COLLAS CRILL

Royal Court decides that where there's a photocopy of a will, there's a way

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The Guernsey Royal Court has handed down what is considered to be the first recorded judgment in Guernsey relating to the registration of a photocopy rather than an original of a will.

Collas Crill acted for the attorney administrator of the estate, with the decision confirming the position under Guernsey law which, until now, was unclear.

The judgment in *The Estate of Beryl St Clare Le Marquand* (Guernsey Judgment 15/2008) will be of great interest to private client practitioners and those who advise clients in relation to wills and estates. It is also useful for anyone named as an executor or who will otherwise be involved in the administration of the estate of a friend or family member.

Presumption

The steps to be taken to deal with a person's affairs following their death are numerous and sometimes complex.

In Guernsey, if a person leaves real property (eg a house) to another person in their will, the original of that will must be registered in order to afford public notice of the new owner, and to enable heirs to give good notice to a purchaser. Practically this is a very simple step whereby the original will is found, provided to the registering authority and registered.

But what if the original will can't be found?

You may be surprised to hear that in England, if a will was known to have last been in the possession of the deceased but cannot be found, it is presumed that they destroyed it before they died and that they intended to revoke it by doing so.

This is known as the "presumption of revocation" and means there can be serious consequences when a will goes missing, even if it has simply been misplaced. This is because in those circumstances the deceased will be considered to have died intestate (i.e. without a will).

However, the presumption of revocation can be rebutted if there is enough evidence to counter it, but this requires the involvement of the Court.

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Photocopy not enough

With no local authority on the subject the position in Guernsey was not as clear cut as it is in England. For that reason, the Royal Court judgment is welcomed.

The matter concerned an application to register an individual's will of real property. Although a photocopy of the will was found, the original was not. Records showed that the deceased and their spouse had made wills at the same time leaving all of their personal and real property to each other (they had no children). They decided not to keep their wills at their advocates' offices, instead taking them home, no doubt to keep in 'a safe place'.

However, when it came to registering the deceased's will, it could not be found.

Because, under Guernsey law, registration was not possible without the original will, the attorney administrator, represented by Collas Crill, applied to the Court to register the photocopy of the will instead.

If the photocopy will could be registered then the property would pass in accordance with the deceased's wishes as set out in their will. If it was not able to be registered, the deceased's estate would need to be dealt with in accordance with Guernsey's intestacy laws.

Depending on the outcome, different beneficiaries would be set to inherit.

Principles and analysis

The attorney administrator submitted that, in circumstances where the original will could not be found, Guernsey law should follow English (and Jersey) law, i.e. that a presumption arises that the deceased destroyed their will in order to revoke it, but that this could be rebutted with evidence to the contrary.

In a milestone decision, the Court agreed and confirmed that the principles that are applied in England and Wales should also be adopted in Guernsey.

The Jurats were then tasked with applying those principles to the facts of this case.

In this instance evidence was produced to the Court which indicated that, although the will could not now be found, it was in existence at the time of the deceased's death.

This alone was enough to persuade the Court that the presumption of revocation was not in effect: somebody had seen the will after the deceased had died, meaning, naturally, she could not have destroyed it herself.

The Jurats nevertheless went on to consider whether the other information and evidence they had been provided with would be enough to rebut the presumption.

They felt that it did, noting as important the fact that there was no record of the deceased making any other will and factors such as the devoted relationship between the deceased and their spouse (who would inherit

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under the will) enjoyed and the deceased's role with the family finances during their lifetime.

Accordingly, the Court gave its permission for the photocopy of the will to be registered.

Headline points

1. **Certainty**

The legal position in Guernsey regarding lost wills is now much clearer: the presumption of revocation does apply, but can be rebutted with appropriate evidence. This brings Guernsey law into line with England and Jersey in that respect.

2. **Safe Custody**

Know where the original of your will is, and where your partner's will is. It is normal and perfectly acceptable for original wills to be kept at the office of the advocate who drew them up, because they will have specialist storage for this purpose: don't be afraid to use it.

3. **Act now**

Take action now – if you don't know where your will is, take steps now to address the situation. Making a new will may save your estate the burden of a costly and time-consuming court application, saving your family both significant money and hassle at a difficult time.

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