



Neutral Citation Number: [2021] EWHC 591 (Ch)

Case No: PT-2020-000600

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/03/2021

Before :

THE HON MR JUSTICE MELLOR

Between :

ALISON JOAN HOWES

Claimant

- and -

JOHN NEAL HOWES

Defendant

Alexander Deakin (instructed by **Pope & Co**) for the **Claimant**
Leigh Sagar (instructed by **Kirk & Partners**) for the **Defendant**

Hearing date: 22nd February 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON MR JUSTICE MELLOR

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10.30 am on Friday 12th March 2021.

Mr Justice Mellor:

1. This Part 8 claim is an unfortunate dispute between sister (the Claimant) and brother (the Defendant), which involves two different estates of which the Defendant was the executor.
2. The two estates in question are first, the estate of Mr Gerald William Crozier ('GWC' and 'the Crozier estate') who was step-father of Mrs Carol Dawn Howes ('CDH'), her estate ('the Howes estate') being the second. CDH was the mother of the Claimant and Defendant. Although in fact both the Defendant and CDH were the executors of the Crozier estate, in practice CDH left the entire task to the Defendant. The Defendant was the sole executor of the Howes estate. To complete the list of relevant people, I should also mention the Defendant's wife, Mrs Stephanie Howes. To avoid confusion I will refer to Mrs Stephanie Howes as SPRH.
3. The order sought by the Claimant is for a complete account of both the Howes estate and the Crozier estate. In broad summary:
 - i) The Claimant is a beneficiary of the Howes estate, so the issue as to whether I should order an account turns on whether sufficient information has already been provided by the Defendant.
 - ii) The Claimant was not a beneficiary of the Crozier estate and the Defendant's position is that therefore the Claimant has no interest to justify an order for an account of that estate in her favour. The Claimant only has an indirect interest in the Crozier estate via her position as a beneficiary of the Howes estate.
4. I was assisted by both Counsel with their helpful updated skeleton arguments and succinct oral submissions. It is fair to say that the Claimant's route to an account of the Crozier estate was unclear, at least initially. Certainly the Defendant's Counsel in his skeleton argument anticipated that the Claimant was in some way attempting to expand the previously recognised categories of fiduciary relationship giving rise to a duty to account and presented a full analysis of the relevant legal principles. However, as will appear, the Claimant's application proceeds on the basis of the standard fiduciary relationship between beneficiary and executor. So, although I am grateful for the analysis, it is unnecessary for me to set any of it out in this judgment.
5. The issues can be identified by reference to the following chronology of key events.
6. GC died on 23rd June 2010. It is not necessary to detail the terms of his will and codicil because it is common ground that CDH was the sole beneficiary. As I have said, it seems clear that CDH left the entire administration to the Defendant.
7. The principal asset in GC's estate was the property at 141, Ladywell Road, London, SE13 7HZ, which was eventually sold by the Defendant in his capacity as executor of GC's will in June 2012 for the sum of £475,000. The completion statement on the sale of that property reveals that after various expenses were deducted, the net proceeds of sale were £465,853 and these were paid into a Santander savings account (ending 9035) in the name of the Defendant on 29th June 2012 which had a current balance prior to that deposit of 64p. On the same day, the sum of £130,853.64 was transferred out of that account to 'Mr John Neal Howes', leaving a balance in the nice round sum of £335,000. Within one

year, the balance in the account had reduced to just £66.33. With the exception of one payment of £500 to the Defendant's wife, the balance was depleted by transfers to 'Mr John Neal Howes'.

