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Inheritance money wrongly paid to insolvent lawyers has to be repaid to estate in take over fraud case

George Lyons and Jonathan Kerr (by his attorney Sandra Grant) v. Andrene Kerr-Robinson
[2016] EWHC 2037 (Ch)

Article by David Bowden

Master Matthews sitting in the Chancery Division of the High Court has had to decide what order to make. Cynthia Lyons died intestate leaving assets both in England and Jamaica. The Defendant took out letters of administration to administer the estate. She should not have been allowed to do so because *caveats* had been lodged with the probate registry. The Defendant instructed a firm of licensed conveyancers to act. That firm had no authorization to act in probate matters. The Defendant transferred to that firm nearly £90k representing assets of the estate. Grossly inflated bills were rendered, money in client account was transferred to office account to pay them, the firm became insolvent and all these trust funds were lost. The Master decided that the Defendant as Trustee had not acted 'honestly and reasonably' under the Trustee Act 1925. The Master made an order against the Defendant personally that she repays these funds to the estate so they can be distributed to the beneficiaries who benefit under intestacy.

George Lyons and Jonathan Kerr (by his attorney Sandra Grant) v. Andrene Kerr-Robinson
[2016] EWHC 2037 (Ch) 24 August 2016
High Court of Justice, Chancery Division (Master Matthews)

What are the facts?
Cynthia Lyons ('the deceased') died in 2011 aged 84. She was divorced and had no children. She had not made a Last Will and Testament. She owned a house in London and one in her native Jamaica. After she died, Andrene Kerr-Robinson (the defendant) claimed she was related to the deceased. She was not. The defendant obtained a grant of probate and then with the assistance of a Mr Samuel Okoronkwo (who worked for a firm of licensed conveyancers called '*Blueprint*') rinsed the estate of most of its cash.

What was lodged with the Probate Registry after Cynthia Lyons death?
Following her death, at least 2 of the deceased more remote relatives lodged a '*caveat*' against dealing with the estate with the Probate Registry. The effect of this should have been to have prevented anyone being granted either probate (if a Will was found) or letters of administration (if not).

Who is the defendant? How did she obtain letters of administration over the estate?
The Defendant is a chartered accountant. The Defendant is also of Jamaican descent and moved to the UK in 1998. She falsely claimed to the deceased's '*niece of the half-blood'.*

Rather disturbingly, despite these statutory caveats having been lodged, the Defendant obtained a Grant of Probate on 15 February 2012. The Probate Registry should not have issued this Grant. Five weeks later it realized its mistake and wrote to the Defendant asking her to return the Grant of Probate. She did not. By then the damage was done and the Defendant proceeded to sell the deceased's property and deal with her estate under the powers conferred on her by that Grant.

What assets did the estate have? How much was the estate worth?
The deceased owned a mortgage free semi-detached house in Wood Green, London. She also had a property in Jamaica. There were sums in her bank account and her personal property at the house. Similar houses in that street sell for north of £500k.

Who are the claimants in this action?
George Lyons (the 1st claimant) claims to be related to the deceased and wants to make a dependency claim on her estate under the Inheritance (Provision for Family and Dependents) Act 1975. Jonathan Kerr (the 2nd claimant) claims against the estate under intestacy. He says he is related to the deceased being a '*nephew of the half-blood'.*

Are there any other relevant facts?
The Defendant opened a bank account with the Halifax in her own name and paid money into it from the deceased's estate. From that account these transfers were made in breach of trust:

- **£2000** by electronic transfer on 2 March 2012 to her personal account,
- **£6000** by electronic transfer on 7 March 2012 again to her personal account,
- **£59,657.67** by CHAPS on 28 March 2012 to Blueprint, and
- **£27,107.41** by CHAPS on 26 May 2012 to Blueprint,

The Defendant claims that when this court case was issued against her that '*she confided in a work colleague, who told her that her husband was a barrister*'. He was Samuel Okoronkwo who was

'*employed by a company called Capstone Sports Management* Limited' and '*referred the Defendant to Blueprint, with which he appeared to be connected*'.

Who was Blueprint?
Blueprint Property Lawyers Limited ('Blueprint') was a firm of conveyancers. They were licensed to carry out conveyancing by the Council of Licensed Conveyancers. That authorization did not extend to conducting litigation or probate work. Blueprint practiced from rented offices in Soho, London. Blueprint consisted of these people:

- Mr Rehan Beg (who is a practising solicitor),
- Ms Perdip Bhachu (who is also a practising solicitor),
- Mr Shamiso Gondo LLB, and
- Mr Samuel Okoronkwo (who is a practising barrister),

On 13 December 2013, a petition to wind up Blueprint was presented. A winding up order was then made on 10 February 2014 and it was placed in compulsory liquidation by the Companies Court.

