

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

THIS JUDGMENT WAS RECALLED FOR CORRECTION AND THEN REISSUED

NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE

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**IN THE FAMILY COURT
AT NELSON**

**I TE KŌTI WHĀNAU
KI WHAKATŪ**

**FAM-2017-042-000339
[2019] NZFC 67**

IN THE MATTER OF THE FAMILY PROTECTION ACT 1955

AND

IN THE MATTER OF THE ESTATE OF JAMES ROGER
SOWERBUTTS

BETWEEN PAUL JAMES SOWERBUTTS
MATTHEW SOWERBUTTS
Applicants

AND PATRICIA ANN SOWERBUTTS
Respondent

FAM-2018-042-000117

IN THE MATTER OF THE PROPERTY (RELATIONSHIPS)
ACT 1976

AND BETWEEN KATHERINE ALICE CARR
Applicant

AND PATRICIA ANN SOWERBUTTS
Respondent

AND PAUL JAMES SOWERBUTTS
MATTHEW ALLAN SOWERBUTTS
MARK ETHAN SOWERBUTTS
Other Parties

Hearing: 8 January 2019

Appearances: R D J Fitchett for the Applicants/Other Parties
P and M A Sowerbutts
S W Sansom for the Respondent
No appearance by or for the Other Party M E Sowerbutts

Judgment: 8 January 2019

Reissued: 18 January 2019

ORAL JUDGMENT OF JUDGE R J RUSSELL

[1] These are proceedings under the Property (Relationships) Act 1976 and also the Family Protection Act 1955 in respect of the estate of James Sowerbutts. In particular, it is an application under s 88 Property (Relationships) Act for leave to commence proceedings by the trustee of the late Mr Sowerbutts' estate, who is now Kathy Carr, to re-call into Mr Sowerbutts' estate a one-half share of what is relationship property which has, following his death, passed by survivorship to his surviving spouse, Ann. Once the half share of relationship is reclaimed into the estate, it is sought by the late Mr Sowerbutts' three children, Mark, Matthew and Paul, to obtain provision from the estate pursuant to the Family Protection Act, they contending that their father owed them a moral duty to make provision for them under his will, that he breached that moral duty by not making any effective provision for them under his will, and agreement has now been reached as to how this claim is to be addressed.

[2] The issues in these proceedings are complicated. The late Mr Sowerbutts and his wife, Ann, executed mirror wills on 19 September 2008, however all of the assets which Mr Sowerbutts owned passed by survivorship to Ann outside the terms of his will. Ann now has, in her own name, three commercial properties which the parties owned in Queen Street, Richmond, a farm residence in Pigeon Valley Road, and some term investments worth \$260,000 approximately, together with vehicles and other personal chattels.

[3] This minute has been dictated following a lengthy judicial settlement conference which has been held today. It has been agreed between Paul and Matthew Sowerbutts that their claim in respect of their late father's estate, under the Family Protection Act, will be settled as follows:

- (a) By payment of \$100,000 to each of them by 31 March 2019.
- (b) By payment of a further \$350,000 to each of them within a further two year period or the sale of commercial properties which are owned in Richmond, whichever event first occurs.
- (c) Default interest rates have been agreed as being four percent above the current ANZ Bank first mortgage interest rate.
- (d) Security is to be provided by a mortgage registered over the Richmond properties.

[4] Separate arrangements are going to be made between Ann and the third child, Mark, who has filed a notice of appearance. Because he is on Court record, Mark will need to confirm that alternative arrangements satisfactory to himself have been made, and that he has no issue with the terms of settlement which have been proposed.

[5] Mark has not participated in these proceedings apart from filing a notice of intention to appear. Mark has, it seems, suffered from a [medical event] which has had some impact on his cognitive capacity. I have raised the question as to whether a litigation guardian is required for him or not. It seems to me, at the very least, he requires independent legal representation about the terms of settlement which have been reached today.

[6] The exact manner in which the terms of the agreed settlement are to be implemented, whether by formal Court orders or by deed of family arrangement executed between the parties, is going to be the subject of further discussion between counsel and the parties. If further Court orders are sought to implement the terms of the agreed settlement, then either a memorandum of consent with memorandum of

counsel will need to be filed or, alternatively, a further judicial conference needs to be convened.

[7] I now record that I have confirmed directly with Paul and Matthew Sowerbutts, and also with Ann, that they agree with the terms of settlement which now needs to be implemented by their counsel. Both counsel have now confirmed their agreement to the terms which I have outlined in this minute.

[8] The proceedings are adjourned to a registrar's list in 21 days for review.

R J Russell
Family Court Judge