

JERSEY / JUDGMENT

Goed and Anor v Begg and Anor

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Hearing (Civil) - application to amend - decision. [2020]JRC245A Royal Court (Samedi) 25 November 2020 Before : Advocate Matthew John Thompson, Master of the Royal Court. Between Brian Goed First Plaintiff Lorraine Desiree Goed Second Plaintiff And Advocate Andrew Begg (as Executor) Defendant Catherine Goed (née Voisin) Prospective Second Defendant Advocate S. B. Wauchope for the Plaintiffs. Advocate A. P. Begg in person. Advocate J. N. Heywood for the Prospective Second Defendant Paras 1.

Introduction

1 2.

Background

2-17 3. Decision 18-39

judgment

the MASTER:

Introduction

1. This judgment contains my decision in respect of an application by the plaintiffs to amend their summons and particulars of claim and to join Mrs Catherine Goed (“Mrs Goed”) as a party.

Background

2. The plaintiffs are the children from the first marriage of the late Mr Hendricus Goed (“Mr Goed”). Advocate Begg is the executor of the Will of Mr Goed. The proposed second defendant is Mrs Goed. Mr and Mrs Goed married in 1990 and remained married until Mr Goed passed away on 24th February, 2019. This was Mr Goed’s second marriage. 3. The plaintiffs commenced proceedings against Advocate Begg by an issue of a summons dated 6th February, 2020. The summons sought the following relief:- “1. show cause why the said Witt should not be set aside on one or more grounds of nullity, namely:
 - a. the Testator lacked testamentary capacity at the time that he gave instructions for the preparation of the Will and I or the time that it was executed; and I or

- b. the Will does not contain or give effect to the Testator's wishes because the Testator was the subject of undue influence at the material time. 2. Further and in the alternative, to produce the said Will to the Court and to accept the reduction of the said Will *ad legitimum modum*, the said Will having been made by the deceased to the prejudice of the Plaintiffs, his son and daughter, contrary to the customs of the Island which prohibit a testator with spouse and issue from gifting greater than two thirds of his personal estate to his spouse to the prejudice of any one or more of his children and to sub-paragraph 2 of Article 7 of the Wills and Successions (Jersey) Law 1993;” 4. On 19th December 2019, Advocate Begg informed Advocate Wauchope for the plaintiffs that the only assets within Mr Goed’s moveable estate were a watch and a pair of candlesticks with a combined value of £4,100.00. 5. In reply on 7th January 2020, Advocate Wauchope wrote to Advocate Begg, which letter included the following:- “Please also specify any moveable estate that the deceased may have jointly with his wife that may have accrued to her by way of survivorship. I am aware that the deceased gifted all of his immovable assets to his wife on 16th July, 2010. Please specify any moveable estate that may have been gifted to his wife at or around this time.” 6. The plaintiffs’ summons was then served on Advocate Begg to avoid any issues of prescription. This was clear from an email from Advocate Wauchope to Advocate Begg dated 3rd February, 2020 where he stated as follows:- “As we drift towards prescription in this matter, I am concerned that I do not have your response to my letter to you dated 7th January, 2020.” 7. It was common ground between all present that the relevant prescription period was a year and a day from the date of death by reference to *Robertson v Lazard Trustee Company (C.I.) Limited* [1994] JLR 103. 8. On 12th March, 2020, Advocate Begg replied to Advocate Wauchope’s letter of 7th January, 2020 which reply included the following statements:- “Henk’s Estate As I have already explained, at the time of his passing, Henk Goed owned nothing in his sole name apart from some personal effects of no monetary value (e.g. photographs), a Rolex watch and a pair of Dutch silver candlesticks. To labour the point (if I must), when Henk died, he had no bank accounts and no investments in funds, stocks or premium bonds in his own name – so the only items which will appear on the inventory of the estate will be his Rolex watch and candlesticks. As I have previously explained, the only liabilities of the estate were Henk Goed’s indebtedness to Lakeside for accommodation and nursing care, the cost of which was paid for by Cathy (from her account/her earnings) and the States. From the time Henk and Cathy married in 1990 until 2010, they (only) had a joint bank account and everything they bought during their marriage (apart from personal jewellery and clothing) was bought jointly – so everything accrued to Cathy on Henk’s death by way of survivorship without coming into Henk’s estate. When, in 2010, Henk became aware that his health was deteriorating, he wanted to make doubly sure that Cathy would be secure financially, not least of all because she was much younger than he and, in particular, she signed all the cheques and attended to all the finances. His name was therefore taken off the joint account. Needless to say, that transfer made no difference at all from a succession point of view because the money in the joint account would have accrued to Cathy on Henk’s death, in any event, under the terms of the mandate. As you note, their home, South Winds, was transferred from joint names into Cathy’s sole name in

