



Neutral Citation Number: [2024] EWHC 1830 (Ch)

Case No: PT-2022-0003555

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY TRUSTS AND PROBATE LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 24/7/2024

**Before:**

**MASTER CLARK**

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**Between:**

**NINA ANGELOVA**

**Claimant**

**- and -**

**(1) PETER JOHN HOLDEN KERSHAW**  
**(2) DAVID CLARK**  
**(in their capacities as executors of the estate**  
**of PETER JOHN BRYANT (deceased))**

**Defendants**

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**Ruth Hughes (instructed by Kingsley Napley LLP) for the Claimant**  
**Robert Pearce KC (instructed by Stone King LLP) for the Defendants**

**Hearing date: 2 July 2024**

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**Approved Judgment**

This judgment was handed down remotely at 10am on 24 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Master Clark:**

1. This is a claim to rectify part of a will under section 20 of the Administration of Justice Act 1985.
2. The testator was Peter John Bryant, who died on 8 December 2020. His will (“the Will”) is dated 7 June 2020.
3. The claimant, Nina Angelova, is a beneficiary under the Will. Her unchallenged evidence is that she met the testator in 2008, and that they became engaged in February 2020. The Will is expressed on its face to be made in anticipation of the testator’s marriage to the claimant. However, they were not married at the date of his death.
4. The defendants, Peter Kershaw and David Clark, are the executors appointed by the Will, to whom a grant was made on 29 October 2021.
5. The Will is relatively complex. It was drafted by a firm of solicitors, Gorvins LLP (“Gorvins”). This claim relates to the discretionary trust (“the BCT trust”), created by clause 10 of the Will, of the testator’s interest in BCT partnership, a structure holding interests in German land.
6. The trustees appointed by the Will of the BCT trust are Mark Conway and Roger Turner. Both have written to the executors stating that they resign as trustees.
7. The beneficiaries of the BCT trust are listed in clause 15.11 of the Will:
  - “15.11.a. My said Wife Nina Angelova provided that we were married at the date of my death.
  - 15.11.b. Roger Turner and his children and remoter issue whether living at my death or born thereafter
  - 15.11.c. Mark Conway and his children and remoter issue whether living at my death or born thereafter
  - 15.11.d. Such other person or class of persons as the Discretionary Trustees (at least 2 in number) shall nominate by Deed during the Trust Period
  - 15.11.e. Charities”
8. The Claimant seeks an order that clause 15.11.a. of the Will be rectified to read:

“Nina Angelova, whether or not we are married at the date of my death”.
9. As to the other beneficiaries listed, Mr Turner and Mr Conway have also disclaimed their interests as beneficiaries. Mr Turner has two adult children: a son, Jackson, and a daughter, Eleanor. Mr Conway has two adult daughters: Megan and Tessa.

10. Notices pursuant to what is now CPR 19.13 have been served on the four children and His Majesty's Attorney General as representing the interests of "Charities". None of these people have responded to the claim.
11. In these circumstances, Master Marsh on 23 November 2023 gave permission to the executors to present arguments in opposition to the claim.
12. At the first hearing listed for disposal of the claim, on 12 April 2024, the evidence comprised:
  - (1) 1<sup>st</sup> witness statement of the claimant's solicitor, Katherine Pymont, dated 27 April 2022;
  - (2) 1<sup>st</sup> witness statement of the second defendant, David Clark, dated 31 May 2022;
  - (3) Ms Pymont's 2<sup>nd</sup> witness statement dated 28 June 2022;
  - (4) 1<sup>st</sup> witness statement of Luke Watson dated 17 August 2022 – exhibiting Gorvins' Will file;
  - (5) Ms Pymont's 3<sup>rd</sup> witness statement dated 17 October 2022;
  - (6) Ms Pymont's 4<sup>th</sup> witness statement dated 15 March 2023;
  - (7) Ms Pymont's 5<sup>th</sup> witness statement dated 10 August 2023;
  - (8) 1<sup>st</sup> witness statement of the first defendant, Peter John Holden Kershaw dated 11 December 2023;
  - (9) Mr Clark's second witness statement dated 11 December 2023;
  - (10) 1<sup>st</sup> witness statement of the claimant, Nina Angelova, dated 16 January 2024.
13. Although Gorvins' Will file was in evidence, there was no evidence from the solicitor whom the testator instructed at the material time, and who prepared the final version of the Will: Christine Thornley. At the first hearing, the executors' primary position was that the evidence was insufficient to satisfy the high standard of proof in rectification cases. In particular, their counsel submitted that statements made in correspondence by Gorvins fell short of admissions that the Will was not prepared in accordance with the testator's instructions. In those circumstances, I offered the claimant's counsel an opportunity to obtain instructions as to whether to seek an adjournment to seek to adduce evidence from Ms Thornley in evidence. She did seek an adjournment for that purpose, which was not opposed by the executors, and which I granted.
14. Ms Thornley made a witness statement dated 20 June 2024. In it she set out that she had no personal recollection of the matter and was entirely reliant on the Will file produced by Gorvins, which she exhibited to her statement. She was cross-examined by the executors' counsel as to whether she had any recollection of the testator and his personality, but her evidence was clear that she had no recollection whatsoever of him.

