

Privy Council Appeal No. 43 of 1958

Victorine Roberts and another - - - - - *Appellants*
v.
Letter T Estates Limited and others - - - - - *Respondents*

FROM

THE FEDERAL SUPREME COURT OF THE WEST INDIES

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 8th JUNE, 1961**

Present at the Hearing:

LORD TUCKER.

LORD DENNING.

LORD MORRIS OF BORTH-Y-GEST.

[*Delivered by LORD DENNING*]

This case concerns the difficulties which have arisen in administering the estate of Miss Sophia Musterd, and particularly what is to be done about the controlling interest which she held in a private company incorporated under the laws of British Guiana called "Letter 'T' Estates Limited" (hereinafter called "the Company"). The Judges in the West Indies have given directions with which the legatees under her will are dissatisfied and they appeal to Her Majesty in Council.

The Company owned plantations in British Guiana. The shares were held as follows:—

Miss Sophia Musterd	- - - - -	222 shares
Mr. Stanley Heald	- - - - -	10 shares
Mr. J. C. Falconer	- - - - -	10 shares
Jessica Watt	- - - - -	80 shares
Ella Jeannie Mearns	- - - - -	81 shares
Greta Enid Mearns	- - - - -	70 shares
Greta Enid Mearns and M. M. Smith jointly	- - - - -	10 shares
		—
		483 shares
		—

Mr. Heald and Mr. Falconer were only nominees of their 10 shares each for Miss Sophia Musterd. So she owned beneficially 242 out of 483 shares.

On 19th October, 1956, Miss Sophia Musterd died leaving a will in which she appointed Mr. Stanley Heald to be the executor of her will and, after several other specific legacies, gave these two specific legacies to her maid and her chauffeur (hereinafter called "the two legatees"):

"I bequeath to Victorine Roberts, my maid for long and faithful years of constant service, 121 of my shares in 'Letter "T" Estates Limited', also my new side-board, the wardrobe with the mirror, and all of my china wares, dinner set, glasses and silver.

"I bequeath to Oscar Edmond James, my chauffeur, for the invaluable help he gave to me on the Estate, the other 121 of my shares in 'Letter "T" Estates Limited' also my writing desk and typewriter."

On the 28th November, 1956, a firm of chartered accountants valued the shares as at 19th October, 1956, when Miss Musterd died, at \$410 a share. On 9th January, 1957, this valuation was filed with the Estate Duty papers for purposes of Probate.

On 25th January, 1957, probate was granted to the executor Mr. Heald and the estate was sworn to nearly \$300,000. It was ample to provide for all the debts and to enable the specific legacies to be paid in full. The executor was not in a position, however, to transfer the shares to the legatees because the Articles of Association of the Company contained restrictions on transfer and gave rights of pre-emption to existing members. Hence the difficulties that have arisen.

Under the Articles of Association of the Company Mr. Heald the executor was the only person entitled to the shares which stood in the name of Miss Musterd. Article 25 said that "The heirs, executors or administrators or other the legal representatives of a deceased member . . . shall be the only persons recognised by the Company as having any title to the shares registered in the name of such member".

Mr. Heald thought that, under the Articles he was bound to offer the shares to the other shareholders at the fair value. Article 15 said that "Any person (not a member or the son, daughter, grandson, granddaughter or other issue, brother, sister, husband or wife, nephew or niece, of a member) becoming entitled to shares in consequence of the death of any member, shall, within three months after his so becoming entitled, offer the shares to members or, in default of members, to persons selected by the directors . . . and the purchaser of such shares shall be entitled, without making any payment therefor, except the fair value and costs of transfer, to all the shares held by such deceased person".

Thinking himself bound by Article 15, Mr. Heald on 7th February, 1957, wrote this letter to the secretary of the Company offering the shares:—

"I hereby give you notice that I desire, pursuant to Article 25, to transfer the shares in Letter 'T' Estates Limited left by Miss Sophia Musterd deceased in her Will, and to comply with Article 15 of the Articles of Association of the Company.

"Will you please let me know as soon as possible if the members, or, in default of members, the persons selected by the Directors, are willing to purchase the shares.

"The fair value of the 242 shares, as you know, has been fixed at \$410 each share and I shall require payment of the sum of \$99,220.00 before transferring the shares to whoever may purchase same.

..... Yours faithfully,

Estate Sophia Musterd, deceased.

