



High Court of New Zealand

MINUTE OF REGISTRAR EARLES AT WELLINGTON

ESTATE: P H M J van der Maesen de Sombreff
FILE CIV 2013-485-6986
DATE: 16 October 2013

APPLICATION FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED NOT GRANTED FOR THE FOLLOWING REASONS:

1. Evidence is required to justify the issue of, and the necessity for, a grant showing more than one name. See *Dobbie* 27.58.3.
2. The basis for an entitlement to a grant of the order sought is the applicants' beneficial interest under the will. there is no mention of this in paragraph 2 of the application nor any evidence of this provided in the affidavit. Paragraph 2(b) of the application and 6 of the affidavit are of no relevance whatsoever. See the *Dobbie* precedent forms
3. Paragraph 7 of the affidavit does not state by what means the notices were given to the other beneficiaries. Why were their consents not sought?
4. Evidence will have to be provided as to why evidence of due execution of the will cannot be obtained and counsel should file a memorandum containing submissions why the doctrine of *omnia praesumuntur rite esse acta* should be applied in this case.
5. The statement in the exhibit notes on the will that the deponents are seeking a grant "as trustees named in the will" is incorrect. The correct statement is the basis for the entitlement to the grant that should have been stated in paragraph 2 of the application. In this case, "...as one of the residuary beneficiaries named in the will..." To be corrected and initialled by solicitor who has signed them.

John Earles
Registrar
DDI: 04 914 3632
Direct Fax: 04 914 3678
Email: john.earles@justice.govt.nz

Solicitors : Cruickshank Pryde

If an amended application or a further affidavit is required to be filed as a consequence of this minute the endorsement should state "Amended application ...etc" and "Supplementary affidavit as to ...etc".

[Type text]

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV No.

IN THE ESTATE

of PAULINE HENRIETTE MARIE
JONKVROUWE van der MAESEN de SOMBREFF
(also known as PAULINE HENRIETTE van der
MAESENDESOMBREFF, PAULINE HENRIETTE
MARIE Van Der MAESEN DE SOMBREFF
SCAIFE and PAULINE HENRIETTE SCAIFE)
Widow of Dr. John Flett Scaife of Queenstown, Retired,
Deceased

MEMORANDUM FOR THE REGISTRAR

Presented for filing by:

Cruickshank Pryde

P O Box 857

Invercargill

Ph (03) 214 4069

Fax (03) 214 4760

Solicitor Acting

Mr P B McDonald

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV No.

IN THE ESTATE of PAULINE HENRIETTE MARIE
JONKVROUWE van der MAESEN de SOMBREFF
(also known as PAULINE HENRIETTE van der
MAESENDE SOMBREFF, PAULINE HENRIETTE
MARIE Van Der MAESEN DE SOMBREFF
SCAIFE and PAULINE HENRIETTE SCAIFE)
Widow of Dr. John Flett Scaife of Queenstown, Retired,
Deceased

Reference is made to the Minute of Registrar Earles at Wellington dated 16 October 2013.

SIMON HENRY NUGENT STAMERS-SMITH a Consultant from Cruickshank Pryde's Queenstown Office spoke to MAREE LAMONT one of the witnesses to the signing of the will of the deceased in December 2010. Mrs Lamont and the other witness to the will, DEBORAH C CLARKE, were both Bank Officers at the Bank of New Zealand at the time the will was signed. Mrs Lamont advises that she was often asked to witness a range of documents, including wills, while she worked for the Bank but she has no specific recollection of witnessing this particular will.

Philip Bruce McDonald Counsel for the Applicant spoke to MAREE LAMONT on 28 November 2013. Mrs Lamont reiterated what she had told Mr Simon Nugent Stammers-Smith. She further said that Deborah Clarke was a Personal Banker at BNZ Nelson Branch. She believes the deceased would have been Deborah Clarke's client. It was common for the Personal Bankers to get other staff to witness documents with them. This was always done in the

presence of the client. Our firm has endeavoured to locate **DEBORAH C CLARKE** the other witness to the will but we have been unable to locate her.

