

**Ch D (Piers Ashworth QC) 21/05/2018**

SUCCESSION

ADMINISTRATION OF ESTATES : EXECUTORS : RELATIONSHIP BREAKDOWN : REMOVAL : CPR r.39.3

**The court exercised its discretion under the [Administration of Justice Act 1985 s.50](#) to remove executors appointed under a will and appoint an independent third party in their place where there had been a sufficient breakdown of trust between the executors that directly impeded the administration of the estate and would continue to do so.**

The claimants asked the court to remove them and the defendant as executors of their sister's estate and be replaced by an independent third party under the [Administration of Justice Act 1985 s.50](#).

The claimants and defendant were siblings. Their sister had died in 2012 and probate was granted in 2013. The parties had been appointed as executors of the estate under the will. There were five beneficiaries, namely the parties and another sister (H). The estate was made up of cash and four properties worth approximately £800,000, which were to be held on trust in equal shares. One property was the subject of a compulsory purchase order (CPO) by the local authority. By 2014 the relationship between the parties had deteriorated. They instructed solicitors to market the properties and effect the CPO, and entered a settlement agreement providing that, in the event of a dispute, only three executors were required to agree a sale price and accept an offer and the fourth would cooperate. Subsequently the claimants alleged that the defendant had not complied with the settlement agreement or engaged in administering the estate. The defendant had also refused to sign the transfer of the property subject to the CPO. The claimants successfully applied to the court for an order for him to sign it. In the instant proceedings the claimants put forward an independent solicitor to be appointed as executor in place of the parties, to which H had agreed. The defendant had not engaged with the instant proceedings and, despite initially stating that he was available for the instant hearing, had written to the court three days before explaining that he was abroad and could not afford representation. He stated that he wished to remain as executor if the claimants resigned and that he would undertake to distribute the estate as fairly and quickly as possible, but did not express a view on the appointment of the solicitor as an independent third party. Under [CPR r.39.3](#) the court continued with the instant hearing despite his absence.

HELD: It was clear that there had been friction and hostility between the parties for some time. Despite the fact that they had initially managed to run the estate together, that was no longer the case. It appeared that the claimants ran some parts of the estate and the defendant ran others. Nothing could be finalised as they were not in contact with each other. Three properties remained unsold. It had been five years since probate was granted and the estate was relatively simple, but the parties were far from reaching a conclusion. The court was satisfied that there had been a sufficient breakdown of trust that directly impeded the administration of the estate and would continue to do so, [Kershaw v Micklethwaite \[2010\] EWHC 506 \(Ch\)](#) considered. It was not possible to say whether the conduct of either party amounted to misconduct but it was clear that they had reached a situation of total impasse, [Steel \(Deceased\), Re \[2010\] EWHC 154 \(Ch\)](#) considered. The most appropriate course of action was to appoint an independent third party as executor. The solicitor recommended by the claimants was suitably qualified and willing to act, and four of the beneficiaries had agreed to his appointment.

Application granted

Counsel:

For the claimants: Tahina Akther

For the defendant: No appearance or representation

Solicitors:

For the claimants: Eric Robinson Solicitors

**LTL 23/5/2018 EXTEMPORE**

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