



Neutral Citation Number: [2020] EWHC 1869 (Ch)

Case No: PT-2018-000741

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST

IN THE ESTATE OF MICHAEL JOHN DE CLARE
STUDDERT deceased (www.michaelstuddert.org)

Rolls Building,
Fetter Lane
London EC4A 1NL

Date: 31/07/2020

Before:

CHIEF MASTER MARSH

Between:

(1) PETER JAMES KING
(2) DANIEL MARTIN VALENTINE
(as Personal Representatives of the Deceased)

Claimants

- and -

(1) JULIAN BEWICK
(2) FERGUS WILLIAM MURISON
(3) DANIEL MARTIN VALENTINE
(4) CHRISTOPHER STAFFORD
(as Trustees of the EAC Educational Trust)

Defendants

Mark Cunningham QC (instructed by Nockolds Solicitors Limited) for the Claimants
The Defendants did not appear (other than the 2nd Defendant attended via Skype on 6
April 2020)

Hearing dates: 4 October 2019, 9 January 2020 and 6 April 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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CHIEF MASTER MARSH

Chief Master Marsh:

1. Michael John De Clare Studdert (“Mr Studdert”) died on 9 August 2017. Mr Studdert was single and had no immediate family. He was a paedophile. He left a will dated 3 February 2016 under which he appointed the partners of Nockolds Solicitors and the second claimant as his executors. A grant of probate was issued to the first and second claimants on 10 January 2018. The terms of the will are clear and do not give rise to any difficulty. They provide for a number of specific and pecuniary legacies to individuals (both in the United Kingdom and abroad) and to church councils. The residuary estate was left to the EAC Educational Trust, which is a registered charity, of which the defendants are the trustees. The trust was created by Mr Studdert on 17 July 1985. Its aims and objectives are to relieve poverty and to advance education for the benefit of the public and particularly amongst the families of clergy of the Church of England, single parent families and other poor families.
2. For the purposes of the grant of probate, Mr Studdert’s estate had a gross value of £4,717,515 and a net value of £4,699,105. It also appears from clause 3.3 of his will that he had some assets in Poland comprising personal chattels and a bank account.
3. Mr Studdert lived at Bunratty, 5 The Wraglings, Bishop’s Stortford, Hertfordshire CM23 5TB. He was born on 28 March 1939 and was therefore aged 78 on his death.
4. The claimants applied by Part 8 claim form issued on 27 September 2017 for directions concerning Mr Studdert’s estate. Their application has been before the court on three occasions, 9 January 2019, 4 October 2019 and 6 April 2020. The defendants have not played any active part in the claim. In the circumstances I shall explain, they have entirely properly left it to the court to give whatever directions it considers appropriate, despite the obvious wish of the trustees to take the benefit of the substantial bequest made by Mr Studdert.
5. The claim raises some difficult issues and the purpose of this judgment is to make public the approach the court has adopted in giving guidance to the claimants concerning the proper disposal of Mr Studdert’s estate. I am grateful to Mr Cunningham QC and his instructing solicitors for their careful and thorough assistance.
6. The claimants made the application to the court because they were rightly concerned that the estate might be subject to claims from survivors of historic abuse and needed guidance from the court about the steps they should take. Over the course of three hearings the court has adopted an iterative approach to providing guidance. The claimants have been directed to undertake enquiries and to consider a number of avenues that might lead to survivors having an opportunity to make a claim. Evidence has been filed with the court and in light of its nature and content I have directed that even though the evidence is referred to in this judgment at a high level, no third party is entitled to obtain copies of the witness statements or expert reports without first making an application to the court on notice to the claimants.
7. The obligation placed upon the claimants is an easy one to state. The editors of Williams Mortimer & Sunnucks 21st ed. put it in this way:

“46-01 Having got in the estate of the deceased, the personal representative must ascertain the debts and liabilities, and arrange for their payment in the due course of administration.”

8. However, section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934 provides that:

“Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate.

Provided that this subsection shall not apply to causes of action for defamation”.

