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ROYAL COURT
(Probate Division) 94.

22nd May, 1996

Before: The Judicial Greffier

Between	Linda Corby née Jackson	Plaintiff
And	Anne Ffrench née Jackson	First Defendant
And	Roger Jackson	Second Defendant

The reference to the Greffier Arbitre of various matters in relation to the Estate of the late Irene May Dewsbury Jackson, the mother of the parties to this action.

Advocate J.D. Melia for the Plaintiff;
Mr.G.G. Crill for the First Defendant;

The Second Defendant rested upon the wisdom of the Court.

THE JUDICIAL GREFFIER: Irene May Dewsbury Jackson (hereinafter referred to as "the Deceased") died on 5th June, 1993, and the law to be applied to her Estate is therefore that which existed prior to the coming into force of the Wills and Successions (Jersey) Law, 1993. On 8th September, 1993, the First Defendant obtained a Grant of Probate in relation to the said Will. On 18th January, 1994, the former Bailiff signed an Order of Justice and this was served on the First Defendant on 20th January, 1994, with the first return date before the Royal Court being on 28th January, 1994. On 10th June, 1994, the Royal Court made an Order reducing the Will of the deceased *ad legitimum modum*. Subsequently, on 21st April, 1995, by consent, the Royal Court ordered that the Judicial Greffier be appointed as *Arbitre*. The Second Defendant decided to rest upon the wisdom of the Court in relation to the Estate of the deceased. Subsequently, the Plaintiff issued a Summons dated 4th May, 1995, which came before me on 25th May, 1995, in relation to the Estate and I then made various procedural Orders in relation to the filing of an inventory by the First Defendant and various other documents and pleadings by the Plaintiff and the First Defendant, all of which has occurred. Although in the original action and in the pleadings and other documents, it appeared likely that there would be a dispute both in relation to the matter of advancements made to the parties to this action and also in relation to the question of whether there were additional items belonging to the deceased which had been omitted from the inventory filed by the First Defendant, at the hearing before me on 24th April, 1996, it became clear that these matters were no longer in issue between the parties.

At that hearing it became apparent that the issues which I would need to decide were as follows:-

(1) Firstly, whether the division of the Estate should be calculated upon the basis of a loan due by the Estate to a company known as L'Etocquet Limited having been forgiven by that company or upon the basis of the loan still existing.

(2) Secondly, whether the tangible moveable items which formed part of the Estate should be valued on the basis of the most recent valuations or whether the valuation should be determined by means of all the relevant items being sold.

(3) Thirdly, whether the Plaintiff should be entitled to interest on her share of the Estate and, in particular, on that part of her share which had its origin in the tangible moveable items which form part of the Estate.

(4) Fourthly, and finally the matter of who should pay the costs in relation to the reference to me as *Arbitre*.

THE LOAN DUE TO L'ETOCQUET LIMITED

As the Will of the deceased has been reduced *ad legitimum modum*, the effect of this is that the Plaintiff will receive two-ninths of the Estate according to law. However, she owns one of the twenty-one shares of L'Etocquet Limited with both of the Defendants also owning one thereof and with the Estate owning the remaining eighteen shares. As the Plaintiff's share of the company (including her two-ninths share of the eighteen shares belonging to the Estate) amounts to five shares out of twenty-one, this is greater than her two-ninths share of the Estate and it is, obviously, in her interests that the loan should not be forgiven. On the other hand, the First Defendant says that if the loan were to be re-paid then in order for this to occur it would be necessary for a large amount of the tangible moveable items to be sold and a 15% commission would be payable on these which would ultimately reduce the value of the Plaintiff's share in the Estate. However, it is also part of the First Defendant's case that I should not order the sale of the tangible items but that she should be able to keep them as part of her share of the Estate at the appropriate valuation. The question of whether that should happen or whether they should be sold is the second issue which I had to determine. If I were to determine that issue in favour of the First Defendant so that the items would not actually be sold then it seems to me that the issue in relation to the loan becomes very clear. If the items are not actually to be sold but are to be taken by the First Defendant as part of a paper calculation then there seemed to me to be no reason why, as part of an overall paper calculation, the Plaintiff should not be left in the more beneficial position in

which the loan, on paper, would be re-paid by the Estate to the company. If I were to decide that all the items ought to be sold as the means of valuation then again a situation would arise in which there would be no reason why the Plaintiff should not have the benefit of the loan continuing. Accordingly, it seemed to me that in any event the Estate ought to be distributed upon the basis of paper calculations which would have the effect of the loan to L'Etocquet Limited being re-paid out of the Estate. Accordingly, I found in favour of the Plaintiff on the first point.

