WeirFoulds LLP

CASE LAW UPDATE

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Rondel v Robinson Estate

2011 ONCA 493 (Released July 6, 2011)

Estates – Interpretation of a Will – Admissible Evidence

This appeal challenged the common law position on the inadmissibility of direct extrinsic evidence of a testator's intention in the face of an unambiguous will.

The testator, who owned property in Spain, England and Canada, executed a will in 2002 intended to deal only with her European property (the "**2002 Spanish Will**"). She granted a life interest in her London flat to the Appellant, with whom she had a long relationship. In 2005, the testator sent her lawyer drafting instructions regarding a Canadian will (the "**2005 Canadian Will**"). The instructions related to the "entire residue of [her] estate". Her lawyer drafted the will according to the instructions but did not inquire to as the testator's previous wills, the location of her assets or her significant relationships. The 2005 Canadian Will included a general disposition clause and a standard revocation clause, which revoked all previous wills. The lawyer reviewed the will, clause by clause, with the testator prior to its execution.

In 2006, the testator revised the 2005 Canadian Will to make a bequest of $1 million to the Appellant (the "**2006 Will**"); no further amendments were made. When the testator died, her lawyer, who was unaware of the 2002 Spanish Will or the testator's European assets, distributed the Canadian assets per the 2006 Will. The lawyer subsequently learned of the 2002 Spanish Will and the European assets.

The Appellant and the testator's lawyer brought applications for the interpretation and rectification of the 2006 Canadian Will, which had already been probated. Both applications were supported by affidavit evidence as to the testator's intention that the 2006 Will would deal only with her Canadian property and was not intended to revoke the 2002 Spanish Will. The Appellant deposed that the testator did not intend to revoke the 2002 Spanish Will and that the 2006 Will did not reflect her intentions and was not approved prior to execution.

The application judge, after reviewing the common law position on the rectification of wills, dismissed the applications. To allow the applications would give the court the power to intervene and rectify an unambiguous will that was reviewed and approved by the testator on the basis of third party affidavit evidence that the testator did not mean what she said.

The Court of Appeal found the application judge did not err by holding that the affidavit evidence as to the testator's intentions was not admissible.

The court upheld the general common law rule that the testator's intentions must be determined on the basis of the words in the will rather than direct extrinsic evidence of intent. While extrinsic evidence related to the circumstances of the testator and the making of the will may be admissible, the affidavit evidence filed in support of the applications exceeded the scope of admissible evidence. Allowing such evidence would introduce uncertainty and increase estate litigation. Disappointed beneficiaries could challenge a will based on the belief that the testator's intentions were different than those expressed in the will. To admit this evidence, other than in circumstances where there is an equivocation in a will, would raise issues of credibility and reliability. In this case, the words of the 2006 Will were clear.