

Russell-Cooke advises on Bernard Matthews' estate

Russell-Cooke recently advised the French long term co-habiting partner of well known turkey farmer Bernard Matthews in relation to his substantial estate.

Mr Matthews died in November 2010 leaving a property to his partner, Odile Marteyn, in the south of France with inheritance tax to be paid from the English estate.

His English will left the majority of his English estate to his natural son. The Deceased's three adopted children were not left anything in either the Deceased's English or French wills.

However, owing to the French Laws of forced heirship, Mr Matthews was only able to dispose of 25% of his French property freely, 75% being subject to the reserved heirship rights for the deceased's children under French law. The children wished to enforce their rights and consequently, in spite of the will, Ms Marteyn was to be left with only a 25% interest in the property.

In addition, the three adopted children of the Deceased sought payment of the inheritance tax due on their forced heirship shares (approximately €2.6m) from the English estate, notwithstanding that the English will did not provide for them specifically.

However, the Chancery Division of the High Court ruled in September of this year that the Deceased's English will could not be interpreted so as to confer a benefit that was not intended on the Deceased's adopted children, particularly in circumstances where the Deceased clearly did not intend his adopted children to benefit.

Nicholas Strauss QC, sitting as a deputy High Court judge also ruled that even if it were possible to construe a legacy in favour of the Deceased's children, they would have to choose between accepting this under the English will and their forced heirship rights in France; it was not open to them to accept the wishes of the testator on the one hand and go against them on the other.

The case highlights the difficulties that can arise where testators have assets spanning jurisdictions, particularly where some assets are located in countries such as France where the law places limits on the amount of one's estate that can be disposed of freely.

It is advisable for all people with assets in multiple jurisdictions to obtain appropriate estate planning advice at an early stage.

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