

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
Property Probate and Trusts (ChD)

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings
Fetter Lane, London.
EC4A 1NL

Date: 02/08/2018

Before :

MASTER SHUMAN

Between :

MICHELLE CHRISTINA CRAIG

Claimant

- and -

PAUL RICHARD CRAIG

Defendant

Claimant in person
Defendant in person

Hearing dates: 8 June 2018

Judgment Approved

MASTER SHUMAN :

1. Joan Craig (“the deceased”) died intestate on 4 August 2014. The parties are her children. On 10 March 2015 they were granted letters of administration, extracted by Rix & Kay Solicitors LLP (“RKS”).
2. There has been a long running dispute between the parties which has prevented the administration of the deceased’s estate being completed. On 17 April 2018 at a directions hearing attended by both parties I listed a disposal hearing to determine the five remaining issues between the parties:
 - i) The meaning of net income (rent) referred to in the order of Deputy Master Nurse dated 14 July 2017 and what deductions are to be made from the rent.
 - ii) Who should pay the Anglian Windows invoice?
 - iii) The valuation date for the transfer of the shares
 - iv) Distribution of personal chattels
 - v) When should 43 Prince Regents Close, Brighton, East Sussex BN2 5JP (“the Property”) be transferred?

3. The disposal hearing took place on 8 June 2018. At that hearing the claimant raised an additional issue, that she requires an indemnity from the defendant in respect of the Property. Subsequently the defendant has filed (i) a statement dated 10 June 2018 setting out further information, attaching documentation and enclosing his statement dated 9 April 2018 (ii) a statement dated 11 June 2018 and (iii) a statement dated 4 July 2018. The claimant has filed a letter dated 10 June 2018 and a statement dated 2 July 2018 in response to the defendant's statement.
4. The relationship between the parties has broken down. Each accuses the other of frustrating the administration of the estate and lays the blame for the failure to complete the administration of the estate at the doors of the other. I note that the defendant says that the delays are due to "the self-indulgent behaviour of the claimant" and suggests that she should be held in contempt of court. He refers to an email that the claimant sent dated 30 April 2018 as evidence of her escalating costs and delaying matters. The claimant asked 7 questions; they were appropriate enquiries to make not least given the hostility between the parties. There is a further email from the claimant dated 10 May 2018, again perfectly reasonable and asking appropriate questions.
5. The parties wish to have finality in this matter. I have therefore considered the issues in light of the witness statements filed by the parties and as supplemented by them in oral submissions. This case has already taken up a disproportionate amount of the court's resources to the detriment of other court users. The administration of the deceased's estate needs to be completed as soon as possible. It is unacceptable that the deceased died on 4 August 2014 and nearly 4 years later the parties are still in dispute. This is not a complicated estate. I am not in a position to determine where the fault lies. Furthermore I do not need to do so in order to reach my conclusions on the issues before me. The estate needs to be distributed between the parties so that they can go their separate ways.

THE BACKGROUND

6. The claimant and the defendant are the only children of the deceased. As she died intestate they share her estate in equal shares. On 10 March 2015 the parties were jointly granted letters of administration. RKS acted on their behalf in respect of the administration of the estate. The parties could not reach agreement on how to complete the administration.
7. The main assets in the deceased's estate are: (i) the Property; (ii) various stocks and shares; (iii) cash; and (iv) personal possessions including various silver and gold items.
8. In or about June 2015 the parties reached an agreement so that the administration of the deceased's estate could be progressed and completed ("the Agreement"). The claimant's version of the agreement, which she signed on 7 June 2015, included paragraph 3 that had been omitted from the defendant's version of the agreement, which he signed on 5 June 2015. Clause 3 provided that if the transfer of the Property had not taken place within 1 year from the date of the Agreement the parties would revalue the Property in order to determine the value of a one-half share.