2010; but, of course, that is flying freehold so no issue arises there. In summary, as already stated, the value of Henk's personal estate is £4,100. If, therefore, the Will were to be reduced ad legitimum modum, your clients would notionally be entitled to one third of that value (but would not be entitled to the Rolex or the candlesticks themselves)." 9. After hearing oral submissions from the parties, because the request for information had been made by Advocate Wauchope before expiry of the relevant prescription period but the reply from Advocate Begg was only received after expiry of that period, I asked Advocate Begg to provide me with copies of his correspondence between him and Mrs Goed, between the period 7th January and 12th March, 2020. Having reviewed that correspondence it is entirely clear that the interval between the request for information and the date of reply was due to a combination of Mrs Goed being unavailable, Advocate Begg being engaged in other matters and various drafts being exchanged until both Advocate Begg and Mrs Goed were happy with the reply that was finally sent. In particular, the delay in sending the reply was not an attempt to play out matters to then rely on a prescription defence.

10. To complete the chronology Advocate Wauchope sent an email dated 25th March, 2020 in reply to Advocate Begg's letter of 12th March, 2020 which included the following:- "However, more practically if the late Henk Goed's assets are as modest as you have indicated then there are rapport issues that my clients wish to investigate."
11. The particulars of claim were served on 30th June, 2020. In addition to the matters raised in the summons, the particulars of claim also made an allegation that Mrs Goed had deserted Mr Goed prior to his death for the purposes of Article 8 of the Wills and Successions (Jersey) Law 1993.
12. Paragraphs 26 and 27 of the particulars of claim also pleaded as follows:- "26. The Plaintiffs state that, to the extent that the deceased's estate has been reduced to this sum, or any value approaching this sum, it has been diminished by gifts made by the deceased inter vivos to Mrs Catherine Goed (or after the deceased had lost capacity to make them) and the Plaintiffs assert that such advances de succession (sic) must be brought back into the estate before determination of the Plaintiffs' entitlement to legitime (sic) if the deceased died testate or, in the alternative, determination of the Plaintiffs' entitlements on intestacy.
27. The Plaintiffs reserve their rights to provide particulars of advances de succession (sic) made to or obtained by Mrs Catherine Goed on the conclusion of discovery."
13. In relation to these particulars of claim, the issues of desertion and the requirement for lifetime gifts to be brought back into the estate had not been raised on the face of the summons itself.
14. Advocate Begg's answer dated 2nd October, 2020 made no admissions in respect of the allegations of desertion. In respect of the claim for rapport, the answer at paragraph 21 pleaded that such issues were prescribed.

