IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY 12/7 C.P. No.66/89

UNDER the Matrimonial Property Act 1963

A N D

UNDER the Family Protection Act 1955

IN THE MATTER of the Estate of JOHN NEWELL TAYLOR

BETWEEN ALISON LLOYD TAYLOR

Plaintiff

A N D THE PUBLIC TRUSTEE

Defendant

~~H79~~
1228

Hearing: 17 June 1991

Counsel: I. Gordon for Plaintiff
No appearance of or for Defendant
M. Leonard for P. Taylor & S. Eccles
R. Jefferis for R. Taylor & J. Commons
J. Turkington for F. Chun
S. Rees-Thomas for Little Company (leave to withdraw)
M. McMelon for Mother Aubert Home of Compassion Trust Board (leave to withdraw)

Interim Judgment: 17 June 1991

ORAL INTERIM JUDGMENT OF TIPPING, J.

This is an interim judgment for reasons which will appear in a moment. The Plaintiff seeks relief under the Matrimonial Property Act 1963 and the Family Protection Act 1955 from the estate of her late husband. The parties were married in 1957 and separated in March 1975. The husband died in 1988, some thirteen years after the

separation. There are two children and there are grandchildren whose interests have been properly protected.

The will appointed the Public Trustee as executor and then divided the estate into eight equal parts, two of which were left to the testator's brother, two to his sister, two to a friend who was living in Hong Kong and the other two to charities. The parties entered into a separation agreement, which is dated 3 March 1975, pursuant to which the wife was given a life interest in the former matrimonial home. The relevant words for present purposes are that the life interest was granted "during the lifetime of the wife for so long as she does not remarry". She has not remarried, indeed the parties were never divorced.

The deceased's will did not repeat the life interest in the matrimonial home in favour of the wife. It seems to have been thought at one stage that this circumstance defeated the life interest. There is no reference in the separation agreement to its binding the executors and administrators of the husband, but all counsel are now agreed with the view that the life interest survives the death of the husband and enures according to its tenor for the life of the wife.

It became apparent reasonably early in the submissions of Mr Gordon for the Plaintiff that certainly under the Matrimonial Property Act, and probably also under the Family Protection Act, what the Plaintiff was in substance seeking was simply the ratification of the life interest. When that beame clear to me I intervened to ask why such ratification was necessary in view of the terms of the separation agreement. Mr Gordon then advised me that there had

been some doubt raised as to whether the life interest survived the death of the husband. As I have said it is now agreed on all hands that it does so survive, so that problem is removed.

I granted the parties a brief adjournment to enable them to consider the matter further in the light of this development. The Plaintiff does not wish to take up her life interest in the sense of remaining in the property for the rest of her life. She is content that the property be sold now, provided that her life interest be capitalised and she be paid an appropriate sum to reflect it. Counsel are agreed that on the tables the value of the life interest of the Plaintiff widow can be computed at 0.546% which on the evidence amounts to $86,400.00, being that percentage of the value of the matrimonial home as per a valuation annexed to the Public Trustee's affidavit, namely $150,000.00. The Plaintiff now says, sensibly and commendably, in my view, that she would accept that capitalised sum, namely $86,400.00, in full settlement of both her claims and inclusive of costs. Ideally she would seek some additional costs but she has said that she will accept that sum all in.

Mr Jefferis, who represents the brother and sister of the deceased, feels that he needs some time to consider this development with his clients and he also wishes to take some time to consider whether or not the computation for capitalising the life interest is a realistic one in the circumstances. I can quite understand that in view of the evidence that has been put in by the two people for whom Mr Jefferis appears.

This is a case where the Court is particularly anxious that the matter be settled if it possibly can between the parties. The reasons are self evident. There is a serious conflict of evidence as to the family circumstances between the husband and the wife and his children. It is not something which a Court relishes having to get involved in and it is much better, if at all possible, for these sort of difficulties to be resolved between those affected. I am not expressing of course any view on the conflict of evidence but I do note the contents of the death certificate.

Mr Turkington on behalf of the lady from Hong Kong quite understandably cannot consent to a settlement along the lines now profferred by the Plaintiff, but feels that his client would probably submit to the judgment of the Court. Mr Leonard, who appears for the Plaintiff's two children, endorses the Plaintiff's claim, supports the concept of capitalisation and seeks costs for his clients, they having no interest on any hypothesis. In the light of the suggested settlement by the Plaintiff the children realistically and responsibly do not pursue any claim in their own right.

There are two charities, as I have already mentioned, whose counsel appeared, abided the Court's decision and were granted leave to withdraw, one of them expressing a reservation as to costs, the other not. It seems to me that the charities should receive some modest provision from the estate for their costs, if they seek it. It also seems to me that Mr Leonard's clients should receive some provision. They were necessarily involved and they filed affidavits. I would

have thought in their respect a sum of approximately $750.00 would be realistic, with perhaps $300.00 for the charities. If there are circumstances that make those suggested figures unrealistic then no doubt the matter can be the subject of further consideration.

The remaindermen will of course have to recognise in any approach to settlement that their enjoyment of the major benefit given to them under the will could well be long postponed if the Plaintiff were to elect to enjoy the life interest in rem. In certain instances the benefits might not be enjoyed in possession at all. There will therefore be considerable utility I would have thought in reaching a settlement by means of capitalising the Plaintiff's life interest. As to the exact level of capitalisation the tables are conventionally taken as a starting point. Of course there can always be room to debate the discount rate which the tables adopt.

I simply observe, for the assistance of the parties and in no binding way, that it seems to me that the Plaintiff's claim is a fully meritorious one and that this might be reflected in any approach to the computation, which is of course for the parties to agree if they can and for the Court to resolve if they cannot. I end by saying that it is implicit in this approach that both the Plaintiff and those represented by Mr Jefferis reserve their position overall if agreement cannot be reached on the compounding figure.

I would sincerely hope that the matter does not have to come back before the Court, other than perhaps to endorse a consent order. Mr Turkington's position is not

perhaps as difficult as that of Mr Jefferis in this respect but I formally note that his client reserves her position also and so do Mr Leonard's clients. The Court strongly encourages the parties to compromise at or about the level which has been suggested by the Plaintiff. The proceeding is formally adjourned sine die for further consideration if that be necessary with all matters of costs reserved.