9. Clause 1 of the Agreement provided that there would be an interim distribution of £10,000 to the defendant.
10. Clause 2 provided that,

“the property 43 Prince Regents Close Brighton East Sussex BN2 5JP will be transferred to Paul (once clearance has been received in respect of any inheritance corrective account and income taxes referred to above so as to ensure the estate has sufficient liquidity) and Paul’s remaining share of estate assets will be reduced by £210,000 accordingly, such sum passing to Michelle’s entitlement and the avoidance of doubt estate agents fees and Rix and Kay LLP’s professional fees to effect the transfer will be met by Paul from his share of the estate and to the extent that capital gains tax is payable as a result of the transfer of Michelle’s share to 43 Prince Regents Close to Paul it shall be borne by the estate before the distribution of estate assets”.
11. Clause 5 distributed the personal possessions between the parties in accordance with an attached schedule. Similarly clause 6 distributed the shareholdings between the parties in accordance with an attached schedule.
12. Given the discrepancy between the parties’ respective copies of the Agreement there was a certain inevitability that court proceedings would be commenced. However it was not until 15 March 2017 that the claimant, who was then legally represented, issued a Part 8 claim form seeking an order under section 50 of the Administration of Justice Act 1985 for a solicitor, Jonathan Gater of Blandy & Blandy LLP, to be substituted as personal representative in place of both the claimant and the defendant. She also sought an account to be taken and inquiry made in respect of the deceased’s estate. In an acknowledgement of service dated 4 April 2017 the defendant contested the claim.
13. On 14 July 2017 there was a disposal hearing before Deputy Master Nurse. The parties were in person by this stage. Deputy Master Nurse made an order, which was subsequently amended under the slip rule 25 September 2017, (“the Order”). I set out the material parts of the Order below.
14. The Order specifically recorded three areas of agreement between the parties: (1) EJ Winter and Son LLP (“EJW”) to be instructed to complete the administration and distribution of the estate in accordance with the outstanding terms of the Agreement save as amended by the Order; (2) the parties to do all such things and execute all such documents as may be reasonably necessary to ensure that EJW is provided with the estate documents and money at present held by RKS; (3) the estate should be distributed pursuant to the terms of the Agreement, omitting paragraph 3 of the claimant’s version, save as amended by the Order. Paragraph 1 ordered that the parties shall cooperate and assist EJW in the administration and distribution of the estate with a view to such administration and distribution being completed as soon as possible. EJW in particular shall as soon as possible after the date of the Order (i) obtain clearance from HMRC of any inheritance corrective account and income taxes

- (ii) enable the transfer of the Property to the defendant to take place (iii) complete the distribution of the estate.
15. Paragraph 3 of the Order varied clause 2 of the Agreement by substituting the sum of £210,000 with the sum of £215,000; so the final distribution due to the defendant would be reduced by this sum.
16. Paragraph 4 of the Order provided that,
- “For the purposes of the final Estate accounts:
- (i) Upon the transfer to Paul of 43 Prince Regents Close being completed, Paul will account to the Estate for the net income received by him from 43 Prince Regents Close prior to the date of transfer and will ensure that any outstanding utility bills are discharged other than from Estate funds”.
17. I infer from the terms of the Order that the administration and distribution of the estate should be completed by 14 July 2018.
18. Martin Chandler of EJW was appointed to act for the parties to complete the administration of the estate. I have seen some of the correspondence between EJW and the parties.

THE ISSUES

- i) the meaning of net income (rent) referred to in the Order and what deductions are to be made from the rent
19. The claimant argues that the defendant is liable to account to the estate for the rent that he should have received from the Property not what he actually received. In October 2015 the defendant permitted his son to occupy the Property. He did not consult with the claimant about this occupation or indeed the level of rent to be charged. The claimant relies on a letter from Sawyer Co to her dated 10 April 2018. They are property agents based in East Sussex and consider that the rental for the property should be in the region of £1,400 per calendar month. The letter does not record that the agent inspected the internal condition of the Property. The claimant calculates that had a market rent been charged the rent collected for the period 10 October 2015 to 8 June 2018 should have been £44,800. After some deductions for costs she estimates that the sum that should have been received was roughly £27,642.
20. The defendant says that he permitted his son, Matthew, to live in the Property because the Property was vulnerable having stood empty since August 2014 when the deceased died. The defendant considered that there was a real risk that the Property could be damaged or occupied by squatters given its location in the Brighton area. He was also concerned to ensure that this was an informal arrangement giving no rights to anyone in occupation of the Property, not least because he thought that administration of the estate would be completed shortly. He therefore let his son live in the Property and charged him a rent of £500 per month. When I asked the defendant whether he had discussed any of this with the claimant he said, without any obvious sign of compunction, no.

