

**NOT
RECOMMENDED**

IN THE MATTER of the Estate of PEARL
ELIZABETH TAYLOR formerly
of Ngaruawahia but now
deceased

BETWEEN PAUL ORREN PEARSE of Turangi,
Field Officer, Trustee in the
abovenamed Estate

Plaintiff

AND BARRY GRAHAM TAYLOR,
JACQUELINE EDMONDS, JANET FAY
CHARLTON, DOROTHY JOYCE
TAYLOR, LEONIE GRACE HONE,
JOSEPHINE SHAREE TAYLOR, ALAN
RICHARD TAYLOR, and the
children of IRENE NEWPORT

Defendants

Hearing: 24 June 1987

Counsel: C.M. Earl for the Plaintiff
Miss C.M. Grice for J.S. Taylor
R.S. Garbett for J. Edmonds, J.F. Charlton, D.J.
Taylor, L.G. Hone
C.J. Harding for the children of Irene Newport

Judgment: 24 June 1987

ORAL JUDGEMENT OF GALLEN J

These proceedings involve matters arising out of the will of the late Pearl Elizabeth Taylor. They were initiated by the Trustee of her estate who considered it desirable to have these matters resolved. The estate is comparatively

small, consisting of a house property. The beneficiaries are not well off and would not readily have been in a position to have initiated the resolution of these matters.

Two problems arise and they both occur as a result of provisions of Paragraph 4 of Mrs Taylor's will. That is in the following terms.

In the events which have occurred Josephine Sharee Taylor moved to live with her Uncle, Barry Graham Taylor, following the death of the Testrix, who was her grandmother. She subsequently moved to live with an aunt, Jacqueline Edmonds, and was formally and legally adopted by that aunt on 4 February 1983. In May 1985 she moved to live with her aunt, Janet Fay Charleton. Josephine was aged 12 years at the date of the death of her grandmother. She is now aged 18 years. She has not lived in the house in which she has a right of residence since her grandmother's death. While she is prepared to comply with the clauses of her grandmother's will she would prefer that the house be sold. The Trustee has made available a report on the house from a land agent in the district in which the house is situated. That report indicates that the house is old and decrepit and would require very substantial sums of money spent on it to bring it into a good tenatable condition. The letter suggests that a major rebuild would be involved. It is not unimportant that the land agent concerned says that the interior is well kept as a

result of very good tenants. His estimate of market price is \$32,000. The concern which he expresses as to the extent of work required on the house is one at least of the reasons that Josephine would prefer the house to be sold. The second question arises as to whether the distribution contemplated by Para 4 of the will is per capita or per stirpes.

All the beneficiaries under the will with the exception of one have been represented at these proceedings. The first named defendant was served but has taken no steps. The children of Irene Newport are three in number; one is of full age and capacity and the other two are both infant but both have left school and are independent and have expressed a view.

Counsel for those children appeared but did not wish to address argument to the Court and in view of the smallness of the estate sought leave to withdraw in order to reduce the liability for costs. The solicitor for those children has written indicating that the children would prefer a stirpital distribution.

Various orders are sought under the Provisions of the Trustee Act 1956. It is apparent that all parties desire that the house should be sold and I think in view of the material before the Court it is obviously desirable that this course be adopted and it would be in the interests of all parties

including the infant beneficiaries. Apart from anything else there could be no guarantee that the cost of putting the house into reasonable order would result in any increase in its ultimate value. I am therefore prepared to make an order under the provisions of the Trustee Act authorising the Trustee to sell the house and such an order is now made.

That leaves over other matters for resolution. The interest of Josephine will be changed by the order for sale and it is suggested that the proceeds could be invested and the income either calculated or made available to her in terms of the Trustee Act. Alternatively, it is suggested that her interest should be quantified at this stage by calculation and the balance of the proceeds distributed amongst the beneficiaries. This proposal has the support of all parties and in view of the small size of the estate, it would appear to be a sensible proposal and one which the Court could accept. Before doing so, however, it is desirable that I should advert to the other problem and that is whether the distribution contemplated by Para. 4 is per capita or per stirpes. It is my view on a reading of that clause that it provides for distribution per capita. This would follow the wording of the clause and would be in accordance with the presumptions which normally determine interpretation in matters of this kind.

It has been suggested to me that the children of Irene Newport are old enough to have a view and have expressed a view

that the distribution should be per stirpes and that an order under the appropriate section of the Trustee Act could be made to reflect what is said to be a family arrangement. On the information before me I do not think I should be in a position to accept such a proposal which effectively would mean a very substantial reduction in the interests of infant beneficiaries; interests which the Court is obliged to protect. In the circumstances, it has been thought desirable that there should be an opportunity for Counsel to further confer regarding this matter including a consideration of an appropriate calculation of the interest of Josephine to enable an immediate distribution to be made rather than an investment of the proceeds. The order for sale is not intended to reduce the entitlement of Josephine and the question of what should be done with the proceeds of any such sale in order to preserve such rights as she may have and which should ultimately be embodied in an order of the Court which takes into account the effect on her interests of the sale is a matter which will have to be further considered and is set over for further argument at a subsequent date. All these matters require further consideration and the proceedings will therefore be adjourned sine die to be brought on on seven days notice.

RJj(alk)

Solicitors for the Plaintiff: McCaw Lewis Chapman
Hamilton

Solicitors for J. Taylor: Harkness Henry
Hamilton

Solicitors for J. Edmonds, J.F. Charlton, D.J. Taylor and L.G.
Hone: Fry Wilson Todd & Co
Huntly

Solicitors for the children of Irene Newport:
Norris Ward & Co
Hamilton