

FW: mother's estate

15 messages

CWJ Fogarty <cwjf@cameronco.co.nz>

12 February 2013 at 09:45

To: "scaife.chris@gmail.com" <scaife.chris@gmail.com>

Good morning Chris.

Your email has been forwarded to me.

Given the issues you raise we would need to meet in the first instance and get some detailed instructions as to the factual background before we can properly advise you as to what your options are.

Can you advise who the lawyer is who is supposedly administering your mum's estate and if any of your family have engaged any other lawyers in this process just to ensure we don't have any conflicts of interest.

When would be a convenient time for you to meet? I have a number of commitments this week, so realistically it would have to be early next week. I am happy to fit around your work. Currently I would be available all day Monday, Tuesday morning, all day Wed and Thursday.

I look forward to hearing from you.

Yours faithfully

Chris Fogarty
Partner

CAMERON & COMPANY
BARRISTERS & SOLICITORS

| | | |
|---------------------------------|-------|--|
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-----Original Message-----

From: Christopher Scaife [<mailto:scaife.chris@gmail.com>]

Sent: Saturday, 9 February 2013 6:38 p.m.

To: Barrington Office

Subject: mother's estate

Dear Cameron & Co,

You were recommended to me for dealing with the following situation:

My mother was suffering from Alzheimer's disease for many years and she passed away on 21st August 2010. To my knowledge to date no executors for her estate have been appointed.

Mum's intended last will was a perfectly reasonable request that her estate be divided equally between her children. Since some had been given an advance, she also mentions in that document that debts to her estate should be taken into account.

However as her mental health declined some of my siblings seized the opportunity to sell her house in Nelson, dump her in a rental flat in the Netherlands and then they signed over all her major capital assets to their own names under pretext of 'administrating' it on her behalf at the time. They also helped themselves to mums paperwork and administrated her ongoing pension income, but have flatly refused to make disclosure of the major capital assets they took, let alone acknowledge what advances they very evidently already had received with mum's knowledge.

More recently, the lawyer they hired to deal with mum's estate has been unwilling to submit her intended last will for probate even though independent advice suggests it would be acceptable. Neither has he been willing to address the legal status of dissipated assets, nor to take notice of anything else I requested. He has not even had the decency to let me know of ongoing discussions with my siblings and decisions that were being made.

It is my belief that I have been patient enough trying to get information already for years before mum died about what was happening to her estimated 4 million dollars of capital assets. In the continued absence of actual figures of who took what, further attempts at mediation would seem utterly futile. On these grounds I wish to apply to the courts, firstly whether said assets are indeed to be considered part of mum's estate and secondly that an independent executor/forensic-accountant be appointed to establish a more equitable division of mums legacy once and for all.

Please let me know if this is something you can help with.

Yours sincerely,

C. Scaife

Christopher Scaife <scaife.chris@gmail.com>

12 February 2013 at 15:56

To: CWJ Fogarty <cwjf@cameronco.co.nz>

Dear Chris Fogarty,

Indeed I would like to avoid conflict of interest: It had been my understanding that my brother appointed Simon Stammer-Smith, a lawyer with Cruickshank Pryde in Queestown, to act on behalf of my late mother's estate. This would be purely to apply for probate on mum's last will and testament. Consequently I had hired a different lawyer to advise me on how to proceed with the dissipated assets.

Martin Bell of Corcoran French was unable to make progress. This I attribute to Simon's refusal to cooperate. Martin summarized the situation as follows:

[quote = "Martin Bell"]

Usually solicitors for the Estate put both documents before the Court and ask the Court to rule on whether Probate should be granted on the later document or the earlier one.

You and I favoured the later one because it only had the New Zealand residing members of the family to be Trustees and also (I think) mentioned account debts.

As one of the Trustees of the earlier Will you should insist that the solicitor in Queenstown acting for the Estate put both documents forward for Probate. You can then consult an independent solicitor to act for yourself and try and have Probate granted on the latter Will.

My view was that whichever Will Probate was granted on it was important to get Probate first so you as Trustee could then start insisting on proper disclosure of records from all members of the family etc.

