

NOTE: PURSUANT TO S 80 OF THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOV.T.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

**IN THE FAMILY COURT
AT CHRISTCHURCH**

**FAM-2013-009-576
[2016] NZFC 2826**

IN THE MATTER OF THE FAMILY PROTECTION ACT 1955

BETWEEN WILLIAM WINTER
 Applicant

AND JAMES KIRKLAND AND BENJAMIN
 FRAMPTON
 Respondent

Hearing: 06 April 2016

Appearances: Mr Moran for the Applicant
 Mr Kirkland for the Respondent
 Mr Fairclough for Richard and Robert Winter
 Mr Sissons and Mr Lynn for Mrs Winter

Judgment: 7 April 2016

JUDGMENT OF JUDGE C P SOMERVILLE

[1] This judgment is being dictated at the conclusion of a four hour settlement conference involving the testamentary promises and family protection claims brought against the estate of the late Mr Winter. All of the deceased's children and his wife are present; two of the children having come from Australia.

[2] Not only is there money in the estate but there is also a significant amount in a family trust set up by Mr Winter some years before his death.

(a) In essence the estate has cash assets of \$650,000, tractors and a 1928 Whippet motor car, estimated in total to be worth \$50,000. In addition there is a further \$25,000 held in a contingency fund. Mr Kirkland, who is one of the trustees, estimates that after all expenses are taken into consideration; this will probably leave \$15,000 for distribution.

(b) The trust has assets of approximately \$600,000.

[3] All matters have been settled, but that process began with the three trustees of the family trust, who are all present today, agreeing that the \$600,000 in the family trust would be used to purchase a home for Mrs Winter on the basis that she would meet all of the outgoings and keep the property properly maintained. This home would be retained in the trust while she required it, but with the understanding that if she were wishing to move from that home into a retirement village, that it would be sold and the proceeds used to purchase an interest in a dwelling for her in the retirement village. If there were to be a surplus, then it would be distributed equally between the four children.

[4] On that basis, Mrs Winter is willing to accept a settlement of the family protection claim which would involve:

(a) Mrs Winter receiving \$345,000, (which includes a half share of the \$15,000 net contingency fund) together with half of any surplus over and above that \$15,000 should the estimated expenses prove to be less than anticipated.

- (b) The tractors and the 1928 Whippet are going to Nigel; and
- (c) The four children sharing \$320,000 (including one half of the \$15,000 contingency fee) and the other half of any surplus, if any. That money is to be divided between them in proportions upon which they have agreed but not revealed today for the purposes of settlement.

[5] All parties are agreed that Mr Kirkland is able to immediately distribute the funds held by him in the estate; he indicates that should occur by the end of the week. He will draft the order in these proceedings once this Judgment has been distributed.

[6] For myself I record that this is a proper settlement of the testamentary promises and family protection proceedings and is in accordance with the Act.

[7] There will be orders by consent in terms of paragraph [4] above.

[8] Costs will lie where they fall. Mr Kirkland's costs will be met by the estate and the trust in whatever proportions he decides is appropriate.

[9] As is obvious, Mr Kirkland will be distributing \$320,000 to the children's solicitors and \$345,000 to the widow's solicitors immediately, despite the order not being formally sealed at that time.

Judge C P Somerville
Family Court Judge