On what basis is the claim brought against the Defendant?
The claimants allege the defendant was not related to the deceased at all and claim that she has wrongly appropriated the assets of the estate for herself. The claim sought for revocation of the Defendant's Grant of Probate and for Janet Atkinson (a partner of Osbornes Solicitors LLP) to be appointed as an administrator of the estate instead.

How do the claimants say the defendant is liable to them?
The claim is in essence for breach of trust. The defendant was a trustee of the estate and she breached her duties as trustee. Even though the Defendant paid estate monies to Blueprint's client account, that does not absolve the defendants of liability to repay these sums following Blueprint's insolvency.

What was the application before the Master?
An application was made for interim relief to prevent dissipation of the estate. At an earlier hearing an undertaking in lieu of an injunction was given by the Defendant. The outstanding issue for the Master was an application for an order in relation to estate monies which had been wrongly paid to the now insolvent Blueprint. There was a minor issue about what were and were not legitimate estate expenses.

What had happened at the earlier hearings?
Since the issue of the claim the matter had been before various chancery judges or masters:

- 4 April 2012 – Arnold J – undertakings were given by the Defendant in lieu of an injunction,
- 7 December 2012 – Deputy Judge Michael Brindle QC – he ordered:
  - Grant of Probate be revoked,
  - Appointed an interim administrator of the estate,
  - Defendant to deliver up property or assets of the estate,
  - Defendant not to '*dispose of or otherwise deal with'* the estate, and
  - Pay the claimants' costs of the application and pay £20k on account in 28 days.
- 28 December 2012 – Court of Appeal – application for permission to appeal the Brindle order,
- 6 February 2013 – Master Price – directions for appointment of interim administrator,
- 25 February 2013 – Sales J – he appointed Janet Atkinson as interim administrator,
- 22 April 2013 – Court of Appeal – application for permission to appeal dismissed by consent, and finally
- 12 December 2013 – Probate Registry – Janet Atkinson granted Letters of Administration.

What undertaking did the defendant give to the Court?
At the hearing before Arnold J on 4 April 2012 she gave this undertaking ('the undertaking'):

> '*not to dispose of or distribute any part of the Estate of Cynthia Maria Lyons which she has received or which she is entitled to collect get in and receive in her capacity as Administratrix of the Estate of Cynthia Maria Lyons until further order.*'

On what basis did the defendant seek to resist the application?
The defendant said that there was no disposal of the estate's assets merely by making the payments to Blueprint's client account. Logically sequentially, she submitted that as there was no disposal, she was not in breach of the undertaking given to Arnold J.

Are there prior authorities of relevance?
These authorities are relevant in this case:

De Clifford v Quilter **[1900] 2 Ch 707** (Farwell J)
Executors of an estate knew that large sums of money were needed for various administration purposes. For 5 years they paid sums to their solicitors in reliance on their statements that they were in fact needed for those purposes and largely they were so applied. But shortly before the administration came to an end, the solicitors became bankrupt, and the remaining balance of estate monies held with them was lost. It was held that the executors had acted honestly and reasonably, and ought fairly to be excused and relieved from personal liability in respect of the balance lost.

Clark v. Chadburn **[1985] 1 WLR 78** (Chancery division, Sir Robert Megarry VC)
Those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them.

Re Barn Crown Ltd **[1995] 1 WLR 147** (Chancery Division, HHJ Rich QC)
In collecting payment upon a cheque, the bank credits the customer's account with the amount of the cheque. If the account is already in credit, no disposition of the property of the customer takes place in favour of the bank. The amount standing to the credit of a customer's account is increased in return for the surrender of the cheque, which becomes a voucher for payment. It is the drawer of the cheque whose property is disposed of. All that happens between the customer and the banker is an adjustment of entries in the statement recording the accounts between them.

R (Revenue & Customs Prosecution Office) v. R **[2007] EWHC 2393 (Admin)** (McCombe J)
A freezing order has the objective of rendering the defendant's assets more readily available for enforcement as and when necessary. The restraint on dealing with an asset is a restraint on any action by a defendant which may have the effect of rendering that process more difficult. Here there had manifestly been a dealing with this asset in so far as it had removed the identifying characteristic of this debt owed by the bank to R - by being a debt with a clearly identified location and identification with books of the bank to one that was not so readily ascertained. A claimant in a freezing order case is always comforted by the ability to identify particular bank accounts held by the defendant. They are specified in the order for a purpose. They are meant to be assets which will be there and identifiable, and readily identifiable, by that identifying mark throughout the currency of the order. The bank's decision to change that identification without a court order (or consent) was in clear breach of the terms of the order. It was not safe for the bank to embark on these transactions without any reference either to the prosecutor or to the court.