9. The difficulty for the claimants is that although there were indications there might be claims for historic sexual abuse, there was little material with which they could ascertain the identity of survivors. The primary consideration for the court was whether the claimants should take reasonable steps, and if so, what steps to identify creditors of the estate. The protection afforded by section 27 of the Trustee Act 1925 is a secondary consideration. In this case it became clear that although the claimants had placed the statutory form of advertisement in the media, there were two additional points to be considered. First, the prospect of the advertisement being seen, let alone acted on, by victims of historic abuse, were extremely slight. Secondly, the protection afforded by section 27 is, or at least may be, limited. It provides in subsection (2) that the personal representatives “... shall not ... be liable to any person of whose claim the ... personal representatives have not had notice ...” provided they have advertised in the form required by the Act. It is unclear whether they would be treated as having notice of a class of claims which they believe may exist in relation to which the identity of the possible claimants is unknown. Indeed, there remains the possibility that the estate is insolvent.
10. Mr Cunningham QC appeared for the executor of the estate of Jimmy Savile in *National Westminster Bank plc v Lucas and others* [2014] EWHC 653 (Ch). Although that case bears some similarities with this case, there are also important differences. In Savile, a large number of claimants came forward to make claims that they had been abused by Jimmy Savile as a result of a television programme that was broadcast within a year of his death. And by the time the claim came before Sales J in February 2014 139 people had intimated that they had claims against the estate. By contrast, in this claim, to date, despite the passing of nearly three years since Mr Studdert’s death, no claims have been intimated and the claimants are not aware of the identity of any possible claimants.
11. I will set out something of Mr Studdert’s background, summarise the difficulties faced by his executors and then deal with the directions given by the court.

Mr Studdert

12. A summary of one version of Mr Studdert’s life appears on the website www.peerage.com:

“He was educated at Charterhouse School, Godalming, Surrey, England. He was educated at King Alfred's College, Winchester, Hampshire, England. He gained

the rank of 2nd Lieutenant between 1958 and 1960 in the Royal Army Ordnance Corps. He graduated from Trinity College, Cambridge University, Cambridge, Cambridgeshire, England, in 1964 with a Bachelor of Arts (B.A.) He was at Cuddesdon Theological College, Cuddesdon, Oxfordshire, England. He graduated from Trinity College, Cambridge University, Cambridge, Cambridgeshire, England, in 1966 with a Master of Arts (M.A.). He was the Curate between 1966 and 1969 at All Saints and Martyrs, Langley, Manchester, Lancashire, England. He was the Curate between 1969 and 1973 at All Saints, Fleet, Hampshire, England. He was a teacher in 1974 at Guildford Church of England Secondary School, Guildford, Surrey, England.”

13. This summary of his life omits to record that he was a School Chaplain at Eagle House School at Sandhurst, Berkshire between 1977 and 1988. It also does not deal with his later positions in the Church of England and that in 2007 he received a lifetime prohibition from exercising any priestly function within the Church of England.
14. An alternative version of Mr Studdert’s life can be seen from the following summary:
 - (1) In 1988 Mr Studdert was convicted on four counts of possessing indecent images of children and fined £1,000 for each image. These offences occurred while he was a Chaplain at Eagle House School.
 - (2) Following this conviction, Mr Studdert’s licence to minister was suspended and the suspension was never revoked.
 - (3) In 1996 Mr Studdert was convicted of attempting to import indecent images and fined £1000.
 - (4) In mid-March 1993 The Right Reverend Michael Adie, Bishop of Guildford, wrote to Mr Studdert to say that he may not exercise any ministry for the foreseeable future and a minimum of 5 years would have to elapse before any reconsideration would be contemplated.
 - (5) In September 2006 Mr Studdert pleaded guilty to 26 counts of possessing, making and distributing indecent images of children. In December 2006 he was sentenced to a term of imprisonment of 4 years. He was also placed on the Sex Offenders Register for life. Mr Studdert’s co-accused on that occasion was Thomas O’Carroll who was the founder of the Paedophile Information Exchange.
 - (6) In 2007, Mr Studdert was prohibited from exercising any priestly function within the Church of England for the rest of his life.
15. The offences Mr Studdert committed in 2006 were very serious. More than 100,000 indecent images were found at his home including 56,000 images on his computer. 578 images were categorised as being level 5.

