

CLAIM NO HC07C01317

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

IN THE ESTATE OF GRAHAM SHEPPARD, DECEASED

BETWEEN:-

IAN ROBERT SHEPPARD

Claimant

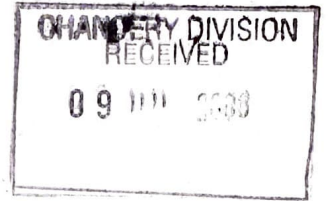
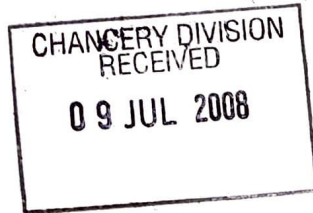
and

(1) MARGARET JANE SHEPPARD

(2) RICHARD JAMES SHEPPARD

(3) THE CENTRE FOR ALTERNATIVE TECHNOLOGY

Defendants



REPLY TO DEFENCE and
DEFENCE TO COUNTERCLAIM

Reply to Defence

1. Save as insofar as it contains admissions, the Claimant takes issue with the Defence.
2. The Will dated 12th October 2004 was not duly executed by the Deceased.

(1) The Deceased wrote and signed the Will at a date before the 12th October 2004, leaving it undated. The First Defendant then took the Will to her parents (Mrs & Mrs Barling) on 12th October 2004 to be signed by them. The First Defendant then left Teignmouth with the Will, driving up the A303 to London. At the home of Edward Norrington in Walton-on-Thames, the First Defendant joined the Deceased, who then completed the date and address of the First Defendant's parents on the Will.

(2) The Claimant does not plead with respect to the whereabouts of the First Defendant on the morning of 12th October 2004, because it is not within his personal knowledge, save for what he overheard at Norrie's (see (4) below).

(3) The Deceased was not present when Mr & Mrs Barling signed his Will. As the First Defendant's diary says: "Called on M&D for them to sign G's Will".

(4) The First Defendant drove up the A303 alone and stopped to phone Edward Norrington. The Claimant was present with the Deceased at the home of Mr Norrington (who died in 2006) between around 3.30pm and around 4.45pm on 12th October 2004, and remembers Mr Norrington relaying the call to the Deceased, who had been taking a nap.

(5) It is admitted that on 10th October 2006 the Claimant was not certain on which day during the week of 18th October 2004 the Deceased called in, save to say it was several days after the birthday of the Claimant's wife Nicola Sheppard (birthday 18th October). He apologised for Nicola not receiving a birthday card (which he blamed on the First Defendant because he had left it on the kitchen table in Teignmouth). It was later determined to have been 21st October because it was after Nicola Sheppard had been shopping in Harrods and returned to collect Tristan Sheppard from school. It was clear from the conversation that the Deceased had left Teignmouth ahead of the First Defendant before their trip to Rome the previous week. The Claimant was already aware of this and that the Deceased had gone to Inkpen as planned (and as was usual), while the First Defendant stayed behind in Teignmouth to wait for the tickets from British Airways. These had not arrived as expected on the Monday morning (11th October) but did arrive the following morning.

(6) The Deceased had come to Walton-on-Thames from Inkpen.

3. It is denied that the provision of the 2005 Will was less favourable to the First Defendant as, by her own admission, she had persuaded the Deceased to leave the property at Inkpen to her until such time as she decided to hand it to the Third Defendant. This was not the case with the 2004 Will, and indeed the case of intestacy would be worse for the First Defendant and would favour the Claimant. What is important is what the First Defendant thought before she was able to obtain legal advice, which was that the 2005 Will was more favourable to her. In May 2006 the First Defendant made it clear to the Claimant that she was seriously considering keeping the property at Inkpen, because by then she had found out that she was not bound to pass it on to the Third Defendant at all.

4. The First Defendant has admitted in her Defence to being aware of the facts relating to the execution of the 2005 Will "within days of the Deceased dying" yet claims not to have known that the Will was invalid at that time.

The Claimant disputes this because the First Defendant has not been consistent. In particular the First Defendant:

- (1) Told the Claimant and his brother Richard Sheppard on Friday 26th August 2005 (two days after the Deceased died) that the 2005 Will was invalid, that her brother (Chris Barling, executor) was very angry and furthermore that there was an earlier Will from 2002 that was definitely valid. She said this Will left the Claimant and his brother less again than the 2004 Will, of which she produced a poor copy but made no comment as to its validity.

- (2) Told the Court during a hearing on 15th March 2007 that the 2005 Will was invalid because it was taken to the Deceased at Torbay Hospital on the night before the Deceased died and then to the home of Mr & Mrs Barling in Teignmouth for signing.

- (3) Wrote to the Probate Registry in December 2007 claiming not to have known that the 2005 Will was invalid when she obtained a Grant of Probate in March 2006. The First Defendant is highly educated and a former head of modern languages at Brooklands College in Weybridge.

- (4) Has since changed the version of events in (1) to say that the Will was signed by the Deceased at some time before 23rd August 2005 (it is dated 2nd August 2005). This change came after the Claimant obtained medical evidence showing that the Deceased was in no state to sign anything the night before he died.

