

GRAY J 1
NO.192/2007 2
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IN THE MATTER OF THE ESTATE OF ERINI STILIANOS - DECEASED 4
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BETWEEN 6
7
ANNA MARIA ITSINES 8
V 9
PHILIP STILIANOS, SARA STILIANOS, SHAMONA STILIANOS, GARY 10
STILIANO AND STELLA STILIANO 11
12
TRANSCRIPT OF PROCEEDINGS 13
14
MR A. RODER FOR PLAINTIFF 15
NO APPEARANCE BY OR FOR FIRST, SECOND, THIRD, FOURTH OR 16
FIFTH DEFENDANTS 17
18
MONDAY, 26 FEBRUARY 2007 19
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RESUMING 3.34 P.M. 21
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HIS HONOUR: There has been a request from Ms Irene 23
Stilianos to be present by telephone. The court 24
facilities are causing some difficulties. I haven't had 25
a chance to read the papers thoroughly so I will sit on 26
the bench and do that while my associate sees if we can 27
make phone contact in the next five minutes; if we can't 28
then we will proceed. 29
MR RODER: Thank you. 30
HIS HONOUR: Mr Roder, we can't make contact, so we 31
will proceed. 32
MR RODER: This is the application by the plaintiff 33
for an injunction. When I mentioned that last week your 34
Honour asked what evidence there was and what was 35
required for the first defendant to deal with the land 36
in Greece, we do have evidence of that now. The exhibit 37
marked 1 to Ms Varga's affidavit sworn and filed today, 38

contains a letter from a Greek lawyer by the name of 1
Pantazis. It's partly the answer to the question one on 2
the first page, and partly contained in a subsequent 3
email, which is Exhibit 3 to that affidavit, to the 4
email of 22 February from Pantazis to my instructor. In 5
that one under the heading 'Urgent query', your Honour 6
sees what is required, it's an office copy of the will 7
and a death certificate, which has been translated and 8
certified under the relevant Hague convention to be 9
accurate. 10

HIS HONOUR: So it contains a certificate from the 11
Athens court. There is no dispute, is there, in regard 12
to the will - 13

MR RODER: Yes, it goes on to say that the later 14
requirement is not - 15

HIS HONOUR: Your client is seeking to have an 16
injunctive order against somebody outside the country at 17
the present time, in respect of property outside the 18
country, which can only be dealt with via some process 19
involving the Greek court. 20

MR RODER: Yes. 21

HIS HONOUR: That process includes, apparently, some 22
form of certificate - pending dispute in regard to the 23
will, whatever that means, but why would I be granting 24
an injunction to affect somebody out of the country - 25
probably out of the country when, on the face of it, 26
there is an avenue that your client can follow in that 27
other country? 28

MR RODER: There is no dispute about the will to be 29
registered in a Greek court. 30

HIS HONOUR: But what does that mean? There is no 31
dispute about the estate and what - 32

MR RODER: Can I say this: in considering this 33
advice from Greece - having considered it I made some 34
inquiries with the registrar. It appears that - this is 35
something I corrected on the last occasion - no 36
exemplification probate has issued nor has an office 37
copy. If your Honour were to direct that neither of 38

those documents issue from the registry in respect of 1
this estate except by your order or order of another 2
judge, that would hold the position entirely, it seems 3
to me, on the advice we have. 4

HIS HONOUR: Well, as presently advised I think that's 5
a very different order and one which I think in the 6
overarching probate jurisdiction of the court you may 7
well have made out a case for. That's a very different 8
matter to making - somebody overseas, property overseas, 9
which I think would be quite extreme. 10

MR RODER: Yes, and now that we are of the view that 11
we don't require anything that drastic it would be wrong 12
for us to press for that. 13

HIS HONOUR: That would allow - if I were to hear 14
Mr Philip Stilianos at short notice should he wish to 15
have that direction changed. In the meantime your 16
client can perhaps make inquiries of the Greek lawyers 17
about the process in Athens and if the dispute should be 18
resolved there, whether there is an appropriate forum to 19
resolve it. 20

MR RODER: Yes, and in the meantime the 21
beneficiaries are protected. 22

HIS HONOUR: That leaves open the avenue that the 23
Greek court might be satisfied by something less than an 24
office copy but it's difficult to imagine it. 25

