

the TESTATOR

The contentious probate newsletter of **Slee Blackwell Solicitors**
LLP

Inheritance Claim: Cohabitee Wins Her Case Against Partner's Estate

Slee Blackwell's Naomi Ireson has been successful in a claim brought on behalf of a cohabitee.

The inheritance claim was made by our client, Mrs M, against the estate of her late partner and cohabitee. Mrs M was in a relationship with the deceased for over 10 years. The deceased died intestate (without a Will) and his net estate was valued in the region of £175,000. Under the intestacy rules the deceased's son was entitled to receive the entire estate.

The claim was robustly defended by the deceased's son who insisted that he receive his full entitlement under the rules of intestacy even though his father failed to make financial provision for his long term partner.

The deceased and Mrs M had lived together in the deceased's house.



During their time together the deceased had financially supported her and she had become dependant upon him. As such, following his death we argued Mrs M had a clear housing need and limited income.

We entered into correspondence with the son's solicitors. It initially looked as though we would need to commence court proceedings, but an out of court settlement was reached at the 11th

hour. This provided Mrs M with the right of occupation to remain in the deceased's house for the rest of her life rent-free, a lump sum award and payment of her legal costs.

This was an excellent result for Mrs M and provided her with reasonable financial provision together with security for her future.

Capacity And Palliative Medication

The High Court recently handed down judgment in an interesting case challenging a Will on the grounds of lack of testamentary capacity, sometimes referred to as mental capacity – *White v Philips* [2017] EWCH 386 (Ch).

The testator, Raymond White, was diagnosed with terminal cancer in July 2009, at which time he had been married to the claimant, Linda White, for over 20 years. Both parties had been married before and each had three children from their respective

previous marriages. The matrimonial home had been purchased by Mr White and the claimant as joint tenants and was mortgage-free.

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Capacity And Palliative Medication

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On 28 May 2010 the testator gave instructions for a Will to be prepared. It was drafted in accordance with his instructions and executed on 4 June 2010. At the same time as giving instructions for his Will, the testator signed a notice of severance of the joint tenancy. The terms of the testator's last Will provided for the claimant to live rent-free in the matrimonial home for the remainder of her life or until she cohabited with another person, after which the proceeds of sale attributable to the testator's estate should be paid to the defendant, one of the testator's daughters.

The claimant contended that the testator lacked testamentary capacity when he gave instructions and executed his Will.

Evidence was heard regarding the deterioration in the relationship between the claimant and the testator in the months leading up to the



execution of the Will, with concerns being raised as to the testator's safety at home ultimately resulting in him leaving the matrimonial home and moving in with his daughter two weeks before giving instructions for his new Will.

The testator was admitted to hospital the day before giving instructions for his new Will, at which time the hospital notes query whether he was suffering from drug toxicity as a result of the

"cocktail of drugs" he was taking. Medical notes made the following day confirmed that the testator was not exhibiting features of dementia. The drafting lawyer noted that same day that there were no doubts as to the testator's capacity. Expert evidence based on the testator's medical records was inconclusive.

The court ruled that the defendant had succeeded in establishing that the four elements of the Banks v Goodfellow mental capacity test had been met, both at the time the testator gave his instructions and when he executed the Will.

Although the palliative drugs may have impaired the testator's reasoning at times, this was not to such an extent that his testamentary capacity would have been affected. Moreover, the terms of the testator's Will could not be considered irrational or unjust. Accordingly, it was concluded that the challenge failed.

Meet the lawyer: Naomi Ireson

Contentious Probate Partner, Naomi Ireson, tells us a bit about herself and the work she does.

What do you like best about your job?

I like the diversity which contentious probate offers in so far as no two cases are the same. I like helping people achieve fairness at what can be difficult times in their lives and I like to help people rectify mistakes made or ambiguities left by their loved ones.

What are the most important characteristics for a contentious probate lawyer?

People skills and tactical/objective thinking. People skills because you are often dealing with people at a very emotive time and who require a high level of support. Tactical/objective thinking because every case needs to be managed uniquely according to its own facts.

What top tip would you give to potential clients?

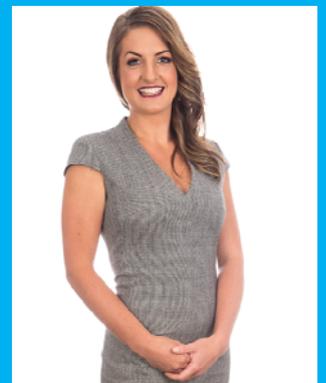
Act quickly after death. There are very short timeframes attached to many contentious probate claims and often the sooner you act, the easier it is to find a resolution.

