COLLAS CRILL

Interpreting wills: Construction versus constitution

SEPTEMBER 2015

On 1 September the Royal Court of Jersey issued a rare judgment on a Wills matter relating to the perennial problem of assets situated in Jersey being referred to in the Will of a non-Jersey resident as "my UK estate" (In the Matter of the Estate of Meena Krishnan (deceased) [2015]JRC181). As a matter of law Jersey does not form a part of the United Kingdom and therefore the Testatrix had arguably died intestate as to her Jersey estate. The beneficiary on an intestacy was different to those entitled to benefit under the Will.

In its judgment the Court gave important procedural guidance concerning who should be given an opportunity to participate in an application dealing with the validity of a will and its admission to probate.

The deceased, who had died domiciled in Hong Kong, left a will devising and bequeathing all of her real and personal estate'situate in Hong Kong and the UK'to her niece as to 70% and to her friend, the executrix of the will, as to 30%. The will made no provision for assets situated anywhere else. In fact, on her death the deceased had no assets in the UK at all: she owned bank accounts in the Isle of Man and Jersey, neither of which is in the UK in the strict legal sense.

On an application to admit the will to probate in Jersey, the executrix asked the Royal Court to decide whether or not, in referring to'the UK', the will covered the deceased's assets in Jersey. If the decision were that it did not, there would be an intestacy in relation to the Jersey assets, in which case someone else - the deceased's aunt - would be entitled to the Jersey accounts.

The Court took judicial notice of the fact that many people, being unfamiliar with the constitutional niceties of the UK and its dependencies, mistakenly think that Jersey forms part of the UK. Applying Hong Kong law as to the interpretation and essential validity of wills (given the deceased's Hong Kong domicile on death), the Court received and accepted extrinsic evidence showing that the deceased was herself one of those mistaken people and that she had intended the will's reference to'the UK'to include Jersey. Accordingly, and in similar vein to two previous Jersey cases to which referred, the Court ruled that the will's reference to'the UK'was intended to cover Jersey, meaning that the will covered the Jersey bank accounts and Jersey probate of the will could be issued.

When the application was first brought before the Court, the deceased's aunt (i.e. she who would take on intestacy) had not been contacted. The Court adjourned the application, considering it wrong to make a ruling without giving her an opportunity to argue that the will did not cover the Jersey assets. In the event the aunt confirmed that she did not oppose the application but the Court nevertheless used the opportunity to give the following guidance:

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"It is important that, when presenting a Representation which raises an issue as to whether a will is valid and can be admitted to probate, consideration is given to the question of notification of those who might have an interest in arguing against the validity of the will (such as those inheriting on intestacy or under a previous will) and the Court needs to be specifically alerted to the issue, so that it can give consideration as to whether such parties should be convened or otherwise given the opportunity to participate."

What lessons can be learnt from the case?

The assets situated in Jersey amounted to £100,000. The costs of bringing the application to court are likely to have been at least 10% of that sum. The judgment notes that the lawyers acting for the Executrix had hoped that the matter would be dealt with at a first hearing but the Court was not happy with this approach and therefore additional time was spent and costs incurred in bringing the matter back before the Court on a second occasion. If the Jersey assets had been less than £100,000, then the question would have arisen as to whether or not it was proportionate for the application to have made at all, which, if the beneficiaries could not reach agreement as to the distribution of the Jersey assets, may have led to the Testatrix's wishes remaining unfulfilled.

The benefits of having a stand alone Jersey Will are clear. Legal fees for the preparation of a basic Jersey Will usually range from £400 - £850, subject to the client's requirements. At Collas Crill we offer a professional executor service which allows probate to be granted within a maximum of two weeks' of receipt of a death certificate. Cost effective and efficient.

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