15. In addition, her (unchallenged) evidence at para 9 was:

“I understand the importance of comprehensive file notes and I believe that I would have made a note of all calls I had with the Deceased, to include any significant issues discussed, and would expect these to be on the file. In my review of the file, I have no reason to believe that the paper file is not a complete record of the Will matter.”

### **Rectification - legal principles**

16. The court’s power to rectify a will derives from section 20 of the Administration of Justice Act 1982:

#### **“Rectification**

- (1) If a court is satisfied that a will is so expressed that it fails to carry out the testator’s intentions, in consequence—
- (a) of a clerical error; or
  - (b) of a failure to understand his instructions, it may order that the will shall be rectified so as to carry out his intentions.”

17. As Chadwick J said in *Re Segelman* [1996] Ch. 171 at page 180:

“The subsection requires the court to examine three questions. First, what were the testator's intentions with regard to the dispositions in respect of which rectification is sought. Secondly, whether the will is so expressed that it fails to carry out those intentions. Thirdly, whether the will is expressed as it is in consequence of either (a) a clerical error or (b) a failure on the part of someone to whom the testator has given instructions in connection with his will to understand those instructions.

In order to answer the first of those questions the court must admit extrinsic evidence of the testator's intentions with regard to the relevant dispositions ...”

18. As to the nature of clerical error in s.20(1)(a), Lord Neuberger in *Marley* refers to *Bell v Georgiou* [2002] EWHC 1080 (Ch) as containing the best judicial summary of the cases on this:

“The essence of the matter is that a clerical error occurs when someone, who may be the testator himself, or his solicitor, or a clerk or a typist, writes something which he did not intend to insert or omits something which he intended to insert. ... The remedy is only available if it can be established not only that the will fails to carry out the testator’s instructions but also what those instructions were.”

19. The burden of proof in a rectification claim is on the claimant, and the standard of proof is the balance of probabilities.

## Facts

20. Ms Thornley's involvement with the drafting of the Will began on 17 April 2020 when she took over from the previous solicitor at the firm who had been dealing with it (and who had become unwell).

21. On 22 April 2020 Ms Thornley had a lengthy telephone call with the testator to discuss drafts that the previous solicitor had sent him and his comments on those drafts. Her attendance note records:

“he wants to include an additional legacy of €750,000 to Nina but only if they are married at the date of his death.”

22. By contrast,

“In relation to BCT this is a partnership which will not qualify for any relief due to the nature of the company. He said that he wants the executors to be able to retain it within the business for 10 years and distribute the income to the ultimate residuary beneficiaries namely Nina, David and Abraham ...”

Thus, at this initial stage, the testator intended the claimant to benefit from BCT, without reference to whether he was married to her.

23. On 29 April 2020, Ms Thornley sent to the testator various redrafted documents, including a revised draft will, a draft Letter of Wishes (“LoW”) and a document entitled “Explanation of the Will of Peter John Bryant” (“the Explanation”).

24. Her draft of clause 15.11.a. read:

“My said Wife Nina Angelova [*I have removed the need for you to be married, if this is not correct please let me know*]

A similar alteration was made in respect of another trust created by the Will, “the BPR trust”.

25. The draft LoW included:

“Whilst BCT continues to run, then the income derived is to go to the trust account and divided equally between Nina, David and Abraham.

When BCT is would (*sic*) up, the capital value should be divided equally between Nina, David and Abraham.”

26. The Explanation included the following in respect of the BPR trust:

“We have explained, above, about the Trustees' discretion in relation to the Discretionary Trust. It is important that you set out your wishes to help the Trustees exercise their discretion in a way that you are happy with. This is done in a "Letter of Wishes".

The Letter of Wishes is not binding on the Trustees but is usually pretty influential. This is why you should select your Trustees carefully. Any attempt to legally "bind" the Trustees to follow your "wishes" changes the nature of the Trust and can have negative tax consequences.

