

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CLAIM NO HC07C01317

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

SKELETON ARGUMENT FOR CLAIMANT

Introduction

1. This skeleton argument is for use at trial in the week of 3 November 2008 of C's claim dated 21 May 2007.
2. For the reasons more particularly described below, the claim should succeed with costs because the will of the deceased dated 12 October 2004 ("the 2004 Will") was not executed in accordance with s9 of The Wills Act 1837 (as amended). It was invalid for want of due execution because the Deceased was not present when the witnesses signed the will.

Intestacy

3. It is C's case that D1 was aware that the Deceased died intestate at the time of death, on 24 August 2005, but failed to inform C.
4. The last will ("the 2005 will") was dated 2 August 2005. On 26 August 2005, D1 admitted to C and D2 that the 2005 will was invalid. On 30 March 2006 probate of the 2005 will was granted to D1.
5. C accepted his legacy under the 2005 will because D1 had led him to believe, also during the conversation on 26 August 2005, that there was an earlier will which left him less, but was valid. C now believes that this was untrue, and maintains that he should have been given the truth in order to make a proper decision as to whether to support the 2005 will, given that he would be entitled to a far greater proportion of his father's estate under an intestacy.

2005 Will

6. On 15 March 2007, at a hearing before Master Bowles, counsel for D1 acknowledged that the 2005 will was in fact invalid, as C had maintained (see Bundle p689). D1 had defended a 1975 Act claim in 2006 without making such an admission, and had repeatedly used the threat that C would receive less under the 2004 will by way of attempting to deter him.

2004 Will

7. Following the death of his father, C became suspicious of the behaviour of D1 and irritated by the slow progress in the administering of the estate by D1 and her brother, Christopher Barling. This is what led to the 1975 Act claim following a souring of relations.
8. In October 2006, C started to make enquiries into the date on the 2004 will (i.e. 12 October 2004). On 23 September 2006, C and his wife Nicola remembered that Nicola's birthday card had been late following her 31st birthday, on 18 October 2004 (her last birthday before the Deceased died). This led to further recollections and a very strong suspicion that the 2004 will had not been validly executed.
9. C started to say that D1 had concealed intestacy (Bundle p745), following which D1 instructed lawyers. C came up with an explanation for the execution of the 2004 will (Bundle, p751). C believed this to be false, and started to piece together the events surrounding 12 October 2004 (Bundle p722).
10. By mid-March 2007, C had reconstructed his movements of 12 October 2004 and recorded it in his 2004 Diary, which he had abandoned keeping on 25 May that year. C asserts that this entry was almost entirely accurate, despite D1's repeated accusation that C has changed his recollections.
11. At the hearing on 15 March 2007, D1 stated an intention to apply for summary judgment asserting the validity of the 2004 will. The main pieces of evidence relied on by D1 then, as now at trial, were two affidavits of due execution by her parents (Tom and Ruth Barling) and one by Margaret Bacon (finally in March 2007 revealed as the 'friend' in the e-mail of 10 October 2004); a diary extract; and her phone records.
12. C maintains that the affidavits of Tom and Ruth Barling of 21 February 2007 were in fact merely statements, held out as affidavits by D1 (see Bundle, p595); that the affidavit of Margaret Bacon is an expansion of what she actually recalls (compare p357, p751); that D1's diary is inaccurate in several respects (see Bundle, p711); and that with respect to D1's phone records, it was D1 and not the Deceased that spoke to Dr Roberts on 12 October 2004 (see bundle p802, p420).
13. C recalls that the Deceased went to his property at Inkpen, in Berkshire, to cut the grass on 11 October 2004, when he hired a tractor/topper from A4 Hire in Hungerford. This recollection would have come sooner had the owner of A4

Hire responded to an early request for the account of the Deceased (see Bundle p770). In the end C asked again and received the account in October 2007 (Bundle, p728). During the three months of correspondence that followed (see Bundle, p1019), there was no mention of 6 November being the date of hire of the tractor/topper (see p887). C recalls the weather (see pp1001-1012, 1034-1037) as being a key factor causing the Deceased to decide to go via Inkpen (see p685) while D1 waited for their BA tickets to Rome to arrive. In addition, the Deceased had a vulnerable immune system (see p725) and would not have mown the grass on a cold, wet November day.

14. C believes that D1 took the 2004 will, which the Deceased had written and signed, to the home of her parents on the afternoon of 12 October 2004. They duly signed it and she then proceeded to drive up the A303. The Deceased was already at the home of his uncle, Edward Norrington ("Norrie"), in Walton-on-Thames, when D1 arrived. C had visited during the afternoon but had left for home (and evening classes) by the time D1 arrived. The Deceased then filled in the date and the address of Tom and Ruth Barling that evening.

2002 Will

15. The Deceased and D1 were married on 3 April 2004, invalidating the will of 4 March 2002 ("the 2002 will"). C maintains that the 2002 will is relevant because it was executed correctly, and thus shows how the Defendant would have executed a will with witnesses present at the same time (see Bundle pp 1, 979).

Earlier Will

16. D1's former neighbour, Rita Blaine, had some years ago informed C that the Deceased had a will which left Inkpen to C and D2. Rita Blaine reiterated this to C in a telephone conversation on 26 June 2006. Rita Blaine said that she and her husband Charlie had been the witnesses.
17. D1 has denied such a testamentary document existed and has denied that the Deceased ever meant to leave Hunters Way to his sons, C and D2 (Bundle, p732, p733).
18. D1 has now agreed with D3 a Deed of Variation (Bundle, p5) should the 2004 will be ruled valid. This, by D1's own admission, would be contrary to the apparent intention of the Deceased at the time he died (Bundle, p731).
19. It is C's belief that D1 is motivated to fight "tooth and nail" in this litigation primarily by a long-held objective to keep Inkpen from C and D2 (see for example p738).
20. C has always been willing to talk, but D1 has always been evasive.