have an interest in his estate are already parties to the proceedings. It is therefore pragmatic to order that no person is appointed pursuant to CPR 19 to represent his estate in this litigation. In due course, a grant of representation will have to be taken, amongst other things, to ensure that Nigel's estate is duly administered, and his debts and liabilities paid in priority to any distribution, but that need not delay determination of the issues in hand in these proceedings.

What are the issues before the court and what is the appropriate procedure for their resolution?

6. The first fundamental issue for determination revolves around the nature of the counterclaim and how it is to be resolved.

7. Mr Bishop contends that the counterclaim is for the removal of Julian as executor/trustee, and therefore seeks to have that resolved at this 1-day hearing without

oral evidence or cross examination, and without necessarily deciding any disputes of fact, in accordance with the principles developed by Chief Master Marsh in the notable line of authority commencing with *Harris v Earwicker* [2015] EWHC 1915 (Ch) and including *Long v Rodman* [2019] EWHC 753 (Ch) and *Schumacher v Clarke* [2019] EWHC 1031 (Ch).

8. Mr Reed points out that the counterclaim has been issued in proceedings issued under CPR part 57 and governed by CPR part 7, rather than CPR part 8, and submits that in providing for disclosure and a 4-day hearing it is evident that the court intended the counterclaim to be resolved upon oral evidence, and furthermore submits that the court thereby intended to resolve all the factual issues raised by the pleadings, rather than merely determine whether or not Julian was to be replaced as executor/trustee. In essence, Mr Reed submits that this application subverts the directions made to date in these proceedings.

9. It is relevant that the judgment of Chief Master Marsh in *Harris v Earwicker* was handed down in 2015, and the judgment in *Long v Rodman* in March 2019. In April 2019, judgment was handed down in *Schumacher v Clark*. These authorities established that applications for removal of executors were to be dealt with pragmatically, that exercise of the power of the court was not dependent upon making adverse findings of fact, that consequently oral evidence, cross examination, and lengthy hearings were not usually required.

10. The case management orders in this case do not explicitly deal with the point. It is not clear to me whether the parties directed the District Judge to these relevant authorities when considering case management. Mr Reed has acted for Julian throughout, and he does not positively say that these authorities were cited, but confidently says that the intention of the court was to resolve all the factual issues raised by the pleadings, rather than merely determine whether the Defendants should be granted the relief sought in their counterclaim, namely replacement of Julian as executor/trustee and relief ancillary to that replacement. For the avoidance of doubt, I accept Mr Reed's explanation.

11. Nevertheless, in my judgment, to the extent (if at all) that the counterclaim has proceeded, and directions have been made to determine all of the factual issues complained of in the pleadings, in addition to determining whether the Defendants should be granted the relief sought by the counterclaim (namely replacement of Julian as executor/trustee), that is an error. The counterclaim is a claim solely for the replacement of Julian as executor/trustee and relief ancillary to that replacement. The counterclaim does not seek the resolution of disputes in relation to the substance of the administration of the estates/trust. The counterclaim is not, and does not purport to be, a claim brought under CPR part 64 for the resolution of issues or questions arising in the administration of the estate. The counterclaim should have proceeded under the procedural and substantive framework set out in Chief Master Marsh's line of authority. Applying that authority, there is nothing which takes this particular case outside the general run of cases, and in my judgment it ought to be resolved at a relatively short hearing without oral evidence and without making adverse factual finding, but merely deciding whether

or not Julian is to be replaced.

12. In that event, Mr Reed submitted that as matters had progressed this far, and even if they had progressed in this manner under some misapprehension, it was nevertheless pragmatic and in accordance with the overriding objective to see everything in dispute resolved at the proposed 4-day trial. Mr Reed submitted that upon the resolution of the issues at trial the administration of the estate could be shortly completed, and that this was preferrable to continuing with this hearing which might result in either the continuation of Julian's custodianship without resolution of any issues, or the replacement of Julian with the consequence that the estate would be burdened and reduced by the significant fees charged by the proposed replacement trust corporation. Mr Reed submitted that although the administration of the estates had progressed to the position whereby only the flat at Courtfield Road remained to be sold, and a final account and distribution settled, it would be a significant exercise for any replacement executor/trustee to read into the long and complex history of his client's administration, address the complaints levelled by the other side, and would therefore be disproportionate.

