

NOT
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
BLenheim REGISTRY

A27/84
A15/85

IN THE MATTER of the Law Reform
(Testamentary Promises)
Act 1949

A N D

IN THE MATTER of the Estate of
NOEL ADAMS, Deceased

BETWEEN A.H. HARRISON

First Plaintiff

AND

THE TRUSTEE EXECUTOR
AND AGENCY COMPANY OF
N.Z. LIMITED

Second Plaintiffs

A N D

A.H. HARRISON

First Defendant

AND

THE PUBLIC TRUSTEE AS
ADMINISTRATOR OF THE
ESTATE OF ELSIE ADAMS,
Deceased

Second Defendant

-A N D-

BETWEEN

I.E.M. SMITH

Plaintiff

A N D

A.H. HARRISON

Defendant

Hearing: 17 November 1988

Counsel: W.G.G.A. Young for the A.H. Harrison
M. Hardy-Jones for the Public Trustee
T. Sissons for I.E.M. Smith
M.B.T. Turner for the Estate

Judgment: 5 Decmber 1988

JUDGMENT OF ELLIS J

This case involves two claims against the estate of the late Noel Adams, who died at Lower Hutt on 22 September 1983. Mr A.H. Harrison is the executor of his estate, being the survivor of the executors named in the Deceased's will, dated 4 June 1970, and which was admitted to probate in this Court. Each claim is under the provisions of the Law Reform (Testamentary Promises) Act 1949. The first is by Mr Harrison himself, and the second is by Mrs I.E.M. Smith. In the action by Mr Harrison, the Trustee Executor and Agency Company of New Zealand Limited is a second plaintiff, being the executor of the estate of Mr Harrison's late wife, Mrs June Harrison. The second defendant in this action is the Public Trustee as administrator of the estate of the late Mrs Elsie Adams. As will shortly appear, the contest is in effect between Mr Harrison and Mrs Smith on the one hand and the estate of the late Elsie Adams on the other. Mr Harrison, in his capacity as trustee was separately represented at the hearing by Mr Turner.

Earlier this year Greig J ordered that the two actions be heard together and be tried on affidavit evidence, reserving leave to the parties to require deponants to be available for cross-examination. Each party presented witnesses for cross-examination accordingly. In particular, Mr Turner cross-examined all witnesses in some detail as part of his duty to put the plaintiffs to their proof. As a result, all

A brief history of the Adams family will suffice. I shall refer to the people involved by use of their christian names, as it is convenient, and I am sure will not give offence. Noel Adams and June Harrison were the children of the late John Adams, himself a descendant of a long established Marlborough family. Noel Adams married his first wife Iris during the war and she died in 1962. Noel Adams re-married Elsie Marshall in 1967 or 1968. As I have already said, Noel Adams died in 1983 and Elsie Adams died on 24 July 1986. On the papers before me, it may be that Noel Adams had a daughter, but her position has been dealt with, I was told from the bar, under the provisions of s76 of the Trustee Act 1956 and these proceedings have been conducted on the basis that Noel Adams had no children.

June Harrison (born Adams) married Arthur Harrison, one of the present plaintiffs, and a defendant, in 1942. June Harrison died in 1982.

Mrs Smith is the widow of the late Frederick Smith, who died in 1972. She is also a sister-in-law of the late Noel Adams. Frederick Smith was the other trustee named in Noel Adams' will.

John Adams died in 1957 at the age of 83. He was a man of property and this was inherited by his two children June Harrison and Noel Adams. The nature of the property and the way in which it was accumulated is described in the affidavits and the evidence I heard. He was involved in three business ventures

The first was a partnership venture with his two children, who owned land in Scott Street in Central Blenheim. The partnership was taken over by a company called Wellworth (Blenheim) Limited. The second was a company called Adams Properties (Blenheim) Limited, in which John Adams had a one third interest. The third was a commercial property in Manners Street, Wellington, which John Adams owned personally. In addition, he owned a farm at Lower Wairau, which was part of the original Adams family estate. The position following John Adams' death was such that finance had to be found to meet death duties and June Harrison and Noel Adams each put in money, which was treated as a gift to the estate. On his father's death, Noel Adams inherited the farm at Lower Wairau and Noel Adams and June Harrison took the other assets equally.

After the war, Noel Adams acquired a Crown leasehold farm at Dillons Point and asked Frederick Smith to manage it for him. It was an integral part of the purchase arrangement that Frederick Smith should manage the property, as the purchase was made possible by the fact that Frederick Smith was a returned serviceman. Mr and Mrs Smith managed the farm until shortly after Mr Smith's death. Although Noel Adams asked Mrs Smith if she wished to remain on the farm, she elected to move into Blenheim.