[/quote]

Thus I was forced to make a formal complaint with the law society against Simon Stammer-Smith, for acting in conflict of interest. It would not be in the interest of mum's estate to discard her valid and intended last will and take no account of inequitable "intervivos" distributions made unilaterally since then which would definitely not have been her intention.

[quote = "legal standards solicitor"]

...the Otago Standards Committee conducted its hearing into this complaint at its final meeting of 2012, on 11 December 2012. The Committee's written decision is currently being prepared.

[/quote]

I can arrange to meet with you any time that suits you because I really want this matter to move forward now and be

concluded one way or the other, once and for all. Going by their actions to date I do not expect my family to be even remotely reasonable.

I look forward to hearing from you so please do also let me know if there is a conflict of interest in order that I can then find someone else to act on my behalf.

Thanks in advance,
Chris Scaife
[Quoted text hidden]

CWJ Fogarty <cwjf@cameronco.co.nz>
To: Christopher Scaife <scaife.chris@gmail.com>

12 February 2013 at 16:00

There is no conflict. How would Wed 20 Feb at 10am suit? Please bring all documentation with you that you have.
Kind regards,
Chris Fogarty
Partner

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From: Christopher Scaife [<mailto:scaife.chris@gmail.com>]
Sent: Tuesday, 12 February 2013 3:57 p.m.
To: CWJ Fogarty
Subject: Re: FW: mother's estate

[Quoted text hidden]

Christopher Scaife <scaife.chris@gmail.com>
To: CWJ Fogarty <cwjf@cameronco.co.nz>

12 February 2013 at 19:29

Web 20th Feb at 10am sounds perfect.

I presume this will be at your office 20 Athelstan Street, Barrington and I will bring a box load of paperwork.
I am looking forward to meeting with you.

Regards,
Chris Scaife
[Quoted text hidden]

CWJ Fogarty <cwjf@cameronco.co.nz>
To: Christopher Scaife <scaife.chris@gmail.com>

13 February 2013 at 08:57

Correct.
See you then.
Kind regards,
Chris Fogarty

From: Christopher Scaife [<mailto:scaife.chris@gmail.com>]
Sent: Tuesday, 12 February 2013 7:29 p.m.

[Quoted text hidden]

[Quoted text hidden]

Chris Scaife <scaife.chris@gmail.com>
To: CWJ Fogarty <cwjf@cameronco.co.nz>

4 March 2013 at 04:42

Dear Chris,

Well I've gone over it all and as far as I can tell they have somehow bypassed me from the Will, got themselves appointed as trustees and taken what remained without me even having a chance to present my point of view. I tried to find out from the courts what has happened but they just tell me to 'talk to my lawyer'.

Now I also gather there is a time limit for taking legal action after which nothing more can be done.

Thus I really do not need another lawyer who just puts me on hold, who doesn't respond to my e-mails, who goes thru the motions but won't initiate actual action. I realize you may well have a lot of other work but that doesn't stop you from at least responding to my e-mail and sending your terms and conditions and being prepared to get the ball rolling.

If you do still want the job then you will need to do it on a no-win no-fee basis and respond within the next two working days.

Thanks for reading,
Chris Scaife
[Quoted text hidden]

CWJ Fogarty <cwjf@cameronco.co.nz>
To: Chris Scaife <scaife.chris@gmail.com>

4 March 2013 at 12:41

That certainly crystallises matters. There is a time limit for taking action and that is 12 months from the date of the issue of probate, however you should be aware that trustees are entitled to distribute the estates assets after six months and therefore ideally proceedings should be filed before that time i.e. before the six month period. You have indicated you will instruct us on a 'no win no fee' basis. We cannot accept instructions on that basis. We are happy to act but need to know we will be paid for our time irrespective of outcome, given there can never be any guarantees in a litigation matter.

If paying us is an issue then we can discuss how our costs are to be met.

Please confirm if you still wish to instruct us.

Yours faithfully

Chris Fogarty
Partner

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From: Chris Scaife [mailto:scaife.chris@gmail.com]

Sent: Monday, 4 March 2013 4:43 a.m.