The doctrine of *omnia praesumuntur rite esse acta* (all things are presumed to have been done correctly) is relied upon to overcome the absence of an attestation clause in the will. It is respectfully submitted that the advice from **MAREE LAMONT**, one of the witnesses to the will, that documents were signed in the Bank in the presence of the client and two Bank Officers is sufficient evidence that the witnessing requirements would have been carried out correctly.

.....

Counsel for the Applicant

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV No.

IN THE ESTATE of PAULINE HENRIETTE MARIE
JONKVROUWE van der MAESEN de SOMBREFF
(also known as PAULINE HENRIETTE van der
MAESENDESOMBREFF, PAULINE HENRIETTE
MARIE Van Der MAESEN DE SOMBREFF
SCAIFE and PAULINE HENRIETTE SCAIFE)
Widow of Dr. John Flett Scaife of Queenstown, Retired,
Deceased

AMENDED APPLICATION WITHOUT NOTICE FOR LETTERS OF
ADMINISTRATION WITH WILL ANNEXED

Presented for filing by:

Cruickshank Pryde

P O Box 857

42 Don Street

Invercargill

Phone (03) 214 4069

Fax (03) 214 4760

DX YA90002

Solicitor Acting

Mr P B McDonald

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV No.

IN THE ESTATE of PAULINE HENRIETTE MARIE
JONKVROUWE van der MAESEN de SOMBREFF
(also known as PAULINE HENRIETTE van der
MAESENDESOMBREFF, PAULINE HENRIETTE
MARIE Van Der MAESEN DE SOMBREFF
SCAIFE and PAULINE HENRIETTE SCAIFE)
Widow of Dr. John Flett Scaife of Queenstown, Retired,
Deceased

To: The Registrar of the High Court at Wellington.

THIS DOCUMENT NOTIFIES YOU THAT:

1. The Applicants CHRISTOPHER JOHN SCAIFE of Christchurch, Electronic Engineer and JAN-MARC SERVAAS SCAIFE of Queenstown, Architect will apply to the Court for an order that Letters of Administration with the Will Annexed of the Estate of the deceased be granted to them.
2. **THE GROUNDS IN WHICH THE ORDER IS SOUGHT ARE AS FOLLOWS:**
 - (a) No executor is named in the will.
 - (b) The applicants are two of the residuary beneficiaries named in the will.
 - (c) Persons with a priority higher than or equal to that of the Applicants have been given notice of the intended application.

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV No.

IN THE ESTATE of PAULINE HENRIETTE MARIE
JONKVROUWE van der MAESEN de SOMBREFF
(also known as PAULINE HENRIETTE van der
MAESENDESOMBREFF, PAULINE HENRIETTE
MARIE Van Der MAESEN DE SOMBREFF
SCAIFE and PAULINE HENRIETTE SCAIFE)
Widow of Dr. John Flett Scaife of Queenstown, Retired,
Deceased

SUPPLEMENTARY AFFIDAVIT OF CHRISTOPHER JOHN SCAIFE
AND JAN-MARC SERVAAS SCAIFE

Presented for filing by:

Cruickshank Pryde

P O Box 857

42 Don Street

Invercargill

Phone (03) 214 4069

Fax (03) 214 4760

DX YA90002

Solicitor Acting

Mr P B McDonald

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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV No.

IN THE ESTATE of PAULINE HENRIETTE MARIE
JONKVROUWE van der MAESEN de SOMBREFF
(also known as PAULINE HENRIETTE van der
MAESENDESOMBREFF, PAULINE HENRIETTE
MARIE Van Der MAESEN DE SOMBREFF
SCAIFE and PAULINE HENRIETTE SCAIFE)
Widow of Dr. John Flett Scaife of Queenstown, Retired,
Deceased

We, CHRISTOPHER JOHN SCAIFE of Christchurch, Electronic Engineer
and JAN-MARC SERVAAS SCAIFE Queenstown, Architect, swear:

1. I request leave to refer to the Affidavit for Obtaining Grant of Administration with Will annexed in the Estate of PAULINE HENRIETTE MARIE JONKVROUWE van der MAESEN de SOMBREFF (also known as PAULINE HENRIETTE van der MAESENDESOMBREFF, PAULINE HERIETTE MARIE Van Der MAESEN DE SOMBREFF SCAIFE and PAULINE HENRIETTE SCAIFE) Widow of Dr. John Flett Scaife of Queenstown, Retired, Deceased sworn by us these deponents on the 11th day of September 2013.
2. There is a spelling error in the in the Heading of the Application Without Notice for Letters of Administration with Will Annexed, Affidavit for Obtaining Grant of Letters of Administration with Will Annexed, Letters of Administration with Will Annexed and Copy Letters of Administration with Will annexed where the deceased is referred to as also known as PAULINE HERIETTE MARIE Van Der MAESEN DE SOMBREFF SCAIFE . The correct spelling of HERIETTE is HENRIETTE.

3. The deceased is also known as:
PAULINE HENRIETTE van der MAESENDESOMBREFF in the certified true copy of the BNZ Bank letter that is attached and marked “A”
PAULINE HENRIETTE MARIE Van Der MAESEN DE SOMBREFF SCAIFE in the certified true copy of the Commonwealth Bank of Australia letter that is attached and marked “B”
PAULINE HENRIETTE SCAIFE in the certified true copy of the BNZ Bank Statement that is attached and marked “C”.
4. Clause 6 of the Affidavit which reads “*We are the trustees named in the Will who are living in New Zealand. The other two trustees named in the Will MARIE MARGUERITE SCAIFE and ROBIN MICHAEL SCAIFE live in Australia*” is not relevant to this Application.
5. We are two of the residuary beneficiaries named in the will.
6. On 29 May 2013 a letter and Consents were emailed to **MARIE MARGUERITE SCAIFE** and **ROBIN MICHAEL SCAIFE**. Attached and marked “D”, “E”, “F” and “G” respectively are certified copies of the email, the letter and the Consents.
7. On 28 August 2013 written notice via email was given to **MARIE MARGUERITE SCAIFE** and **ROBIN MICHAEL SCAIFE**. Attached and marked “H” and “I” respectively are certified copies of the email and the Notice.

BNZ Customer Account Services

Harbour Quays

60 Waterloo Quay, Wellington

Private Bag 39806, Wellington Mail Centre, Lower Hutt 5045, New Zealand

Email: bnz_cas_estates@bnz.co.nz

T. 0800 500 280 F. 04 474 7777

12 January 2012



The Estate of the late Pauline Henriette van der Maesendesombreff
C/O Simon Stammersmith
Unit 23 Gorge Road Retail
159 Gorge Road
QUEENSTOWN 9300

17 JAN 2012

Estate Pauline Henriette van der Maesendesombreff
Account number 02-0948-0148042-000 & 083

Dear Mr Stammersmith,

We have conducted an audit of our Deceased Estates, and it has come to our attention that the above estate is still open.

If you are the next of kin or executor/trustee of the estate, please contact us on free phone 0800 500 280 or by writing to: BNZ Deceased Estates, Private Bag 39806, Wellington Mail Centre, Lower Hutt 5054.

Please note that the Bank is required to transfer any unclaimed money to the IRD after 6 years (non-interest bearing accounts) or after 25 years (interest bearing accounts) under the Unclaimed Money Act 1971.

Should you have any further queries, please do not hesitate to contact us.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Pesi Kupa', written over a horizontal line.

Pesi Kupa
Deceased Estates Officer
BNZ

Commonwealth Bank

Commonwealth Bank of Australia
ACN 123 123 124

12 MAR 2013

Processing Services Melbourne
Deceased Estates
PO Box 334
Silverwater NSW 2128
Australia

FreeCall 1800 686 153
Facsimile 1300 784 293
DX 1020 Sydney (2388 001)
Internet: www.commbank.com.au

Cruickshank Pryde
Barristers and Solicitors
23 Gorge Road Retail Centre
159 Gorge Road
QUEENSTOWN 9300
NEW ZEALAND



28 February 2013

Dear Sir/Madam

Estate of Pauline Henriette Marie Van Der Maesen De Sombreff Scaife

Also known as: Pauline Henriette Scaife

Our Reference: nu32038490

Your Reference: Simon Stammers-Smith

We refer to your letter dated 28 February 2013 and provide current account balances as requested.