13. In my judgment that is not the correct way forward. Proceeding to a 4-day hearing on everything and anything disclosed by the pleadings and/or evidence is not in accordance with the overriding objective of the CPR. In the context of the lengthy administration of these two estates, it would be litigation over a moveable feast and might easily descend (without additional and exacting case management) into an intractable line by line enquiry into the interim accounts and any provisional final account. Further, as the evidence produced for this hearing demonstrates, it is likely to be a forum for the parties to merely ventilate their dislike of each other. It would certainly be expensive for the parties. It would be contrary to Chief Master Marsh's well-established line of authority. This course might nevertheless result in the appointment of an expensive trust corporation notwithstanding the proposed 4-day trial. No 4-day trial has been listed, and it may be several months before there is judicial availability. Applying the overriding objective, in my judgment it is in the best interests of the parties and the beneficiaries of the estates to grasp the nettle and determine the counterclaim today on the basis of written evidence and in accordance with authority.

The legal framework

14. The legal framework is not contentious and is taken from Chief Master Marsh's line of authorities. In summary:

    (1) The core guide is the welfare of the beneficiaries, and the discretion is to be exercised in a pragmatic way.

    (2) The court must consider first whether the circumstances are such that the discretion is engaged, second whether an order should be made, and third what

order should be made.

(3) It is unnecessary for the court to find wrongdoing or fault or a lack of good faith. The guiding principle is whether the administration of the estate is being carried out properly. Put another way, is it in best interests of the beneficiaries to replace the personal representative?

(4) If there is wrongdoing or fault and it is material such as to endanger the estate the court is likely to exercise its power to replace. However, if the criticism is minor and will not affect the administration of the estate it may not be necessary to exercise the power to replace.

(5) The wishes of the testator expressed in the will concerning the identity of the personal representatives is a factor to take into account.

(6) The wishes of the beneficiaries may also be relevant, but the beneficiaries as whole or some of them have no right to demand replacement and the court has to make a balanced judgment between competing points of view as to what is in the interests of the beneficiaries as a whole.

(7) In the absence of material wrongdoing or fault, the court must consider whether it has become impossible or difficult for the personal representatives to complete the administration of the estate or trusts. The court must review what has been done and what remains to be done. A breakdown in the relationship between some or all of the beneficiaries and the personal representatives will not without more justify their replacement. If, however, the breakdown of relations makes the task of the personal representatives difficult or impossible, replacement may be the only option. Friction or hostility between the trustees and beneficiaries is not of itself a reason for removal, but where that hostility is grounded on the mode in which the trust or estate is being administered, it is relevant.

(8) Where the personal representative is or may be in a position of conflict because of intimated claims against him which need to be investigated, this is relevant. Conflict does not have to be established to merit removal; an outward appearance of potential for conflict can result in removal.

(9) The additional cost of replacing some or all of the personal representatives in favour of professionals is a material consideration. The size of the estate and the scope of the work which will be needed will have to be considered.

(10) It is rarely necessary for an application to result in a trial because it is usually unnecessary to make findings in respect of issues of fact. In fact, in circumstances where the application may be the precursor to a *devastavit* claim or similar, it is important for the court not to make findings of fact. The approach of the court is whether there appears on the evidence available (or likely to be obtained at proportionate cost) the basis for a claim which has reasonable prospects of success,

subject to consideration of available defences. Such a claim must enhance the value of the estate relative to the costs of pursuing it. The evidence need not be determinative, but must not be speculative or contingent. A single borderline complaint might not merit investigation, but a number of complaints viewed as a whole may justify replacement and investigation.

(11) It is not open to the parties to demand a trial or require a certain number of days for trial. It is for the court to control. It is exceptional for applications under section 50 or under the inherent jurisdiction to require a full trial. The use of the part 7 procedure, if even appropriate, does not inevitably lead to a trial with cross examination of witnesses.

15. The principles relating to the removal and replacement of trustees under section 41 of the Trustee Act 1925, or the inherent jurisdiction of the court are similar (*London & Capital Finance plc v Global Security Trustees Limited* [2019] EWHC 3339 (Ch D) and do not need to be separately stated.

Consideration

16. The Defendant's allegations in summary are that:

(1) By reference to his acts and language, Julian's temperament is fundamentally unsuited to satisfying his fiduciary obligations to his siblings, particularly Nick. The Defendants refer to various pieces of correspondence and to Julian's alleged actions in relation to dealings with Alexander's MG car.

(2) That Julian has a conflict of interest in relation to his dealings with Seathrift concerning his intention to pay himself from the estate for caring and maintaining the property and his use of the property as his residence.

