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DEATHS, DAUGHTERS-IN-LAW, AND DELAY IN 1975 ACT CLAIMS – *ARCHIBALD V STEWART & ANOTHER* [2023] EWHC 2515 (CH)

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DEATHS, DAUGHTERS-IN-LAW, AND DELAY IN 1975 ACT CLAIMS – *ARCHIBALD V STEWART & ANOTHER* [2023] EWHC 2515 (CH)

The Inheritance (Provision for Family and Dependants) Act 1975 (the "1975 Act" or the "Act") enables specific classes of claimant to bring a claim against a deceased person's estate for reasonable financial provision. Unless the court otherwise permits, such a claim must be made within 6 months from the date on which a grant of probate or letters of administration is taken out.

The High Court's recent decision in *Archibald* by no means reinvents the wheel insofar as 1975 Act claims are concerned. However, it has clarified and reaffirmed certain parameters going forward and serves as a useful reminder of important "dos and don'ts".

FACTS AND ISSUES

A 1975 Act claim was brought by Neil and his wife, Julie, in respect of the estates of Neil's parents. Sadly, Neil died post-issue. The court had to determine (a) whether Neil's claim survived his death to be pursued by his estate; (b) whether Julie had standing to bring the claim under section 1 of the Act; and (c) whether they should have permission to bring their claims out of time under section 4 of the Act.

DOES A CLAIM SURVIVE A CLAIMANT'S DEATH?

It had previously been held in three High Court decisions[1] that 1975 Act claims do not survive the death of the applicant; the right to bring such a claim was not a cause of action, which would ordinarily survive a person's death for the benefit of their estate,[2] but a mere hope or contingency.

The Supreme Court's decision in *Unger v Ul-Hasan* [2023] UKSC 22 swept this notion away as a heresy, albeit in the context of matrimonial legislation. There, Lord Leggatt held that *"there can…be no doubt that, today, a financial order claim is not a mere hope of contingency. It is a cause of action".*

However, in Archibald, Deputy Master Francis accepted the Defendants' submission that *Whyte*, *Re Bramwell, and Fresco* were unaffected by the Supreme Court's decision in *Unger*. Those decisions all relied on a second strand of reasoning; that a 1975 Act claim is one purely personal to the applicant and incapable of being further pursued following his or her death. Accordingly, Neil's claim did not survive his death and was dismissed.

[1] *Whyte v Ticehurst* [1986] Fam 64, *Re Bramwell deceased* [1988] 2 FLR 263, and *Roberts v Fresco* [2017] EWHC 283 (Ch).
[2] Section 1(1) Law Reform (Miscellaneous Provisions) Act 1934

JULIE'S STANDING

The court held that Julie was not eligible under section 1(1)(d) as a person treated as a child of the family. The evidence was insufficient to establish a quasi-parent-child relationship as between Julie and Neil's deceased parents. Whilst there was evidence of mutual support and affection, this did not go outside or beyond what one would expect between parents and their child's spouse or partner. Julie's claim was struck out accordingly.

LIMITATION

Neil and Julie's case was that they were not advised of their ability to bring such a 1975 Act claim against Neil's father's estate despite having instructed solicitors whilst they were still within time to do so.

The court indicated that the advice which they had received would have been *"highly material"* in considering whether to allow a claim to be made out of time. However, Julie did not disclose any such advice such that the court was unable to make any findings in relation to any possible failures by their solicitors.

In any event, the court was satisfied that Neil and Julie chose to bring a claim under the 1975 Act not because they sought reasonable financial provision, but because they were disappointed with the way in which the estates were being administered. The court would not have granted permission because *"The 1975 Act is not a bargaining tool, nor something for a beneficiary to fall back on if he or she is disappointed with trustees' decisions"*.

CONCLUSION

The key takeaways for legal practitioners from this case are as follows.

- A 1975 Act claim does not survive a claimant's death for the benefit of their estate, notwithstanding the decision in *Unger v Ul-Hasan* [2023] UKSC 22.
- There is a high evidential threshold to meet in order for a daughter- or son-in-law to be eligible to bring a 1975 Act claim. The court will expect evidence that the claimant was taken under the deceased's wing as a child in their own right, as opposed to being treated as their child's spouse or partner.
- Putative claimants should act fast and not let an intimated 1975 Act claim lie.
- It may be a relevant factor for the purposes of obtaining permission to bring a claim out of time that a claimant's solicitors failed to advise them that they could bring the claim prior to the expiry of the limitation period. Clients should be prepared to waive privilege and disclose advice if their case is otherwise sufficiently strong.

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