For present purposes, it is necessary only to state the nature of Noel Adams' assets as at his death.

These comprise the Lower Wairau farm, valued now at \$205,000, the Dillons Point farm, valued now at \$92,000, one third of the shares in Wellworth (Blenheim) Limited and by now, accumulated cash of something over \$80,000, derived largely from the interest in Wellworth (Blenheim) Limited.

I now relate the position of each of the claimants Arthur Harrison and Mrs Smith. They are not in conflict one with the other, and indeed each lends the other support. Mr Harrison has spent all his working life since he returned from the war in 1944, managing the Adams family interests and of course his own. The assets involved those I have already mentioned, and small share portfolios. He worked as a farmhand for labouring wages on the farms, but he had business expertise and he devoted much of his energies to the management of the properties and all that was associated with them. He gave Noel Adams advice and it appears little burden fell on Noel Adams' shoulders. In particular, Arthur Harrison resolved the problems following John Adams' death, including the payment of death duties, and also did his best to provide Noel Adams with cash income from the properties from time to time. The assets, though substantial, did not produce a great cash income. Noel Adams had a problem with alcohol, and it appears that his contribution to the management of the assets and the work on the properties diminished as the years passed. Arthur Harrison bought out Noel Adams' share in the Manners Street property for \$25,000 in 1974 or thereabouts. This provided substantial cash funds for Noel Adams.

It was submitted by counsel that it was likely that the price was favourable to Mr Harrison and from the valuation evidence, I am inclined to accept that submission. However, it was a family transaction and there is no suggestion that Noel Adams was anything other than pleased with the agreement that had been reached. On the other hand, I think it fair to assess the transaction as one that was overall beneficial to Arthur Harrison. I am satisfied on the evidence before me that Arthur Harrison performed substantial services for Noel Adams during his lifetime.

As I have said, Mr and Mrs Smith came to live on the farm at Dillons Point. To do so, Frederick Smith gave up his job as a master plumber. He was a highly qualified tradesman, being also a mechanic and gunsmith. He was a very close personal friend of Noel Adams. The friendship went back to their school days. They were close friends during their teenage years, sharing a passion for motorcycles, and as I have recorded, Frederick Smith and Noel Adams married sisters. After the Smiths moved to Dillons Point, they managed that farm first for cattle and then for cropping. This involved both Mr and Mrs Smith full time and for only modest wages. They performed all tasks expected of a couple running a farm and in addition, Frederick Smith ran Noel Adams' contracting business and attended to the mechanical and other needs of Noel Adams' other farm, and as I have said, he was a master plumber. I am fully satisfied on the evidence that Mr and Mrs Smith performed services for Noel Adams during his lifetime to a value well in excess of what was paid them in wages or in kind.

The Adams family was a close one, as was the friendship between Noel Adams and Frederick Smith. Arthur Harrison as brother-in-law was of course one of the family. These close relationships are amply reflected in the provisions of Noel Adams' will of 1970. As I have already said, he appointed Frederick Smith and Arthur Harrison as executors. He specifically left the Dillons Point farm to Frederick Smith. He left the balance of his estate upon trust to pay the income to his second wife, Elsie Adams, and thereafter the capital as well as the income for his sister June Harrison. The devise of Frederick Smith failed, as did the gift of residue to June Harrison.

There was evidence before me that Noel Adams did little to differentiate between Frederick Smith and Iris Smith and indeed continued to refer to them both after Frederick Smith's death. So too, it appears that Noel Adams did not clearly distinguish between his sister June Harrison and his brother-in-law Arthur Harrison when considering his property and testamentary dispositions. This was confirmed by the evidence of Mr Fisher, the Accountant employed by Noel Adams, who told me that he mentioned to Noel Adams from time to time that he should make a will, but that Noel Adams did not discuss this with him in any sensible way. Like many people, Noel Adams perception of his testamentary position and obligations clouded with the years and because of his increasing problem with alcohol.

Produced as exhibits were two handwritten notes by a Mr Norman Frank Bevins. Mr Bevins is now also dead, but for some 9 years, he was the custodian of the Lower Wairau property for Noel Adams and knew him well. I am satisfied that the notes were written in circumstances that do not detract from their truth.

In one he said:

"It has often been conveyed to me by the late Noel Adams that after his sister's death, his brother-in-law, the said Arthur Harrison, was to inherit all Scott Street, known as Wellworth, jointly owned by all three".