What you need to know

| Account / Reference Number | Current Account Balance as at 28 February 2013 |
|----------------------------|--|
| 411910132834 | \$1831.47cr |
| 411410179636 | \$130.93cr |
| 411410179644 | \$554630.04cr |

We're here to help

If you have any questions or need more information, please call **1800 686 153**, between 8:30 am and 5:00 pm, Sydney time, Monday to Friday.

Yours faithfully

Darren Dickson
General Manager
Processing Services



Queenstown Branch
Telephone 0609 850 483
Facsimile 03 -442 7324

MRS P H SCAIFE, C/O MARC SCAIFE, PO BOX 858, QUEENSTOWN 9348

Flexi Money

STATEMENT NO.27 FOR THE PERIOD 10 OCTOBER TO 10 NOVEMBER 2008

ACCOUNT NAME
SCAIFE, PAULINE
HENRIETTE

ACCOUNT NUMBER
02-0948-0148042-083

| Date | Particulars | Type | Withdrawals | Deposits | Balance |
|------------------------|--|------|-------------|-----------|------------------|
| 10 Oct | OPENING BALANCE | | | | 13,756.13 |
| 20 Oct | PRESBYTERIAN SUPPORT WAKATIPU HOME | AP | 3,296.56 | | 10,459.57 |
| 31 Oct | P MAESEN DE SOMBREFF CP0002903098 | FX | | 56,186.35 | 66,645.92 |
| 31 Oct | GROSS CR INTEREST \$6.73 LESS RAW TAX \$1.31 | | | 5.42 | |
| 31 Oct | BANK FEE (INCL \$0.50 REBATE) | | 0.00 | | 66,651.34 |
| CLOSING BALANCE | | | | | 66,651.34 |



Flexi Money - Account Fee Summary

02-0948-0148042-083

| Particulars | Usage | Unit Price | Total |
|---|--|------------|-------|
| BNZ Internet Transactions | | .25 | .00 |
| Electronic Transactions | | .35 | .00 |
| Automatic Payment Debit | 1 | .50 | .50 |
| BNZ ATM Transactions | | .50 | .00 |
| Non-BNZ ATM Transactions | | .50 | .00 |
| Cheque/Postal Credit Transactions | | 1.00 | .00 |
| Staff Assisted Transactions | | 2.50 | .00 |
| <i>Total Monthly Fees</i> | | | .50 |
| <i>Electronic/Internet/BNZ ATM Trans Rebate</i> | | | .50 |
| 31 Oct | Monthly Bank Fee (Charge period from 30 Sep 2008 to 30 Oct 2008) | | .00 |

Debit Interest Rate(s) as percent per annum applicable to this account during the statement period

16/ 9/2008 - 10/11/2008
23.600%p.a.

Current overdraft interest rate percent per annum applicable to this account is 23.600. There is no required payment applicable to this statement period provided the limit has not been exceeded. This rate is less than the finance rate within the meaning of the Credit Contracts Act 1981. This only applies if you entered into your facility agreement prior to 1 April 2005 and the Bank has not notified you that the facility has been migrated to the Credit Contracts and Consumer Finance Act 2003. If you have any questions please contact your nearest branch or call 0800 500 468.