S. Heald, Executor."

On 22nd February, 1957, the secretary of the Company replied to the executor and said that three of the shareholders, Mrs. Watt, Mrs. E. J. Mearns and Mrs. G. E. Mearns (hereinafter called "the three shareholders") would take up the shares. He said:—

"I have just been notified by Messrs. Cameron and Shepherd that their clients, as listed hereunder, have accepted the offers made to them and will take the number of shares set against their individual names:

Mrs. Watt will take	-	-	-	-	-	-	101 shares
Mrs. E. J. Mearns will take	-	-	-	-	-	-	81 shares
Mrs. G. E. Mearns will take	-	-	-	-	-	-	60 shares
							242
							—

"Messrs. Cameron and Shepherd also state that their other clients, Mrs. G. Mearns and Mr. M. Smith, are not in a position to take up their proportion of the shares offered.

“ I shall be glad, therefore, if you as executor of the estate of Sophia Musterd deceased and her nominees will execute transfers of the above shares in favour of the above-named persons and forward them to Cameron and Shepherd for completion. On receipt of these transfers they will forward a cheque for \$99,220 in payment.”

On 5th March, 1957, the three shareholders deposited the sum of \$99,220 with the Company: but instead of complying with their request for a transfer to them, the executor decided to safeguard himself by applying to the Court for directions, as he was entitled to do under section 45 of the Supreme Court Ordinance.

On 11th March, 1957, the executor Mr. Heald took out a summons asking the Court to give directions whether he should transfer the 242 shares to the three shareholders or to the two legatees or “ make and give such directions as the Court may deem fit ”. He served this summons on the Company and the two legatees but not on the three shareholders. On 8th August, 1957, the Supreme Court of British Guiana (Miller, J.) ordered the executor to execute transfers of the 242 shares to the two legatees. The Company appealed and an order was made giving leave to the three shareholders to join in the appeal. On 4th July, 1958, the Federal Supreme Court of the West Indies (Hallinan, C.J., Rennie, J., with Archer, J. dissenting in part) reversed the decision of Miller, J. and ordered the two legatees to comply with Article 15 of the Company’s Articles and to make the offer required by it. This meant, in effect, that the two legatees had to offer the 242 shares to the shareholders. There was a difference between the Judges as to the time when the fair value of the shares should be ascertained. Hallinan, C.J. and Rennie, J. thought that it should be the highest value during the three months after Miss Musterd’s death, i.e. between 19th October, 1956, and 19th January, 1957; Archer, J. thought it should be their value on 7th February, 1957.

The two legatees now appeal to Her Majesty in Council. Their Lordships have had the benefit of a much fuller argument than was put before the Courts in the West Indies and in the result no one of the counsel sought to support either the order made by the Supreme Court of British Guiana or the order of the Federal Supreme Court of the West Indies.

At the hearing before their Lordships the principal issue was between the two legatees and the three shareholders. The three shareholders said that the executor was under a binding contract, evinced by the letters of 7th and 22nd February, 1951, to transfer the 242 shares to them at the price of 410 dollars per share. The two legatees said that the executor was under no such obligation. The executor, they said, was never under an obligation under Article 15 to offer the shares to the members within three months after becoming entitled to them. He was at liberty to transfer the shares at a later date: and, as the shares had risen in value, he ought to sell them at a much higher value than 410 dollars a share and pay over the proceeds to the two legatees.

In order to determine this issue and give appropriate directions to the executor, their Lordships think it necessary first to construe Article 15.

The first question is, who is the person designated by the substantive words in Article 15 “ any person . . . becoming entitled to shares in consequence of the death of any member ”? The majority of the Federal Supreme Court (Hallinan, C.J. and Rennie, J.) thought that the words mean a person becoming entitled to the beneficial interest in the deceased’s shares. That is, in this case, the two legatees. Their Lordships do not share this view. It seems to them that the words designate, in this case, the executor (who becomes entitled to the legal interest) and not the two legatees (who only become entitled to the beneficial interest). The executor is the only person recognised by the Company as having any title to the shares which were registered in the name of Miss Musterd, see Article 25. He must be recognised by the Company as being entitled on behalf of the estate, even though his name has not been entered on the register, see *Llewellyn v. Kasintoe Rubber Estates* [1914] 2 Ch. 670. The Company are not bound by,

and may not recognise, any equitable, contingent, future or partial interest, see Article 7. This view was accepted by all the counsel who appeared before their Lordships: and it means that the words "any person" designate the executor.

