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IN THE SUPREME COURT

CIVIL JURISDICTION

ADELAIDE

BEFORE THE HONOURABLE JUSTICE GRAY

NO.192/2007

IN THE MATTER OF THE ESTATE OF ERINI STILIANOS - DECEASED

BETWEEN

ANNA MARIA ITSINES - PLAINTIFF

V

PHILIP STILIANOS, SARA STILIANOS, SHAMONA STILIANOS, GARY
STILIANO AND STELLA STILIANO - DEFENDANTS

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 21 FEBRUARY 2007 AT 10.15 A.M.

MR A. RODER FOR PLAINTIFF

NO APPEARANCE BY OR FOR DEFENDANT

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period of four months. If no such application is made, it
will be assumed that no such order is sought.

HIS HONOUR: Mr Roder, the matter is listed for today 1
really for a discussion about the procedure to be 2
followed. 3

MR RODER: Yes. 4

HIS HONOUR: The matter initially was drawn to my 5
attention by the registrar and there was concern being 6
expressed by I think Mr Philip Stilianos about delays in 7
some documentation that he was seeking from the registry 8
being provided. As I understand it from the registrar, 9
Treloar & Treloar were representing the executor. 10

MR RODER: Yes. 11

HIS HONOUR: And they had some opposition to the 12
provision of the documentation that Mr Philip Stilianos 13
was seeking. As I understand it, the dispute then led 14
to the issue of the proceedings which I understand may 15
have been served by email. 16

MR RODER: Yes. 17

HIS HONOUR: Notice given by email at least to some of 18
the defendants. 19

MR RODER: They have all now been served and 20
acknowledged service. I don't have proof of service 21
with me. 22

HIS HONOUR: There's been quite a lot of contact with 23
my chambers by Mr Philip Stilianos, both by telephone 24
and email, and quite a body of material has been 25
forwarded which I have not reviewed. There seemed to be 26
a concern that today's hearing might involve substantive 27
matters, whereas the purpose of today's hearing was to 28
try to put in place some procedure to enable the issues 29
that require urgent attention to receive that urgent 30
attention. 31

There was also contact received from one of the 32
other defendants in Melbourne requesting a telephone 33
hearing today. That request wasn't received in my 34
chambers until I think after 9 a.m. Adelaide time and it 35
wasn't practical to arrange a telephone attendance. 36

My associate indicated to that defendant that 37
matters of substance wouldn't be dealt with this 38

morning. If there was a matter of substance to be dealt with, there would be a further time fixed. I want to put those matters on the record.

I have your client's application and an affidavit of Ms Varga in support. Could you indicate to me procedurally how you see the matter progressing?

MR RODER: It seems to me that it will be necessary for us to have a position as to what the Greek law is. We have just this morning received some further advice from Greece about that topic. We have not given that to the other beneficiaries today. We need to do that and see if they want to respond to that.

Once we know if they want to respond to those matters, there are two categories of matters. There are some matters on which the executor seeks determination by the court, a binding determination on everybody. Consequential from that the executor may need advice and directions from the court as to what she should do in light of the binding determinations; should she go to Greece what should she do in Greece.

It seems to me, with respect, that the procedure ought to be to fix a timetable for the beneficiaries to put in notices of acting and any other affidavits. As I have said, we got more information today which we will give them. It needs to be a reasonably generous timetable from their point of view.

We then come back to seek a determination from your Honour of the substantive questions which are, one, whether the writing of names or certificates of title and handing them over constituted a gift that this court will recognise. Secondly, if not, what the effect of Greek law is in respect of the succession to the properties in Greece and, thirdly, what the Australian law is in respect of paying debts out of foreign residue. That last question is one on which I offer no authority. There are quite difficult matters of principle in it.

HIS HONOUR: In terms of the court handling it

procedurally, the first thing will be to fix a further hearing date allowing sufficient time for the defendants to deal with notices of acting and instructing solicitors if they wish or whatever the position might be.

MR RODER: I say from our point of view there is only one matter that is particularly urgent. The other aspects of it could be managed in an ordinary way.

HIS HONOUR: What's the urgent matter?

MR RODER: The urgent matter is this: Mr Philip Stilianos, the first defendant, has gone to Greece. He's on notice of the proceedings and on notice of the application for the injunction. He's gone to Greece. He has asserted that he is entitled to deal with the Greek properties and that the testamentary expenses and debts should not be paid out of the properties, and we have advice from Greek lawyers that he may be able to deal with the properties. We seek an injunction in Australia. There may be nothing left to fight about.

HIS HONOUR: At the moment he's out of the jurisdiction.

MR RODER: Yes, he is.

HIS HONOUR: And the property is out of the jurisdiction.

MR RODER: Yes.

HIS HONOUR: Why wouldn't you apply to a Greek court for some form of restraining order. It seems a rather remote circumstance.

MR RODER: We made the application while he was there. He has left the jurisdiction in the face of the application.

