

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

CLAIM NO: HC07CO1317

In the estate of GRAHAM SHEPPARD deceased

BETWEEN:-

IAN ROBERT SHEPPARD

Claimant

- and -

(1) MARGARET JANE SHEPPARD

(2) RICHARD JAMES SHEPPARD

(3) CENTRE FOR ALTERNATIVE TECHNOLOGY

Defendants

PARTICULARS OF CLAIM

1. The Claimant is one of the two children of the above-mentioned deceased ("the deceased"), who died on 24 August 2005. The Second Defendant is the other child. Both children are adults.
2. The First Defendant is the widow of the deceased, having married him on 3 April 2004. She is also the sole proving Executor of the deceased, acting under a grant of probate of the High Court of Justice, District Probate Registry at Bristol dated 20 March 2006. She is sued in that capacity and in her personal capacity.
3. The Third Defendant is a charity.
4. The parties are (or in the case of the Third Defendant may claim to) be interested in the estate of the deceased. The Claimant has not joined any person whose interest in the estate (if any) is worth £20,000 or less.
5. The net probate value of the deceased's estate was £1,369,303. The principal asset of the estate is the property known as "Hunters Way", Craven Road, Inkpen, RG17 9DY

("Inkpen") (believed by the Claimant to have an approximate current value of £600,000).

6. The Claimant is aware of two documents created since the deceased's marriage to the First Defendant (which would have revoked any earlier dispositions) purporting to be Wills, namely "the 2004 Will" and "the 2005 Will".
7. The 2004 Will is a document bearing the date 12 October 2004. It contains the following gifts in the events which have happened:-
  - (1) A legacy of £80,000 to the Claimant;
  - (2) A legacy of £100,000 to the Second Defendant;
  - (3) Various small pecuniary and specific legacies;
  - (4) A gift of Inkpen to the First and/or the Third Defendants (on terms which are ambiguous); and
  - (5) A gift of residue to the First Defendant.
8. The 2004 Will is a double-sided document, and the text of the Will is found on both sides. It is purportedly witnessed by the First Defendant's parents, Ruth Margaret Barling and Thomas James Barling ("the Witnesses") of 5 Woodway Road, Teignmouth, Devon, TQ14 8PT ("5 Woodway Road"), using a common attestation clause in the following form:-

"Signed by the testator/testatrix in our presence and by us in his/hers".
9. Contrary to what is said on the face of the document, the 2004 Will was not duly executed in accordance with the requirements of the Wills Act 1837 (as amended), section 9, in that it was signed in the following way:-
  - (1) The deceased wrote out the Will and signed it, without being in the presence of the Witnesses, on or before the morning of 12 October 2004;

(2) On the morning of 12 October 2004, the First Defendant was at the matrimonial home, 6 Benedict Close, Teignmouth, Devon TQ14 8FD ("6 Benedict Close"), where she remained until 2.20pm at the earliest (as can be demonstrated by telephone records);

(3) Some time after 2.20pm, the First Defendant went to 5 Woodway Road taking with her the 2004 Will (which had already been signed by the deceased) in order that the Witnesses could sign it, which they did in her presence;

(4) The deceased was not present when the Witnesses signed the 2004 Will. Indeed, he met the Claimant at 3pm on that day at the home of the Claimant's Great-Uncle (the now deceased Edward Norrington) at 35 Kenwood Drive, Walton-on-Thames. Walton-on-Thames is approximately a three-and-a-half hour drive from Teignmouth, and accordingly, the deceased could not have been in Teignmouth during the afternoon of 12 October 2004;

(5) The Claimant has a very clear recollection of the events of 12 October 2004, because it was the day before his father's departure to Italy, and whilst in Walton-on-Thames the Claimant offered the deceased a lift to the airport, an offer which the deceased accepted. Furthermore, the Claimant can demonstrate that he was present at Kingston University (where he was a student) for evening lectures between about 6pm and 10pm on that day, so the Claimant cannot be mistaken as to whether it was during the afternoon rather than the evening that he saw his father. Whilst the Claimant was at evening lectures, the deceased telephoned and spoke to the Claimant's wife, Nicola, to tell her that there was no need for a lift to the airport, as a cab had been booked; and

(6) The Claimant is unsure as to whether the deceased was present at 6 Benedict Close at any time on 12 October 2004.