The law

16. The starting principle is that the administrators must ascertain and pay the debts of the deceased. The creditors of the deceased and the estate must be paid in priority to the beneficiaries. If the administrators fail to fulfil their obligations they may be personally liable. However, the administrators may provide for outstanding debts by making a retention and may obtain some protection under section 27 of the Trustee Act by advertising. In addition, the administrators may obtain insurance against claims on the estate being made or may obtain security provided by the beneficiaries or an indemnity from them. There are difficulties, however, where there are unascertained creditors. In that instance the only safe course of action is to apply to the court for directions.
17. The law was reviewed exhaustively by Lindsay J in *Re Yorke (deceased)* [1997] 4 All England 907 at 916e - 922j. In that case, the court was particularly concerned with unascertained future liabilities arising because the deceased had been a Lloyds name. This is not on all fours with this case where there may be unascertained creditors who have claims that arise out of past conduct by the deceased. Nevertheless, there are helpful principles that can be drawn from *Re Yorke*:
 - (1) “The courts looked in general at the ‘reasonable probability’ of there being future demands against the estate: *Dean v Allen*. A practical view would be taken.” at 920e
 - (2) “... the court could take a practical view, even against executors who asked for better protection, that no retention or security beyond the personal liability of the beneficiaries was needed and could decree accordingly, thus conferring the immunity which the executors had sought: see *Waller v Barrett and March v Russell*.” at 920h
18. In *Savile*, Sales J referred at [19] to the need for the executors in that case to perform the difficult role of “balancing the interests of all those with claims or potential claims to the funds in its hands.”
19. I draw from these statements of principle that the court will have in mind on an application for directions:
 - (1) The duty placed on administrators to pay the debts and liabilities of the estate is not an absolute one.
 - (2) The administrators only need to be required to take reasonable steps to locate and identify unascertained creditors. This is another way of saying that the court will take a practical view.
 - (3) The steps the administrators will be required to take will vary depending on the circumstances. The nature of the liabilities and the degree of likelihood that they exist are but two factors that are likely to be important.
 - (4) The court will balance the need to pay debts and liabilities with the reasonable expectation on the part of the beneficiaries that they will receive payment.

The hearing on 9 January 2019

20. The nature of this claim is such that the evidence provided to the court is inevitably limited and it has not been tested at a trial. Had the evidence produced at the first hearing amounted merely to a remote concern about the possibility of there being a class of persons who might claim, the court might have reached the view that the balance came down in favour of permitting the claimants to distribute the estate on the footing that any such claims could be disregarded. However, the evidence pointed firmly in the opposite direction. The claimants have not uncovered any evidence that Mr Studdert was ever convicted of assaults on children. However, he had strong connections with Poland where the age of consent is 15. His will provides a number of legacies to person who are described before being named as “my Polish friend” and he had a bank account and chattels in Poland. The reasons for his connection with Poland are not known for certain but the following points in the evidence are of note:
- (1) It seems likely from observations made by Mr Studdert’s cousin to Sarah Browne of Nockolds that Mr Studdert had sexual contact with children under the age of 16 in Poland.
 - (2) On his conviction in 2006 Acting Detective Chief Inspector Neil Thompson said that both Mr Studdert and his co-defendant had travelled extensively over the years particularly to Eastern Europe. He expressed the view that they were a danger to youngsters but likely to be more of a danger to youngsters abroad rather than in this country.
 - (3) In 2015 Mr Studdert applied to the Crown Court at Southwark for a variation to the restrictions placed on him at the time of his conviction. His stated purpose was to enable him to spend time with two Polish families who had children under the age of 16. His Honour Judge Loraine-Smith refused the application and in doing so said: “The evidence before me shows this applicant is capable of being extremely cautious about disguising his interest in children.”
 - (4) The claimants received after Mr Studdert’s death two letters sent to him by the former Radio DJ Chris Denning who is serving a 13 year sentence for sexual offences committed against boys. Mr Denning has a history of sexual offences committed in the Czech Republic and Slovakia.
21. In light of this and other evidence I made a finding on 9 January 2019 that is recorded as a recital to the order, in the following terms:
- “... there is a real prospect that the Deceased may have committed historic sexual assault both within the jurisdiction of England and Wales and outside the said jurisdiction in Eastern Europe and in particular within Poland (“Historic Assault”) and that the Historic Assault may have given rise to personal injury claims against the Deceased and hence his Estate.”
22. Having reached that point, it was necessary to provide the claimants with directions about the steps they should take. They were required to:

- (1) Distribute the small pecuniary legacies.
 - (2) Give notice of the order to the pecuniary legatees, the Police and the Church of England and to invite them to provide further information relating to Historic Assault.
 - (3) Investigate the cost and practical benefit of setting up a website in both the English and Polish languages as a facility to allow potential claimants to contact the claimants.
23. The thinking behind giving approval for the payment of pecuniary legacies was twofold. First, the sums involved were relatively small in relation to the value of the estate. Payment would not make a material difference to the estate's ability to pay victims of Historic Assault. Secondly, the payment to Mr Studdert's 'Polish Friends' might make it easier to obtain information that was helpful to the claimants.
24. It seemed to me that in this case the reasonable steps the claimants should be required to take should be (a) taken in stages and (b) more extensive than might be the case in relation to ordinary claimants against the estate. Having formed the view there was a real likelihood of Historic Assault, potential claimants should be given a real opportunity to come forward. The practical difficulties in the way of the claimants obtaining further information about a class of persons whose identities and indeed existence is unknown cannot be over-stated.