A draft of the Letters of Wishes is enclosed and I have simply taken this from the instructions you provided previously. If there are any changes that you would like to make, please do so. This is only intended to be a draft and it is important that the documents reflect your wishes. It is also important that you regularly review this document so that it keeps up with your changing wishes over time.”

27. This explanation was picked up in the covering email of 29 April 2020 where Ms Thornley said:

“In terms of the Will generally you will need a number of letters of wishes to provide the necessary guidance to your trustees and I have created these from the documents you sent to me previously however please check these carefully to make sure that I have not missed anything or misunderstood anything.”

28. On 3 May 2020, the testator sent back his alterations to the drafts by returning them with his handwritten annotations. In relation to the proposed alteration to the description of the claimant as a beneficiary of the BPR Trust, he wrote “NOT CORRECT”.
29. In relation to clause 15.11.a, he added “??”, but did not indicate that it was not correct. He also amended the draft LoW to add another beneficiary and in other respects immaterial for present purposes. He did not amend or add any words qualifying the claimant’s entitlement.
30. On 1 May 2020, the testator asked Ms Thornley by email, in relation to IHT:
- “If I were married to Nina, but she was not a UK national, does this matter?”
31. On 5 May 2020, Ms Thornley prepared revised drafts reflecting her understanding of the testator’s instructions. In the course of this she had email exchanges with the testator on various points, including the effect of domicile on the spouse exemption for IHT purposes. This was followed up by a telephone call on the same day, in which Ms Thornley advised him as to this.

32. On 19 May 2020, the testator sent to Ms Thornley a “Revised Plan for Beneficiaries – Peter Bryant May 2020” (“the Revised Plan”) in the form of a table listing amounts or entitlements of the beneficiaries under his proposed will. The relevant part of this was:

| Type of benefit | Beneficiary      | Amount if married | Amount if not married |
|-----------------|------------------|-------------------|-----------------------|
| BCT Trust       | Roger Turner     | 12.5%             | As if married         |
|                 | Mark Conway      | 12.5%             | ditto                 |
|                 | Nina Alexandrova | 75%               | ditto                 |

33. In his covering email, the testator said:

“I have been reviewing my options, now that I understand the IHT implications of being married.”

34. Ms Thornley responded on 26 May with a number of queries, to which the testator replied (indicated by italics) on the same day:

“Before I make the changes to the Will am I correct in that:-

Main Will

Reduce the £75,000 legacies to £70,000?

*No, my error, all at £75K*

Remove (*sic*) Trevor?

*No again my error, Include at £20K*

...

BCT Trust

Are you changing the beneficiaries so that these are just Roger, Mark and Nina (the Will currently lists them as Adrian, David and Abe).

*Yes”*

35. Ms Thornley then prepared revised drafts, intended to be the final versions, which she sent to the testator on 27 May. Clause 15.11.a was amended to the form in which it was in the Will. Self evidently, this did not reflect the testator’s instructions as set out in the Revised Plan. Ms Thornley quite properly accepted this in her statement.

36. By contrast, the LoW was amended to reflect the Revised Plan:

“Whilst BCT continues to run, then the income as derived or any growth is to go to the trust account and divided as to 75% to Nina (**regardless as to whether or not we are married**) and 12.5% to each of Roger and Mark.

When BCT is wound up, the remaining capital value should be divided as to 75% to Nina (again **regardless as to whether or not we are married**) and 12.5% to each of Roger and Mark.”

(emphasis added)

37. There are two relevant exchanges in the email correspondence sending and responding to the drafts.

“It is also worth remembering that you can alter the letters of wishes at any time (without our involvement) provided of course the people you are directing the trustees to benefit are listed as discretionary beneficiaries”

“*Where are they to be listed - there are a couple of people that I might want to include in the BPR Trust*”

“They need to be listed in the Will, in section 15.10. If you could please let me have their details I can add them.”

and

“Nina's inheritance will obviously depend on whether or not you are married at the time but is it also dependent on whether or not you are co-habiting? I know you don't co-habit at the moment and if you don't intend to change things I don't suggest that we include that restriction.

*Please explain.*

When people are married in the 'traditional' sense (if there is such a thing) and live together all the time we often make the gift contingent on being married and cohabiting as otherwise if they have separated (and maybe starting divorce proceedings) but are technically still married the gift will still take effect. If you are not going to be living together all of the time it is very difficult to make the gift contingent on anything other than being married.

