

## Financial Remedies

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**A rare example of a claim under the Inheritance (Provision for Family and Dependants) Act 1975 ('The Act') for such financial provision as would reasonably be expected to be received by a wife under the will of her husband.**

**[Klein v Cripps Trust Corporation Ltd \[2025\] EWHC 688 \(Fam\)](#)**

**[Facts \[pg. 1-8\]](#)**

Parties to the claim were: Elena Kelin (wife/claimant), Cripps Trust Corporation (CTC) the first defendant and executor, and Cydliia Adler, the former executrix and second defendant who was neither present nor represented.

On 25 March 2020, Alexander Kelin died aged 87, leaving behind his wife Elena Klein who was 17 years his junior and a son Elliot, then aged 12. Mr Klein's will was dated 5 January 2011 in which he made the following declarations were made:

- £300,000 to his wife 'on the understanding that C will not make a claim against my estate' notwithstanding their long marriage;
- £100,000 to his son to be held on trust by his trustee and distributed as to 1/3 on his son's 18th birthday, 1/3 on his 21st birthday, and the remainder on his 25th birthday;
- £100,000 be left on trust for his adult daughter;
- £200,000 to Cynthia Adler;
- £100,000 to his trustee for charitable purposes;
- £100,000 on discretionary trust for his relatives, friends;
- Other bequests to relatives totalling about £179,000; and,
- The residue as to 10% to Ms Adler and 90% to be held on discretionary charitable trust with suggested beneficiaries.

No provision was made as to where his wife and son would live or maintenance for them, save the £100,000. This came as a shock to the wife, who in the 5 years since his death, had only received 1 payment of £7,500 which was only paid as interim provision pursuant to an order of Moor J. The net value of the estate was some £8.18 million.

Proceedings were first brought in March 2021 for the removal of Ms Adler as executrix and trustee, that application succeeded on 5 November 2021 when Deputy Master Rhys, with the first defendant, replaced Ms Adler as executrix. The protracted nature of the administration of Mr Klein's estate means things became complex. Pg. 7 of the judgment highlights just a few of those difficulties:

- (i) *The documentation which has been provided to Cripps has been inadequate, incomplete and out of date. Forensic Accountants, Frenkel's prepared a report into the probable assets of the companies and their value. Only once this was available and liaison undertaken with HMRC could Cripps even apply for a Grant of Probate which they did on 11 April 2023: over 3 years*

after the Deceased's death and nearly 18 months since the decision on the Removal application. A grant was received in August 2023.

- (ii) Apart from the matrimonial home the main 'assets' in the Estate were properties which were held through about 18 limited companies. On the basis of the Frenkel report the value of the shares in those companies would have been in the region of £8m or some 92% of the Estate's value. Initially it appeared 2 companies might also be included but these ultimately turned out to be owned 100% by Ms Adler. Of the limited companies in the Estate the shareholdings held by the Estate varied from 100% to 50%. Ms Adler had appointed herself a director of some of them (wrongly) and was a director of others. As enquiries were made it appeared many had been struck off the Register for failure to comply with the lodging of returns etc, some purportedly owned properties which they did not, some held properties it was not known they had owned, some had charging orders against properties for unpaid liabilities, some had held hundreds of thousands of pounds in bank accounts but ascertaining what had happened to the funds was difficult to establish. It appears that Ms Adler may have withdrawn significant sums from companies apparently without authority.
- (iii) Ms Adler did not pay the costs ordered against her and on 18 September 2024 an order for sale was made in respect of one of Ms Adler's properties to satisfy the payment of £177,302.81 being the total of costs awarded plus the costs of the order for sale proceedings. The sum was not paid and so the sale is proceeding.
- (iv) On 20 November 2023 Ms Adler issued a claim in the Chancery division to be the true owner of the Deceased's shares in 15 of the companies comprised in the Estate. For 3 companies the Deceased's registered share ownership was 95% of the shares, 1 was 10% and the other 11 were 50%. The hearing of this claim had been listed to take place in early 2024 and as a result of the issuing of Ms Adler's claim in the Chancery Division that hearing had to be vacated. Had her claim succeeded the value of the estate would have been dramatically reduced. Ms Adler's claim was heard by Chief Master Shuman on 30th of October 2024. She declared that Ms Adler was absolutely entitled to the issued shares in Parygold Properties Limited and Brongard Limited but that the Deceased was the true beneficial owner of the shares in the other 15 companies claimed by her. She was ordered to pay the Claimant's costs including a £100,000 interim payment, and Cripps were authorised to pay these costs out of Ms Adler's interests in the Estate. In the course of the judgment Chief Master Shuman noted that Ms Adler's position was wholly inconsistent with her position in the Removal proceedings, in which she had filed a summary of the net estate which included all those shareholdings she now claimed and that she had serious doubts about her credibility.
- (v) The list of problems goes on and is tracked through the six statements of Constandinos Sikkil of Cripps concluding on that dated 10 February 2025. On 23 January 2025 Deputy ICC Judge Frith had acceded to Cripps' application for Cripps to register as shareholder in 10 of the companies (I think so they could take steps to appoint directors and proceed with liquidating the property holdings). Ms Adler was directed in orders made in October and November 2024 to sign a letter of authority to enable Cripps to secure disclosure of bank statements from Barclays. She has not signed the letter of authority, and an application has been made and granted under section 39 of the Senior Courts Act 1981 to enable that disclosure to be obtained.