5. As the 2004 Will was not validly executed, the Deceased died intestate and the estate should devolve according to the laws of intestacy.

Defence to Counterclaim

6. It is denied that the 2004 Will was executed in accordance with the strict requirements of s9 of the Wills Act 1837 (as amended).

(1) The failed execution of the 2005 Will involved the same individuals as the 2004 Will, in particular Mr & Mrs Barling (the parents of the First Defendant) having signed as witnesses to both. Their credibility must be in serious doubt because they are the parents of the First Defendant and because the circumstances surrounding the 2005 Will show a pattern of behaviour.

(2) The credibility of the First Defendant must also be in serious doubt. In addition to changing her story with relation to the 2005 Will, she has put forward, and used in litigation since February 2007, sworn affidavits of due execution in relation to the 2004 Will which are in fact merely statements not sworn under oath.

(3) The main reason that the Deceased was drafting a new Will in August 2005 was because he and the First Defendant knew that the earlier Will was invalid, and may in fact have known that the 2002 Will had also been invalidated by their marriage in April 2004. The 2004 Will had been written because of the dangers of flying after major surgery and a risk of thrombosis, but it had not been correctly executed. The differences in the 2005 Will were very few, the main two being: (a) the Claimant having separated from his wife, the Deceased wanted to help him get back on his feet through an increased legacy (while also doing the same for Richard Sheppard, as his usual and uninfluenced approach had always been); and (b) because the First Defendant had said that she'd like to keep the property at Inkpen for longer – as confirmed in an e-mail to the Claimant on 23rd July 2006: “It was only as a result of something I said that he changed the wording.”

7. The Claimant kept the recollections outlined at 2(5) from the First Defendant until after the hearing on 15th March 2007, when it was admitted unexpectedly that the 2005 Will was invalid. He had also kept from her the more detailed picture of events, including his visit to Walton-on-Thames on 12th October 2004 and the events surrounding that. The Claimant had been researching these events since the recollection in 2(5) was made at a meeting with Nicola Sheppard on 23rd September 2006, specifically to look into the date of the 2004 Will (12th October 2004). The First Defendant has since that time created an alternative version of events which the Claimant believes to be false:

(1) On 10th October 2006 the First Defendant sent an e-mail (see attached) to the Claimant saying that the 2004 Will was valid because she and the Deceased went to her parents to have the Will witnessed on 12th October 2004. This e-mail came a week after the Claimant had told his brother that he thought the First Defendant would produce a 'story' to prop up the 2004 Will.

(2) In the e-mail the First Defendant claimed to have a "diary entry to that effect and there was a friend there who recalled my father saying that we would be coming for that purpose." The 'friend' was not identified until five months later when ahead of the 15th March 2007 hearing, the First Defendant sent to the Claimant affidavits of due execution and a scan from her 'diary'. Shortly after that and closer to the hearing date an affidavit by the friend, Margaret Bacon, was sent to the Claimant. Although Margaret Bacon stated that she was present when the 2004 Will was executed, she could not be certain about the date. In addition it is averred that the said e-mail illustrates that Mrs Bacon's recollection was in fact limited to what Mr Barling told her, which was before he knew that the Deceased had decided to go to Inkpen alone as originally planned, leaving the First Defendant in Teignmouth to have the Will signed and also to wait for the British Airways tickets for Rome.

(3) On 19th March 2007 the First Defendant wrote to the Claimant's then solicitor John Devlin saying: "It is my conviction that your client's whole intestacy claim was based on this piece of fake evidence." She was referring to British Airways having erroneously given the Claimant false information that

the Deceased travelled to Rome alone on 13th October 2004, which for a while caused considerable confusion – which was not helped by the First Defendant taking almost two months to pass on a letter from British Airways giving official confirmation of her flights (which the Claimant had been unable to obtain for Data Protection reasons).

(4) As stated above, the First Defendant sent the Claimant a scan of her ‘diary’ ahead of the 15th March 2007 hearing, but this only covered one page and was a very poor scan. In June 2007 a scan of the two pages was sent (the whole week of 11th October 2004) but the Claimant did not get to see the diary until during negotiations following an aborted hearing in September 2007. He was able to flick through the pages briefly but did not have a chance to read anything properly. Since then he has attempted to inspect the diary to no avail.

(5) The Claimant takes issue with a few small parts of the diary entries for 11th and 12th October 2004. These are minor changes which could have been added quite easily in an attempt to place the Deceased with the First Defendant. In particular the diary says: “G then drove. I dozed off for ½ an hour.” In fact the Deceased was not able to drive for two months following operations in July/August 2004, following which he was in great discomfort and had his dressings seen to every day for two months. He tended to use the train to go to Inkpen, where he received daily nurse visits, and often sat on an inflatable cushion. Before the operations he had been cleared to drive but using an eye patch, as he had double vision. The Claimant believes he only started to drive again in mid-October 2004, but is not certain of the exact date.

I believe that the facts stated in the Reply and Defence to Counterclaim are true.

Signed by IAN ROBERT
SHEPPARD



Filed and served this 9th day of July 2008

By Ian Sheppard

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