MR RODER: We asked about that and there is a 26
further second affidavit of Ms Varga's of today, a much 27
shorter affidavit, to which she exhibits some further 28
email correspondence with the Greek lawyers, and they 29
tell us that by 'office copy' they mean copy bearing the 30
court's insignia. That's not to say that he is not 31
entitled to order a search copy and we don't suggest he 32
should be restricted from getting that. 33

HIS HONOUR: At the present time the documents that 34
Mr Philip Stilianos would have access to would be a copy 35
of the title, in the name of the deceased? 36

MR RODER: A copy of the title, presumably the death 37
certificate. 38

HIS HONOUR:	Bearing some form of handwritten	1
	notation?	2
MR RODER:	Yes.	3
HIS HONOUR:	Indicating a desire to gift that property	4
	to Philip?	5
MR RODER:	Not all of the titles have handwritten	6
	notations on them. There are three which don't, the	7
	only indication is the name, just the name written on	8
	them.	9
HIS HONOUR:	How many titles are in Mr Philip	10
	Stilianos's name?	11
MR RODER:	The affidavit of the plaintiff is a	12
	table. There are three which have his name written on	13
	them, there are three that have no names written on them	14
	and then there are others with the names of other	15
	members of the family.	16
HIS HONOUR:	Let me just summarise as I see your case	17
	in the broad - see if I properly understand it. For	18
	some time there has been some question mark over the	19
	assets that form the estate of the testator. The	20
	difficulty arises from the suggestion that certain of	21
	the properties held by the testator were gifted by the	22
	testator to children, prior to death, and if that was so	23
	then the argument is that those properties fall outside	24
	the estate. The executor's concern is that the evidence	25
	of gifting is quite unclear.	26
MR RODER:	Yes.	27
HIS HONOUR:	And the executor is concerned to act with	28
	propriety to do what can be done to ensure that the	29
	assets are preserved pending the resolution of dispute	30
	about the property and what falls within the estate.	31
MR RODER:	Yes.	32
HIS HONOUR:	Philip Stilianos has indicated a keen	33
	desire, as I understand your case, to deal with his	34
	property immediately, that is have certain of the	35
	properties transferred to himself. He has expressed	36
	that view?	37
MR RODER:	Not in so many words. He has expressed	38

the view that he is entitled to deal with the properties 1
without the involvement of the executor; not in so many 2
words has he said he will sell them and keep the 3
proceeds for himself. He has said that no one else 4
should sell them. 5

HIS HONOUR: Where is the fear that he will act in 6
Greece inappropriately - 7

MR RODER: The fear is that he has asked for the 8
documentation that would enable him to deal with the 9
property and that he has gone there, and he has told us 10
that it is none of the executor's business and that the 11
properties are to be dealt with by him and no one else. 12

HIS HONOUR: Have you sought from him an undertaking 13
from him that he won't seek to deal with those 14
properties pending the resolution about what forms the 15
estate? 16

MR RODER: No. 17

HIS HONOUR: What evidence would he have, evidence of 18
identification, of a sealed copy - 19

MR RODER: If he were to obtain that he would have 20
the only other document from Australia that he needs to 21
deal with the land in Greece. 22

HIS HONOUR: For what other use could those documents 23
be put? 24

MR RODER: He could not use - they are evidence of 25
title and they can be used to prove the grant of probate 26
and the validity of the will in any foreign 27
jurisdiction, there is no use to which - ordinarily 28
that's of use only to an executor, however in Greece 29
there is a use, on the evidence we have, there is a use 30
available to him that would not ordinarily be available. 31

HIS HONOUR: But that use is to enable that property 32
be dealt with without reference to your client? 33

MR RODER: Yes. 34

HIS HONOUR: And that's your fear. 35

MR RODER: That's the fear. 36

HIS HONOUR: We might try and see if we can get 37
Ms Stilianos on the phone again. 38

For the purpose of the transcript - I will direct it
be made available to the parties - could I record that
the court has attempted to provide a telephone link to
Irene Stilianos in Victoria. The facilities have been
provided but have been unsuccessful in obtaining a
connection; whether the problem is at this end or the
Victorian end or somewhere else is unknown. In the
circumstances I propose to proceed and give all parties
liberty to apply at very short notice in the event that
they wish to present further submissions before the next
hearing date.

Mr Roder, where is my power to give a direction to
the registrar?

