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25, 1961

IN THE PRIVY COUNCIL

No. 43 of 1958

UNIVERSITY OF LONDON  
W.C.I.  
16 FEB 1962  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

ON APPEAL FROM THE FEDERAL SUPREME COURT  
OF THE  
WEST INDIES

I N T H E M A T T E R of THE ESTATE of SOPHIA  
MUSTERD deceased

- and -

I N T H E M A T T E R of THE SUPREME COURT ORDINANCE  
CHAPTER 7, SECTION 45

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B E T W E E N

VICTORINE ROBERTS (Feme Sole)  
and OSCAR JAMES

Appellants

- and -

LETTER T ESTATES LIMITED  
STANLEY HEALD  
JESSICA WATT  
ELLA JEANNIE MEARNs and  
GRETA ENID MEARNs

Respondents

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CASE for the RESPONDENT  
STANLEY HEALD

Record

1. This is an Appeal from a judgment of the Federal Court of the West Indies dated the 4th July, 1958 allowing an appeal from a judgment of the Honourable Mr. Justice Miller in the Supreme Court of British Guiana dated the 8th August, 1957 giving directions upon an Originating Summons issued upon the application of this Respondent in his capacity as Executor of the estate of Sophia Musterd (hereinafter called "the Testatrix").

Record

2. The matter arises under a term of the Will of the Testatrix whereby 121 shares in the respondent company Letter T Estates Limited (hereinafter referred to as "the Company") were bequeathed to the First Appellant Victorine Roberts and 121 shares in the Company were bequeathed to the second Appellant Oscar James (all 242 of which shares are hereinafter referred to as "the said shares").

3. The Company is a private company and the Articles of Association thereof contain restrictions on transfers of the shares of the Company. The relevant Articles of the Company are set out in the Record. 10

pp 12-16

4. The Testatrix died on the 19th October, 1956, and probate of her Will was granted to this Respondent on the 25th January, 1957. The auditors of the Company gave a certificate valuing each of the said shares at \$410 as at the date of the death of the Testatrix, and this certificate was filed for the purposes of the computation of estate duties on the 9th January, 1957. 20

p. 35

p. 3

p. 53

p. 53

5. On the 30th January, 1957 this Respondent wrote to the Appellants informing them of the valuation of the said shares, explaining that under the Articles of Association of the Company the said shares had first to be offered to members of the Company and asking for instructions.

p. 61

6. On 7th February 1957 this Respondent wrote to the Company giving notice that he desired pursuant to Article 25 to transfer the said shares and to comply with Article 15 of the Articles of Association of the Company. He also asked in the same letter if the members or in default of the members the persons selected by the Directors were willing to purchase the said shares. He stated there in that the fair value of the said shares had been fixed at \$410.00 per share and that he would require payment of \$99,220.00 before transferring the said shares. This Respondent sent a copy of this letter to one Linden F.S. Burnham Counsel for the Appellants. 30

pp. 4/5

7. By letter dated 22nd February, 1957 the Company informed this Respondent that the Third, Fourth and Fifth Respondents were willing to purchase the said shares in the proportions set out therein. The letter also requested this Respondent to execute transfers of the said shares in favour of the Third, Fourth and Fifth Respondents. 40

p. 5

p. 54

8. From the correspondence with the Appellants Counsel (some of which is set out in the Record) it became clear that the Appellants objected to the transfer of the said shares at the price named by this Respondent and this Respondent by his Solicitor took out a summons on the 11th March, 1957 applying for an Order of the Court giving directions as to whether this Respondent should execute transfers of the said shares in favour of the Third, Fourth and Fifth Respondents or whether to execute two transfers each for 121 of the said shares to the two Appellants respectively. pp.7-10  
pp 1/2
- 10 9. The Summons came on for hearing on the 20th May, 1957 and Judgment was given on the 8th August, 1957. The Court Ordered this Respondent to execute two transfers in favour of the Appellants on the grounds that under Article 15 of the Company's Articles of Association the Appellants were the only persons entitled to offer the said shares to members or persons selected by the Directors. The Judge held that the certificate of valuation for Estate Duty purposes could not be accepted as one fixing the fair value of the said shares for the purpose of transfer. p.16  
p.25
- 20 10. The Company appealed to the Federal Supreme Court and by an Order made the 28th September, 1957 the Third Fourth and Fifth Respondents in the present appeal were added as Respondents in that appeal. Judgment was given on the 4th July, 1958 by Eric Hallinan C.J., Rennie J, and Archer J who allowed the appeal, Archer J, for reasons different from those of the Chief Justice with whom Rennie J. concurred. p.27  
p.28
- 30 11. In his judgment the Chief Justice said that it was the duty of the Appellants in this appeal to make the offer of the said shares to the Company, that they had failed to do so, but that the duty to do so continued, and that the Court should direct them to make the offer. The Court should also direct the Auditors to ascertain the fair value as at the date of the offer, but if this value should be greater than the value of the shares at any time during the three months ensuing after the Testatrix's death, then the fair value should be the highest valuation which the auditors might have placed on the shares during that period. Rennie J. concurred with this judgment. p.34-35  
p.35-41
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Record  
p. 41

12. Archer J. in his judgment said that in his view the original offer made by this Respondent was valid and that he would have directed this Respondent to transfer the said shares to the Third Fourth and Fifth Respondents at the fair value ascertained as at the 7th February, 1957.

p.42-43

13. The Order of the Federal Supreme Court was made on the 4th July, 1958 in accordance with the terms of the judgment of the Chief Justice.

p.44-45

By an Order of the same Court dated the 26th September, 1958 the judgment of the Court was stayed and conditional leave to appeal to Her Majesty in Council was given. Final leave to appeal was given by an Order of the same Court dated the 2nd March, 1959.

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p.46-47

14. The Appellants and the Respondents other than this Respondent have in the Federal Supreme Court presented all the arguments relating to this matter. Their interests are such as to ensure that they will do the same upon this Appeal. In the circumstances this Respondent does not propose to set out in this case any arguments for or against the Judgment.

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15. The purpose of the summons which originated the matter of this Appeal was to obtain directions from the Court for this Respondent as Executor. This Respondent submits that this was the proper course for him to adopt and that in the circumstances his costs should be provided out of the estate. He submits himself to the directions of the Court and to carry out such acts (if any) as he may be ordered to do.

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PETER CURRY

No.43 of 1958

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE FEDERAL SUPREME  
COURT OF THE WEST INDIES

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ROBERTS and JAMES

- v -

LETTER T ESTATES LIMITED  
and OTHERS

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CASE FOR THE SECOND RESPONDENT  
STANLEY HEALD

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