

7/11 NZLR

NOT
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CP 322/87

UNDER

The Trustee Act 1956

AND

IN THE MATTER of the Estate of
LAWRENCE CLERVAUX CHAYTOR
Deceased

BETWEEN

J.T. INGERSON

Plaintiff

A N D

J.R.L. TRIPE

Defendant

Hearing: 27 October 1988

Counsel: Pamela J. Andrews for the Plaintiff
M. Hardy-Jones for the Defendant Trustee
P.G. Logan for the Public Trustee
Mr Anthony Chaytor appears in person
Miss Hall (daughter of Mrs Hall) appears in person

ORAL MEMORANDUM OF ELLIS J

This claim is for the balance of legal fees rendered by Mr Ingerson, a Wellington Solicitor to the Public Trustee for services he rendered as an auditor appointed by the Public Trustee under s.83B of the Trustee Act 1956, to investigate the administration of the Chaytor estate.

The briefest of histories will have to suffice. It seems that Mr Chaytor died in about 1952, leaving a widow and four children. Mr Chaytor appointed his widow and a son and a sister as trustees of his estate, and pursuant to the will, the widow had a life interest. The estate comprised very substantial farm holdings and the management of it involved farming companies. The estate was essentially managed by the son. The son and sister died some years ago and were survived by the widow, who died some eight years ago. Following the death of the son and sister, Mr Tripe, the Defendant, became joint trustee with the widow. Following the death of the widow, Mrs Hall, the daughter, became concerned about past management of the estate and approached the Public Trustee under the Act to appoint an auditor, which he agreed to do as I have related. Mr Ingerson provided his report on 10 September 1986, and concluded that although Mrs Hall's concerns were to some extent unfounded, his investigation revealed other matters that on their own warranted his appointment as an auditor. He concluded by recommending that the estate should pay his fee, which in the ordinary course of events would be the expected thing.

The Public Trustee paid the sum of \$18,500 towards Mr Ingerson's fee from monies that he had received from Mrs Hall and the present proceedings are for the balance of Mr Ingerson's fee, \$4,090.48, plus interest and costs.

There can be no doubt that serious accounting difficulties had arisen in the administration of the estate by the time Mr Ingerson came to make his investigation. It appears too that Mr Tripe entered on his trusteeship at a time when the administration of the estate was far advanced and records were not fully available. It is impossible on the information before me to form any concluded view as to fault for the state in which the estate was found by Mr Tripe. Mr Chaytor criticises the conduct of the audit, although not necessarily Mr Ingerson himself, past advisors to the trustees, and confirms that his relationship with his sister has had some difficulties.

If I am to determine the incidence of the whole of Mr Ingerson's fee, so as to reflect the true justice of the situation, I will have to be much better informed as to the matters that were touched on by Mr Logan and Mr Hardy-Jones in particular. It may well be that such an enquiry is of little benefit to the estate beneficiaries. It appears that a practical distribution of the farm lands is in hand and that Mr Chaytor and his sister Mrs Hall will be personally involved in decisions that must be made, both in this estate and their late mother's estate in which they are both trustees.

I would hope that they would be able to settle the proper payment of Mr Ingerson's fee as part of those negotiations.

With Mr Chaytor's consent, I now order that the sum of \$4,090.48 together with interest at 11% from 29 September 1986 be paid to the Plaintiff out of the estate of the late Lawrence Clervaux Chaytor. I also order that the Plaintiff's costs, which I fix in the sum of \$1,000, together with disbursements, be paid out of the estate of the Plaintiff. The form of that order will be judgment for the Plaintiff in those terms. That in itself would dispose of the Plaintiff's interest in the present proceedings.

Other matters at issue, if they can be properly pursued in the present claim, are adjourned sine die. If the merits are to be pursued further, as I said I would expect to be properly informed by evidence.

The Public Trustee's costs are fixed in the sum of \$350 and disbursements and are to be paid out of the estate.

ANDREW J.
.....