

Neutral Citation Number: [2024] EWHC 2761 (Ch)

Case No: PT-2022-BHM-000042

IN THE HIGH COURT OF JUSTICE
PROPERTY, TRUST & PROBATE LIST (ChD)
IN THE MATTER OF THE ESTATE OF JESSE FRODSHAM

33 Bull Street
Birmingham
West Midlands, B4 6DS

Wednesday, 4 September 2024

BEFORE:

HIS HONOUR JUDGE RICHARD WILLIAMS sitting as a Judge of the High Court

BETWEEN:

-
- (1) MRS MARY MAY
 - (2) MR EDMUND WILLIAM KNOWLES
 - (3) MR ARTHUR KNOWLES
 - (4) MR JOHN KNOWLES
 - (5) MRS SANDRA ELIZABETH MAKIN
 - (6) MRS ELIZABETH MOLYNEUX

Claimants

- and -

- (1) MR TIMOTHY STUART MIDDLEMAS
- (2) MR JEFFREY KNOWLES

Defendants

ANGUS BURDEN appeared on behalf of the Claimants
The First Defendant appeared in person for the handing down of this judgment on the 2nd day of the trial, but he did not attend and was not represented on the 1st day of the trial
The Second Defendant was not in attendance and was not represented

Hearing dates: 3rd and 4th September 2024

JUDGMENT
(Approved Transcript)

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JUDGE RICHARD WILLIAMS:

Introduction and background

1. This is my oral judgment following the trial of a probate claim to determine the validity of a will dated 2 January 2020 (“*the Disputed Will*”) purportedly made by Mr Jesse Frodsham (“*the Deceased*”), who died on 3 February 2020 at aged 73.
2. The originally named six claimants and the second defendant are the cousins of the Deceased and would be entitled to his estate on an intestacy. Sadly, during the course of these proceedings, the sixth claimant, Mrs Elizabeth Molyneux, has herself died. Therefore, at the start of the trial, I made an order substituting Mrs Pauline Hill as the sixth claimant as the personal representative of the late Mrs Molyneux.
3. The first defendant, Mr Timothy Stuart Middlemas, is named sole beneficiary of the Deceased’s estate under the Disputed Will. The estate comprises three residential properties in London. As at 27 July 2023, the distributable estate net of inheritance tax was £931,525.
4. The present proceedings were commenced on 14 April 2022.
5. By way of further background, I refer to and adopt the essential chronology filed on behalf of the claimants.¹
6. It is the claimants' primary case that the Disputed Will is invalid, since it does not comply with the requirements under section 9 of the Wills Act 1837. In particular, the claimants allege that the signature on the Disputed Will is not that of the Deceased, but rather a forgery concocted by Mr Middlemas.
7. Initially, Mr Middlemas defended the proceedings but, by order dated 28 March 2024, Mr Middlemas's defence was struck out as a result of his failure to comply with earlier court orders to serve witness statements explaining the precise circumstances surrounding the preparation and execution of the Disputed Will. It was further directed that the trial proceed on an undefended basis.

¹ A copy of the chronology is attached to this transcript.

8. At the adjourned pre-trial review hearing on 12 August 2024, and for the reasons then given, I dismissed the application made by Mr Middlemas for relief from sanctions to allow for his defence to be reinstated.

Standard of proof

9. An allegation of forgery is a very serious allegation. It is in essence an allegation of dishonesty; however, this is not a criminal trial where the standard of proof is beyond reasonable doubt, such that I must be sure. Rather, I must apply the lower civil standard of proof being the balance of probabilities, in other words more likely than not.
10. I consider that the correct position in relation to the civil standard of proof applicable in this case is that, whilst it is right to consider the inherent probability of an allegation in light of the particular circumstances of the case in determining whether it has been proved on the balance of probabilities, there is no legal requirement that the more serious the allegation, the more cogent the evidence needed to prove it. The civil standard of proof does not vary with the gravity of the alleged misconduct. As Males LJ said in *Bank St Petersburg PJSC and another v Arkhangelsky* [2020] EWCA Civ 408:

"[117.] In general, it is legitimate and conventional, and a fair starting point, that fraud and dishonesty are inherently improbable, such that cogent evidence is required for their proof. But that is because, other things being equal, people do not usually act dishonestly, and it can be no more than a starting point. Ultimately, the only question is whether it has been proved that the occurrence of the fact in issue, in this case, dishonesty....., was more probable than not."