15. The application to amend therefore sought to join Mrs Goed as a second defendant to the summons and to add a claim that Mrs Goed account for any avances de succession made by Mr Goed to her during his lifetime.
16. In respect of the particulars of claim, the proposed amendments were to add Mrs Goed as a defendant.
17. Unusually on an application to join a party, I ordered that Mrs Goed should be entitled to make submissions on the prescription question and therefore whether she should be added as a party. Decision
18. The fundamental difference between the parties was that Advocate Wauchope argued that he could not plead a claim for rapport against Mrs Goed until he knew that lifetime gifts had been made to her. Otherwise he would be commencing proceedings on a speculative basis which he suggested would lead to him being criticised as counsel.
19. Advocate Heywood for Mrs Goed contended that insofar as a party was seeking to introduce a new cause of action which was arguably time barred, the party seeking to introduce such a cause of action had to establish that the other party had no reasonable prospect of success on any limitation argument. If the party seeking an amendment could not establish that a defendant had no reasonable prospect of success then leave to amend should be refused. He cited *Bagus Investments Limited v Kastening* [2010] JLR 355 in support of his proposition.
20. He therefore argued that the plaintiffs prior to the expiry of any limitation period were aware of the contents of Mr Goed's 2010 Will of personal estate, they were aware of the relatively low value of Mr Goed's moveable estate based on the letter of 7th December, 2019 from Advocate Begg and that all Mr Goed's immovable property had been gifted to Mrs Goed in 2010 (see Advocate Wauchope's letter of 7th January, 2020). There was therefore no possible basis upon which the plaintiffs could raise an empêchement in respect of being unable to make a claim against Mrs Goed requiring her to account for lifetime gifts of movables to her.
21. There was no dispute between the parties on the applicable legal principles on an application to amend which I had considered in *MacFirbhisigh and Ching v C. I Trustees and Executors Limited & Ors* [2014] (1) JLR 244 at paragraphs 27 to 30.
22. It was also common ground that, if a party seeking to introduce an amendment cannot establish that a defendant has no reasonable prospect of success of raising a prescription defence, then leave to amend should be refused (see *Bagus Investments Limited v Kastening* [2010] JLR 355 followed in *Neal v Kelleher* [2014] JRC 233).

23. To evaluate the rival contentions of Advocates Wauchope and Heywood it is necessary to consider the legal principles of a claim of rapport in order to analyse whether the plaintiffs are able to raise an empêchement defence in response to the prescription argument raised by Mrs Goed. It is only if the plaintiffs can satisfy me that there is no reasonable prospect of the empêchement defence failing, should I grant permission to amend.
24. The relevant legal principles for a claim in rapport were summarised in *De La Haye v Walton* [2013] JLR 117 at paragraphs 54 to 55 as follows “Avancement de succession and joint accounts 54 The law concerning avancement de succession and rapport à la masse is well established and is not in dispute between the parties. In short, an inter vivos gift by a parent to a child (excluding, of course, matters of parental obligation such as provision of food, clothing, education, vocational training, etc.) is described as an avance de succession. On the death of the parent, the child may be compelled at the instance of the co-heirs to la rapporter à la masse, i.e. to bring the gift back into the gross of the estate. The aim of the principle is to prevent one heir benefiting to the prejudice of the others by means of inter vivos gifts that are made to him. As *Le Gros, Traité du Droit Coutumier de l’Ile de Jersey* (1943) states (at 70): “Le rapport a donc pour but d’établir l’égalité entre les héritiers venant à une même succession.” 55 A child who has received a gift may elect to rest on his advance (rester sur ses avances) and forego any claim to participate in the succession provided that the estate is solvent and he has not committed any “act d’héritier” (*Valpy v. Janvrin* (5)). Advances are brought back into the estate at their value as at the date of the gift (*Morgan (née Amy) v. Amy* (2)) and do not carry interest (*Re Vincent* (6)). The principle also applies to inter vivos gifts by a husband to a wife (*Ottley de Gruchy, veuve Ottley* (3)).”
- v. de Gruchy, veuve Ottley (3)).”
25. In the present case the heirs of Mr Goed are the plaintiffs and Mrs Goed. The plaintiffs therefore have the legal right to compel Mrs Goed to “rapporter à la masse” to bring any lifetime gifts back into the gross of the estate.
26. Mrs Goed has the right however to keep any advances she had received and forego any claim to participate in the estate provided the estate is solvent.
27. The case of *De La Haye* then explored how the principles summarised at paragraphs 54 and 55 applied to joint bank accounts leading to the following observation at paragraph 59. “59 In our judgment, where a deceased contributes all the money paid into a joint account in the names of the deceased and an heir by way of gift, there is a form of contingent or potential avance. There will be an actual avance to the extent that money is paid out of the joint account to or for the benefit of the heir during the life of the deceased or accrues to the heir by survivorship on the death of the deceased.”
28. It is clear from *De La Haye* that an analysis may well be needed of who contributed monies to any joint account between a deceased and a co-heir in order to evaluate the amount of any avance de succession.