8. It is common ground that on 5th October 2012, a property at 14, Goodwin Close, Sittingbourne, Kent, ME10 2SW was purchased for CDH for £170,000 and as I understand it, she lived in that property until her death on 17th January 2018.
9. There are some odd features of this purchase. First, on 16th October 2012 the Defendant was recorded on the Land Register as the registered proprietor of the property, the property having been purchased for £170,000. Second, it appears from the bank records of SPRH that she paid the deposit of £17,000 to Cook Taylor Solicitors on 10th September 2012, with the balance of £155,000 also being paid from SPRH's account on 28th September 2012.
10. The purchase of the 14, Goodwin Close property is reflected in the Defendant's 9035 account which records a transfer to 'Mr John Neal Howes' on 10th September 2012 of not £17,000 but £20,000 and then a transfer on 10th September 2012 of £155,699 again to 'Mr John Neal Howes'.
11. As for the point that the 14, Goodwin Close property was put into the Defendant's name, he says he did this at the request of CDH to avoid delays in probate which might be caused on her death if the property was in her name. So far, the Defendant has not explained why the purchase monies for the 14, Goodwin Close property were not paid directly from his 9035 savings account to the solicitors or why they were transferred, first, to another of his accounts, thence (apparently) to his wife's account and only from there to the solicitors.
12. As I have mentioned, CDH died on 17th January 2018, with the Defendant as the sole executor of her will, under which (subject only to the bequest of CDH's jewellery to the Claimant) the Claimant and the Defendant are to take equal shares.
13. The property at 14, Goodwin Close was sold on 29th April 2019 for £231,000 and the completion statement indicates that after deduction of the solicitors' professional charges and various disbursements, the balance paid to the Defendant was £225,721.90.
14. On 25th March 2019, the solicitors for the Claimant wrote to the Defendant asking him to account to the Claimant as to the assets in the estate of CDH. The Defendant responded himself in a lengthy letter dated 7th April 2019 (to which I will have to return below) but without providing any estate accounts nor any figure for the resulting value of the estate which was available for distribution.
15. Further correspondence led to a letter from the Defendant's solicitors dated 21st June 2019 which reported that the resulting balance from the Howes estate was £207,930.27, yielding one-half shares of £103,965.14. That letter enclosed invoices and correspondence numbered 1-40 which, as I understand the position, were put into exhibit JNH3 to the Defendant's witness statement at pages B61 through to B129 of the bundle.
16. The Defendant relies on the letter of 21st June 2019 and its enclosures as the provision of sufficient information to the Claimant to defeat her claim to an account of the Howes estate. For this reason, I have reviewed the content of exhibit JNH3 with some care,

although I have not conducted a detailed forensic analysis to check every entry in the schedule which I am about to describe.

17. Exhibit JNH3 starts with a detailed schedule which includes a number of expenses which although not expressly identified as having been paid as part of the administration of the estate of CDH may be assumed to be such (they include a sum identified as Capital Gains Tax, funeral expenses, costs of closing various accounts, paying off various credit cards etc. - mostly the normal expenses one would expect to see) together with the balance of the sale of 14, Goodwin Close. Whilst the Claimant may or may not question some of the entries in this schedule, it is fair to say that the schedule clearly identifies what sums were deducted from the proceeds of sale of 14, Goodwin Close to yield the resulting balance in the estate of £207,930.27. Furthermore, the expenses seem to reflect the invoices also included in exhibit JNH3. In short, and subject to the point I am about to discuss, the contents of exhibit JNH3 do appear to me to give the Claimant sufficient information as to how the Howes estate was administered by JNH. I am confirmed in that view by the fact that Mr Deakin for the Claimant did not identify any problem or query over the content of exhibit JNH3, again subject to the point I am about to discuss.
18. The key point in question concerns the way in which the proceeds of sale of 141, Ladywell Road were paid out from the Defendant's 9035 account and largely entirely dissipated in the space of just one year. I emphasise that I am making no findings one way or the other and am not in the position to make any findings. The Defendant may be able to establish that these proceeds of sale were either spent at the direction of CDH or provided to her in cash sums, such that the Defendant did not breach any of his fiduciary duties as executor. However, pending further information, there are, at the very least, question marks over what the 9035 account records show.
19. In his witness statement, the Defendant recounts how he was advised that 141, Ladywell Road would sell at only around £300,000 if sold in the state in which it was left at the death of GWC, but at £475,000 if renovated. The Defendant says that, with the agreement of CDH, a major renovation of this property was carried out. The Defendant says in his witness statement that the cost was about £150,000 to £180,000 in total. He says that he has asked the builder concerned for a breakdown of the cost but the builder has told him that he only keeps records for 5 years and this work took place more than 5 years ago.
20. This evidence contrasts with the oddly specific sum of £130,853.64 paid out from the 9035 to the Defendant on the same day that the sale proceeds entered that account. It might be thought that this sum represented a repayment to the Defendant of sums he had expended funding the renovation, but the Defendant has not actually said that (at least, not yet). Furthermore, one would expect the Defendant to be able to produce bank account records showing how sums totalling £130,853 odd were paid by him to the builder. Yet further, it is unclear why the Defendant estimated the costs of renovation so imprecisely in his witness statement and on any basis considerably more than this specific sum.
21. On the same day as that first payment out (i.e. 29th June 2012, the same day as the sale proceeds were credited to the account), there were also transfers to Mr John Neal Howes of £5,000 and £4,000. As mentioned above, all the ensuing transfers were made to Mr John Neal Howes, except for one transfer of £500 to SPRH on 5th February 2013. It is not necessary for me to set out all the transfers which took place. A minority were for

