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Cruikshank Pryde & Estate P. Scaife

Chris Scaife <scaife.chris@gmail.com>
To: John.Earles@justice.govt.nz

22 September 2012 at 11:19

Dear Mr Earles,

It has come to my attention that Phil McDonald of Cruikshank Pryde has been seeking advice regrading my late mother's estate.

Currently the New Zealand Law Society is investigating my complaint against Simon Stammer-Smith of said firm for acting in conflict of interests.

To give an indication of what the issues are I below quote the observations I have just prepared on Simon's response to my complaint.

My concern is that no advice should be given that would pre-empt the out come of the investigation or prejudice future court case as it is currently my intention to request that independent executors be appointed for my mother's estate.

Yours sincerely,
Christopher John Scaife
139 MacKenzie Ave, WOOLSTON, Christchurch 8023

----- My draft reply to the NZ law society --->

22/09/2012

Dear Nicky,

Thank you for your letter dated 18/09/2012 and for the copy of Simon Stammer-Smith's reply to my complaint No. 6239. I see once again his statements are a misrepresentation and I now address each point he makes with the identifiers that he gives them:

a - Simon states: "*Mr. Scaife disputes the 1987 Will and believes Robin and Marguerite should not be Executors... I am taking steps to resolve this with the Court...*"

This is inaccurate. I do not "dispute" the 1987 Will. I state it was superseded by mums 1998 will. This was confirmed by several independent professional legal opinions.

Most recently the E-mail he supplied from John Earles, adviser to the High Court in Wellington on 14 August 2012 starts with: "It would be possible to obtain probate on the 1998 will..."

What I object to is signing an affidavit that Simon prepared on the 1987 Will, because it contains incorrect and misleading statements. Simon's attempts to "resolve" this has not address the legal issue of appointing trustees who can evidently not be trusted, instead he is just picking faults with mum's 1998 document.

Regarding Robin and Marge being appointed as executors, Martin Bell, the Lawyer advising me regarding legal position of assets taken by my siblings wrote on 23/08/2011 :

"If they insist on applying as well, then we may need to take the position that the latest Will is applicable and that Probate should be applied for on that document."

b - Simon writes: "*Mr Scaife believes I am not addressing the dissipation of assets by his siblings... I have attempted to deal with this allegation...*"

I do not want Simon to address the issue of "dissipation of assets". That is what I hired Martin to do. Both Simon and Marc who hired him have stated that Simon was hired only to deal with application for probate.

Ideally I would like to know the full legal significance of such "dissipated assets", but as a compromise in my e-mail of

20 of May (and others) I thought I made this clear:

"I hope you've included a declaration for the executors that we will all disclose the monies being administered on the deceased's behalf with documentary evidence as I've requested."

All Simon had to do was to ask them to officially either confirm, or deny having transferred assets to their own name that are still to be considered part of mum's estate. Then we could have addressed specific details once probate was obtained. Alas it is probably not in the interest of those who already helped themselves to whatever they wanted to make any such acknowledgement!

c - Simon claims I disagree with proposed disbursements and that the 1987 document divides assets in the same manner as the 1998 will does.

This also is incorrect.

Mum's 1998 Will specifically mentions taking into account any debts to her estate. The 1987 document does not. Amounts already signed over could be considered a debt to the estate and I would only dispute equal distribution of the remainder if said amounts were to be disregarded as that was most definitely NOT mum's intention.

d - Simon falsely misrepresents my point of view:

I did not say I believe the distribution of *"assets intervivos by my mother"* has been unfair. It is the distribution done unilaterally BY MY SIBLINGS (not by my mother) and AFTER her mental faculties were declining that needs to be fully disclosed and investigated before we can even know if those were fair and we need an agreement on what counts as "fair" and what definitely does not.

e - Here Simon is prevaricating by asking me to identify very old documents relating to my father's legacy.

Simon is not dealing with dad's last Will. Dad died in 1972! Dad was a down to Earth, born and bred practical kiwi guy and fully aware that mum would in no way be needing a "loan" from us.

Dad did discuss with me the fact mum wanted full control of all assets. Not wanting him to worrying about it on his death bed I vividly remember telling him that I thought mum would not be unfair to us. My point about said document was merely that dad still left us each something with the intention to help us be independent when we became adults. Regrettably mum confused the issues by then insisting we also sign over those to her.

What I was explaining is that by far the largest proportion of family wealth was in mum's name exclusively and she would be a recipient of a very generous widow's pension too. The main point I'm trying to make is that, with a wide margin mum had by then returned any "loan" there ever was back to each of us. The issue of dad's will is a complete red herring.

This is why I had asked Simon in my e-mail of 21/09/2011 to delete the misleading statements about dad's Will from the affidavit that Simon had prepared.

f - Yes I am indeed unhappy with communication from Simon's firm.

All the records show that not only my siblings, but also Simon were excluding me from knowing what was going on.

