



THE PITFALLS OF THE HOMEMADE WILL: BRITISH UNIVERSITY IN DUBAI V EBRAHIMI

MAY 2021

In order to be valid, a will must be properly executed. In Guernsey, as in England and Wales, this means that the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and each witness either (i) attests and signs the will, or (ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness).

The case of *British University in Dubai v Ebrahimi* [2021] EWHC 757 (Ch) presents the dangers of drafting a will without proper legal advice and the legal drama that may ensue. Professor Robert Whalley died on 4 July 2018, leaving an estate valued at £1.7 million and two purported wills being:

1. the 2018 will which left the estate to Professor Ebrahimi and his wife as to 50% each (**2018 Will**); and
2. the 2012 will which left 90% of the estate to the British University in Dubai (**British University**) and 5% each to Professor Ebrahimi and another academic (**2012 Will**).

In respect of the 2018 Will, probate was granted on 7 February 2019 to Professor Ebrahimi as executor. The claim in *British University in Dubai v Ebrahimi* was brought by the British University against Professor Ebrahimi and the question for the High Court was whether the 2018 Will was validly executed.

The 2018 Will was a holographic one-page will. It was apparently witnessed by two witnesses on 4 May 2018, the day after it was purportedly executed by the testator. There was no formal attestation clause. At the hearing, it was common ground that the witnesses witnessed the testator's signature separately after it had been executed on 4 May 2018. Accordingly, the witnesses did not validly attest the will.

However written on the back of the 2018 Will were the signatures of two different purported witnesses, each dated 3 May 2018. Professor Ebrahimi's case relied upon these attestations and each witness swore an affidavit confirming the same. When giving evidence at the hearing, one of these witnesses was asked if the content of his affidavit was true – he answered "no" and when asked how he would like to correct his affidavit he replied: "There was no meeting on 3 May 2018". Professor Ebrahimi's counsel then took instructions and the defendant withdrew his defence against the claimant's claim that the 2012 Will was valid and the 2018 Will was invalid.

There is no suggestion in the judgment that the 2018 Will was fraudulent but due to the formalities not being adhered to, it was invalid. Ironically, there are also potential issues with 2012 Will due to the manner in which it was witnessed but as it was executed in Dubai,

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this will be a question under Dubai law, to be determined in due course.

The consequences of this are not over for Professor Ebrahimi and the witnesses who lied for him, as the judge referred the case to the Director of Public Prosecutions due to the possible criminal actions committed by them.

This case could have been avoided if Professor Whalley had sought legal advice when drafting the 2018 Will. Getting a lawyer to draft your will may seem expensive when it is possible to do it yourself but there are many pitfalls that are easily avoided with appropriate legal advice.

Particularly in Guernsey, there is often a distinction between wills of personalty (e.g. cash and personal items, among other things) and wills of realty (property). Holographic wills are only valid for wills of personalty and not for wills of realty. Therefore if you own property in Guernsey, it is imperative that you get advice from a Guernsey law firm to ensure that your property passes as intended upon your death.

Please contact Joanne Seal if you would like to discuss any issues relating to wills, probate and estate planning.

You can also learn more about our Wills, Probate & Estate Planning services and team [here](#).

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FOR MORE INFORMATION PLEASE CONTACT:



JOANNE SEAL

Group Partner* // Guernsey

t:+44 (0) 1481 734261 // e:joanne.seal@collascrill.com

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