*Assume we are going to be living together, and insert the appropriate clause*

38. The testator also pointed out a typo in the name of one beneficiary: “Toby” rather than “Tony”.
39. The revised final versions were sent to the testator under cover of a letter dated 2 June 2020. He signed the Will on 7 June 2020 and returned it on 8 June 2020.

### **Discussion and conclusions**

40. At the second hearing, the executors’ counsel conceded that it was beyond doubt that Ms Thornley made a clerical error when she failed to transpose the Revised Plan into the Will. He submitted that this was consequence of Ms Thornley’s “admission” to this effect in her witness statement. However, in my judgment, the error is plain on the face of the Will file, and Ms Thornley’s evidence is only acknowledging this inevitable inference. This error was also conceded by Gorvins to the executors’ solicitors, as recorded in their (the executors’ solicitors’) email dated 8 September 2021 to Patrick Fuchs (the claimant’s trusts advisor) and their letter dated 20 April 2022 to the claimant’s solicitors.



41. The only outstanding issue was therefore whether the Will failed to carry out the testator's intentions as a result of Ms Thornley's error.
42. As to this, the executors' counsel made 5 submissions.
43. First, he submitted that the testator was deeply involved in the detail of the Will and concerned to make sure he understood it, by asking questions of Ms Thornley. He was not simply a passive recipient, but was actively involved in understanding the drafts. The testator would, he submitted, have known that clause 15.11 set out the beneficiaries of the BCT trust, because Ms Thornley told him where the beneficiaries of the BPR trust were listed (see para 37 above).
44. As to this, it is also apparent that the testator did not fully engage with all the detail of the Will. Thus, as noted, he did not know where in the Will the beneficiaries of the BPR were listed; and the fact that he was directed to clause 15.10 of Will does not show that he also read clause 15.11. He also asked Ms Thornley to "insert the appropriate clause" in respect of the claimant's entitlement to his residuary estate, when the draft Will already contained such a clause. Thus, although he was not a passive recipient, he did not read the draft Will with care and attention to every single detail in it. In addition, it is not to be inferred that whenever Ms Thornley mentioned a provision in the draft Will to him, he returned to it to read it.
45. Furthermore, his active involvement was such that if he had noticed the deviation from his instructions in the Revised Plan, he would in my judgment have raised this with Ms Thornley. There is no record of any telephone calls between them after she had sent him the final drafts; and, as noted above, her clear evidence was that she would have made an attendance note of any call with him.
46. Secondly, the executors' counsel submitted, the testator paid close attention to the implications of being married. For example, he wanted to understand the relevance of having a spouse for IHT purposes. It is to be inferred therefore, he submitted, that the testator would have applied his mind to the provisions of the Will relating to this.
47. In my judgment, it is not to be inferred that following his detailed examination of the drafts sent to him on 29 April 2020, and his extended correspondence (and telephone call on 5 May 2020), the testator would have returned to the drafts with the same level of attention as he gave them earlier. It is equally likely that he would have assumed that Ms Thornley had given effect to his instructions. In any event, if he had carried out a further review that would have extended to the LoW, and the testator would have noticed the Will's inconsistency with the LoW.

48. He had received clear advice (see para 26 above) as to the importance of the LoW, it is unequivocal in its terms, and clearly inconsistent with the Will. If the testator's intentions had changed when he came to execute the Will, he would in my judgment have asked Ms Thornley also to amend the LoW. The fact that he did not do so is very strong evidence that he did not notice that the Will did not reflect the Revised Plan.
49. Thirdly, the executors' counsel submitted, the testator's intentions changed significantly over the relatively short period covered by the Will file. From this it is to be inferred, he submitted, that the testator's intentions were in flux down to the last minute.
50. As to this, although the testator's intentions did alter in various respects, his intentions as to the claimant's interest in the BCT trust did not alter after his telephone call with Ms Thornley on 22 April 2020, and remained steadfast thereafter.
51. Fourthly, he submitted, the testator understood that the Will took precedence over the LoW: the LoW could be changed, and was non-binding; the Will was the governing document and more important. However, the Will file shows the testator paying active and careful attention to the wording of the LoW; and it is not, in my judgment, to be inferred that he would have disregarded such a clear inconsistency between it and the Will at the point of executing the Will.
52. Finally, he relied on the fact that the testator had the Will in its final form from 27 May 2020 to 7 June 2020, so he had ample opportunity to review and consider its contents before signing it. The existence of an opportunity is not enough to show that the testator availed himself of it. It falls, in my judgment, far short of showing that the testator in fact noticed the failure of the Will to reflect his instructions.
53. For these reasons therefore, I will make an order rectifying the Will as sought by the claimant.