



Neutral Citation Number: [2023] EWHC 2212 (Ch)

Case No: PT-2022-000866

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 19/9/2023

Before:

MASTER CLARK

Between:

JONATHAN DORMAN
(as administrator of the estate of William Reece deceased) **Claimant**

- and -

(1) JOHN WILLIAM REECE
(2) SUSAN JANE SCOTT (née REECE)
(3) GAIL ALISON REECE **Defendants**

Michael O’Sullivan (instructed by **Harold Benjamin LLP**) for the **Claimant**
The Defendants in person

Hearing date: 23 August 2023

Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10am on 19 September 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

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Master Clark:

1. This is my judgment on the trial of 3 issues (ordered by my order dated 26 February 2023), set out at paragraph 6 below.

Claim and parties

2. The claim concerns the estate of William Reece (“the deceased”) who died aged 82 on 2 September 2013 leaving a will dated 6 July 2012 (“the will”).
3. The claimant, Jonathan Dorman (“the administrator”), is a solicitor appointed as administrator of the deceased’s estate by a consent order dated 8 August 2019 in an earlier probate claim (PT-2019-000372 – “the probate claim”), which sought to propound the will, and for an order pronouncing against an earlier will dated 2 February 2010 (“the earlier will”). A grant of letters of administration with the will annexed was made to the administrator on 18 March 2021.
4. The defendants, John Reece, Susan Scott, and Gail Reece are siblings, and are the children of the deceased. For the sake of clarity and without intending any disrespect I refer to them by their first names. They each acted in person at the trial.
5. The will gives to John the deceased’s flat at a sheltered housing estate called Cedars Village: 2 Wildwood Court, Marriot Terrace, Chorleywood, Rickmansworth, Hertfordshire WD3 5GG (“the Flat”). The deceased’s residuary estate is divided equally between the three children.
6. The claim was commenced on 17 October 2022 to obtain the court’s determination of a number of issues arising in the administration of the estate. The issues tried at this trial are:
 - (1) whether the John owed a debt of £254,656.86 (“the monies”) to the deceased at the date of his death – the administrator’s position being that he did, and John’s position that he did not;
 - (2) if so, whether he is required to pay any interest on that debt, and at what rate and for what period;
 - (3) whether the John is liable to pay the service charges and other expenses attributable to the Flat (“the Flat expenses”) from the date of the death of the deceased;
 - (4) whether the John is liable to pay the costs of sale of the Flat.

Evidence

7. The administrator was tendered for cross-examination on his witness statement, which exhibits the relevant correspondence, but he has no direct knowledge of the relevant events.

8. All three defendants gave evidence, much of which was either not or only marginally relevant to the issues before the court. John plainly considers that he is morally entitled to the monies; his sisters consider that he is not, and that he wrongly failed to repay them to the deceased. I consider John's evidence in my factual findings below.

Factual findings

9. The relevant events begin in 2006, when the deceased sold his house, and bought the Flat.
10. In 2007, John decided to buy a flat nearer to his father: 14 Ovaltine Court, Ovaltine Drive, Kings Langley WD4 8QZ ("Ovaltine Court"); and to sell his current flat at 14 Broadlawns Court, Harrow Weald ("Broadlawns Court"). As will be seen, he bought Ovaltine Court before he sold Broadlawns Court.
11. Sharp & Co., who were also the deceased's solicitors, acted for John in the purchase and sale. On 26 July 2007, the deceased transferred to them £31,146.83. This sum was used to pay for an extension to the lease of Broadlawns Court.
12. On 10 August 2007, the deceased transferred to Sharp & Co, a further £223,510.05. This sum was used to complete the purchase of Ovaltine Court on about 10 August 2007.
13. The total of the payments made by the deceased for John's benefit was £254,656.86.
14. On 18 September 2007, the sale of Broadlawns Court completed. After the repayment of a mortgage (£29,522.55), the costs of sale and other costs, the net proceeds of sale were £198,783.39. Sharp & Co made an interim payment from them of £195,000 to John's account with Barclays Bank on 18 September 2007. On 4 October 2007, 2 payments by cheque were made from the Barclays account to John's account with Tesco Bank: £99,999 and £92,000, making a total of £191,999.
15. On 2 September 2013 the deceased died. On 4 September 2013 Susan entered a caveat at the Probate Registry; and on 4 April 2017 she issued and served a citation to propound the earlier will, to which John entered an appearance. On 9 May 2019, John commenced the probate claim.
16. Following his appointment on 8 August 2019, the administrator wrote to John's solicitors, B P Collins LLP on 5 November 2019:

"The deceased's bank statement shows a payment on 26 July 2007 of £30,750.00 being received in and the sum of £31,146.83 being paid out to solicitors, Sharp &

Co. On 9 August 2007, the sum of £300,000.00 is received into the deceased's current account and the sum of £223,510.05 is paid to Messrs Sharp & Co. These appear to be monies paid by the deceased for the purchase of your client's home. The Lease of which was completed on the 10 August 2007 and acquired at a price of £250,000.00. The papers indicate that this was made by way of a **bridging loan** until your client sold his home at Broadlawns Court which sold in September 2007 for £229,999.00. I cannot trace the repayment of the **bridging loan** in the bank statements which I have and I should be grateful if your client could provide evidence of the repayment of the loan or acknowledgement that the monies are still outstanding.”
(emphasis added)