10. The 2005 Will is a document bearing the date 2 August 2005. It contains the following gifts in the events which have happened:-

- (1) A legacy of £150,000 to the Claimant (“in discretionary trust”);
- (2) A legacy of £150,000 to the Second Defendant;
- (3) Various small pecuniary and specific legacies;
- (4) A gift of Inkpen to the First and/or the Third Defendants (on terms which are again ambiguous); and
- (5) A gift of residue to the First Defendant.

11. The 2005 Will is purportedly witnessed by the Witnesses using a common attestation clause in the following form:-

“Signed by the said TESTATOR in the presence of us, present at the same time, who at h request, in h presence, and in the presence of each other, have subscribed our names as witnesses”.

12. The First Defendant applied for a grant of probate of the 2005 Will (which was obtained as mentioned in paragraph 2 above). The Claimant has not seen the documents which led to the grant of probate, but believes (on the basis of what he is advised is usual practice) that the First Defendant would have sworn a general form of Oath containing a statement to the effect that the First Defendant believed the 2005 Will to be the last true Will of the deceased.

13. Contrary to what is said on the face of the document, the 2005 Will was not duly executed in accordance with the requirements of the Wills Act 1837 (as amended), section 9, in that it was (like the 2004 Will) signed by the Witnesses other than in the presence of the deceased. So much was admitted by the First Defendant (by her Counsel) at a hearing before Master Bowles on 15 March 2007 in another action (Claim number HC06CO3585, the short title to the record of which is *Sheppard v Sheppard & ors*) at which the Claimant and his legal representatives were present.

14. The admission mentioned in the previous paragraph is a very serious matter, and the credibility of the First Defendant and the Witnesses when weighed against that of the Claimant, must be viewed in light of the admission. In particular:-

- (1) The First Defendant has knowingly sworn a false Oath;
- (2) In the absence of an adequate alternative explanation, it is to be inferred that the Witnesses signed their names next to the attestation clause on the 2005 Will in the knowledge that the facts set out in the attestation clause were false, and in order to give the false impression that the Will had been duly executed, whereas in fact it had not; and
- (3) The Witnesses, being the parents of the First Defendant, cannot be regarded as independent witnesses.

15. Further, the Claimant will contend that the 2005 Will shows a preparedness on behalf of the deceased to sign Wills without seeing to it that they were properly witnessed.

16. By reason of the matters aforesaid, the grant of probate to the Claimant in relation to the 2005 Will ought never to have been made, and ought now to be revoked. Furthermore, the deceased in fact died intestate, so that his estate devolved as follows:-

- (1) A statutory legacy of £125,000 to the First Defendant;
- (2) A life interest in half of the deceased's residuary estate to the First Defendant; and
- (3) Subject thereto, the deceased's residuary estate to the Claimant and the Second Defendant in equal shares.

AND THE CLAIMANT claims:-

- (1) An Order that the grant of probate to the Claimant be revoked;

- (2) An Order pronouncing against the validity of the 2004 Will and the 2005 Will on the grounds that each of them was not duly executed;
- (3) An Order pronouncing in favour of an intestacy;
- (4) An Order that letters of administration be granted to the Claimant;
- (5) Accounts, enquiries and directions;
- (6) Further or other relief; and
- (7) Costs.

EMILY CAMPBELL

Dated this 21<sup>st</sup> day of June 2007

Statement of Truth

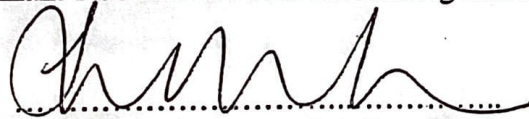
The Claimant believes that the facts in these Particulars of Claim are true.

I am duly authorized by the Claimant to sign this Statement

Full Name: Stan Baring

Name of Claimant's Solicitors Firm: Stan Baring Solicitor

Signed:



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Claimant's Solicitor Sole Practitioner