Problems with administration meant that the wife did not bring her claim under the 1975 Act until March 2023.

## Parties' Positions [pg. 12-13]

The wife sought an equal division of the estate between herself and the other beneficiaries of the will. The wife made the point that, on divorce, she would probably be entitled to an equal share. The wife's position was subject to a minimum provision to her of £3million, which was to include the FMH (mortgage free) and a lump sum of £2.1million which would generate a lower income than that which she said was reasonable, in the region of £100,000.

The first defendant's position was that the Will did not make adequate provision for the wife. Therefore, the FMH should be included in any award made to her. The wife's position that she should receive 50% of the estate was not opposed should the Court consider this reasonable financial provision. Finally, any award guaranteeing that the wife receives a minimum of £3million including the FMH was opposed as there was significant uncertainty as to the net value of the estate and the wife had provided no basis for this sum being the minimum necessary to meet her needs.

## The Law [pg. 14-23]

S.1 of the Act provides that a claim may be brought by the spouse or civil partner of the deceased under S.2 of the Act on the ground that the disposition of the deceased's estate is not such as to make reasonable financial provision for the applicant. S.1(2) gives the definition of 'reasonable financial provision' and defines it as:

**'such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance.'**

Reasonable financial provision is an objective test rather than one dictated by what the deceased considered reasonable.

S.2 of the Act sets out the powers available to the Court to make reasonable financial provision if satisfied that the provision is unreasonable.

S.3 of the Act sets out the matters to which the Court must have regard to in determining whether, and in what manner, the Court shall exercise its powers.

S.7 of the Act provides for the payment of a lump sum, or a lump sum by instalments; including being paid by personal representatives of the deceased or by trustees of the property out of which the lump sum is payable.

Testamentary wishes 'are part of the circumstances of the case and fall to be assessed in the round together with all other relevant factors' per Lord Hughes JSC at [47] of [Jlott v The Blue Cross \[2018\] AC 545](#). However, the fact a testator has given reasons for leaving his estate as he has does not mean the resultant provisions are reasonable – the court must interrogate those reasons, considering whether they are unjustified, unexplained, or a fig-leaf for the real reasons: *Re Nahajec dec'd* [2017] WTLR 1071 at [92]; *Thompson v Raggett* [2018] WTLR 1027 at [28].

Paragraphs 21 and 22 are important reading for family practitioners. They provide guidance on the importance of the divorce cross check in applications such as these. Firstly, it applies to ensure that the surviving spouse does not find themselves in a worse position than if the marriage had ended

by divorce (at [13] of *Ilott v The Blue Cross* [2018] AC 545); and that the divorce cross check is important in all cases, but highly relevant in cases of a long marriage.

Paragraph 22 includes a useful summary of caselaw regarding the divorce cross check from the cases of [Lilleyman v Lilleyman \[2013\] Ch 225](#), at [59-60] per Briggs J (as he then was) and Cobb J in *Kaur v Bolina* [2022] WTLR 235, at [31], namely;