[Quoted text hidden]

[Quoted text hidden]

Chris Scaife <scaife.chris@gmail.com>
To: CWJ Fogarty <cwjf@cameronco.co.nz>

4 March 2013 at 14:31

Yes I can agree to that but I really do have to know you will be working on it sooner rather than later and if you are too busy or not motivated then I need to find someone else today.

I have collated a lot of evidence to show my siblings took assets then they argued about for years (initially with out including me).

I also have evidence of their lawyer discussing ways of justifying inequitable distributions as gifts and to exclude me because I wasn't cooperating. Sadly the Otago Standards Committee did not find their Lawyer at fault (apparently because I failed to prove my siblings were guilty of wrong doings). They wasted a lot of time and were inexplicably slow at releasing their report.

I suspect they already have distributed the assets now because of brother Marc's mysterious message that he had come to Christchurch with figures to discuss. He never turned up and just told me I could sue him. I think they may be trying to prevent me from acting on time.

I have spent the last few days collating and cross referencing a lot of relevant evidence of assets that the others took and correspondence about it.

Regards,
Chris
[Quoted text hidden]

CWJ Fogarty <cwjf@cameronco.co.nz>
To: Chris Scaife <scaife.chris@gmail.com>

4 March 2013 at 14:56

The first step is for us to write to the Court and ask for a copy of your mother's probate. Once we have that then we will know what the time limits are on this matter.

Do you wish me to go ahead and do that? It wasn't crystal clear to me whether or not the probate was issued out of the High Court in Invercargill or Dunedin, however as I understand it, your mother was living in Queenstown when she died and that in all likelihood it will be Invercargill.

The Court has a filing fee of \$40.89 for a copy of probate. If you can direct credit/internet transfer that to our trust account 020800 0367409 02 and quote reference number 291047, then I can go ahead wit that request.

I look forward to hearing from you.

Kind regards,
Chris Fogarty

From: Chris Scaife [mailto:scaife.chris@gmail.com]

Sent: Monday, 4 March 2013 2:31 p.m.

[Quoted text hidden]

[Quoted text hidden]

Chris Scaife <scaife.chris@gmail.com>
To: CWJ Fogarty <cwjf@cameronco.co.nz>

4 March 2013 at 15:02

Yes I will do that now

[Quoted text hidden]

CWJ Fogarty <cwjf@cameronco.co.nz>
To: Chris Scaife <scaife.chris@gmail.com>

4 March 2013 at 15:04

Thanks. I'll get a letter prepared to post.

From: Chris Scaife [mailto:scaife.chris@gmail.com]

Sent: Monday, 4 March 2013 3:03 p.m.

[Quoted text hidden]

[Quoted text hidden]

Chris Scaife <scaife.chris@gmail.com>
To: CWJ Fogarty <cwjf@cameronco.co.nz>

4 March 2013 at 15:08

It transferred just now.
What details do you need from me next?
[Quoted text hidden]

CWJ Fogarty <cwjf@cameronco.co.nz>
To: Chris Scaife <scaife.chris@gmail.com>

4 March 2013 at 15:42

Can you just please confirm the exact date of your mother's death. When we met you advised it was Oct 2010.
No other details beyond that required at present.
Kind regards,
Chris Fogarty

From: Chris Scaife [mailto:scaife.chris@gmail.com]
Sent: Monday, 4 March 2013 3:09 p.m.
[Quoted text hidden]

[Quoted text hidden]

Chris Scaife <scaife.chris@gmail.com>
To: CWJ Fogarty <cwjf@cameronco.co.nz>

4 March 2013 at 16:16

Mrs Pauline Henriette Marie Scaife (Maiden name van der Maesen de Sombreff)
died 21st August 2010 in Frankton care home
[Quoted text hidden]

Chris Scaife <scaife.chris@gmail.com>
To: CWJ Fogarty <cwjf@cameronco.co.nz>

7 March 2013 at 13:32

Dear Chris,
Unexpectedly I received a reply from the registrar to the courts in Dunedin (attached).
This is stark contrast to the last communication I got from Cruikshank Pryde (also attached)

Back in September 2012 my brother suggested they already had probate or administration and that I could sue him if I wanted to.
[Quoted text hidden]

2 attachments



CourtNoProbate.jpg
1318K



SimonAdministrationAct.jpg
1485K