21. I have to determine what the Order means and to give the words of the Order their natural and ordinary meaning and to construe them in their context, not only their historical context but also having regard to the object of the Order. See in particular the judgments of Lord Sumption in Sans Souci Limited v VRL Services Limited [2012] UKPC 6 at paragraph 13 and Lord Clarke in JSC BTA Bank v Ablyazov (No. 10) [2015] UKSC 64 at paragraphs 16 to 26.
22. Paragraph 4 (i) of the Order clearly states, “Paul will account to the estate for the net income received by him from 43 Prince Regents Close prior to the date of transfer”. The words are plain. The Order does not say that Paul will account for the market rent of the Property. There is no mechanism for determining the market rent of the Property. I am satisfied that the Order provides that the defendant will account to the estate for the rent that he actually received for the Property. Accordingly he must account for the sum of £500 per calendar month from 10 October 2015 until Matthew or any occupier moves out or the transfer of title takes place. EJW should make the necessary calculation. If there is any dispute about the relevant period then EJW should write to the court, copying in the parties, setting out the parties’ respective positions for a determination on paper by a master as to the relevant period.
23. I also consider that there is a further point that undermines the claimant’s argument. By 14 July 2017 the claimant knew that the defendant had informally let his son into occupation of the Property. The defendant filed a witness statement which set out why he had let his son move in and that his son was paying £500 per month. Either this issue was determined by the court on 14 July 2017 or it should have been argued at that hearing by the claimant. It is not open to her to reopen an argument that was either made or should have been made on 14 July 2017.
24. From the sum due to the estate there needs to be deducted expenditure relating to the Property. The defendant has itemised the items that he wishes to deduct. He does not retain receipts. The defendant’s evidence is that to keep expenses to a minimum he purchased any necessary materials and where possible he carried out the repairs. In his witness statement dated 24 April 2018 he listed 10 items of expenditure totalling £1,851. By the time of the hearing before me the claimant had accepted the items numbered 2 to 10. The only issue was whether the defendant could recover the cost of installing a new boiler, total cost £780. The claimant referred me to the defendant’s witness statement dated 24 April 2018 which said, “installation of new boiler due to breakdown and being advised by engineer complete replacement needed £780” and contrasted this with his statement dated 2 April 2017 where he said, “I have just replace boiler at a cost of £700 to me”. Apart from the discrepancy in the expenditure I tried to pin the claimant down on what her issue with this expenditure was. She simply described this cost as “strange”.
25. The defendant has now explained that he forgot to include the cost of the flue, £80, in his earlier statement. The total expenditure in respect of the boiler is therefore £780. That gives a satisfactory explanation for the discrepancy. I find that the expenses that should be deducted from the income due to the estate is £1,851.
26. In addition the defendant claims his travel expenses of making at least 3 journeys from where he lives in Stafford to the Property. He calculates that as 600 miles at 40p per mile which equals £240. The claimant has not referred to this expense in her witness statement dated 12 May 2018. Had the defendant employed someone to carry

out the work some of the expenses claimed would have been higher. I consider it reasonable for the defendant's travel costs to be deducted. The defendant, I assume, is seeking 40p per mile by reference to historical mileage cost allowance rates for businesses. I consider that the rate of 25p per mile is appropriate. That is another rate claimed by businesses and is also the amount allowed for witnesses. The defendant can therefore recover £150. So total expenses are £2,001. I note that in accordance with the Order any utility bills due at the date of transfer are not to be discharged from estate funds.

ii) Who should pay the Anglian Windows invoice?

27. The defendant explained that prior to the deceased's death new windows for 2 front windows at the Property had been ordered from Anglian Windows Ltd ("Anglian"). The cost of supply and fitting was separated; the defendant says he does not know who authorised this. The estate has paid for the cost of supply but not the fitting. The cost of fitting is £1,050. The windows remain stored by Anglian. As far as I can discern from the parties this is not an invoice but rather a quote for what it will cost if the windows are fitted by Anglian.
28. The defendant has agreed to pay this sum. However he initially sought to make that conditional on the administration being completed by a certain date or then that it must be tied up with the indemnity sought by the claimant.
29. As the Anglian windows fitting is not a debt owed by the estate then I do not consider this is an amount that the estate should pay. Further there is no evidence before me that the value of the Property included new windows being fitted. Given that the Property is to be transferred to the defendant and that this will enhance the Property for his benefit then the defendant should pay this amount.

iii) The valuation date for the transfer of the shares

30. The defendant contends that this should be the date of the Agreement. The claimant suggested 15 January 2018 per EJW's letter dated 17 January 2018. However EJW simply suggested that the transfer of the shareholding take place immediately and accordingly valued the shares around that date.
31. Clause 6 of the Agreement is clear. The shareholdings are to be valued at the date of transfer. The administration should proceed to completion as soon as practicably possible. The shareholding should be valued at the date of transfer not at the date of the Agreement.

iv) Distribution of the personal chattels

32. The defendant said that he wished to receive all of the deceased's silver items and that he negotiated the Agreement on the basis that was what he was to receive. The schedule to the Agreement sets out that the defendant is to receive "All silver items listed in the probate valuation undertaken by Paul Franklin". The defendant has discovered that there are a further 2 silver items, a cross and ingot, which were not itemised on the probate silver valuation. The claimant's response is that as they are not shown on Mr Franklin's valuation and they are therefore hers.