specific sums, such as £533, £385, £1,081.91 or £1,193, consistent with paying specific bills. A few are for relatively modest sums such as £250, £350 and £300. However, there are a number of transfers of relatively significant sums:

- i) 29th November 2012, for £20,145. This sum is consistent with the Defendant's explanation that it was paid for a replacement vehicle for himself. He says CDH told him to purchase it because of all the running around he was doing for her.
 - ii) In early 2013, 2nd January, £5,500; 19th January, £4,000; 21st Jan, £1,050; 24th Jan, £8,000;
 - iii) In February 2013: 21st Feb, £1,300; 22nd Feb, £1,000;
 - iv) In March 2013: 2nd March, 3 x £5,000 and 1 transfer of £10,000; 7th March £1,000; 8th March, 2x £20,000 (and each of these were to new Santander accounts in the name of the Defendant, namely 2995 and 4142, from which the balances were gradually depleted over the course of the next year by transfers to Mr John Neal Howes or standing orders to 'John' or what appear to be council tax payments); 12th March, £2,000; 21st March, £500.
 - v) In April 2013: 3rd April, £1,000; 4th April, £2,000; 17th April, £1,500; 24th April, £1,500.
 - vi) At the beginning of May 2013, the balance in the account was £1,515.87. Two transfers of £500 were made on 4th May.
22. It is apparent that the Defendant's witness statement served in these proceedings deals only with the Howes estate, consistent with the contention that the Claimant had no interest in the Crozier estate. However, in his letter to the Claimant's solicitors dated 7th April 2019, the Defendant did put forward some explanation of how the legacy from the Crozier estate had been spent. For example, he asserts that from 2010 to 2016 the Claimant *'used our mother as her own private bank, asking for and getting any money she wanted. Also our mother was very generous in paying for school trips for my sister's children as well as football training for her son, paying for holidays as well as inviting me and my family, numerous Christmas and birthday presents.'* He went on in that letter to say that the new property at 14, Goodwin Close required total redecoration, new furniture, kitchen white goods, beds and bedding, TV etc. The Defendant went on to say that *'All my mother's bills and living expenses were paid from her inheritance by direct debit, so she did not have to worry about such things. Throughout this time I regularly updated my mother as to what money she had left as I wanted her to be aware that funds were running low, and to be careful with her spending.'*
23. As I mentioned above, it is possible that CDH was content to leave all money matters to her son and effectively use the Defendant as her private banker. Hence, that all the expenditure from the proceeds of 141, Ladywell Road was made at the direction of or to CDH herself. However, I have to say that the pattern of expenditure from the 9035 account does strike me as more than a little odd and raises a number of questions. For example, why were all but one of the transfers made to Mr John Neal Howes? Why do we not see an account dedicated to paying bills for CDH? It might be said that what we see from the 9035 account is equally consistent with the Defendant taking considerable sums for himself.

24. Although the Claimant's witness statement in these proceedings was commendably (perhaps overly) restrained, by letter dated 26th July 2019, the Claimant's solicitors set out some detailed calculations by which they determined that the total value of the Howes estate should have been some £512,000 odd and considerably more than the balance of £207,930 put forward by the Defendant's solicitors. The letter identified the alleged shortfall of £304,133.24 and acknowledged that the Defendant was presumably asserting this sum was spent by CDH. It went on, presumably on instructions from the Claimant, to say this:

‘Carol Dawn Howes lived modestly, and income that she received by way of state benefits, her AVIVA private pension and any income as Abi's Carer would have been more than sufficient to cover all her necessary expenditure and therefore without any need to use savings accrued and represented by the surplus of monies from the sale of 141, Ladywell Road... and all other sums of the late Gerald William Crozier and purchase price of 14, Godwin Close...’