For instance, Simon's e-mail dated 27/01/2012 to Marc, Marguerite and Robin clearly shows he was ignoring everything I had said about dad's estate and suggesting ways to juggle figures to use it as an excuse for inequitable distributions that had already taken place.

Notice how he did not ever write to me about "Marge's latest", "Robin's latest" or Marc's latest" as he did to them about "Chris' latest".

Another example is how I was not informed of their decision to leave application for probate till after Christmas, or why they had done so. It is hardly surprising I lost patience with them, hearing absolutely nothing at all, for month after month even though we had this so called professional lawyer "addressing the issues".

Note: This is one reason why I accused Simon of acting in conflict of interest in the first place.

g - Simon claims I do not wish to mediate. This is a flagrant distortion of the truth:

I would have been perfectly happy to mediate and have been asking Marc, Robin and Marge (for about 10 years now) to mediate about the status of the assets they took on their own authority and how they had distributed it. They have never taken anything I suggested into account or complied with my requests.

Even so, I would have been happy to proceed to probate had I simply been given official acknowledgement of these assets as part of mums estate. Simon has not even asked them if they would consider doing so. Thus as I stated in the first place I do currently not see there is anything further to mediate about and they have made no counter suggestions.

h - Simon incorrectly claims: *"Mr Scaife believes I have dishonestly assisted his siblings in dissipating the assets of his mother, while she was ill."*

This is not so. I have always assumed Simon was not actually hired to deal with mum's Will until after she died, but I do not know why Simon failed to disclose when I asked him on 21/03/2012 what authority he was acting on. Privately I have also assumed that Simon was being misinformed due to the ongoing duplicity and lack of integrity from my brothers and sister. What I do believe however, is that since his appointment, Simon has acted "nolens volens" (whether he intended to, or not) on their behalf.

Now from a practical point of view and having received no legal advice to the contrary, what I did believe needed to happen is as follows:

1. Establish the legal position of assets taken by siblings after the year 2000 when mum's Alzheimer condition deteriorated: *Are these assets, or are they NOT part of mum's estate?*
2. Apply for probate on mum's will on the understanding of exactly who is refusing to be honest and upfront about what they took and then excluding those individuals from being appointed as trustworthy trustees.
3. Obtain information from financial institutions regarding unaccounted for assets.
4. Make distributions based on the full information.

In my opinion Simon has not been cooperative in working towards any of these objectives. Neither has he proposed alternative avenues and I believe now it would be better to have independent official executors appointed with powers to investigate and make objective decisions.

i - Simon incorrectly attributes to me a belief that his advice to obtain my own legal representation was inappropriate.

The fact is I already had obtained my own legal advice regarding "dissipated assets".

What I believe was inappropriate was Simons refusal to communicate directly with me regarding application for probate, thus aggravating the existing contention with my dear siblings who have been refusing for years now to be upfront and communicate.

j - Simon was not hired to deal with "dissipation of assets". Martin was. Simon has no right to appoint himself in this capacity.

k - In his letter to Marc dated 1/06/2012 and in communications with Robin and Marge that followed, Simon does not even consider any of the issues that I raised and they are simply conspiring to bully me into signing an affidavit regardless what I think of it and to dismiss the 1998 Will regardless if it is valid.

I maintain that my objections to the draft affidavit Simon produced were perfectly justifiable and he has never given reasons for ignoring my requests, like the one to remove the mention of dad's will.

In my view what is actually holding up the whole process is Robin and Marge's ongoing refusal to acknowledge and disclose assets they took as well as Marc's failure to produce documentary evidence of the original financial transfers he made from mum to his own name. This does, to me, not inspire confidence in their intent or trustworthiness.

The reality is that the 3 of them took advantage of mums deteriorating mental condition to relocate her to a small rental flat in the Netherlands and to secretly pay a cousin to check up on her occasionally under pretence of social visits, (which incidentally mum confided she did not appreciate at all).

Regarding her flat, mum's words were: "Op dat hock ga ik niet zitten!" (I'm not going to go sit in that dingy dump). However, to no avail, as back here 3 of her children set about selling her house and grabbing all her capital assets without even being liable for gift duty because mum was no longer a New Zealand resident. (Note: I don't know if they had legal advice about this, as I was not informed of what was going on).

In her e-mail of 24/11/2011 Marge mentions a European practice of giving a lifetime interest of the children's inheritance to a surviving parent. The purpose of such a practice is precisely to prevent that a widow is turfed out of the family home by her greedy kids, but even though mum had already returned all our inheritance to us, it evidently hasn't stop them from doing so.

As I outlined above there are some things that really need to be addressed and I do not feel I should be the one who is up against "the legal professional" who is meant to be sorting it out. I should not have to hire a second lawyer just to deal with said professional as Simon suggests.

Now that I understand where the problem lies, I repeat my request that I be allowed to appoint a decent objective and honest lawyer like Martin Bell to handle the whole thing and I do not acknowledge Simon's right to appoint himself for this task.

< ----- thanks for reading!