(3) There is a dispute between Julian on the one part and Leessa and Nick on the other part that each has taken their parents' chattels.

(4) Julian has treated Nick less favourably than himself and other beneficiaries. No distribution has been made to Nick because there is a dispute as to whether Nick should pay or account to the estate for sums advanced by Alexander for school fees. However, Julian has made distributions to himself notwithstanding that he accepts that there is a triable issue concerning a debt alleged to be owed by Julian to the estate. Similarly, Julian has made a distribution to Vanessa notwithstanding that at the time she had some significant indebtedness to the estate arising from her occupation of Courtfield Road since Alexander's death in 2013.

(5) Julian has not sought possession of Courtfield Road from Vanessa, and intends to purchase it himself, or purchase it jointly with Vanessa and others, or at the very least assist Vanessa to purchase it from the estate, and consequently has an interest

which conflicts with the estate's interest.

(6) That Julian has obstructed the administration of Nigel's estate.

17. The Claimant's position in summary is that the administration of the estates has been complex, difficult work, which has maximised the value of the assets in the estate. For instance, the development plot at Seathrift was valued for probate at £100,000, but sold for £1.3m with planning permission obtained by Julian. Seathrift has recently sold for £1m having been carefully maintained by Julian for many years. Other investments have significantly increased in value over the course of the administration. Only the flat at Courtfield Road remains to be realised, and it is now illogical to substitute him as executor/trustee at disproportionate expense. Julian points out that Jean and Alexander chose him as executor knowing the family dynamics and the personality of his siblings. Julian denies the allegations levelled at him on a personal level and points to what he has achieved in administering the estate, and compares that to the very modest progress achieved by Nick and Leessa whilst they held letters of administration, and criticises them for delay and withholding their cooperation during his administration. To the extent that he proposes to remunerate himself for taking care of Seathrift he alleges that this was agreed by the beneficiaries and in any event represents much better value than employing a caretaker and/or gardener. To the extent that he has treated Nick differently he says that is justified by reason of Nick's (disputed) indebtedness to Alexander's estate. To the extent that Julian is concerned to preserve Courtfield Road as a home for Vanessa any potential conflict can be overcome by obtaining the beneficiaries' informed consent, and furthermore it is Nick and Leessa who have failed to cooperate in that regard by disclosing their valuation(s) of the property.

18. I do not propose to go through all of the issues raised by the parties and recite all the evidence referred to by the parties' respective counsel. It is not pragmatic to do so, not least because in accordance with authority making findings of fact is unnecessary and may be inappropriate.

19. Having considered everything I have read and been told, I have reached the firm conclusion that Julian should now be substituted as executor and trustee of both the estates and the SJP Trust in favour of a professional trustee. There are a number of reasons, some substantial and some relatively minor, and some factors point away from that conclusion, but in my judgment the aggregate balance falls firmly in favour of the appointment of a professional trustee in order to finalise the administration:

    (1) There is very clearly a significant breakdown in the relationship between Julian on the one part and Nick and Leessa on the other, and between Julian and Nick in particular. It is not necessary to attribute fault or responsibility in coming to that obvious conclusion. The evidence is legion, and this litigation is the very embodiment of personal hostility. By way of example only I refer to: Julian's intemperate correspondence to Irwin Mitchell dated 27 June 2016; his correspondence to Leessa dated 27 February 2017; Leessa's allegations of unpleasant conduct towards her by Julian whilst she stayed at Seathrift in part

corroborated by Peter Williams; Nick's attempted explanation of the root of the difficult relationship between himself and Julian at paragraph 61 of his witness statement which Mr Reed (on instruction) termed "spiteful" in his submissions; the complaints that Julian was essentially treating Seathrift as his second home whilst purporting to charge the estate a caretaker's fee; the intractable correspondence concerning obtaining a grant of representation for Nigel's estate which broke down when Julian demanded that Nick and Leessa cease communication with the jointly instructed solicitors or otherwise accept personal liability for their fees; the saga of the sale of Alexander's vintage MG car by Nick, including an anonymous allegation of fraud against Nick to the local police, the withdrawal of the car from auction by Julian and its re-entry many months later, and the dispute about payment of the MOT bill; the dispute about payment of Alexander's family bond; Julian's perception that Nick deliberately concealed his deed of variation from him and that as Nick has assigned his interest to his children he consequently has a financial problem settling his account with the estates; Julian's perception that Nick and Leessa attempted to hijack the SJP Trust by seeking to appoint themselves as trustees; Julian's allegation of unambiguous impropriety in relation to Leessa and the dispute concerning valuables removed from Seathrift. These illustrations amply make the point, and I do not propose to attempt a comprehensive recital of the evidence of hostile and dysfunctional relations;