The other said:

"It was discussed in my hearing as a witness that the property in Noel Adams name, known as the Lower Wairau block was to stay in the Adams family and anything in the Lower Wairau in his wife's name was to stay in the Marshall family. I have been a friend of the Adams' for 16 years, 9 years of this as custodian of the said property of Lower Wairau."

The gist of these letters is plain, that Arthur Harrison was to benefit to a substantial extent in Noel Adams' estate.

The first claim is by Arthur Harrison and the administrator of his wife's estate. However, the services rendered were by way of Arthur Harrison himself and there was no evidence before me that June Harrison herself rendered services such as would sustain a claim under the Law Reform (Testamentary Promises) Act.

On the other hand, I am satisfied that the late Noel Adams did receive substantial benefits from Arthur Harrison's services and that Noel Adams promised to reward him by testamentary provision. The family relationship in no way detracts from the merits of the claim: Jones v. Public Trustee [1962] NZLR 363.

In the second claim, Mrs Smith alone claims. I am satisfied that Mr and Mrs Smith together provided very substantial services to Noel Adams during his lifetime in the manner I have described and that Noel Adams promised to reward them, or the survivor of them, with testamentary provision. I am satisfied that on the evidence, Noel Adams did not distinguish particularly between his old friend Frederick Smith and Frederick Smith's wife, either during their lifetime or afterwards, and accordingly I do not consider it necessary in any way for Mrs Smith to claim as it were through the right of her husband. On the facts, she is entitled to claim herself.

I now turn to the question of quantum. Dr Young submitted that Arthur Harrison's claim did not extend to the whole of the estate, or even to the estate excluding the Dillons Point farm. He claimed that his client's claim should be satisfied by a transfer of the shares in Wellworth (Blenheim) Limited in specie. The net value of such shares could in my view be simply translated into a one third interest in the real estate and so would be worth say \$340,000. I do not think that it is realistic in the circumstances to discount this figure particularly, as it appears that most of the shares, if not all of them, would be owned by Arthur Harrison.

I consider that Mr Fisher, the Accountant, accurately summarised the position when he said:

"16. All in all, in relation to the services that Mr Harrison provided to his brother-in-law, Mr Adams, I think that it is highly likely that if Mr Adams had been left to tend to his own affairs, his estate would have been a great deal less than it is now."

For Mrs Smith, Mr Sissons submitted that the proper award was a cash payment of \$100,000, representing in round figures the value of the Crown leasehold, plus some income from the date of death in 1983. There is no doubt that a measure of the testamentary promises has been clearly stated as the Dillons Point farm itself.

I now turn to the provisions of s.3 of the Law Reform (Testamentary Promises) Act, which provides that the testamentary promise shall be enforceable against the estate of the Deceased in the same manner and to the same extent as if the promise of the Deceased were a promise for payment by the Deceased in his lifetime of such amount as may be reasonable, having regard to all the circumstances of the case, including in particular the circumstances in which the promise was made and the services were rendered or the work was performed, the value of the services or work, the value of the testamentary provision promised. The section requires also that I am to take into account the nature of the estate, and the claims of those otherwise entitled to it, in this case, the wife of the Deceased, the late Elsie Adams.

In this last respect, I am satisfied that the late Mrs Elsie Adams was entitled to substantial consideration from the estate of her husband and I consider that the provisions of the 1970 will would have met Noel Adams testamentary obligations properly if his sister and his friend Frederick Smith had survived him, and against the understanding that his obligations to Mrs Smith and to Arthur Harrison were made by the provisions for Frederick Smith himself and June Harrison.

The provisions of s.3 would allow me to vest the Dillons Point farm in Mrs Smith and also empower me to order a transfer of shares in specie to Mr Harrison. Conversely, I can fix a cash payment, notwithstanding the expressed intention that the beneficiary would be in receipt of a specific devise of land.

Taking all matters into account, including the practical administration of the estate, I am moved to accept the submissions made on behalf of each plaintiff. Accordingly, the plaintiff Arthur Harrison's claim will be visited with an order directing the trustee in the estate of the late Noel Adams to transfer to him the one third shareholding held by the estate in Wellworth (Blenheim) Limited. The claim by Mrs I.E.M. Smith is allowed and I order that she receive the sum of \$100,000 from the estate of the late Noel Adams.

Each plaintiff will be entitled to costs, which under the circumstances should equate their solicitor and client costs as nearly as may be, including disbursements and witnesses expenses. The Public Trustee will not need an order for costs, as he represents the interests of the residuary beneficiary in the estate. Similarly, Mr Turner is protected for his costs out of the estate.

In case these orders do not finally dispose of the matter, I expressly reserve leave to all parties to apply further.

Arthur E. J.
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