Will can be overridden by oral agreement to transfer shares on death - EWHC

Synopsis: An England and Wales High Court (EWHC) case in which it was decided that an oral agreement among shareholders regarding the transfer of shares on death is capable of being valid and binding. The agreement can not only supersede the terms of a company's articles but may also override the terms of the donor's will.

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In this case, Lane & Anor v Lane [2024] EWHC 2616 (Ch) (21 October 2024), a father and son had created a company called AGM Brickwork & Stonework Limited to carry on their construction business in 2003. The agreement made at the time allocated 40 shares to each and ten shares each to their wives, Pamela Lane and Suzanne Lane, who were included in the shareholding for tax reasons.

Alan Lane (the father) died on 3 November 2009 and his 40 shares were recorded at Companies House as having been transferred, on the date of his death, to his son Mark Lane. According to Mark Lane, all four parties to the original agreement had orally agreed that, upon the death of either the father or the son, the deceased's shareholding would pass to the survivor of the two. Mark Lane argued entitlement to the deceased's shareholding on the alternative bases of contract, proprietary estoppel and constructive trust.

[Proprietary estoppel is a legal claim which may arise in relation to property where someone is given a clear assurance that they will acquire a right over the property, they reasonably rely on the assurance and they act substantially to their detriment on the strength of the assurance.]

Alan Lane's widow, Pamela Lane, denied that there was any such agreement. She said the question of what should happen in the event of the death of either of the men was not raised at the initial shareholder meeting. Accordingly, she claimed to be the only person entitled to be registered as the holder of the disputed shares under the terms of the company's articles of association. Moreover, the deceased had left a will dated December 2001 appointing her as the sole executrix. This will left his residuary estate, including the shares, on trust for her absolutely.

Pamela Lane's complaint was, in essence, that Mark and, subsequently, Mark and Suzanne Lane had arranged the finances of AGM Brickwork & Stonework Limited in a manner that has deprived her of the dividends to which she was properly entitled and had thereby caused her unfair prejudice.

The EWHC had little contemporaneous documentation to decide between the claims and was unable to form any useful conclusions from the witnesses' demeanour or presentation of evidence. It had to form a view of where the probabilities lie, having regard to all the available evidence.

Alan Lane was a bricklayer by trade and Mark Lane followed in his footsteps. They both worked as self-employed sole traders, doing work together for building

contractors in and around Cardiff. They were highly skilled and by the beginning of the century had built up a good reputation.

In 2003 a contact in the building industry suggested to Mark and Alan that they set up in business together rather than continuing to work for others. Alan Lane made it clear that he wanted to concentrate on work on site and had no interest in becoming involved in paperwork or administration. Mark and Alan initially invited another bricklayer, Gary James, to work with them in the business and he agreed to do so. Gary James became one of the first directors of AGM Brickwork & Stonework Limited and contributed an initial to its name, but he was never, and was never intended to be, a shareholder and he left the company after a few months.

Mark and Alan had no idea how to go about setting up in business formally, but another contact put them in touch with an accountant called Craig Freeman for the purpose of taking advice. Mr Freeman, who carried on business as Freemans, and his office manager, Rebecca Liscombe, gave evidence at trial on behalf of Mark Lane. Mr Freeman suggested to Mark and Alan that they operate their intended business through a limited company rather than as a partnership. This was a distinction that had previously meant nothing to them, but they accepted the advice. On 19 September 2003, Mr Freeman procured the incorporation of AGM Brickwork & Stonework Limited as a private company with a share capital of £100 divided into 100 shares of £1 each and with a Memorandum of Association and Articles of Association in largely standard form.

The relevant provisions in the Articles are articles 29, 30 and 31 (emphasis added) were...

"29 **If a member dies** the survivor or survivors where he was a joint holder, and **his personal representatives where he was a sole holder** or the only survivor of joint holders, **shall be the only persons recognised by the company as having any title to his interest**; but nothing herein contained shall release the estate of a deceased member from any liability in respect of any share which had been jointly held by him.

30 **A person becoming entitled to a share in consequence of the death** or bankruptcy **of a member may, upon such evidence being produced as the directors may properly require, elect either to become the holder of the share or to have some person nominated by him registered as the transferee.** If he elects to become the holder he shall give notice to the company to that effect. If he elects to have another person registered he shall execute an instrument of transfer of the share to that person. All the articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member had not occurred.