MR RODER: I think your Honour has an inherent power
to do it. In any event, there is power in s.9 I think,
where there is a case of difficulty or doubt.

HIS HONOUR: S.9 of -

MR RODER: The Administration of Probate Act - s.8:
'The registrar can obtain the direction of a judge ...
he is doubtful as to whether he should exercise any -'

HIS HONOUR: I don't need the - of the registrar
before me, do I?

MR RODER: No, not that I know of. That indicates
that there is power to give him directions.

HIS HONOUR: I think that perhaps I should see if -
actually I infer that probably the registrar is looking
for assistance in this matter. I might ask the
registrar to come before me now and see if we can deal
with that.

Mr Roder, perhaps you can help me with this: has
there been some contact between Mr Philip Stilianos and
the registrar seeking exemplification?

MR RODER: Yes, there has.

HIS HONOUR: Has that been going for some time?

MR RODER: I understand that there has - there is
correspondence from the solicitor then acting for
Mr Philip Stilianos to the registrar exhibited in the
papers, there is one letter, and my understanding is

that there has been some ongoing contact between them. 1

HIS HONOUR: Is that letter exhibited? 2

MR RODER: Yes. 3

HIS HONOUR: Which exhibit is it? 4

MR RODER: I'll find the number for your Honour. 5
It's Exhibit No.8 to Ms Varga's affidavit sworn 20 6
February; it's one of the affidavits in support of the 7
original application. I have mischaracterised it; it's 8
a letter from the registrar to my instructors which 9
advises that correspondence - 10

HIS HONOUR: Just let me read that for a moment. That 11
rather confirms what you put to me earlier about 12
Mr Philip Stilianos's intentions that he is claiming 13
through the solicitor to be freely acting or acting 14
independent of the executor in regard to the transfer of 15
these properties. So it's this letter that has led to 16
these proceedings in a sense, is it? 17

MR RODER: That letter and I understand there were 18
some telephone conversations as well. In response to 19
that letter my instructor has put in a letter as to why 20
the exemplification should not be available and it's 21
that that has led really to the issue of proceedings. 22

HIS HONOUR: That's exhibit - 23

MR RODER: No, our submissions aren't exhibited. 24

REGISTRAR MR A. FAUNCE-DE LAUNE NOW PRESENT 25

HIS HONOUR: Mr Registrar thank you for attending at 26
short notice. In this matter Mr Roder for the plaintiff 27
has indicated that his client be protected by my 28
directing that there be no exemplification of probate or 29
office copy of the probate provided to anybody without 30
my consent - without order being made by me. In that 31
event I have told Mr Roder that his client ought not 32
need to pursue injunctive relief, that would have an 33
effect of holding of the status quo. So that the issues 34
about the assets of the estate can be resolved. I have 35
inquired of Mr Roder my jurisdiction to make the order, 36
he takes comfort in the inherent jurisdiction of the 37
court. I pressed him further and he drew my attention 38

to s.8 of the Administration of Probate Act which
section allows you to obtain a direction with regard to
the power or discretion.

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I accept I probably have inherent jurisdiction but I would like to know whether you do, in fact, seek my direction in this matter in regard to the issue of any exemplification or office probate from the registry.

REGISTRAR: Yes, that would be a direction I would be seeking under s.8.

HIS HONOUR: Thank you for that. Mr Roder, I'm prepared to give a direction to the registrar as you seek. I will provide the following very short reasons and reserve the right to edit and expand on those reasons in due course.

RULING DELIVERED 4.08 P.M.

PROCEEDINGS CONTINUED 4.13 P.M.

HIS HONOUR: Mr Roder, as I indicated, I am going to direct you to seek the hearing date before a master of the court. I spoke briefly to Master Lunn. If you approach his chambers as soon as practicable he will find a date which he can give further consideration to the interlocutory proceedings in this matter. There will be time for the parties who wish to appear to appear but in view of the issues involved it's probably best to speak to Master Lunn's chambers, obtain an appointment time, probably after the time, after a period expires with a view to the management of the action. He can deal with any questions that must be dealt with by a judge back to me. If issues arise out of the directions I've given they can be referred back to me. Is there anything further.

MR RODER: Nothing else.

HIS HONOUR: I generally reserve the question of costs. They can be dealt with later.

ADJOURNED 4.15 P.M.