17. John’s solicitors’ reply on 6 November 2019 set out his actual reply to them:

“I can remember that I paid £235,000 for this property, and that my last property was sold for £230,000, we did act through my father's solicitors at the time as he had dealt with the same firm for many years, the reason for the move was that I wanted to be in a nearer location since his move to Chorleywood in 2006 and here in Kings Langley is just a 10 minute drive away. The list price on my property was £250,000 however it was a new build and a potential buyer before me had dropped out, they offered me a discount of £15,000 but only for a cash sale. It is my truly my belief that **it was all sorted out at the time and that there were no monies left outstanding.**”
(emphasis added)

18. Importantly, in my judgment, John did not challenge that the arrangement was a bridging loan. Instead, he asserted that the loan had been repaid.

19. On 19 November 2019, the administrator wrote to B P Collins:

“We have been unable so far to verify that your client repaid his father for the bridging loan, can you request such evidence is produced as soon as possible.”

20. On 26 November 2019, the administrator again wrote:

“Your client will need to demonstrate that he has repaid the bridging loan . I look forward to receiving copies of relevant bank statements or other evidence to demonstrate this.”

21. On 26 November 2019, B P Collins forwarded John’s reply to the administrator:

“Regarding the **bridging loan**, I was hoping that the bank statements from Barclays would clear up that matter, unfortunately they do not cover the whole of 2007 transactions, as far as I was concerned **the issue was closed at the time with no monies outstanding**, for sure my father would not have left such a sum in a non-interest account, but at that time he did not disclose to me all of his financial details. I think he had a Barclays Guernsey account, and also an account with Tesco, I do

know by 2013 both those accounts were closed, but they may have been active in 2007, however I have been unable to trace transactions on both of those, it is also possible that there were other bank/investment accounts or even share holdings that I did not know about.”
(emphasis added)

22. B P Collins forwarded a further response from John on 29 November 2019:

“Although I could cover the cost on the purchase of [the new flat] it was dependant on the sale of my flat in Harrow Weald for the full value, for which I did have an offer at the time, and did sell for £230,000 in 2007 Therefore to secure this property my father paid for it **on the understanding that the monies were paid back on the sale of my flat, it was all "done and dusted" in 2007.**”
(emphasis added)

23. Again, importantly, in both responses there was on John’s part a clear acceptance that there had been a bridging loan, and an assertion that it had been repaid.

24. On 11 February 2020, B P Collins wrote:

“REPAYMENT OF BRIDGING LOAN

After a good deal of investigatory work and repeated enquiries made to Barclays, our [client] has been able to obtain from Barclays a copy of a bank statement for his own account showing approximately £195,000 going out of the account on 8 October 2007.”
(emphasis added)

25. Although not expressly stated, it is, in my judgment, clear that this email is stating that £195,000 was paid from John’s account to his father’s account to repay the bridging loan. This was confirmed in an email from B P Collins to the administrator the following day, 12 February:

“John has sent a copy of the attached ledger to you directly but I wanted to email a copy to you also, for expediency.
You will see the ledger shows completion money coming in from the conveyancing solicitors in September 2007 and then two payments going out by cheque in October. I am instructed that **these two payments represented the repayment by John to his father of the bridging loan.** John cannot recall why the payment was made by way of two separate cheques - his guess is that the payments were made to two separate accounts belonging to his father and that one of the accounts may have had a limit set?”
(emphasis added)

26. On 28 April 2020, there was a radical change in John’s position, set out in B P Collins’ email of that date:

“I write further to your emails last month regarding the repayment of the "bridging loan". Our client has obtained some further statements from his bank and we are instructed to provide a further explanation. In summary, the cheques in the sum of £92,000 and £99,000 raised against our client's Barclays bank account (and honoured on or around 8 October 2007) were presented for payment into our client's Tesco account at a branch in Rickmansworth on or around 4 October 2007. The situation regarding the money provided by John's father ("William") is less straightforward than set out in our previous emails to you and we apologise for any confusion. It has not been our intention to mislead you.”

27. The email then sets what is called a more detailed explanation, the gist of which is that the deceased agreed to help John buy the new flat, and John retained the net proceeds of sale of the old flat. Even this was not the whole story, because, as seen, the deceased provided the £30,000 used to buy the extension of the lease of Broadlawns Court. There was said to be an arrangement “to enable John to continue the care of his father and to compensate John for the loss of his savings” over the previous 5 years. John’s recollection is said to be that the deceased, himself, took possession of the two cheques and paid them into John’s Tesco bank account. The email continues:

“John accepts that he has confused matters by categorizing the above arrangement as the repayment of a loan rather than giving full details at the outset and disclosing the arrangement and seeking your input as to whether to categorise the receipt of funds from William as a loan or a gift. He says that, at the time, he did not at any time consider it to be a "gift" and that he felt the payment was consideration for his help, which would have continued for years to come had William survived. He describes the above circumstances as "a personal arrangement built on mutual trust guaranteeing [John's] continuing ability to care for [William]".

