

5 Stone Buildings

Standing: who can now weigh in and bring a claim following *Randall v Randall*?

Mark Baxter

7 February, 2018

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Parties

- Claimant:
 - Colin Alan Randall

- Defendant:
 - Hilary Ann Jocelyn Randall

- Former spouses (D's petition)

Source of the problem: divorce consent order

- “I **AND UPON** the petitioner undertaking to the Court and agreeing
- 1) To pay such lump sum or sums as may be necessary to give effect to the following agreement between the Petitioner and the Respondent, namely, that in the event that the Petitioner receives hereafter any property and/or monies from her mother by way of inter vivos gifts and/or inheritance, the Petitioner shall retain the first £100,000.00 of the sum of any such gifts and/or inheritance and the balance shall be divided equally between the Petitioner and the Respondent and...

Source of the problem

- 2) To notify the Respondent of the receipt of any inter vivos gifts and/or inheritance from her mother within 28 days of the same and
- 3) To pay the Respondent the afore-mentioned lump sum or sums forthwith upon receipt...”

Believed or assumed D (as only child) was sole beneficiary of existing Will from April 1999

The inevitable happens

- 30.01.09: D's mother executes Will limiting D's inheritance to £100,000 (residue divided between grandchildren instead) (Will cannot be found)
- "20.10.09": D's mother executes new Will with new address and to remove pecuniary legacy to museum

Proceedings

- C issues claim challenging validity of “20.10.09” Will and seeking revocation of grant, and relies on rights under Consent Order to establish standing
- D defends on merits and on basis C has no interest in estate sufficient to bring claim

CPR, r.57.7(1)

“The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.”

Assumptions:

- Procedural requirement in respect of question of substantive law
- ‘Interest in the estate’ means beneficial interest or interest in administering

CPR, PD57.4

“In giving case management directions in a probate claim the court will give consideration to the questions

(1) whether any person who may be affected by the claim and who is not joined as a party should be joined as a party or given notice of the claim, whether under rule 19.8A or otherwise; and

(2) whether to make a representation order under rule 19.6 or rule 19.7.”

Difficulties for D

- ‘Feels right’, but lack of clear authority:
 - What is an interest in an estate? (only 1975 Act claims considered recently, and conflicting on that point)
 - Does CPR reflect a substantive requirement that each party has such an interest?

Authorities

- *Menzies v Pulbrook & Kerr* (1841) 2 Curt 846
 - Two creditors of the Deceased opposed a grant of probate
 - Creditor entitled only to ensure a grant to someone (no right himself, although may be appointed at court’s discretion)
 - Allowing creditors to dispute validity of Will “would create infinite trouble, expense, and delay to executors”

Authorities

- *Dixon & Dickinson v Allinson & Allinson* (1864) Tr & Sw 572
 - D & D were appointed executors of both W & H
 - W died leaving Will & codicil in H's favour, then H soon after
 - A & A entered caveats in W's estate
 - H's creditor EEB brought admin action against D & D in H's estate
 - D & D propounded W's Will & codicil and given permission to join EEB's liquidator as person interested in Will & codicil being upheld

Authorities

- *In the Goods of Timothy White* (1893) LR Ir 31 Ch
 - Son obtained administration but suppressed Will in mother's favour
 - Mother fell on hard times, borrowed, and could not repay
 - Creditor discovered the suppressed Will, (if admitted) she could repay him: granted permission to claim for revocation of grant
 - “A creditor of a person who has an interest under a will has a sufficient interest to entitle him to be made a party. *Dixon v Atkinson* is a distinct authority to this effect.”
 - in 13th & 14th eds *Tristram & Coote*, but not 15th ed (1915) or since

Authorities

- *Rao v Latchamma* AIR 1926 Madras 1193
 - Widow of Deceased's late brother opposed application for grant of probate
 - Will disposed of 'joint family' property to which Deceased had survived on death of brother
 - Under Hindu inheritance law, widow was entitled to maintenance out of the income of that property
 - Question was whether widow had 'interest in estate'
 - "If a person is likely to suffer by the grant of the probate of a forged Will or an invalid Will he has sufficient evidence to enter a caveat."