The hearing on 4 October 2019

25. The claimants undertook the enquiries that were directed in the order and the claim came back before me on 4 October 2019. Notice of the order made on 9 January 2019 given to the Police and the Church of England had been met with a guarded response. As is commonly the case, public authorities place reliance upon the Data Protection Act and/or the GDPR without specifying the basis upon which reliance is placed. There seemed every reason to suppose that both the Police and the Church of England would be repositories of relevant data and the order made on 4 October 2019 required both organisations to provide information about Historic Assault unless it would be unlawful for them to do so. Neither took any point about their ability to respond to the court's order.
26. The order also required the claimants to give notice of the order and of Mr Studdert's criminal convictions to the schools at which Mr Studdert had worked with a request to provide any information they held about Historic Assault.
27. The earlier order had directed the claimants to investigate the cost and likely benefit of setting up a dedicated website. The evidence provided to the court on that subject did not warrant the claimants being required to set up such a website without further justification for it. Instead, the claimants were directed to obtain expert advice. After consideration of the options open to the court it seemed that the more beneficial source of expert advice for the claimants was not from a person with direct experience of working with survivors of abuse but rather a lawyer with experience of dealing with claims made (and not made) by survivors.

The hearing on 6 April 2020

28. David Greenwood of Switalskis Solicitors was instructed by the claimant and he has produced a report dated 5 December 2019. Mr Greenwood qualified as a solicitor in 1994 and has had extensive experience of dealing with claims made by the victims of child sexual abuse. He has been an executive member of the Association of Child Abuse Lawyers since 2001. His advice has proved to be invaluable.
29. The information that was obtained as a result of the directions made on 4 October 2019 was very extensive. When the claim came back before the court on 6 April 2020, the evidence that had been obtained was sufficient to warrant the court declaring that it was satisfied Mr Studdert had committed historic sexual assault in England and Wales and outside the jurisdiction of the court in Poland, Denmark and Italy.
30. An order was made directing the claimants not to distribute the net estate until further order. Having regard to the considerations discussed in Mr Greenwood's report it is of course possible that no victims will come forward. However, there needs to be a reasonable opportunity for claims to be made and a bar on distribution altogether is proportionate for the time being. It remains to be seen how long that bar should remain in place. It is always open to the defendants to apply for the bar on distribution to be lifted.
31. The principal additional direction made was that:
 - “3. The Claimants shall take steps to:
 - 3.1 create dedicated web sites in the English, Polish, Danish and Italian languages providing details of: (a) the Deceased's date of death, his criminal convictions and a copy of this Order; and (b) a facility to allow claimants to contact the Claimants' solicitors via the said web site; and
 - 3.2 create entries in the following social media; Twitter, Facebook, and Wikipedia; in the English, Polish, Danish and Italian languages to signpost claimants in respect of Historic Assault towards the website to be created in accordance with paragraph 3.1 above; and
 - 3.3 maintain the web site and social media entries created in accordance with paragraphs 3.1 and 3.2 above, until further order.”
32. Two further discreet issues arose for consideration:
 - (1) The evidence provided by the claimants identified a victim of historic sexual abuse. Mr Greenwood highlighted the need to avoid explicit mention of abuse in communications and he recommended that a note of Mr Studdert's death and an online entry which, if followed, gives redress details might suffice. Communicating with a known victim of abuse places a heavy burden on the claimants and they were given permission to seek further advice on the subject.

(2) Mr Studdert's connections with Poland had led to investigations about historic sexual abuse being undertaken in Poland. The claimants were directed to give notice of this order and of Mr Studdert's criminal convictions to the Polish Embassy in London with an invitation to provide further information about the investigations that were carried out.

33. The website has now been set up:

www.michaelstuddert.org

34. It remains to be seen what emerges from the steps that are taken by the claimants. It is clear, however, that a complete bar on the distribution of the estate should not remain in place indefinitely.

35. The claimants will provide a further report to the court in due course and further consideration will be given to that question in order to provide a proper balance between the execution of the claimants' duties to identify creditors of the estate and their duty to distribute the estate in accordance with the terms of the will. Consideration may be given to setting up a compensation scheme if one is warranted.