

## Estate of Turquand Young [2013] JRC235

Insights - 06/02/2014

### Construction of wills

In the recent Jersey case of Estate of Turquand-Young [2013]JRC235 the Royal Court considered the proper construction of a residuary bequest in a will to eight named charities, two of which were in fact the same entity.

### Facts

In his will, the testator left the residue of his estate (the value of which was in excess of £9 million) to eight named charities in equal shares. The named charities included the National Society for Cancer Relief and Macmillan Cancer Relief, both of which are former names of Macmillan Cancer Support and are therefore one and the same.

Macmillan Cancer Support contended that it was therefore entitled to two-eighths of the residue of the testator's estate. However, the remaining charities contended that, as in truth there were only seven charities, the residue of the estate should be divided equally between the seven charities. The court received two conflicting opinions from English counsel, one of which supported the contention put forward by Macmillan Cancer Support and one of which supported the contention put forward by the remaining charities.

The executor applied to Court to seek a ruling from the Court on the correct interpretation of the residuary bequest.

### Judgment

It was accepted, on the basis of conflict of law rules, that the will should be interpreted in accordance with English law on the basis that the testator had been domiciled in England and Wales at the time the will was made.

After considering the general principles of construction of wills under English law, the Court held that the residue should be divided into eight equal parts and that Macmillan Cancer Support should receive two of those parts. The reasons given by the Court were broadly as follows:

- where a charity has changed its name before or after the date of a will, the bequest in the will takes effect as a bequest to that charity notwithstanding the change in name and as such a gift to the National Society for Cancer Relief or Macmillan Cancer Relief standing alone would be a valid gift to Macmillan Cancer Support;
- the fact that the National Society for Cancer Relief and Macmillan Cancer Relief are the same entity and the testator used the wrong name in his will does not of itself make the bequest "meaningless or unclear";
- although a testator who has left two legacies of the same amount to the same person is presumed to have made an error, it is not clear that a testator would not wish to benefit a charity with a double share where he believes he is dealing with two different charities;
- it was not possible to know what the testator would have done had he known of his mistake;
- the testator clearly intended that two eighths of his residuary estate would be used to fund the work of charities working to provide cancer relief; and
- speculation as to what the testator might have done had he known that the two charities were in fact the same entity could not be used as a proper method of interpreting the will.

The Court did not consider extrinsic evidence but did find that the extrinsic evidence available would not have altered its conclusion.

## Comment

The case illustrates the importance of confirming the name of a charity before referring to it in a will and including further details of the charity where available. The result in the present case may or may not have been what the testator desired. Had he known at the time his will was drafted that the National Society for Cancer Relief and Macmillan Cancer Relief were in fact the same entity, the testator could have chosen himself how he wanted the residue of his estate to be shared. As it was, the Court had to do the best it could on the information available to it.

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