AP Automatic Payment

FX Foreign Exchange Transaction

Page 2 of 2
026081



Payment Services, Banking Delivery Services

PO Box 2302
Wellington, New Zealand
Telephone 0800 800 468
www.bnz.co.nz

DATE: 31 OCT 08

MRS P H SCAIFE
C/O MARC SCAIFE
PO BOX 858
QUEENSTOWN 9348

OUR REF: CFS0002903098

ADVICE OF CREDIT

We have today received an inward payment in your favour which has been credited to your account. Details are as follows:-

FROM: COMMONWEALTH BANK OF AUSTRALIA SYDN

BY ORDER: P MAESEN DE SOMBREFF SCAIFE

CURRENCY: NZD AMOUNT: 56,186.35

TOTAL PAID
CURRENCY: NZD AMOUNT: 56,186.35

ACCOUNT NAME CREDITED: VAN DER MAESEN DE SOMBREFF, PAULINE

ACCOUNT NUMBER CREDITED: 02-0948-0148042-083

DETAILS OF PAYMENT:
TRANSFER

CHARGES DEDUCTED BY REMITTING BANK: - 25.00
CURRENCY: NZD AMOUNT:

Should you have any queries regarding this payment, please contact your nearest Bank of New Zealand branch.

Please retain this advice as your record of the payment.

Bank of New Zealand.

Phil McDonald

From: Phil McDonald
Sent: Wednesday, 29 May 2013 12:18
To: 'mm_scaife@hotmail.com'
Cc: 'scaife.robin@gmail.com'
Subject: FW: Attached Image
Attachments: 2964_001.pdf

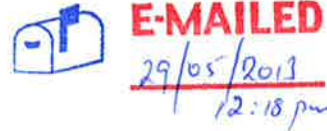
Good afternoon Marguerite and Robin

Please find letter attached.

I look forward to your urgent response.

Kind regards
Phil McDonald

28 May 2013



Robin & Marguerite Scaife

By email:

scaife.robin@gmail.com

mm_scaife@hotmail.com

INVERCARGILL
42 Don Street
P.O. Box 857
Invercargill, 9840
New Zealand
DX YA90002
Phone 0-3-214 4069
Fax 0-3-214 4760
Email office@cplaw.co.nz

QUEENSTOWN
Unit 23
Gorge Road Retail Centre
159 Gorge Road
Queenstown, 9300
New Zealand
Phone 0-3-441 2424

Trust Account
ASB 123195 0000222 00

Estate P Scaife

I am the partner in Cruickshank Pryde's Invercargill office who looks after the firm's Estate files. I have been assisting Simon Stammers-Smith (from our Queenstown office) in regard to your late mother's file.

I understand Simon recently forwarded you a consent form which, if signed, gives your consent to Marc and Chris being appointed as the administrators in your late mother's Estate.

I further understand from Simon that there may be some reluctance on your part to sign those consent forms.

By way of background, as you are aware, we had initially tried to obtain probate of your mother's earlier Will. Your brother Christopher was reluctant to allow that to happen and after taking advice from an expert at the High Court it seems we are able to apply to have administrators appointed to administer your mother's later Will. That is, therefore, what we now need to do. In terms of that Will the children living in New Zealand at the date of your Mother's death are to be appointed to administer the Will.

Having Christopher and Marc appointed as administrators does not change how matters will be progressed after administration is granted. Assets in the Estate will be realised and the moneys invested. No distributions will be made until either all parties agree or a Court has made Orders in relation to the distribution of the Estate. The administrators individually will not have the ability to have access to those moneys except to pay verifiable Estate debts.

I should therefore be pleased if you could sign the consent forms, which are again attached, and scan the signed forms back to me within, say, a week of today's date and post the originals as soon as possible. The originals will have to be attached to the affidavit that Marc and Christopher need to sign.

If you do not agree to sign the consent forms, then I anticipate that our instructions will be to proceed to apply to have Christopher and Marc appointed as administrators in the absence of that consent. There is a process that allows that to occur. In that case, you do have the ability to object to that process and you may wish to take your own independent legal advice in regard

to that. Should we be able to assist in referring you to someone in that regard, please let me know. From my perspective, the best way forward is to get to a point where administration has been granted, the assets are brought into the Estate and frozen, and the parties can set about trying to settle matters or issue Court proceedings if that becomes necessary.

Please feel free to contact me directly to discuss any issues raised above. I look forward to receiving the consents or hearing from you in the very near future.