25. I consider it would be overly formal for me to ignore this account from the Claimant for the sole reason that it was not put forward in the Claimant's witness statement, particularly in circumstances where the only relevant account from the Defendant to the contrary is in his letter of 7th April 2019. Furthermore, I note that these assertions in the Claimant's solicitors' letter were not contradicted in any ensuing letter from the Defendant's solicitors, although I acknowledge the Defendant had already set out his version of events in his own earlier letter of 7th April 2019. On this basis there remains an acute conflict between Claimant and Defendant as to the spending habits of CDH, where neither account has been set out in a witness statement.
26. If I summarise where all the materials discussed above have led me, on the one hand it is possible (as I have said) that the Defendant's account in his letter of 7th April 2019 is substantially accurate and CDH herself spent virtually all the money left over within about a year, as was her entitlement. On the other hand, in my view, the facts as so far presented could be equally consistent with the Defendant having appropriated significant sums for himself from the Crozier estate which belonged to CDH.
27. On this latter alternative, *if* that had occurred, then one asset in the Howes estate would be a claim by the Howes estate against the Defendant for reimbursement of any sums wrongfully appropriated by him from CDH without her knowledge. It is on this basis that I consider the Claimant does have a sufficient interest to require the Defendant to produce an account of the Crozier estate.
28. I emphasise that in so ordering, I have not been able to identify any point at which it could be said that the Defendant's administration of the Crozier estate concluded. On the contrary, on either account, the Defendant appears to have continued in a capacity as fiduciary to CDH. Accordingly, the account will have to cover the period from the commencement of the administration of the Crozier estate down to either the administration of the Howes estate or the date at which any proceeds of the Crozier estate were effectively reduced to zero, whichever is earlier. When I say ‘effectively reduced to zero’, for reasons of proportionality I mean once the proceeds are shown to have reduced to less than £100.

29. I have also taken some account of the fact that in correspondence the Defendant's solicitors have relayed instructions from the Defendant which were either wrong or clearly misleading. For example, in the letter dated 21st June 2019, they said '*Our client has no documents regarding the sale of 141, Ladywell Road. That property was vested in the name of the Deceased [i.e. CDH] and was sold by her.*' - the implication being that the Defendant was not in control of the sale proceeds, whereas it turns out he was in total control.
30. On the other side of the balance, I also bear in mind that, in respect of the Howes estate, the Defendant appears to have produced a careful and detailed account.
31. However, for the reasons explained above, I order the Defendant to produce an account of the Crozier Estate. It is not necessary for the Defendant to produce any further account of the Howes estate. The fact that I have formed the view that the account given already of the Howes estate provides sufficient information can be used by the Defendant as a guide as to the information required to be set out in the account of the Crozier estate. If there is a dispute about whether sufficient information has been supplied in the account of the Crozier estate, the parties have permission to apply.

Costs

32. Both parties have put forward costs schedules and each side claims their costs. At this juncture, I am not in a position to decide who is right and who is wrong about CDH's expenditure. If it turns out that the Claimant's account is substantially accurate, then the Claimant is likely to receive an order for costs in her favour, both of the costs incurred to date and of any future claim in the proceedings between the parties. By contrast, if it turns out that the Defendant's account is substantially accurate, the Defendant is likely to receive an order for costs in his favour, on the same basis. Accordingly, it seems to me that the fair order for costs at this juncture is that the costs are in the proceedings or the dispute between the parties. I envisage that if the account produced by the Defendant gives rise to a further claim by the Claimant for reimbursement on some basis from the Defendant, it may be brought in these proceedings. It may well be that at that point, these proceedings will have to be converted into a Part 7 claim (e.g. because there will be a considerable dispute of fact). But I hope it is clear that I envisage the costs to date will be dealt with in any further proceedings. If that is not possible for any reason, then the parties have permission to apply.
33. Finally, I wish to emphasise that I do not encourage the parties to engage in further litigation which has the capacity to eat up what remains of their mother's legacy on one side or the other. It will be far better if the parties could sit down together and discuss (possibly with the assistance of a mediator) their different points of view and reach a compromise, however hard (if not impossible) that process might appear from their current viewpoints.