11. Direct evidence of fraud is relatively rare and is often a matter of inference from circumstantial evidence, although the court should generally take great care when assessing whether or not inferences can properly be drawn in any particular circumstances. The essence of a successful case of circumstantial evidence is that the

whole is stronger than the individual parts. The court should necessarily avoid a piecemeal consideration of circumstantial evidence.

The evidence

12. In preparation of this judgment, I read the report of Ellen Radley, Forensic Document Examiner, dated 23 May 2024, which was obtained on the instructions of the claimants' solicitors. Prior to his defence being struck out, Mr Middlemas was also given permission to rely upon his own expert evidence, but none has been served in response to that of Ms Radley.

13. I also read and heard evidence from:
 - a. the first claimant, Mrs Mary May;

 - b. the second claimant, Mr Edmund William Knowles;

 - c. the third claimant, Mr Arthur Knowles;

 - d. the first claimant's husband, Mr Robert May;

 - e. the Deceased's long-time neighbour, Mr Charles Howard; and

 - f. Mr David Charles Uden, who is the nephew of the Deceased's late partner, Mr Neil Churchman, who died on 28 April 2020.

I found all these witnesses of fact to be honest witnesses, doing their best to assist the court.

14. Finally, I read and heard submissions by counsel for the claimants. I am unable in the course of this judgment to refer to all of the evidence and arguments relied upon, but I have taken it all into account in reaching my decision.

Analysis

15. Whilst the claim is no longer defended, the court has a supervisory role to play in relation to wills.
16. It was argued on behalf of the claimants that the substantive content of the Disputed Will does not make sense for the following reasons:
 - a. Firstly, at the time the Disputed Will was made the Deceased was, and had been since about 2005, living in the flat with his partner, Mr Churchman. It is hard to believe that the Deceased would not have wanted to make some provision for his long-term partner, who was then frail and dependent upon the Deceased for housing. It makes even less sense that Mr Churchman purportedly was asked to witness the Disputed Will.
 - b. Secondly, as explained in the claimants' witness statements, although the Deceased was brought up in St Helens, before moving to London in his late teens, he remained in contact and on good terms with his family.
 - c. Thirdly, it is very surprising that bearing in mind the size of the estate, the Deceased would have wanted to leave everything to Mr Middlemas, who he had known for some four years, to the total exclusion of Mr Churchman and the Deceased's own family.
17. However, I consider that there are number of countervailing factors which I need to weigh in the balance:
 - a. Firstly, following the death of his previous partner in 2003, the Deceased developed an alcohol problem, after which time he stopped visiting his family in St Helens. Whilst he kept in touch with his family by telephone and text messages, by the time of the Disputed Will the Deceased had not seen his family for many years.
 - b. Secondly, it is clear from the medical records that the relationship between the Deceased and Mr Churchman was volatile and safeguarding concerns had been raised that Mr Churchman was in an abusive relationship.

- c. Thirdly, Mr Howard described Mr Middlemas as having become a frequent visitor to the Deceased's flat.
18. That all said, in exercising my supervisory role, I am satisfied on the whole of the remaining evidence before me that the Disputed Will is not valid, but concocted. In particular, the signature on the Disputed Will is not that of the Deceased. I make that finding for the following primary reasons.

The expert evidence

19. As evidenced by the CV exhibited to the report, Ms Radley is a highly qualified, experienced and internationally renowned in forensic document examination, including signature authentication, handwriting identification, identification of thermochromic inks, document manipulations and font identification. The main body of Ms Radley's report extends to 24 pages and is a very detailed analysis of the 38 documents before her, including the original Disputed Will.
20. Ms Radley concludes that it is more likely that the Deceased, and indeed Mr Churchman, did not write the signatures in their names on the Disputed Will. She noted a number and variety of significant differences between the questioned signatures and the known signatures of the Deceased and Mr Churchman, both in respect of constructional features and the mode of execution.
21. Quite properly, Ms Radley adopted a very cautious approach to the examination of the signatures and recognised that there were no known signatures provided for examination which were strictly contemporaneous with the date of the Disputed Will, which thereby restricted the examination since signatures can change, develop or deteriorate over time, particularly if an individual is in ill-health, which both the Deceased and Mr Churchman were.
22. However, Ms Radley's evidence goes much further than simply a comparison of signatures. In particular, Ms Radley observed as follows:

"All signatures and handwriting appearing on the Will have been appended in black *non ballpoint* pen ink. However, on the reserve of page 1, there is, what appears to be black *ballpoint* pen ink, which appears on the embossed lines of the signatures appended to the front of the page. Due to technical features observed, this appears to be the result of offsetting i.e. a transference of ink caused by the paper of page 1 resting on writings in wet ballpoint pen ink, on an underlying page, at the time when the signatures on page 1 were written. In this process, the writing action of the signatures pushes the reverse side of the paper into contact with the wet ballpoint pen writing beneath, allowing a transfer of ink onto the reverse of the paper.

Due to the nature of the apparent offsetting, with the respect to the signatures in the names of Jason Frodsham and Neil Churchman on the Will, I consider that this could be due to the signatures being tracings of signatures in each of their names, which were made in ballpoint pen ink on an underlying page."

23. In addition, the Disputed Will comprises two pages. On the first page are the operative provisions and the purported signatures of the Deceased and Mr Churchman, as witness, together with the signature of Mr Middlemas as the other witness. Mr Middlemas's signature would have invalidated the Disputed Will, since legally the moment a beneficiary (here the sole beneficiary) signs as a witness, they will no longer be a beneficiary. However, the second page of the Disputed Will contains the saving signatures of two further purported witnesses. Ms Radley is of the opinion that her findings are consistent with pages 1 and 2 of the Disputed Wills being created separately and not created as a single document at a single point in time. Those findings include:
- a. the paper used on page 2 is different from page 1;
 - b. the printer ink has adhered in a different way, inconsistent with both pages being created in a single print run;

- c. there are horizontal folds on page 1, absent from page 2; and
- d. the typed content and formatting of the Disputed Will are substantially different between the two pages.

The timings of the production of the Disputed Will

- 24. Mr Howard, a Chartered Surveyor, was a reluctant but impressive witness. He gave his evidence in a careful and measured way. He was a detached and objective observer, who had no financial interest in the outcome of these proceedings, or any loyalty to any of the parties. He knew the Deceased and Mr Churchman for many years, speaking and/or texting both on a regular basis.
- 25. It is not disputed that the flat was also occupied by a tenant, Mr Jason Purll, who shared a common lounge area with the Deceased and Mr Churchman. Mr Churchman collapsed at home on about 12 January 2020 and was admitted to hospital. He was still in hospital when the Deceased died. Mr Purll continued to live at the flat after the Deceased's death.
- 26. To his great credit, Mr Howard was concerned for Mr Churchman and what would happen to him and his home, if and when Mr Churchman was discharged from hospital. It was Mr Howard's evidence that, on making enquiries, he was told by Mr Middlemas and Mr Purll, who specifically said he had looked through the Deceased's papers, that the Deceased had not left a will.
- 27. I accept and attach significant weight to Mr Howard's evidence generally, but in this regard, his evidence is also corroborated by the evidence of Mr Arthur Knowles, who on learning of the Deceased's death, telephoned Mr Purll and was told that, despite searching the flat from top to bottom, Mr Purll had been unable to locate the Deceased's next of kin. No mention was made of the Disputed Will, and indeed arrangements were then made for Mrs May and her husband as next of kin to attend the flat to collect the Deceased's papers on the understanding that the Deceased had died intestate.