HIS HONOUR: He may well have had plans to leave the jurisdiction in any event.

MR RODER: I am not suggesting he didn't. I don't suggest that at all, I think he did, but he was on notice of it. We had applied for it. Under rule 206 your Honour has power in the administration of an estate to make any order that will protect the interests of the

beneficiaries in the administration of this estate to protect the two infants, and they are infant beneficiaries, two great granddaughters of the deceased - I withdraw that, they are minor beneficiaries, they are 16 or 17. They receive in effect a fixed sum of about \$60,000. That's the only asset that's in this jurisdiction and that could all go on the testamentary expenses unless they are protected from that.

HIS HONOUR: None of the defendants are seeking to protect their position by issuing proceedings.

MR RODER: It's the executor's responsibility.

HIS HONOUR: It's their responsibility. As I understand it, it's been suggested that some of these properties may have been gifted to some of the defendants.

MR RODER: Yes.

HIS HONOUR: If they want to assert that -

MR RODER: The executor just raises that as a question. The executor takes no position on that. That needs to be fought out between the beneficiaries.

HIS HONOUR: On the papers I have read it would take quite a degree of persuasion that this was an occasion for an ex parte injunction today.

MR RODER: It's not ex parte, with respect, he's been served. The considerations will be similar, I accept that.

HIS HONOUR: You mean the service by email to Mr Philip Stilianos; he may well have had long-term plans to go to Greece.

MR RODER: Your Honour should assume that he did.

HIS HONOUR: I don't have material before me that would explain how he could deal with these properties.

MR RODER: Can I take your Honour to the material on that. It's the only aspect of the matter that really, on my instructions, I need to agitate this morning. If I can take your Honour to the material on that, the affidavit of Ms Varga sworn on the 20th, yesterday,

Varga. In the first exhibit, p.5, the top right-hand corner, this is advice from the Greek lawyer:
'Necessary to register the grant of probate with the Athens court'.

The exemplification of the probate was the document that was required from the registry:
'And thereafter to notify the inheritance with the local tax authorities. Further the beneficiaries will need to officially accept the inheritance by way of a notarial deed'.

We wrote back asking for some clarification, p.7 under Greek law the acceptance of inheritance is made by the beneficiaries themselves and the estate passes direct to them. Your Honour will recall that the first defendant is the sole residual beneficiary of this estate. On the face of it, the whole of all of the land passes to him. If he registers the grant of probate, notifies the inheritance with the local tax authorities and executes a notarial deed, it's all his.

There's more to it than that because he had said, if I take you to the exhibit No.4 to the affidavit, the email to my instructor, the bottom of the first page of that exhibit:

'Any law court and law firm is irrelevant as far as Greece property inheritance is concerned, I have over many months engaged a lawyer overseas to defend the estate and prepared documents that Greece requires to process the will and my inheritance'.

So he's started to do it.

HIS HONOUR: What was the date of death?

MR RODER: 7 March last year, coming up for the anniversary.

HIS HONOUR: Mr Roder, let's assume for the moment that you were to obtain an injunctive order, what would you do with it?

MR RODER: Mr Stilianos has indicated to us that we can serve him by email. We'll also attempt to serve him personally in Greece.

HIS HONOUR: Would you need to register in some way 1
 the order in Greece before operating in that 2
 jurisdiction? 3

MR RODER: No, we wouldn't. We wouldn't need to. 4
 It might be that we could attempt to enforce it in the 5
 way that a foreign judgment would be enforced here by 6
 action but no, we wouldn't need to do that. Your 7
 Honour's jurisdiction runs. 8

HIS HONOUR: Mr Philip Stilianos is speaking about 9
 processing the matter through the Greek courts. 10

MR RODER: All he has to do, according to the 11
 lawyer, is register the probate with the Greek court. 12
 That's the process. 13

HIS HONOUR: I don't have any information here about 14
 how, according to Greek law, other interests might be 15
 notified to the Greek court so that - 16

MR RODER: The only information we have is in the 17
 material we received this morning which indicates that 18
 the only device for notifying interest is of the same 19
 nature or similar nature to injunctive relief here. One 20
 can apply for an order to prevent a transfer or to 21
 prevent the registration. There isn't a procedure 22
 similar to a caveat procedure. 23

HIS HONOUR: Mr Roder, I'm not prepared to deal with 24
 the injunction application today. I'm not prepared to 25
 grant the injunction today. I am prepared to fix a 26
 time, an approximate time, at which the defendants can 27
 have an opportunity to express their view. For example, 28
 has this affidavit of Ms Varga been sent by email to 29
 Mr Philip Stilianos? 30

MR RODER: Yes. 31

HIS HONOUR: When? 32

MR RODER: Last night. I can't tell your Honour if 33
 he's read it. 34

HIS HONOUR: Was the first indication that your client 35
 received that he intended to try to deal with the 36
 property in the last few days? 37