What made you choose contentious probate?

I worked in variety of civil litigation areas during my training but contentious probate was the niche which attracted me most. I like working directly with clients and their families and seeing first-hand the results.

If you weren't a lawyer, what would you be?

A professional horse rider.



Homes & Gardens: An Unusual Will Interpretation Dispute

We recently represented Mr J in a probate dispute arising as a result of conflicting interpretations of his late aunt's Will.

Mr J's aunt left her 'house' to him under the terms of her Will. You would think a bequest like this would be quite straightforward. However, it transpired that, due to the property being purchased decades apart, the garden land was held under a different title number to the actual house itself. Upon discovering this, the executor, who was also one of the residuary beneficiaries, interpreted the Will in such a way that the gift to Mr J was of the 'house' on its own and not the garden. This meant that the house would pass to Mr J, but the garden would form part of the residue of the estate, ultimately benefitting the executor.

Mr J's interpretation of the Will was that the garden passed to him as part of the gift of the house. The house, he said, included the garden. He

argued that his aunt had not specifically mentioned the garden in the Will as she considered it to be part of her house and it would not have occurred to her that anyone would seek to separate the two. Mr J therefore appointed us to deal with the Will interpretation dispute.

We agreed with Mr J's interpretation. When his aunt had referred to her 'house' she was clearly intending that this term would also include the garden.



However, due to the very nature of a Will interpretation dispute the key witness - the aunt - couldn't be called upon and there was little evidence to support either interpretation. Charlotte Dullaway, who represented Mr J, therefore undertook enquiries to obtain secondary evidence to support our interpretation. The dispute was finally resolved when witness evidence was obtained from people who knew Mr J's aunt confirming that she would not have treated the house and garden separately.

This witness evidence made it very likely that a court would agree with Mr J's interpretation of the Will.

The executor therefore agreed to transfer both the garden and house to our client, knowing that if he lost in court he would face a substantial claim for legal costs.

Will Leaving Estate to Deceased's Hairdresser Successfully Challenged Due to Partially Sighted Witness

We were instructed by Mrs W to challenge the validity of her late aunt's Will on the following grounds:

- (a) that the deceased lacked testamentary capacity;
- (b) that the deceased was unduly influenced;
- (c) that the Will was not properly witnessed.

One of the witnesses was partially sighted. We alleged that as such, he could not properly witness the Will and that the Will did not therefore meet the required formalities for execution, set out in section 9 of the Wills Act. This was an unusual case, but we relied upon the historical and only reported case on the issue; In the Estate of Charles Gibson, Deceased (1949). In that case the Judge said a witness to a Will must have "the faculty of seeing".

Mrs W, who was represented by inheritance dispute lawyer, Nomi Ireson, successfully settled her claim at mediation and received one half of the estate.

MEET THE SLEE BLACKWELL CONTENTIOUS PROBATE TEAM



Naomi Ireson, Partner

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Naomi deals with all areas of contentious probate focusing on high net worth estates. Beneficial interest claims are a particular interest of hers having been victorious in the reported Court of Appeal case of Ely v Robson. Naomi is a firm advocate of mediation and has an exceptional record of success.



Lee Dawkins, Partner

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Lee specialises in Inheritance Act claims and executors disputes. Lee is also a member of the Professional Negligence Lawyers Association and deals with claims against solicitors and other will writers for negligence in relation to will preparation.



Chris Holten, Solicitor

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Chris specialises in contested Will claims, inheritance disputes and contentious probate law. He has experience of dealing with a wide variety of contested Will cases and has a special interest in spousal claims arising from foreign marriages.



Chris Green, Solicitor

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Chris specialises in all types of contentious probate matters, from challenging the validity of Wills to executor and beneficiary disputes. In particular, he handles a significant number of claims under the Inheritance (Provision for Family and Dependents) Act 1975, acting for both claimants and defendants.



Charlotte Dullaway, Trainee

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Charlotte is coming to the end of her training and specialises in all areas of contentious probate with a particular interest in executor disputes and Will challenges. Charlotte acts for personal representatives, beneficiaries, claimants and defendants.



Stephanie Smith, Paralegal

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Steph assists the other members of the contentious probate department. She has a particular interest in Inheritance Act claims and provides invaluable support to ensure the smooth running of the department.

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