28. Mrs May and her husband gave evidence that they attended the flat on 3 May 2020, when Mr Purll (in the presence of Mr Middlemas) announced that there had been a development, and the Disputed Will had now been found.
29. Mrs May took a photograph of the Disputed Will, which at that time (entirely consistent with Ms Radley's expert evidence) only comprised the first page and no mention was even made of the second page, which was not disclosed to the claimants' solicitors until 11 August 2020.
30. In my judgment, the circumstances surrounding the production of the Disputed Will are simply incredible, and therefore it is inherently unlikely that the Disputed Will is genuine. In summary:
 - a. page 1 was not disclosed until some three months after the Deceased had died, and despite the fact that Mr Middlemas (who said he signed the Disputed Will) and Mr Purll (who said he searched the flat for a will) both told Mr Howard immediately after the Deceased's death that there was no will. Indeed, Mr Howard became so suspicious upon subsequently hearing of the production of the Disputed Will that he made contact with the Deceased's accountant, Mr Ali Osman, to obtain details of the Deceased's family.
 - b. page 2 of the Disputed Will was not disclosed for a further three months after the time Mrs May and her husband had attended the flat to collect the Deceased's papers.
 - c. As is evident from the video of the flat, it is relatively small and if the Disputed Will was genuine, it would have been found in its entirety shortly after the Deceased's death, particularly as Mr Middlemas would have known of its existence having allegedly witnessed it.

The nature and content of the Disputed Will

31. The Deceased bought, sold and rented properties. He routinely instructed professionals including both solicitors and accountants. For example, it was the evidence of

Mr Howard that when he and another tenant in the building wished to extend their leases, the Deceased put them in contact with his solicitors, Anthony Holden Crofts & Co. Exhibited to Mrs May's witness statement is a copy letter dated 23 May 2019, which she found in the Deceased's papers. The letter is from Anthony Holden Crofts & Co addressed to the Deceased attaching further copies of his passport as requested.

32. It makes no sense that the Deceased would have attempted to prepare his own amateurish will in such circumstances. Whilst latterly, the relationship between the Deceased and Mr Churchman may have been volatile and chaotic, the video and photographic evidence of the flat where they lived together shows that, even towards the end of their lives, they were a sophisticated and tidy couple.
33. Indeed, it was the evidence of Mrs May that, after visiting the flat on 3 May 2020, she spoke to the Deceased's agent, Mr Sangha, who said that the Deceased had told him a week before he died that he would be making a will once he had completed the proposed purchase of another property.
34. Further, it was Mr Howard's evidence that, at the time of his death, the Deceased was not even in touch with Mr Middlemas following a falling out, in 2019, over a Mercedes motor vehicle that the Deceased had purchased for Mr Middlemas to use. Mr Middlemas only reappeared on the scene after the Deceased had died. Mr Howard's evidence in this regard is corroborated by the fact that Mr Middlemas's then solicitors', in a letter dated 3 November 2020, stated on behalf of Mr Middlemas that he was no longer in possession of the Mercedes motor vehicle, but rather it was in the possession of a handyman known as Undeem. The car had not been returned to Mr Middlemas, who had been advised to report the matter to the police.
35. Finally, it was the evidence of Mr Uden that Mr Churchman was very intelligent and multilingual, travelling extensively overseas as part of his job, which makes it even more remarkable that Mr Churchman purportedly signed the Disputed Will above the misspelling of his printed first name, being 'NIEL' rather than 'NEIL'.

The conduct of Mr Middlemas

36. As already noted Mr Middlemas, in breach of several court orders, failed to provide witness evidence explaining the precise circumstances surrounding the preparation and execution of the Disputed Will. I draw an adverse inference from that failure to provide clearly relevant evidence; the adverse inference being that Mr Middlemas was unable to evidence a coherent, consistent and credible explanation.
37. Further, the contemporary documents confirm that Mr Middlemas procured the transfer of £26,888.63 to himself from Mr Churchman's Santander account by falsely claiming in an online bereavement form that he was entitled to receive the money as the partner of Mr Churchman. That was a lie, and Mr Middlemas was never entitled to receive that money also.

Conclusion

38. In conclusion, and for all those reasons, I find to the civil standard of proof that the Disputed Will is not genuine and, in particular, was not signed by the Deceased. I pronounce against the Disputed Will and direct that a grant of letters of administration be issued on the grounds of an intestacy.