(2) Relationship breakdown is not sufficient of itself to justify the replacement of an executor/trustee, but it is relevant where the administration of the estate/trust is compromised. In my judgment, this is a case in which that personal hostility now places significant hurdles in the way of finalising the administration of the estates, and I set out my reasons for that below;

(3) In this case Julian is also the trustee of the SJP Trust, a discretionary trust in which Nick and Leessa are both within the class of discretionary beneficiaries and are also default beneficiaries, and Julian has an unfettered discretion under the terms of the trust which extends to appointing the fund to himself. I cannot very well see how Julian can or at least can *appear* to exercise (or delay exercising) such a broad discretion fairly and without bias when the relationship between the parties is so patently dire. This problem is amplified by:

    (a) The strong implication that Mr George (and his successors Jonathan Lloyd Evans and Martin Johnstone) was merely Julian's nominee, which to my mind has been implicitly accepted in the course of submissions. Mr George was by all accounts Julian's friend and not known to the family. There is no evidence that he has involved himself in any aspect of the administration of the trust, and he has not involved himself in these proceedings at all. Solicitor's correspondence written on behalf of Julian is confidently written on the basis that Mr George will not withhold his agreement to Julian's proposals;

    (b) Julian's perception that Nick concealed the deed of variation and his inference that Nick consequently has a financial problem and needs an advance from the

SJP Trust to discharge a significant indebtedness to the estate (as to which, see below), and Julian's obvious hostility to Nick in that regard;

(c) Julian's position that Nick and Leessa previously attempted to hijack the SJP Trust by an illegitimate deed of appointment in 2016, against a background where it is said that St James' Place advised (albeit incorrectly) that was a legitimate course of action and have agreed to pay compensation to Julian as personal representatives of the estates for giving the wrong advice;

(d) Julian's original position set out in correspondence that the fund was to be split equally between the siblings, which position has changed to one that he is under no obligation to distribute the trust fund and that the trust has a lifetime of 80 years, notwithstanding that the trust fund may be key to settling Nick, Leessa's and Julian's alleged liabilities to the estate;

(e) In sharp contrast to the previous point, Julian's proposals that the SJP Trust be used to help finance Vanessa's retention of Courtfield Road as her home, and Julian's proposed direct or indirect involvement in assisting Vanessa to acquire Courtfield Road as her home;

(f) I also accept Mr Bishop's submissions that as Julian (as executor of Alexander's estate) has exercised the fiduciary power of appointing new trustees to the SJP Trust and has appointed himself as trustee with a special power of appointment (i.e. which he may exercise in his favour), the appointment is in any event voidable at the option of the beneficiaries (see *Lewin on Trusts 20th Ed* para 15-056). Viewing these actions in their totality as a single transaction, the transaction savours of self-dealing. In coming to that conclusion, I am prepared to assume that was not Julian's intention, but it does not change the appearance of self-dealing. The same may have applied if Nick and Leessa as personal representatives of Jean's estate had successfully appointed themselves as trustees of the SJP Trust;

(g) It is noteworthy that Jean and Alexander did not choose Julian as a trustee of the SJP Trust, and they did not create any express power of appointment to be exercised by Julian in their respective wills. They merely appointed Julian as their executor and there is no suggestion that they were aware that Julian would thereby acquire the power to appoint new trustees to the SJP Trust, including himself;

(4) Julian's intention to help preserve Courtfield Road as a home for Vanessa is likely, one way or another, to present a direct or indirect conflict of interest and at the very least the appearance of a potential conflict of interest. If Julian is to acquire an interest in the property or indirectly assist Vanessa to acquire the property, a conflict arises between achieving the best price for the property and his personal interest in acquiring or assisting Vanessa to acquire the property. This issue is compounded by Julian's proposed use of the SJP Trust to assist in the retention of

the property as a home for Vanessa, the obvious risk of an appearance of bias if Nick and Leessa are not similarly benefitted from the trust, and the risk of an appearance of self-dealing if Julian uses his power of appointment under the SJP Trust to directly or indirectly benefit himself whilst delaying any distribution to others. I agree that all of this could be solved by agreement between the beneficiaries (and perhaps in a different family would be solved by agreement), but the personal hostility between the siblings makes this difficult if not impossible. Mediation has been unsuccessful. It is a clear example of personal hostility having a direct impact on the administration of the estate.