Authorities

- *Green v Briscoe* [2005] EWHC 809 (Ch)
 - 1975 Act claim not an “interest in the estate”

- *O’Brien v Seagrave* [2007] EWHC 788 (Ch)
 - 1975 Act claim is an “interest in the estate”

Deputy Master: CPR

- No purpose to requiring statement of interest in estate of both C and D unless is substantive requirement and so requires point of dispute to be identified at earliest possible stage
- r.57.7 concerns who may start claim, and who claim may be started against as of right; 57PD.4(1) concerns who may be subsequently joined at discretion of court

Deputy Master: authorities

- *Menzies* correctly decided on the basis of previous authority
- *Dixon* concerned joinder of a party to an existing claim

Deputy Master: authorities

- *White* wrongly decided:
 - Contrary to *Menzies*
 - Not referred to *Menzies*
 - Relied on incorrect analysis of ratio in *Dixon*
 - Did not distinguish between being C or D and being joined
 - Why referred to in 13th & 14th eds *Tristram & Coote*, but not 15th ed (1915) or since

Deputy Master: authorities

- *Green & Seagrave* rank equally for doctrine of precedent but not on point: *Green* to be preferred
 - Consistent with *Menzies*
 - judge in *Seagrave* did not have sight of report of *Green* decision

Judgment: conclusions

“Whether a person has an interest in the estate is to be determined by reference to the touchstones of: (1) whether they are personal representatives, (2) the grant of representation, and (3) the entitlement to a distribution of the estate. The court is concerned with identifying ‘an interest in the estate’, and not whether someone is ‘interested’ in the estate. Just as a creditor of an estate, while interested in the estate, has no interest in the estate, so in my judgment a creditor of a beneficiary of the estate has no interest in the estate, although he is possibly interested in the estate.”

Grounds of appeal

1. Rule re interest interpreted too narrowly:
 - C is not a creditor of the estate as in *Menzies*; what he will receive depends on distribution of estate
 - But anyway, *Dixon* described creditor of B as having “real and substantial interest” in the estate

Grounds of appeal

2. Rule is procedural only

- *Menzies* described it as a “rule of practice” of the Prerogative Court
- If it would have prohibited C’s claim, it should not be applied because the CPR brought in “a new procedural code”

My submissions

- *Menzies*: creditor of estate cannot challenge right of executor to administer estate because no right to administration himself
- *Dixon*: concerned joinder as D, not standing as C, and was only because B dead and PRs already Cs
- *White*: *Menzies* not cited and misstated *Dixon* as authority for proposition creditor of beneficiary may bring probate claim
- *O'Brien v Seagrave*: *Green v Briscoe* not cited, only considered 1975 Act claimants, but reconcilable because they are Bs

Court of Appeal: Authorities

- “*Menzies* has stood the test of time and continues to be referred to in *Williams, Mortimer, & Sunnucks*... It is clear authority for the proposition that the creditor of an estate does not have a sufficient ‘interest’ in the estate to allow him to challenge the validity of a will.” Lord Dyson MR, [12].

– No change

Court of Appeal: Authorities

- *Dixon*: “I do not accept that the basis for this decision was that the liquidators were the only persons who could be joined to represent the husband’s interest... The essential point was that the creditors were allowed to be joined because, by reason of being creditors of the husband, they had an interest in the estate... There is no suggestion the Court thought it material that the liquidators were seeking to be joined to the claim rather than to bring the claim in the first place.”
Lord Dyson MR, [15].

Court of Appeal: Authorities

- What if there was a PR of husband's estate?
- Creditor's remedy is against the PR to enforce administration

Court of Appeal: Authorities

- *White*: “The court said... there was no doubt of the jurisdiction of the court to grant [an application for permission to issue a citation to recall a grant] ‘in the case of a creditor who has an interest’ in the issuing of such a citation... There is no doubt that a creditor of an estate does not have sufficient interest in an estate to bring a probate claim... but the interests of the two types of creditors are fundamentally different... The interest of the creditor of the beneficiary is to ensure that the beneficiary receives what is due to him or her... The creditor of the estate is not interested in which beneficiary receives what.” Lord Dyson MR, [16, 22].