33. The Agreement actually says that the claimant shall receive all personal possessions “identified as at the date of this Agreement including general contents save as to the following items which will be received by Paul [my emphasis]”. The items were not identified and therefore do not simply pass to the claimant.
34. Construing the Agreement it appears that the parties had agreed that the defendant should receive the deceased’s silver items. I direct that EJW should obtain a valuation of these 2 items, ideally from Paul Franklin. If the defendant wishes to receive these items then he should give credit for the value of those items on the final distribution. If he chooses not to receive these items or questions the valuation then they can be received by the claimant, on the same basis. In default the items are to be sold and the proceeds, if any, divided between the parties.

v) When should the Property be transferred?

35. The claimant’s position is that there should only be a transfer when she receives the full entitlement that she is due from the estate. The defendant’s view is that the transfer should have taken place in 2015 and certainly should take place as soon as reasonably possible.
36. I note that EJW were concerned about the liquidity of the estate on distribution pending the corrective account being approved by HMRC. I understand from the parties that EJW now has that approval and has or will receive any tax due back to the estate. EJW should now proceed to complete the administration of the estate as soon as reasonably practicable which includes transferring the Property to the defendant. The income that the defendant must account to the estate for shall continue until Matthew or any occupier moves out or the transfer is effected, whichever is the earlier. Pursuant to paragraph 3 of the Order the sum by which the defendant’s share of the estate should be reduced to as a result of the transfer of the Property to him is £215,000.

INDEMNITY

37. The claimant did not include an indemnity in her claim form. In her statement dated 12 May 2018 she said that as the defendant has been in sole control of the Property since October 2015, having not sought permission to allow his son to occupy the Property, the estate has been exposed to risk. She considers that there is a potential liability for something that the defendant may have done or has failed to do whilst Matthew, or others, may have been in occupation. The claimant had instructed solicitors to draw up an indemnity but says that the defendant refused to sign it. At the date of the disposal hearing she did not have the terms of the indemnity to hand.
38. The defendant in an email dated 12 May 2018 to Martin Chandler said,
- “i am agree to provide michelle and the estate with a complete warranty for 43 prc [the Property] this includes any claims that arise for bubonic plague and any claims that may arise from the existence of asbestos that currently is present at 43 prc in the form of gutters, downpipe and roofing material.

Michelle and the estate will not be liable for any claims or any future repairs that are needed, including the leaking roof.

... i agree to purchase 43 rpc in the full knowledge that there are tenants present in the house”.

However that offer was made subject to certain conditions relating to the issue about the meaning of “net rent” in the Order, the period over which that is payable and that the transfer of the Property takes place by 30 December 2018.

39. Given the determinations that I have made in this judgment, the fact that the defendant permitted his son and possibly others in occupation of the Property without obtaining permission from the claimant in her capacity as co-administratrix and that the defendant has offered to give an indemnity I direct that EJW should draw up an indemnity, as they have offered, to cover the terms offered by the defendant. The cost of drawing up that indemnity should be paid by the defendant.
40. This judgment deals with the outstanding issues in the administration raised by EJW in its letter to the parties dated 13 March 2018. EJW will now be in a position to complete the administration of the estate and make the final distribution to the parties. I expect the transfer of the shareholding and the Property to proceed promptly. I direct that a copy of this judgment be sent by the court to EJW direct.
41. Should there be any matters that arise, that EJW have not foreseen, and the parties cannot agree or any party fails to execute documents necessary to complete the administration I direct that EJW should write to the court setting out what the issue is and a summary of the opposing arguments by the parties so that a master can make any necessary determination on the papers. Should that arise then the court will also consider whether to make an adverse costs order against a party. I cannot emphasise enough to the parties that there needs to be an end to this litigation, the administration should be completed promptly so that the final distribution can be made to the parties.
42. The court will draw up an order to reflect the determinations that I have made in this judgment and I direct that that order shall be served on EJW by the court.