28. On 4 May 2020, John’s solicitor forwarded an email from him setting out his position:

“I still think the "bridging loan" concept has been misunderstood, there was no expectation from my father to repay in cash, there was however an expectation that I continue to care for him for the and I feel that I fully filled that obligation to him, there is no way I could have done so otherwise, there would have been absolutely no point for me moving to a different flat to create a financial debt that I could never repay, had I been able to work obviously that would be a different set of circumstances, but as you appreciate I had by 2007 already been a full time carer for my father for 5 years, and he expected me to continue for the foreseeable future, with no recourse to public funds or help in any way, not even any concessions such as council tax or expenses and having lost virtually all of my savings and effectively my career as a Purchasing Manager too.

...

I truly do not believe that there was any concept or belief by my father to lend me money payable in cash to his estate after he had died,”

29. In his oral evidence, John was inconsistent and sometimes confused. He said that the proceeds of sale of Broadlawns Court had gone back to Sharp & Co, who were his

father's solicitors. However, he is shown as the client on the completion statement; and, more importantly, the CHAPS payment instruction form shows £195,000 leaving Sharp & Co's account to John's Barclays account. John then said that the deceased had paid the cheques from his Barclays account to his Tesco account. He accepted, however, that the deceased was not on the mandate for his Barclays account, and could not give any coherent explanation as to how the deceased could have drawn cheques on his (John's) account, or why he would have done so.

30. The fundamental difficulty with John's evidence was that it was that it was completely inconsistent with his position set out in the initial email exchanges between the administrator and John's solicitor (on his instructions). Although John referred to and relied upon the fact that he was not legally trained, first, a bridging loan is not a legally complex concept; and, secondly, John was legally represented in these exchanges. It was only when confronted with the irrefutable evidence that the payments had not gone to the deceased, but to John himself, that his story changed.
31. I therefore reject John's evidence that the deceased agreed he could retain the monies or paid them back to John at any point. I find that the arrangement was a bridging loan by which John agreed to pay the deceased the monies when he had completed the sale of Broadlawns Court; and that he did not do so.

Interest

32. Section 35A of the Senior Courts Act 1981 gives the court a discretionary power to award interest. In my judgment it would be appropriate to award interest to compensate the estate for its inability to invest the monies. The administrator's counsel provided a schedule of the Bank of England's base rate over the relevant period, and submitted that on a broad brush basis, a rate of 3% simple interest would be appropriate. This was not opposed by John, and I award interest at that rate, commencing from the date of completion of the sale of Broadlawns Court.

Expenses related to the Flat

33. As noted above, the Flat (and its contents) were given to John under the will. The general rule is that a specific devisee is entitled to the benefit of property from death, but is also liable for any expenses in relation to the property: see *Re Rooke* [1933] Ch 970: *Snell's Equity* (34th edn) at para 35-034. The administrator submitted therefore that the Flat expenses should be paid out of its proceeds of sale.
34. In this case, the primary Flat expenses are the service charges (and interest on them) payable in respect of the Flat, which are considerable: as at 14 October 2022, they totalled £51,802.63.

35. As noted above, Susan (with Gail's agreement) entered a caveat on the day after the deceased's death; and this continued in place until the administrator was appointed on 8 August 2019. The administrator did not obtain a grant of probate until 16 March 2021, for reasons that are not explained in the evidence.
36. In his witness statement in support of the claim, the administrator alleged that he had been unable to sell the Flat because John had not cleared it of its contents. This is disputed by John, and he was not cross-examined on this issue. At the directions hearing on 28 February 2023, on the administrator's application, I granted him permission to sell the Flat. By the date of the trial he had not done so, and there was no evidence as to why not.
37. John submitted that the Flat expenses should be born by the estate, because he had been unable to sell the Flat as a result of the caveat entered by Susan; and then because of the appointment of the administrator. As to the effect of the caveat, it was nonetheless open to John to apply for a limited grant to enable him to sell the Flat, and/or to bring the probate claim earlier. The fact that he was in person and did not seek legal advice does not alter this conclusion. It would only be right to direct that the Flat expenses should fall on his sister's share of the residuary estate if:
- (1) John had a claim against them in respect of the caveat having been entered, which could be set off against their entitlement to the residuary estate – John did not put forward any legal basis for such a claim;
 - (2) the other assets in the estate were insufficient to pay the estate liabilities, including the costs and expenses of the administration, so that the specific devise of the Flat failed because its proceeds of sale were required to meet the estate liabilities – on the accounts in evidence before me that it is not the case, particularly since John is required to repay the monies to the estate.
38. As to any delay by the administrator in selling the Flat, that would be, if established, a breach of his duty as personal representative, giving rise to a claim against him in *devastavit*. Such a claim is not within the scope of these proceedings. In any event, it would not justify sharing the burden of the Flat expenses between the residuary beneficiaries.

Costs of sale of the flat

39. As to these, the principle in *Re Rooke* also applies, unless again the specific devise fails because the other estate assets are insufficient to meet its liabilities.