Court of Appeal: Authorities

- *White*: “The case was cited in the 1900 and 1906 editions of what is now *Tristram & Coote’s Probate Practice* edited by Dr Tristram himself, before the case mysteriously disappeared from the book in the 1915 edition following Dr Tristram’s death. No explanation was given in that later edition for the removal of the reference to the case and, for my part, I am not prepared to take that as any indication that the case was wrongly decided.” McCombe LJ, [34].
 - Insufficient alone, but surely relevant when clearly anomalous?

Court of Appeal: Authorities

- *O'Brien v Seagrave*: “There is no decided case which is inconsistent with a broad construction of the meaning of ‘interest’. Mr Baxter submits that *O'Brien* can be upheld on the ground that a successful claimant under the 1975 Act is a beneficiary of the estate. But even if that is correct, this was not the reason given by Judge Mackie for reaching his conclusion. He adopted a broad construction of ‘interest’. I would adopt his reasoning and hold that, unless there is binding authority... which requires us to adopt a narrow interpretation of ‘interest’ in CPR 57.7 or there are cogent arguments for doing so, justice requires that it should extend to a person such as [the Claimant].” Lord Dyson MR, [24]

Court of Appeal: CPR

- “I do not accept that the question whether a person has a sufficient ‘interest’ in an estate to be eligible to bring a probate claim is a matter of substantive law. Whether a Will is invalid is, of course, determined in accordance with rules of substantive law. But the question of who has sufficient interest to be permitted to bring a probate claim to prove that a will is invalid is *prima facie* a procedural matter... In short, whether a person had a good claim is a question of substantive law. Whether he has the right to bring his claim before a court is a question of procedure.” Lord Dyson MR, [27]

Court of Appeal: CPR

- Validity or construction of contract question of substantive law, but who has *locus* to enforce question of procedural law?
- Why *locus* in all other claims not dealt with in CPR?

Court of Appeal: Judgment

- “[The Claimant] has a real interest in challenging the will... I conclude that he has a sufficient ‘interest’ in the will to bring his claim.” Lord Dyson MR, [27]
- “It appears to me to be highly unjust that if... a will had been forged in an attempt to defeat an order made in divorce proceedings, the party affected could not challenge the validity of the will in probate proceedings.” McCombe LJ, [37]
- “Justice in the general sense requires [the Claimant] to be able to bring his probate claim.” King LJ, [45]

Court of Appeal: Judgment

- Why did they get it so wrong?
 - Lack of ‘feel’ for jurisdiction
 - ‘Impulse to do practical justice’
 - Sympathy for C (been had?)
 - **Palm tree justice?**

Supreme Court?

- Widening of class of Cs has public policy considerations: limited court resources
 - CA acknowledged but failed to apply r.57.7 / PD57.4 distinction (e.g. in interpreting *Dixon*)
 - Misstated ratio of *Dixon*: application made by executors, not liquidator; wrong to ignore importance that beneficiary dead
 - Deputy Master relied on *Menzies* reasoning, did not misapply to case of creditor of beneficiary
 - Failed to consider how *O'Brien v Seagrave* fitted with previous authority
-
- Misdescribed ‘substantive’ and ‘procedure’

New normal

- Any creditor of any potential beneficiary may bring probate claim (default not necessary)
- If only “real interest” in challenge required, might category of potential claimants be even wider?
 - **(Divorcing) spouse of potential beneficiary?**
 - **Child of potential beneficiary?**

Consequences?

- Creditors etc of potential beneficiaries should be joined / given notice under PD57.4?
- But not necessary parties to a compromise under s.49 Administration of Justice Act 1985:
 - Requires only consent of every “relevant beneficiary”, i.e. a person who under any such will (or intestacy) is beneficially interested in the deceased's estate
- Mediation?

Court of Appeal: costs

- Trial of preliminary issue required determination of a novel point of law on which no binding, or conflicting, authority
- Claim as whole remains undetermined: outcome remains unknown
- If preliminary issue determined at trial, costs of preliminary issue would be costs in the claim

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Thank you,
any questions?

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