SALE OR VALUATION

It seemed to me to be slightly strange that the issue of whether the distribution of the Estate should be on the basis of the sale of all the tangible moveable items or on the basis of a valuation of the same should be raised at the hearing on 24th April, 1996, because the Orders made by me on 25th May, 1995, clearly envisaged that the Plaintiff's share would be determined on the basis of valuation. However, I heard the submissions of both lawyers on this point. The Plaintiff still appeared to be concerned that the valuations produced both on behalf of the First Defendant and on her behalf might be on the low side even though the last valuation which had been produced on behalf of the Plaintiff in relation to the items other than jewellery was 9.8% higher than the last valuation produced on behalf of the First Defendant. The position is, of course, that the valuation was made on the basis of the value as at the date of death of the deceased and this point had been agreed between the parties and is, in any event, correct. The First Defendant's position was both that in the case of the reduction of a Will *ad legitimum modum* the correct basis of division was valuation and that, in this particular case, because the deceased had left a specific legacy of the tangible items to the First Defendant, the distribution should take place, if at all possible, on the basis of the wishes of the deceased being respected in this matter and that, therefore, the appropriate method was by valuation so that the other children were compensated in financial terms for their share of the Estate without the intention of the deceased that these items should go to the First Defendant being overturned. It seemed to me that I should, as far as was compatible with the rights of the Plaintiff and the Second Defendant, seek to arrange matters in a way which respected the wishes of the deceased. It was also clear to me that the Plaintiff was not really interested in receiving actual tangible items but was really only interested in the value thereof. Furthermore, that if the items were to be sold then 15% commission would have to be paid and, therefore, the Plaintiff could only gain thereby if the sale price were more than one hundred divided by eighty-five times the most recent valuations. A further difficulty is that an actual sale would only give a current valuation and not a valuation at the date of death and this would lead to further difficulties in relation to the back calculation of the valuation to the date of death. Accordingly, on this second point, I have decided in favour of

the First Defendant so that I am ordering that the distribution should take place on the basis of the last valuation produced on behalf of the Plaintiff by Bonhams, which valuation was 9.8% higher than the last valuation produced on behalf of the First Defendant, and not on the basis of the sale of the relevant items. I would mention in passing that the valuation of the jewellery by Mr. Peter Le Rossignol was not in dispute.

INTEREST

Where a Will is reduced *ad legitimum modum* then the person reducing the Will is obviously entitled to their appropriate share in this Estate, in the case of the Plaintiff two-ninths of income earned by the Estate for the period of administration, subject only, in the case of an Estate such as this where the deceased died prior to the Wills and Successions (Jersey) Law, 1993, coming into force, to the rights of the Executor or Administrator to claim income for the period of a year and a day less the appropriate expenses of the administration of the Estate, in the way which has been customary for many years. However, in this case a large proportion of the two-ninth share is actually represented by the value of the tangible moveable items and these are not income earning items. The contention of the Plaintiff is that the First Defendant is responsible for delays in relation to the administration of the Estate; that as a result of these delays she has not received her share of the Estate within the period of a year and a day; and that, accordingly, she ought to be compensated for this by an interest payment upon her share of the Estate. The First Defendant responds that she has not been responsible for delays in the administration of the Estate and that if interest were to be paid then what is this to be paid from because it has not been earned by the Estate. The First Defendant also says that if interest is to be paid then this pre-supposes that the value of the tangible items will have increased during the period in question by an amount corresponding to such interest.

It seems to me that the concept that interest should be paid where interest has not been earned by the Estate on part of the assets of the Estate is a new concept. I do not know of any precedent in the past for this and none were put before me and I have no doubt that if one looks back to before this century to the origins of our Probate administration procedure that the concept of the payment of such interest would have been completely foreign. For this reason it does not seem to me that an Order for interest is appropriate. Furthermore, I cannot say that any delay in relation to the completion of the administration of the Estate is due solely to the Plaintiff. It seems to me that both the Plaintiff and the First Defendant have at times been difficult in relation to this Estate and, in my view, there is no clear balance one way or the other as between them. Furthermore, as I have already said, under the relevant law, the First Defendant had the right to claim income for the period of a year and a day subject to certain deductions and the

Plaintiff could not, therefore, claim any interest until the start of the period of a year and a day. Furthermore, the remedy of the Plaintiff, in this case, was to proceed as rapidly as possible with her action for the division of the Estate rather than to claim interest thereon. Accordingly, I have decided that an interest Order would be a departure from previous practice and would, in any event, not be appropriate in this case.

COSTS

I have first had to decide what costs are within my power to order. The only matters which have been sent to me have been the issues which arise by virtue of my having been appointed as *Greffier Arbitre*. There are other matters in the Order of Justice which remain adjourned *sine die*. Accordingly, it seems to me that my authority is limited to the matters which have been before me as *Greffier Arbitre*. Both the Plaintiff and the First Defendant entirely blamed each other for the costs incurred by reason of the reference to me and the costs incurred by reason of the procedural issues which I have previously determined. Of the three issues which I have finally determined two have been found in favour of the First Defendant and one in favour of the Plaintiff. On the other hand, there were previously certain matters such as the provision of the inventory which ought to have been dealt with by the First Defendant without any need for me to make an Order. I have considered whether I should make an Order for costs out of the Estate but both the Plaintiff and the First Defendant correctly pointed out to me that this would be unfair to their brother who has taken no real part in the action but has merely rested on the wisdom of the Court. Accordingly, it seems to me that the appropriate Order for me to make is that the Plaintiff pay one-third of the costs of the First Defendant of and incidental to the reference to me and that the remaining costs in relation to the reference to me as *Arbitre* be borne by the Plaintiff and the First Defendant personally and I have so ordered.

I hope that the orders which I have now made will enable the distribution of the Estate and the liquidation of L'Etocquet Limited to be completed without any further disagreement between the parties. However, if any further issues were to arise then either party would be at liberty to refer the matter back to me for further adjudication.

Authorities

Le Gros: "Traité du Droit Coûtumier de l'Ile Jersey" (Jersey, 1943):
Du Testament: pp.124-134.