

## **Deed made by couple after divorce removed their testamentary freedom**

Synopsis: A deed executed by a couple promising to make Wills leaving their family business to their two children has been held legally binding by the England and Wales High Court.

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### **The case**

Ernesto and Josephine Colicci married in 1982 and they started an ice-cream van business that they subsequently developed into a major catering business operating cafes and restaurants across London including across the Royal Parks.

They had two children, Robert and Rosanna Colicci, now 40 and 37 years old respectively.

Unfortunately, the Coliccis divorced in 2011, having negotiated a clean-break settlement and signing their first ever shareholders' agreement. They both continued to manage the business after their divorce right up until Ernesto's death.

Ernesto Colicci married again in 2014, to Nora Grinberg. However, in 2016 he and his ex-wife signed a deed in which they covenanted that any shares they still held in the company when they died would pass to Robert and Rosanna. They both promised to make Wills to that effect. Ernesto never told his second wife about this deed.

In April 2017, Ernesto made a new Will leaving his shares to his second wife. However, he did not tell his ex-wife nor his children about this new Will, of which Nora Grinberg was appointed executor. His solicitor warned him that the new Will might cause his adult children to feel aggrieved, and that they might challenge it.

At around the same time, a new shareholders' agreement was also executed, by which the Coliccis' son and daughter Robert and Rosanna were given some shares and Robert would become a director. Ernesto did not tell Nora Grinberg about this agreement either.

Four years later he died unexpectedly at the age of 66. His ex-wife, son and daughter contested the terms of the 2017 Will that left his shares to his widow, and instead sought to enforce the 2016 deed signed by Ernesto and Josephine in which they agreed to leave the entire company to their children.

Nora Grinberg's defence was that the 2016 deed ceased to be in force when the same parties made the new written shareholders' agreement in March 2017. The family denied this, asserting that the 2017 agreement left the 2016 deed in force; or, alternatively, that the 2017 agreement should be rectified to that end. Nora Grinberg resisted the claim for rectification.

## **The outcome**

The England and Wales High Court concluded that the 2016 deed was a binding obligation on Ernesto and Josephine Colicci, preventing them making other arrangements to dispose of their shares on death.

The subject matter of the 2016 deed was a mutual promise that any shares still held by Ernesto and Josephine at death would pass to the adult children, and a promise to make Wills to that effect. It created testamentary obligations and removed Ernesto's and Josephine's freedom to dispose of their shares on death.

It was also determined that the second shareholders' agreement entered into in 2017 did not supersede the 2016 deed.

As a result, Ernesto's share of the business was inherited by Robert and Rosanna Colicci and not by Nora Grinberg.

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