29. The Court in De La Haye referred to Le Gros as authority for what was an avance de succession at pages 58 to 71. At page 69 of Le Gros the principles were summarised as follows:- “Résumons ici les principes qui découlent de ces judgments:
1. Que les enfants ont le droit de déclarer qu'ils se contentent des avances qu'ils ont reçues en mariage pour toute part et portion de la succession mobilière de leur parents. (1679. George Gaudian et autres; 1709, Abraham Richardson). Le jugement Gavey (Ordre du Conseil) énonce qu'un héritier n'est pas tenu de rapporter à la masse ce qu'il a reçu en vertu d'un contrat de mariage lorsque le donateur déclare que l'avance est faite hors du tiers disponible que la coutume lui permet de donner par testament.
 2. Que les enfants ont le droit de déclarer qu'ils se contentent des avances qu'ils ont reçues pour tout partage de la succession mobilière de leur parente (C.R. 1716. O. du C. 1718, Valpy dit Janvrin; 1917. Ex. Le Cornu
 - v. Falle) – sans prejudice à leur part de la succession héréditaire (Valpy dit Janvrin).
 3. Que si au moment de l'avance faite à titre de mariage il y a stipulation que l'enfant reviendra à partage, le rapport du bien donné doit être effectué. (1706, Le Gallais, caux).
 4. Que les enfants qui prennent part au partage de la succession mobilière doivent rapporter les avances qui leur ont été faites (1709. Abraham Richardson. 1716 Valpy dit Janvrin).
 5. Que si une succession mobilière est déficitaire, l'enfant qui s'est arrêté sur ses avances peut être recherché par les enfants qui prennent part au partage du meuble pour sa part proportionnelle du deficit. (Le Gallais, caux, 1706). Remarquons que la Cour ne se prononça pas in limine litis sur la déclaration de Messire Bertram Godfray Falle de s'arrêter sur ses avances (succession de défunte Dlle. Mary Elizabeth Godfray, supra). Les prétentions n'ayant point été émises, la Cour n'émises, la Cour nétrait pas à même de savoir si l'actif de la succession dépasserait le passif. V. C.R. 1700, Avril 18. Entre Edouard Nicolle et autres, succession Elizabeth Baucamp.
 6. Qu'on ne peut réclamer le paiement d'intérêts sur des avances de succession (1815, Le Gros. 1869, Vincent).
 7. Il paraît superflu de faire remarquer que la jurisprudence qui a admis le droit d'un enfant de s'arrêter sur les donations qu'il a reçues blesse l'égalité qui doit régner entre les enfants dans le partage du bien de leur parent. Nous devons conclure que cette jurisprudence se justifie par les variations continuelles de la fortune du parent ou du désir du père d'aider son enfant dans ses entreprises. Mais elle oblige avec raison l'enfant qui veut prendre part au partage de la succession de rapporter à la masse le bien qui lui a été donné, ou moins prendre.”
30. Co-heirs therefore have a right to require another co-heir to account for any avance. That co-heir equally has a right to elect to keep any avance made. The price for such an election is that such co-heir cannot then participate in the estate. If an estate is insolvent, a co-heir who has elected to retain lifetime gifts may be required to contribute to the deficit.