Yours faithfully

CRUICKSHANK PRYDE



Phil McDonald
Partner

phil.mcdonald@cplaw.co.nz

PMD/EH

be240501

Phil McDonald

From: Phil McDonald
Sent: Wednesday, 28 August 2013 14:35
To: 'mm_scaife@hotmail.com'; 'scaife.robin@gmail.com'
Subject: Estate P Scaife
Attachments: 4606_001.pdf

Good afternoon Marguerite and Robin

Please find attached a Notice signed by Marc and Chris for your reference.

I will now forward the Affidavit for Obtaining Letters of Administration with Will Annexed to them for signing and will then file the Application in Court when I have received the executed Affidavit.

Should you have any queries please feel free to contact me.

Kind regards
Phil McDonald

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV No.

IN THE ESTATE of PAULINE HENRIETTE MARIE
JONKVROUWE van der MAESEN de SOMBREFF
(also known as PAULINE HENRIETTE van der
MAESENDE SOMBREFF, PAULINE HENRIETTE
MARIE Van Der MAESEN DE SOMBREFF
SCAIFE and PAULINE HENRIETTE SCAIFE)
Widow of Dr. John Flett Scaife, of Queenstown, Retired,
Deceased

TO: MARIE MARGUERITE SCAIFE and ROBIN MICHAEL SCAIFE

We, CHRISTOPHER JOHN SCAIFE of Christchurch, Electronic Engineer
and JAN-MARC SERVAAS SCAIFE of Queenstown, Architect being the
two trustees named in the will of the deceased who are living in New Zealand
give notice to you that we intend to apply to the Court for an order that letters
of administration with will annexed of the estate of the deceased be granted to
us.

DATED at Christchurch this 10 day of August 2013

C. J. Scaife
.....
Christopher John Scaife

Witness to signature:

Occupation:

Address:

C. Kennedy
.....

Conasellor
.....

10 Karitane Drive, Cashmere, Christchurch
.....

DATED at Queenstown this 6th day of August 2013

J. M. Servaas Scaife
.....
Jan-Marc Servaas Scaife

Witness to signature:

Occupation:

Address:

Stuart Bateman
.....

Interior Design
.....

38 Hurum Lane, Aspen Grove, Queenstown
.....

Phil McDonald

From: Michael Mathieson [Michael.Mathieson@justice.govt.nz]
Sent: Friday, 13 December 2013 09:10
To: Phil McDonald
Subject: Estate de Sombreff CIV 2013-485-6986
Attachments: 201312130801.pdf

Phil,

A caveat has been filed in this estate. See attached.

Michael Mathieson

Deputy Registrar
Probate Unit
High Court at Wellington
DDI +64 4 9143690

=====
Confidentiality notice: This email may contain information that is confidential or legally privileged. If you have received it by mistake, please:
(1) reply promptly to that effect, and remove this email and the reply from your system;
(2) do not act on this email in any other way.
Thank you.
=====

Form PR 10
Caveat

r 27.11(2)

In the High Court of New Zealand
John Earles (Wellington) Registry
No: CIV 2013-485-6986

Under section 60 of the Administration Act 1969
And

In the matter of the estate of

PAULINE HENRIETTE MARIE JONKVROUWE van der MAESEN de SOMBREFF (also known as **PAULINE HENRIETTE MARIE VAN DER MAESEN DE SOMBREFF SCAIFE**) Widow of Dr John Flett Scaife of Queenstown, Retired, Deceased

Letters of Administration of the Estate of P H M J van der Maesen de Sombreff (aka Pauline Scaife, deceased), must not be granted without notice to Robin Michael Scaife (of 35 Leura Street, Nedlands WA 6009, Australia) who has an interest in the estate.

This document is filed by Robin Scaife (Plaintiff) whose postal address is 35 Leura Street, Nedlands WA 6009, Australia. The address for service of the plaintiff is 35 Leura Street, Nedlands WA 6009, Australia

Documents for service on the party may be left at that address for service or may be emailed to the plaintiff at scaiferobin@gmail.com.

Date: 7 December 2013

Signature:

Robin Scaife