(5) Julian similarly has a conflict of interest concerning the determination of the issue as to whether and to what extent Julian is indebted to the estate (if at all). The factual basis of this issue was not explored in submissions, not least because it was properly accepted by Mr Reed that this question is a triable issue. Julian cannot agree this matter with himself, and cannot sue himself in order to resolve this question, and for the reasons given above this litigation is not the forum to resolve this issue. In another estate this issue, in conjunction with others, may have been resolved by agreement, but in this case the personal hostility between the siblings makes this difficult if not impossible.

(6) Julian has a similar difficulty in maintaining a claim against the estate for his occupation and maintenance of Seathrift over many years. This is not a minor claim, but totals some £87,000 on Julian's calculation and on any view goes well beyond payment of his out-of-pocket expenses. There is no charging clause in Alexander's will, and there is a dispute as to whether the basis of Julian's remuneration was agreed by all of the beneficiaries, which dispute cannot be summarily resolved at this hearing. Julian has a conflict of interest in assessing his own claim, and cannot sue himself to resolve the issue. For the reasons given above, this litigation is not the forum to resolve this issue.

(7) Julian's conduct in entering Nick's alleged indebtedness to the estate in the estate accounts, whilst omitting his own alleged indebtedness, and making distributions to himself and Vanessa but withholding distributions to Nick (or his assigns) on account of the disputed indebtedness gives the clear appearance of bias rooted in the personal hostility between them. It is in my judgment a clear difference in treatment of Nick caused by the personal animosity between them.

(8) The simple delay in administration of the estates is worrying. It is said that the administration is complex, but these are not complicated estates, and Jean and Alexander did not have complicated financial affairs. In broad terms they died with some property, savings and investments and no financial problems. The calculation of inheritance tax in a long-running administration is admittedly complex, but this is entirely commonplace. Even if the court were to accept that the administration is complex, it has still been over 14 years since Jean's death and 11 years since Alexander's death, but Seathrift has only recently been sold and Courtfield Road is yet to be realised. The delay may have been mitigated by the increase in the value

over time of the properties and investments, but critically the beneficiaries have not had the use of the full benefit of their entitlement and have endured all the uncertainty inherent in such a lengthy delay. The administration has turned into a family saga that has created a number of issues which have been held in abeyance for several years, but now require determination.

(9) It is correct that Jean and Alexander chose Julian as their executor, and that choice demands respect. However, Julian is not thereby excused from all the usual fiduciary duties or absolved from actual or perceived conflicts of interest, or to be excused the appearance of potential bias.

(10) Following the death of Nigel, Nick (together with his children) and Leessa represent 50% of the constituency of beneficiaries. They are neither a majority nor a minority. As is evident from the correspondence, Julian has accused Vanessa in the past of being a liar and a thief, and Vanessa's antipathy to Julian is apparent from her correspondence e.g. of 6 June 2017. To the extent that Julian and Vanessa may have found some common ground, it appears to relate to Julian's willingness to now find a way to preserve Courtfield Road as a home for Vanessa, with all that entails in terms of a potential conflict of interest for Julian, and an appearance of bias in Julian utilising the SJP Trust to that end.

(11) It is correct that the appointment of professional executors and trustees will create a new and significant layer of expense which will diminish the value of the net estate to the detriment of all beneficiaries. However, the estates are of sufficient value to justify those fees if such an appointment is otherwise in the interests of the beneficiaries. Courtfield Road (value c. £1m) remains to be realised, and thereafter it is a matter of drawing final accounts. That will require, amongst other things, determination of whether and to what extent Julian and/or Nick are indebted to the estate, and determination of Julian's claims against the estate for fees/reimbursement.

(12) For the reasons given, it is in the interests of the beneficiaries as a whole that the final steps of this administration should now be completed by an independent professional trustee.

20. I will therefore make orders removing Julian and any other current trustee of the SJP appointed by him, and appointing the trust corporation, and all necessary ancillary orders.

21. I will ask counsel to agree a minute of order, including the matter of costs. If a hearing has not already been listed, I will have the court office list a hearing. The hearing may be vacated with the consent of the parties if all matters arising can be agreed and a minute of order emailed to me.

District Judge Wales
Bristol Civil Justice Centre

29 October 2024