- (i) Marriage is an equal partnership, and the division of property must be fair and non-discriminatory. Equality of treatment need not lead to equality of outcome.
- (ii) The three principles of financial needs, compensation, and sharing should be considered. These are applied in turn. Financial needs may exhaust the entirety of the property available. Compensation seeks to equalise economic disparity between the parties based on how they conducted their marriage. Sharing is applied if there is property still available after the first two requirements are addressed.
- (iii) In principle sharing extends to all property, but where property is non-matrimonial this may be a reason to depart from it.
  - a. The circumstances in which property was acquired, and its nature are relevant, but will carry little weight if the property is necessary to meet the Claimant's financial needs;
  - b. The sharing principle applies to all property but is more likely to be departed from in the case of non-matrimonial property;
  - c. The correct approach is to apply the sharing principle to the matrimonial property and then consider whether this results in an appropriate disposal, or if non-matrimonial property needs to be transferred to achieve the correct result.
  - d. The relevance of property being pre-acquired will decline the longer a marriage lasts.
  - e. Treatment of pre-acquired property is highly fact-specific, and the court retains a broad discretion.

## **The Evidence [pg. 26-41]**

In order to determine reasonable provision from the estate, the Court had to first decide what the estate is. It is therefore a necessarily lengthy section of the judgment.

Williams J said that attributing a net value to the estate was not determinable in any reliable way. The most recent accounts suggested a gross value of £9.03million, whilst the Frenkel's valuation suggested £8.9million (after the liability of the mortgage capital sum was deducted). The administration account showed a gross value of £9.1million with liabilities of £409,000. Liabilities included the mortgage arrears of the FMH and other properties and IHT and suggested a net value of £8.6million. Administration expenses were due totalling £423,619 further reducing the value to £8.178million. Expected further administration costs at their lowest were £400,000 plus VAT but could be considerably more; possibly £2-4million.

The wife identified her reasonable needs as follows:

- She would have rental income from a flat in Southend at £10,000 per annum. That flat had net equity of £190,000
- She would continue to receive benefits for a further year or so of £14,000
- It was likely she would receive a full state pension entitlement

- She had debts owed to her of £391,319, which were mirrored in her liabilities
- She had an additional £28,000 in liabilities, the bulk of which were sums owed to a builder
- Her capital needs included a new car for £55,000 (substituted for £17,500 by Williams J)

Various parts of the Claimant's annual expenditure budget were cut [40] and the child's needs were assessed at [41].

## **Evaluation [pg. 42-69]**

Parties had been married for 16.5 years before the husband died and the wife was 41 years younger than the deceased. The wife adopted a traditional role as a homemaker which allowed for the husband to continue to run his businesses but also for him to be cared for in his old age by the wife. That was an equal contribution which carried as much value as the financial and other contributions of the husband. There was a heavy obligation on the husband to make financial provision for the wife to enable her and Elliot to continue to live after his death as they had during his lifetime. Whilst it was difficult to ascribe a specific value to the estate, it was in the region of £6million. There were some issues with liquidity which would take time to resolve, but the majority of the assets were property and therefore superficially easy to liquidate.

The wife sought to rely on conduct and that the deceased was controlling. The court determined that it was not possible to determine if the husband was controlling, but the evidence pointed to him being financially dominant which gave him de facto control. The wife sought to argue therefore, that the deceased's testamentary wishes should be afforded little weight, including provision to charity and friends. On this, Williams J said that more respect was required. It was likely that the husband would be horrified that his estate was being spent on legal fees, rather than supporting individuals identified in his will.

Whilst the Court was not required to undertake a theoretical application of the S.25 factors, it was required to undertake no more than a broad-brush cross-check. The yardstick of equality appeared broadly appropriate in this case albeit there were likely very strong arguments in favour of the deceased for a departure from equality in his favour based on pre-marital contributions. Determining that departure was a speculative exercise in the present circumstances, particularly given on a financial remedy application, the net value of distributable assets would have been more certain. Had the net distributable assets been closer to £10million a departure from equality of anything between 40/60 or 1/3-2/3 may have been argued.

## **Conclusion**

The deceased's will did not make reasonable financial contribution to the Claimant. Reasonable financial contribution required:

- Transfer to the wife of the FMH with a value of £1million
- A lump sum, or series of lump sums to meet immediate capital needs, capitalised income needs and the income needs of Elliot over the coming 5 years as follows:
  - Total one-off for capital: £83,139
  - Capitalised Duxbury sum of £1.16million
  - Elliot:
    - 2024/2025: pro rata 2024/2025 at 2/3 = £20,390
    - 2025/2026: £30,560

- At university, 4 years tuition at £9,250 + maintenance at £10,227, £20,000 + expenses at home including holidays of £10,000 = £30,000 for 4 years

Total amount of £1,864,089 to be paid in instalments.



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