MR RODER: No, because that was the purpose of the 38

request for the exemplification of probate. 1

HIS HONOUR: Which goes back some time. 2

MR RODER: Yes, this has been going on some time. 3
The last few days he's been in a position to do it. 4

HIS HONOUR: He has the - 5

MR RODER: Exemplification of the probate. He's got 6
what he needed from the probate office. That's why we 7
were resisting the probate, resisting the documentation 8
being provided to him. 9

HIS HONOUR: When did he receive the exemplification? 10

MR RODER: I don't know that, I can't tell your 11
Honour. Can I withdraw that: I'm told he hasn't got 12
exemplification. 13

HIS HONOUR: Would Monday be convenient? 14

MR RODER: Thank you. 15

HIS HONOUR: We'll list the matter not before 3.30 on 16
Monday for the hearing of your application for an 17
injunction. I direct that today's transcript be made 18
available to the parties as soon as practicable. 19
Mr Roder, I would like your client to make arrangements 20
of that transcript to be forwarded to each of the 21
defendants. 22

MR RODER: Yes. 23

HIS HONOUR: I would like also your client to give 24
notice of your application for an injunction and in 25
particular that I have listed the matter for hearing at 26
not before 3.30 on 26 February, Monday next. 27

MR RODER: Yes. 28

HIS HONOUR: I would like that notice to be given to 29
all of the defendants. 30

MR RODER: Yes. 31

HIS HONOUR: It would be helpful, Mr Roder, if you 32
prepare a short outline of your submissions as to why 33
your client should have an injunction granted in her 34
favour. I would like that forwarded to the defendants 35
by the close of business Friday. I appreciate that may 36
involve email communication. In other words, I would 37
like the defendants to have notice of the application, 38

what you are relying on and your outline by the end of 1
 the week so they have got some days on the weekend to be 2
 considering the matter, or their advisers have. Are you 3
 expecting any other solicitor to be acting in the 4
 matter? 5
 MR RODER: We are not sure. 6
 HIS HONOUR: Of the defendants, Mr Philip Stilianos is 7
 in Greece at the moment? 8
 MR RODER: Yes. 9
 HIS HONOUR: Sara Stilianos? 10
 MR RODER: Sara and Shamona are the minors. 11
 HIS HONOUR: What age are they? 12
 MR RODER: 16 or 17, they are twins. I think 17. 13
 They are grandchildren of Mr Philip Stilianos. 14
 HIS HONOUR: Gary? 15
 MR RODER: Gary and Stella are adults. Stella is 16
 the lady in Melbourne who appears to have contacted your 17
 chambers. 18
 HIS HONOUR: Who are the parents of Sara and Shamona? 19
 MR RODER: The parent of the girls is Irene and we 20
 anticipate that she will act as their guardian ad litem. 21
 HIS HONOUR: What level of contact are those 22
 instructing you through the executor with Sara and 23
 Shamona's guardian and Gary and Stella. 24
 CONTINUED 25
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MR RODER: Quite a deal. The guardian of the minors 1
has been in contact seeking advances out of their share 2
for their maintenance in life, which they are ordinarily 3
clearly entitled to, subject to this question of whether 4
the testamentary expenses are paid from. 5

HER HONOUR: The assets of the jurisdiction you say 6
are in the order of 60,000? 7

MR RODER: Yes. 8

HIS HONOUR: The value of the Greek properties, is it 9
known? 10

MR RODER: For probate purposes it was in the order 11
of a bit under 100,000. I don't know if that's based on 12
equivalent value or general or not, but it's not a large 13
estate on any view. 14

HIS HONOUR: We'll meet again not before 3.30 on 15
Monday. Those instructing you will give those notices. 16
In regard to the other aspects of the litigation, I've 17
arranged for a master to work with me on the file. 18

MR RODER: Yes. 19

HIS HONOUR: Mr Roder, I think I will need to have 20
some information as to absence exemplification, how it 21
is Mr Phillip Stilianos can deal with these properties 22
in Greece. Is it possible that the defendants may wish 23
to attend by telephone? 24

MR RODER: I think it's likely that those in 25
Victoria would take that - 26

HIS HONOUR: What about Mr Phillip Stilianos? 27

MR RODER: He's in Greece. I don't know what he'd 28
want to do. 29

HIS HONOUR: It may be possible to arrange for a 30
location for hearing which would allow some form of 31
telephone hook-up and, if Mr Phillip Stilianos wished to 32
appear in person, was out of the jurisdiction and wished 33
to avail himself of that facility, then I would like to 34
arrange it if it can be arranged. 35

MR RODER: Yes. 36

HIS HONOUR: And perhaps when those instructing you 37
are instructing the other defendants as well, those 38

matters could be discussed. 1
MR RODER: Thank you. 2
ADJOURNED 10.40 A.M. TO MONDAY, 26 FEBRUARY 2007 NOT BEFORE 3
3.30 P.M. 4

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