ESSENTIAL CHRONOLOGY

DATE	EVENT
27.3.1938	Neil born
10.2.1946	Jesse born
Early 1970s	Jesse moves to London and meets Hugh Stanton
c. 1999	Jesse living at 11 Anhalt Road
c. 2003	Hugh died
c. 2005	Neil and Jesse become partners

2011	Charles Howard moved into neighbouring flat
2016	Jesse introduced to Mr. Middlemas
25.5.2019	Jason Purll rents room in Anhalt Road
September 2019	Jesse has several appointments/admissions to hospital for difficulty swallowing- unable to swallow solids. Surgery recommended.
September 2019	Last time Billy spoke to Jesse. Discussed his Mercedes car which was too big for him
November 2019	Last time Mary spoke to Jesse
Early December 2019	Operation to correct swallowing – operation successful
December 2019	Billy suffers a stroke
End of December 2019	Jesse texts Billy to wish him Happy New Year- Billy unable to reply due to being in hospital
2.1.2020	Date of Disputed Will
Mid Jan 2020	Billy discharged from hospital. Texts Jesse but no reply
12.1.2020	Neil admitted to hospital following a stroke- fell and was unresponsive
13.1.2020	Neil reports that sometimes has carers but they are not very good
End January	Mr. Sangha told Mary he had spoken to Jesse at this time about a Will but

2020	Jesse was going to wait until he had found a flat
3.2.2020	Jesse admitted as emergency. Dies of peritonitis
c. early March 2020	Neil moved from hospital to Ashmead Care Home for end of life care
End of March 2020	Billy calls Jesse and speaks to Jason Purll and told that Jesse had died. Billy calls Mary and Mary calls Arthur
End March/early April 2020	Arthur calls flat and speaks to Jason Purll, who says had searched the flat but had not been able to find details of next of kin. Agreed that Mary would sort out Jesse/s affairs
Early/mid-April 2020	Billy called the flat to ask questions about Jesse's death. Told that Jesse had asked Jason Purll to take him to hospital and that he had been drinking. He died the same day
April 2020	Jason Purll gave Mary, John Sangha's phone number. Obtained details of the estate
23 April 2020	Mary registers Jesse's death
28 April 2020	Neil dies
29/30.4.2020	Mary instructs Co-op and advised to collect papers from flat
1.5.2020	Mary spoke to John Sangha about visiting flat.

	Originally arranged for 2.5.2020 with Jason Purll who then asks that it be 3.5.2020
3.5.2020 (Sunday)	<p>Mary and Robert visit flat. Are met by Jason Purll who tells them there has been a development and a will has been found</p> <p>Collect papers and shown page 1 of the Disputed Will</p> <p>Mr. Middlemas sits on the settee</p> <p>Jason Purll tells them that Neil had died but that he had a brother who was well off and had classic cars</p>
c. 3.5.2020	<p>Arthur calls flat to speak to Jason Purll to ask why will not mentioned before. Told that was found in Neil's paperwork.</p> <p>Jason Purll volunteers that Mr. Middlemas had not seen Jesse for 12 weeks and had not been aware that had died</p>
4.5.2020	John Sangha calls Mary to say certain Jesse had not made a will because of the conversation he had had with Jesse just before he died
4/5.5.2020	Mr. Middlemas instructs Bonnetts solicitors

5.5.2020	Bonnetts suggest they had complete Disputed Will by this date
12.6.2020	Affidavits of due execution in the names of Mr. Lloyd-Jennings and Mr. Ajram
11.8.2020	Affidavits of due execution provided to Coop by Bonnetts
25.3.2021	Coop writes to alleged witnesses at addresses on page 2
30.3.2021	Letter purportedly from Mr. Lloyd Jennings
16.4.2021	Mr. Middlemas causes payment of the balance on Neil's accounts to himself
23.4.2021	Letter to Mr. Lloyd Jennings's daughter at address in Stroud- no reply
29.4.2021	Letter to Mr. Ajram at address on Affidavit- returned addressee unknown
21.7.2021	Letter of Claim- annotation that the Disputed Will was executed at "Ashley's"
13.10.2021	Questions to Bonnetts about circumstances in which will prepared
19.10.2021	Bonnetts reply that cannot remember when he was asked to witness the Disputed Will or what time of day it was executed
14.4.2022	Proceedings issued
24.6.2022	Letters of Administration for Neil estate
3.8.2022	Santander seek recovery of the sums paid out to Mr. Middlemas on the

	grounds that not entitled because not the executor
5.10.2022	Interim administrators appointed
7.8.2023	CCMC
21.11.2023	Unless order for Mr. Middlemas to file a statement setting out the circumstances in which the Disputed Will was executed
28.3.2024	Defence struck out
12.8.2024	Relief from sanction application dismissed
3.9.2024	Trial

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