



## *Ruanne Dellal v Guy Dellal & Ors* [2015] EWHC 907 (Fam)

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This interesting case shines a light on the little used, but sometimes effective, power of the court to clawback transactions or gifts made by the deceased in order to defeat a claim against the estate under the 1975 Act.

### Mrs Dellal's Case

Mrs Dellal's case is that the children (from a previous marriage) and deceased's sister had been the recipients of 'Black Jack' Dellal's wealth, distributed to them or to entities in which they held control and/or interests over a number of years before Mr Dellal's death (the moniker was on account of Mr Dellal's gambling habit). In effect she alleges that he secretly gave away his wealth before he died in order to defeat any claims against his estate.

Mrs Dellal is already wealthy, having assets of £41m, including assets acquired through a Post-Nuptial settlement of £28.5m. At face value her claim for more financial provision from the estate appears unwarranted. However, one of the factors and a starting point in the assessment of a spouse claim under the Act, as regards the reasonableness of the provision made by the Will is: what provision would have been made had she and Jack Dellal divorced, rather than had he died? Arguably this would enable her to obtain significant further provision on the basis of the *White v White* equality of division of marital assets.

### The Children's/Sister's Case

The application before the court was for strike out and/or summary judgment of Mrs Dellal's request (as part of her claim) that the court exercise its power to clawback the missing wealth using s.10 of the Inheritance (Provision for Family & Dependents) Act 1975 (supplemented by ss.12 & 13 of the Act).

Section 10 of the Act gives the court the power to order the recipient of the deceased's property to pay a sum of money or transfer other property back to the estate

for the purposes of making an award of financial provision. The effect is to increase the size of the net estate. Such orders can only be made in respect of:

- Disposals made by the deceased 6 years before their death
- Made with the intention of defeating an application for financial provision.
- Where the disposals were not made for full valuable consideration
- And where exercise of the powers would facilitate the making of the financial provision order

The court must exercise its discretion in exercising the power and have regard to the circumstances in which any disposition was made and any valuable consideration which was given, the relationship of the recipient to the deceased, the conduct and financial resources of the recipient and all the other circumstances of the case.

With regard to 'intention' this is subjective i.e. the applicant must prove the intention was present and no presumption of intention applies. It is not necessary that the deceased should have the 1975 Act in mind and it need not be his sole or dominant intention. Inferences as to intention can be drawn from the natural consequences of his act of disposing of the assets, i.e. if the disposal is not made for any obvious explicable reason the natural inference can be that the deceased was deliberately, even if only in part, taking steps to defeat later claims under the Act.

A claim under section 10 of the 1975 Act does not affect the validity of the disposition under attack. If relief is granted then it takes the form of a money judgment against the recipient to pay a specified sum or property to the estate.

## Summary Judgment and Strike-Out

The children's application for strike-out was dismissed.

However, Mrs Dellal was on weaker ground in the face of the summary judgment application. The test on summary judgment is: is there a realistic prospect of success of the claim i.e. is the prospect of success real as opposed to fanciful? In the court's view, although there was a 'poverty of the claimant's case as to actual dispositions (by the deceased) and the existence of the statutory motive', Mrs Dellal had put up a strong prima facie case that at his death Jack Dellal had access to very considerable resources.

What is particularly interesting is that the court (Mr Justice Mostyn) was concerned that the summary judgment application could not be properly determined until Mrs Dellal (and the court) had evidence (if such existed) of

any of the alleged dispositions by the deceased to the children/sister. The application for summary judgment was therefore adjourned pending specific disclosure limited to all documents in the custody possession or power of each of the children/sister showing transfers of money or any other thing of (or worth) £10,000 or more to or for them in the 6 years before death and which derived directly from the deceased, or from any entity over which he had de jure or de facto control.

It is now quite likely that the children will seek an out of court settlement as they will hardly want to declare the true nature of the assets received from the deceased.

This article is not intended to be a full summary of the law and advice should be sought on all issues.

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