31. In the present case, the plaintiffs knew of the Will, they knew of the value of Mr Goed's moveable estate and they knew that gifts of Mr Goed's immovable estate had been made in 2010. They also had some knowledge that Mr Goed during his lifetime had other moveable assets of value.
32. In my judgment, the above matters were sufficient to plead a claim of "rapport à la masse". Such a claim would not have been an abuse of process and could not have been challenged solely because the dates of any transfer of lifetime gifts had not been identified. Such a challenge would have failed because the person making the challenge (Mrs Goed) had the knowledge of what lifetime gifts had been made. What would have occurred in relation to any such challenge would therefore have been some form of discovery order against Mrs Goed requiring her to identify any lifetime gifts made.
33. I do not therefore regard this case as analogous to that type of case where allegations are made without material facts being pleaded. The most common example of such type of case is where allegations of fraud are made (see e.g. *Trico v Buckingham* [2019] JRC 095) which are not properly particularised. Such cases are very different however to a claim of "rapport à la masse" where a co-heir has a right to demand from another co-heir that the latter accounts for any lifetime gifts.
34. Advocate Wauchope expressed concern that his client was at risk as to costs by commencing proceedings without knowing precisely when and what lifetime gifts were made. On the facts of this case, I do not agree. Advocate Wauchope had asked the question, had reasonable grounds to do so but had not received an answer. I do not consider that a plaintiff, who commences proceedings to claim rapport to avoid a defence of prescription in the face of unanswered questions about lifetime gifts, would be regarded as acting unreasonably so as to deprive such a plaintiff of their costs. In such a scenario I consider that the costs of such a plaintiff would still come out of the estate (applying *Re Amy* [2000] JLR Note 64B). Had the plaintiffs therefore claimed rapport within time, such a claim would have been a reasonable claim to bring.
35. The position might be different if a co-heir had replied prior to the issue of proceedings saying there were no lifetime gifts made with reasonable evidence in support and proceedings were then still commenced but that is not the situation in relation to the present application.
36. It is also clear that Advocate Wauchope was aware of the possibility of a claim of rapport because he referred to it in his reply of 25th March, 2020 as soon as he received a reply from Advocate Begg. A claim in rapport must have therefore have been in his mind when he asked about lifetime gifts on 7th January as there is no other purpose for such an enquiry. The present case is not therefore one of his clients being unaware of the legal remedy available to them.

37. As the plaintiffs were facing an unanswered question about lifetime gifts when they had other knowledge about the value of the estate which suggested that such gifts had been made, as well as knowledge of a gift of immovable estate, I consider that the defence of prescription raised by Mrs Goed is arguable and that the plaintiffs have not satisfied me that Mrs Goed has no reasonable prospect of success in raising that defence. In reaching this conclusion, it is also for the plaintiffs to have satisfied me that Mrs Goed had no reasonable prospect of resisting a claim of empêchement. I am not persuaded that they have done so given the plaintiffs' knowledge about Mr Goed's wealth.
38. Accordingly, the application to amend is refused.
39. Finally, I should add I do not regard this as an unjust outcome because if a claim had been made within time, given the value of Mr Goed's moveable estate compared with the value of the joint account when transferred to Mrs Goed, it is inevitable that Mrs Goed would have elected to retenir ses avances which she is entitled to do. As Mrs Goed is content for the plaintiffs to have the benefit of the watch and the candlesticks, her approach reflects her legal entitlement to retain the benefit of any lifetime gifts made to her. Authorities *Robertson v Lazard Trustee Company (C.I.) Limited*

[1994] JLR 103. *Wills and Successions (Jersey) Law 1993 Bagus Investments Limited v Kastening*
[2010] JLR 355 *MacFibhisigh and Ching v C. I Trustees and Executors Limited & Ors*

[2014] (1) JLR 244 *Bagus Investments Limited v Kastening* [2010] JLR 355 *Neal v Kelleher* [2014] JRC 233 *De La Haye v Walton* [2013] JLR 117 *Trico v Buckingham* [2019] JRC 095 *Re Amy*
[2000] JLR Note 64B

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2020%5DJRC245A.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/goed-and-anor-v-begg-and-anor-2020>

Prepared on 23 October 2026 · Esheria