Why was money paid to the licensed conveyancers?
Just before the hearing before Arnold J in which the undertaking in lieu of an injunction was granted, Blueprint wrote to the Defendant by letter dated 23 March 2012 asking her to:

'*immediately transfer into Blueprint's client account for safe holding the current balance of the funds you presently hold on this matter and provide us with the account statement so that we can be in position to confidently state to the other side no dissipation of assets*.'

The Defendant went along with this and made the 2 CHAPS transfers to Blueprint.

What bills did Blueprint issue?
It is fair to say that Blueprint was not backwards in coming forwards when it came to billing. Mr Okorondo's hourly rate was £550 per hour + VAT and Mr Gondo's was £250. It seemed there was no legal service that they could not render to the Defendant. This included:

- 11 May 2012 - **£117,400.70** bill – mainly for legal services of Mr Okorondo from 4 April and 10 May 2012 in dealing with the Arnold J injunction hearing, and
- 7 December 2012 - **£360,814.30** (excluding VAT) statement of costs - for legal services from 26 March to 7 December 2012 for dealing with the hearings up to that before Michael Brindle QC.

Master Matthews described the bill and its figures as '*a large number of hours, at a high rate of charge, even for a partner in a City law firm*', '*remarkable*' and '*extraordinary*' for a '*dispute over an estate worth a few hundred thousand pounds at best*'.

What does the Trustee Act 1925 say about the liability of trustees?
Section 61 of the Trustee Act 1925 provides as follows:

'*If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same*.'

What ruling did the Master make as to whether the Defendant had breached the undertaking?
Firstly the Master had to decide if the payment that the Defendant made to Blueprint amounted to a '*disposal*' for the purpose of the undertaking given before Arnold J. He considered *Re Barn Crown* in which the judge decided that the issue of a cheque was a *disposal* ''. He also considered *R (Revenue & Customs Prosecution Office) v. R* and decided that this dealt with a prohibition on '*dealing*' which is not the same as a prohibition on 'disposal'. He said the undertaking distinguished 2 kinds of conduct:

- disposing of assets forming part of the deceased's estate, and
- distributing them.

He ruled that there was no prohibition on merely '*dealing*' with them '*so long as that does not involve disposing or distributing*' but that '*distributing' an estate asset 'refers to the transfer of assets or their proceeds to persons entitled (or at any rate believed to be entitled) to them under the applicable succession rules*.'

He ruled that the Defendant's conduct lay between the 2 extremes in *Re Barn Crown* and *R.* He said that 'f*rom the point of view of the undertaking given to the court, keeping assets in the ownership of the Defendant served a useful purpose.'* As to the CHAPS transfers, he held that '*This must have involved a* 'disposing*' by the Defendant of her credit balance with the* Halifax'.

The 1st CHAPS payment was made in March 2012 **before** the undertakings were given to Arnold J. However, the Master ruled that this was still a payment made in breach of trust even though Blueprint made client account to office account transfers to cover their 'bills' as soon as they received these funds. The Defendant had asked Blueprint what part of the order of Michael Brindle QC she had not complied with and was sent an email date 21 March 2013 from Perdip Bhachu saying:

> '*1. Payment in respect of the costs order in the sum of £20,000, which we are counter acting [sic] with our Court of Appeal application, and 2. Requirement to return the original letter of administration from Jamaica, which you are only obliged to do so on receipt.*'

The Defendant went on to instruct new lawyers (a solicitor's firm this time – Fortis Rose) and in an email to them date 29 October 2014 said

> *'I am concerned that the current Administrator has heard nothing from my side and the matter will proceed at my disadvantage, particularly with the legal bill of Bays [solicitor for the Claimants] in addition to accounting for the £80k Adem [trainee solicitor at Fortis Rose] mentioned is due to the estate.'*

The Master ruled that *'certainly by October 2014, the Defendant was well aware that there was a hole of some £80,000 in the estate accounts'*. The Master said that this email 'does *not, as the Defendant would have me accept, unambiguously show that the Defendant did not know that the estate monies had been used to pay Blueprint's litigation bills'.* He lambasted the Defendant's attitude with these trenchant remarks:

> '40. … *Yet on her case she did nothing at the time to ask about those funds. Nor did she ask about the matter when the interim administrator was appointed in February 2013. And, even when she wrote to Blueprint in March, she still did not ask about the funds, and in particular whether they had by now been transferred. …. She is an accountant, with a high-powered employment. In my judgment this alternative scenario is highly improbable, and that lends further weight to the view that she knew of the take-overs.'*

In conclusion the Master ruled:

> '54. *In my judgment the Defendant was in breach of the undertaking to Arnold J in respect of the £27,107.41 paid after the undertaking was given, because she paid the money out of her Halifax account to Blueprint's account. She was also in breach of the undertaking even in respect of the £59,657.71 paid to Blueprint before the undertaking was given, by allowing the monies to be used to pay Blueprint's legal bills.'*

And finally that:

> *'57… one consequence of the breaches by the Defendant of the undertaking ...is that the Defendant cannot rely on those monies having been paid away to Blueprint in part-satisfaction of their invoices, and having now become irrecoverable..'*

What ruling did the Master make on the Defendant's Trustee Act defence?
Firstly he looked at the Practice Direction to CPR part 46 which says:

> '**1.2** *The trustee is not to be taken to have acted for a benefit other than that of the fund by reason only that the trustee has defended a claim in which relief is sought against the trustee personally*.'

On this he said *'the work done by Blueprint was not to gather in or protect the estate. On the contrary it was to resist a claim by the Claimants that accused the Defendant of plundering the estate'.* He said the

Defendant's actions did not have '*the hallmarks of an administrator anxious to look after the interests of the Estate*'. He said '*it was not her money she was spending'* and that she '*was not acting reasonably in the way that she defended these proceedings'.* The Master said there was a clear distinction to *Quilter* because:

> '72. *In the present case there was no need whatever for the Defendant to hand over the estate monies to Blueprint for estate administration, or indeed any other estate purpose. … But the monies were safe where they were. Indeed, as it turned out, rather safer. …. However, I can and do say that she did not act reasonably in handing over the monies to Blueprint when it had no estate function to perform and the litigation which it was to carry on was (as I have held) for the Defendant's benefit rather than for that of the Estate.'*

He said the Defendant '*took the risk it would all turn out all right'* and of her conduct concluded that:

> '75. *Accordingly I cannot exercise the jurisdiction under section 61 in favour of the Defendant, either in relation to her accounting as personal representative to the interim administrator, nor indeed by analogy in relation to the claim under the undertaking and the order*.'

What have the regulators done?
Nothing that will benefit the estate at all.

On 4 October 2013 the Council for Licensed Conveyancers (CLC) intervened in Blueprint Property Lawyers. However the CLC has disclaimed any liability to indemnify the estate claiming that the losses it suffered took place in the course of probate and litigation work, which Blueprint was not authorised to carry on by the CLC. What the CLC has failed to grasp is that the bills were illusory or inflated, the client to office account transfers were bogus, and that the client account has been plundered which should trigger an indemnity fund payout.

Perdip Bhachu is a practising solicitor presently working for Prince Evans in Ealing. Although she worked for Blueprint, had the conduct of the case and was held out as a principal on its notepaper as a solicitor, the Solicitors Regulation Authority has similarly disclaimed any liability to the estate. Mr Beg now works for IBB in Uxbridge but it is not clear what his role in this had been. Barristers are not allowed to hold client money so this limits what the BSB could do with Mr Okoronkwo.

Is there anything else of note in the judgement?
The Master goes on to consider other expenses the Defendant sought to charge to the estate. He ruled that these could not be allowed:

- Return flight to Jamaica for the Defendant or the Defendant's husband,
- Expenses for Next of Kin verification,
- Land Registry Fee,
- Land taxes in Jamaica, and
- Postage.

He did however rule that these expenses **could** be allowed:

- Administration fee payable to Probate Registry,
- Travel to interview at Probate Registry, and
- One small invoice for legitimate advice to the estate from Hamilton Davies, solicitors.

What lessons can be learned from this case?
Take over frauds are becoming more common and fraudsters are seeking ever more ingenious ways to exploit loopholes in the system. We have seen take over frauds in relation to dormant bank accounts or dormant properties. In the corporate space, fraudsters have committed take over fraud by having business stationary printed up of legitimate well-established businesses but using addresses of rented property not connected with the real business. Here this case has shown the systemic weakness in the Probate Registry. It is not clear what the Probate Registry has done to tighten up on its procedures. Clearly if it has not taken action, then take over fraud in probate work will re-occur. In the meantime probate practitioners will need to be vigilant.

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