The words in parenthesis in Article 15 "(not a member or the son, daughter et ceteros of a member)" are troublesome. The intention of the parenthesis was probably to ensure that a deceased member could leave his share by will to another member or to a close relative and, in that event, the shares would not have to be sold. But if that were the intention, their Lordships find that the draftsman has not succeeded in carrying it out. Once it is held, as their Lordships think it must, that "any person" designates the executor, then the words in parenthesis must mean "not himself being a member or the son, daughter, etc. of a member". This view was accepted by counsel for the two legatees and for the three shareholders, and for the executor, but not by counsel for the Company. He invited their Lordships to insert several words into the parenthesis so as to read "not *being a person who holds on trust for* a member or the son, daughter et ceteros of a member". Their Lordships see no sufficient reason for introducing these words. It would be difficult to do so consistently with the established principle that a company takes no notice of trusts of its shares, which is embodied in section 27 of the Companies Ordinance and Article 7. Their Lordships think, therefore, that on the true construction of the parenthesis, it means that when the executor is himself already a member of the Company, or the son, daughter, etc. of a member, he is not bound to offer the shares. This gives, it must be acknowledged, a capricious result but on the wording it is the only result possible.

Once this literal meaning is given to Article 15, it means that the executor Mr. Heald was not bound under Article 15 to offer the 242 shares to members: for he was already a member. He was therefore within the exception contained in the parenthesis. True it is that he was only nominee of these 10 shares for Miss Musterd but this does not affect the matter. The Company takes no notice of the fact that he was only a nominee. Suffice that he was registered as a member in respect of 10 shares.

Their Lordships take the view therefore that Article 15 did not apply in this case. The executor was not bound by it as he thought he was. The three shareholders, by their counsel, admitted that the executor was under a misapprehension but they contended nevertheless that the letters of 7th and 22nd February evinced a binding contract. The executor was, they say, able to transfer to members without restriction: because Articles 8 and 9 only restrict transfers to non-members. Those Articles, they say, do not restrict transfers to members any more than similar Articles did in *Delavenne v. Broadhurst* [1931] 1 Ch. 234; and the Directors have no right under Article 17 to refuse to register a transfer to a transferee who is already a member.

Their Lordships are not satisfied that the letters of 7th and 22nd February, 1957, do evince a binding contract. The correspondence before them is incomplete. The letters which the Company wrote to the shareholders and their replies were not put in evidence in the Courts of the West Indies. In the absence of those letters it would not be possible to affirm that there was a binding contract, apart altogether from the fact that the executor was under a misapprehension.

What then is the position? The executor is, of course, bound to protect the interest of the two legatees who are entitled to the beneficial interest in the shares: and he should consult them. He may apply to be registered as a member in respect of the 222 shares. But the Directors are not bound to give their consent to this, see Article 26. And they may well refuse. Alternatively he, in his capacity as executor, may transfer the shares without becoming registered himself, see section 29 of the Companies Ordinance: but in that case he must comply with the provisions of the Articles. It was suggested that he might be able, without consulting the Company, to transfer to a member at the best price he can obtain, see *Delavenne v. Broadhurst* [1931] 1 Ch. 234: but, in view of the opening words of Article 9, their

Lordships feel some doubt about this. Their Lordships think that his safer course would be to act under Article 9 itself. He should give notice to the Company that he desires to transfer the shares, and then make the Company his agent for sale "to any member or to any person selected by the directors . . . at the fair value". But he can choose the time he thinks best for this, so as to obtain the "fair value" at the most appropriate time. He is not bound by the three months in Article 15.

What then are the directions which should be given to the executor? Seeing that he is not bound to act under Article 15 and has never been bound so to act, the directions must be so designed as to make it clear that he is under no such obligation as was held by the Federal Supreme Court and to give him freedom to act under the other Articles as he may be advised. Seeing also that it has not been proved that the executor made any enforceable contract to sell to the three shareholders, he should not be directed to transfer to them.

In the opinion of their Lordships the appeal should be allowed; the judgment of the Federal Supreme Court of the West Indies dated 4th July, 1958, and of the Hon. Mr. Justice Miller dated 8th August, 1957, should be set aside: and the second respondent Stanley Heald, executor of the estate of Sophia Musterd deceased, should be directed to take such further steps as he may think fit in the administration of such estate on the footing that he is not bound to transfer or procure the transfer of the 242 shares in the respondent Company either to the appellants or to the third, fourth and fifth respondents. The costs of all parties before their Lordships and in the Courts below should be taxed and paid out of the general estate of Sophia Musterd deceased.

In the Privy Council

VICTORINE ROBERTS AND ANOTHER

v.

LETTER T ESTATES LIMITED
AND OTHERS

DELIVERED BY
LORD DENNING

Printed by Her Majesty's Stationery Office Press,
HARROW
1961