31 **A person becoming entitled to a share in consequence of the death** or bankruptcy **of a member shall have the rights to which he would be entitled if he were the holder of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to attend or**

vote at any meeting of the company or at any separate meeting of the holders of any class of shares in the company."

It was arranged that Mr Freeman would meet with Mark, Alan, Pamela and Suzanne to discuss shareholdings and other administrative matters and to give general advice. The meeting took place in late September 2003 at Mark and Suzanne's home. It is common ground that, although in substance the business was to be a 50:50 arrangement between Alan and Mark, Mr Freeman advised that there would be tax advantages in giving 10% shareholdings to Pamela and Suzanne.

That advice was accepted, and the 100 issued shares in AGM Brickwork & Stonework Limited were duly allotted as to 40 to Alan, 40 to Mark, 10 to Pamela and 10 to Suzanne. It was agreed that Mark, Alan and Gary James would be the directors and Suzanne the secretary, that the registered office would be Mark and Suzanne's home, and that Mr Freeman would act as AGM's accountant.

One factual dispute concerning the September 2003 meeting was central to the Pamela's claim. Mark's case was that, in response to a query from Mr Freeman, all present agreed with Alan Lane's proposal that if Alan died his shares would go to Mark and if Mark died his shares would go to Alan. Pamela's evidence was that there was no such agreement and that the question of what should happen in the event of the death of either Alan or Mark was not raised.

In the following years, AGM Brickwork & Stonework Limited traded successfully. Alan and Mark Lane continued to work on construction sites, though Mark took responsibility for much of the administration and was assisted in that role by Suzanne, who worked from an office at home.

Alan Lane, who had been diagnosed with terminal cancer in 2007, died on 3 November 2009. He left a will dated 19 December 2001. Clause 1 of the will appointed Pamela as the sole executrix. Clause 3 left Alan's estate on trust for Pamela absolutely, provided (as was the case) she survived him for 28 days. In the event, Pamela did not take a grant of probate until 12 May 2023, during the course of these proceedings.

On 13 January 2010 Mr Freeman filed at Companies House a Form TM01 recording the termination by death of Alan's appointment as a director of AGM. On 29 October 2010 Mr Freeman filed at Companies House AGM's Annual Return. This showed that Alan's 40 shares had been transferred to Mark on the date of his death and that the shares in AGM Brickwork & Stonework Limited were now held as to 80 by Mark, 10 by Pamela and 10 by Suzanne.

Mr Freeman's evidence was that, shortly after Alan's funeral, and remembering the agreement that had been made in 2003, he said to Mark "something along the lines of, 'I know you don't want to think about it but we need to sort the shares out'", meaning by this that they needed "to file documents at Companies House to record the agreement that Alan's shares would pass to Mark." However, as the next Annual Return was not due until October 2010, there was no immediate rush.

Mark Lane's evidence was to substantially similar effect: that Mr Freeman said that he would deal with the necessary paperwork to show that Alan's shares had been transferred to Mark. Mr Freeman stated that he prepared the Annual Return without further reference to Mark or Suzanne.

In cross-examination he said that he had not known that a share transfer form had to be executed but had believed that the entry on the Annual Return would suffice. It was put to him that he had deliberately acted with a view to procuring Alan's shares for Mark without alerting Pamela Lane to what was happening, but he denied that. It is common ground that nothing was said to, or indeed by, Pamela concerning Alan's shares.

Alan had not been able to work during his illness and, after his death, AGM operated substantially as it had done previously. In January 2017, Suzanne Lane was appointed as a director, but this did not reflect any alteration to her day-to-day activities.

The Court concluded that the evidence of the son, Mark Lane, and that of the company's accountant, was to be preferred, and that there was indeed an oral agreement of the kind claimed. This was because only the father or son had the required skills to carry on the business in the event of the death of the other. The agreement was effectively a contract binding both the Alan Lane, the deceased, and his son, Mark Lane, involving mutual promises among the four prospective shareholders as to the disposition of the shares. The parties had intended those promises to have legal effect. This was enough to provide consideration and so create a legally valid contract.

Even if that was not the case, said the EWHC, the son would be entitled to the disputed shares on the basis of promise-based proprietary estoppel.

Comment

This case highlights how contractual arrangements can potentially conflict with testamentary stipulations in a will.

In this case, the oral agreement effectively overrode the deceased shareholder’s will, placing his shares with his son, rather than his wife. However, the question of when exactly a promise should override a person’s will is extremely complicated and, so, it is always safer to put a shareholder agreement in writing, and to update wills to reflect that agreement.