A question of tact

Littlewood v Wilkinson Woodward *and the dangers of trying to avoid offending clients, assessed by William Henderson*

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'The judge explained that the litigation would have been avoided if Mrs Littlewood had been told that she should simply forget about the earlier meeting, or if she had been asked specifically whether she wished to leave the Hudson to anyone, but that the solicitors could not be said to be in breach of their duties.'

In *Littlewood v Wilkinson Woodward* [2009] Mrs Littlewood's granddaughter, Charlotte, sued the solicitors who had prepared Mrs Littlewood's will for damages for negligently causing her to lose the chance of inheriting a house, called 'the Hudson'. HHJ Langan QC, sitting as a judge of the Chancery Division, dismissed her claim.

Background facts

The solicitors' firm of Wilkinson Woodward had made a will for Mrs Littlewood in 1994. On 12 July 2000 Mrs Littlewood telephoned the solicitors. She said she wanted to change her will, and requested a home visit. An appointment was made for Ms Stevenson to see Mrs Littlewood on the afternoon of 17 July. Ms Stevenson was a probate clerk. She has only worked for the solicitors for five months, but she had worked for three years for another firm in a similar capacity.

Ms Stevenson duly visited Mrs Littlewood. On her return to the office she made a lengthy, written 'record of instructions, advice given and agreed action'. The principal testamentary wishes recorded by Ms Stevenson were that the proceeds of sale of the Hudson should go to her granddaughter, Charlotte; various specified commercial and residential properties to her sons Alick and Stephen; and the residue to the Bradford Royal Infirmary to buy machinery and equipment to aid arthritis sufferers.

Ms Stevenson was concerned about whether Mrs Littlewood had possessed capacity to make a will on 17 July. She had frequently contradicted herself, and at times had been vague and unable to confirm the values of her properties and assets or provide much detail about them. On her return to the office Ms Stevenson discussed her concerns with Ms Hodkinson and Mr Woodward. Ms Hodkinson had qualified as a solicitor in 1993. Since qualifying she had been employed by the firm in the department dealing with trusts, wills and probate. Mr Woodward was a consultant with the firm. When a partner he had handled a number of property transactions for Mrs Littlewood. He thought that at that time she had been of sound mind, but thought that she might have had a drink problem. It was decided that Mrs Littlewood should be seen again. This was arranged for 20 September, and both Ms Stevenson and Ms Hodkinson attended. Neither had any doubt about Mrs Littlewood's capacity on this occasion. According to Ms Stevenson she 'was like a completely different person'. There was an issue about whether it was explained to Mrs Littlewood that her instructions were being sought afresh, or whether the solicitors were merely checking the instructions that she had given Ms Stevenson in July. The judge was satisfied that the instructions were sought afresh.

After the 20 September meeting a draft will was prepared. This did not include a gift of the Hudson to Charlotte, or indeed any specific gift of the Hudson. The draft will provided for Charlotte to have Mrs Littlewood's jewellery and for the residue to go to the Arthritis Research Campaign. The draft will was sent to Mrs Littlewood. She subsequently said that she wished to make 'drastic changes' to the will, and a third meeting was arranged for 8 November. Both Ms Stevenson and Ms Hodkinson attended. As a result of the instructions obtained by them on this occasion there was a change to the bequests to Mrs Littlewood's sons, and

Charlotte was given certain properties (not including the Hudson) in the event of Stephen not surviving Mrs Littlewood by one month. The final version of the will was prepared following this meeting. A fourth and last meeting then took place on 15 November 2000, at which the will was executed.

Mrs Littlewood died on 1 December 2002. The Inland Revenue account showed a gross estate of £435,625, and a net estate of £433,046. The Hudson was valued at £150,000, but in due course was sold for £175,000. The evidence was that the jewellery had been worth £10,000, but that all or almost all of it was purloined after Mrs Littlewood's death, so that Charlotte was left with just a single ring.

Duties alleged

In his closing submissions, Charlotte's counsel relied on three alleged duties:

(1) a duty to take care to give effect to the testamentary intentions of Mrs Littlewood;

(2) a duty to clarify Mrs Littlewood's intentions regarding the Hudson; and

(3) a duty to advise Mrs Littlewood that the Hudson was going to fall into residue.

It was accepted on Charlotte's behalf that duties (2) and (3) only arose if there was a specific instruction in respect of the Hudson at the 17 July meeting.

Judge's conclusions

The judge considered that it was obvious that the existence of duty (1) depended on the view he took of the meeting of 17 July. However, ultimately he does not appear to have considered it necessary to decide that point, because he held that what the solicitors did subsequently was sufficient to discharge their duty to their client who, of course, was Mrs Littlewood, not Charlotte.

The judge explained that it would clearly have been better, and the litigation would have been avoided, if Mrs Littlewood had been told at the 20 September meeting that she should simply forget about the earlier meeting; or if she had been asked specifically whether she wished to leave the Hudson to anyone; but he held that what took place at the meeting on 20 September, coupled with the careful taking of Mrs Littlewood through the final version of the will on 15 November meant that the solicitors could not be said to have been in breach of their duties to Mrs Littlewood or, by extension, to Charlotte.

Littlewood v Wilkinson Woodward [2009] WTLR 1189

Comment

This case turned on its own particular facts. At the meeting on 20 September Ms Stevenson and Ms Hodkinson did not explain to Ms Littlewood that they were seeking her further instructions because they were concerned that the instructions she had given Ms Stevenson on 17 July might not truly have represented her intentions. This failure was explained by an understandable unwillingness to antagonise a client by making what, on almost any footing, would have been at least a tactless observation. That awkwardness might have been avoided by making a specific enquiry about how Mrs Littlewood wished the Hudson to devolve, but, as the judge also understood, Ms Stevenson and Ms Hodkinson did not want to prompt Mrs Littlewood into making a particular disposition. There was a fine line down which Ms Stevenson and Ms Hodkinson could have gone, which would have made it clear that the question of the devolution of the Hudson was in the forefront of Mrs Littlewood's mind without at the same time risking upsetting her by indicating that the 17 July meeting had probably been a waste of time. The line they actually took gave Charlotte grounds for thinking she might have a claim, but in the event the claim failed because the solicitors had done enough for the judge to be satisfied that the will gave effect to Mrs Littlewood's testamentary intentions.

Perhaps there are two lessons to be learnt from this case. First, being tactful with a client may lead to problems later. Second, the primary person to whom a solicitor owes a duty is the client. In the present case this was Mrs Littlewood, not Charlotte, and the solicitors did fulfil their duty to Mrs Littlewood. ■