

*Lubis v Walters as Administrator of the Estate of Robert David Walters deceased*  
[2009] NTSC 23

PARTIES: LUBIS, IKA KARTIKA

v

WALTERS, ROBERT EDWARD as the  
Administrator of the Estate of Robert David  
Walters deceased

TITLE OF COURT: SUPREME COURT OF THE NORTHERN  
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN  
TERRITORY EXERCISING TERRITORY  
JURISDICTION

FILE NO: 64 of 2008 (20815199)

DELIVERED: 28 May 2009

HEARING DATES: 16, 17, 18 February, 24 March, 6 April 2009

JUDGMENT OF: ANGEL J

**CATCHWORDS:**

DE FACTO RELATIONSHIPS – DE FACTO RELATIONSHIPS ACT 1991  
(NT) – Whether a commercial arrangement or bona fide domestic relationship –  
revocation of Letters of Administration.

*Administration and Probate Act 1969* (NT) s 66, Sch 6 Pts II and III, ss 26, 41  
*De Facto Relationships Act 1991* (NT) ss 3(1), 3A

*Briginshaw v Briginshaw* (1938) 60 CLR 336; *Hibberson v George* (1989)  
12 Fam LR 725; *In Re Fagan (deceased)* (1980) 23 SASR 454; *Mavrideros v*  
*Mack* (1998) 45 NSWLR 80; *Nolan v Nolan and Another* (2003) 10 VR 626;  
*Pelka v Secretary, Department of Family and Community Services* (2006)

151 FCR 546; *Quijarro v Robson* [2008] NSWSC 818; *Roy v Sturgeon* (1986) 11 NSWLR 454, referred.

**REPRESENTATION:**

*Counsel:*

|            |                        |
|------------|------------------------|
| Plaintiff: | G Clift and P Mariotto |
| Defendant: | I Morris               |

*Solicitors:*

|            |                 |
|------------|-----------------|
| Plaintiff: | De Silva Hebron |
| Defendant: | Hunt & Hunt     |

|                                   |           |
|-----------------------------------|-----------|
| Judgment category classification: | B         |
| Judgment ID Number:               | Ang200903 |
| Number of pages:                  | 22        |

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Lubis v Walters as Administrator of the Estate of Robert David Walters deceased*  
[2009] NTSC 23  
No. 64 of 2008 (20815199)

BETWEEN:

**IKA KARTIKA LUBIS**  
Plaintiff

AND:

**ROBERT EDWARD WALTERS as the  
Administrator of the Estate of Robert  
David Walters deceased**  
Defendant

CORAM: ANGEL J

REASONS FOR JUDGMENT

(Delivered 28 May 2009)

- [1] These proceedings concern a dispute over the estate of Robert David Walters deceased who died intestate on 24 January 2008 in Langkawi, Malaysia. The deceased, an Australian, formerly of Darwin, was 62 years of age at the time of his death. In the years prior to his death the deceased had lived on his boat, the *Agapantha*, which he sailed between locations in South East Asia, principally Langkawi in Malaysia and Phuket in Thailand.
- [2] On 22 April 2008 the defendant was granted Letters of Administration of the deceased's estate. On that same day the defendant, without further ado,

distributed over \$600,000 cash from his late father's estate to himself and entities under his control. The defendant is the only child of the deceased.

[3] On 3 June 2008 the plaintiff, an Indonesian National living in Malaysia, who was born on 22 August 1979, commenced the present proceedings against the defendant claiming that she was the de facto wife of the deceased at the time of his death and that she had been so for a continuous period of more than two years prior to his death and therefore entitled to a share of and interest in the deceased's estate. She also seeks to have the defendant's grant of Letters of Administration revoked and orders that the administration of the estate of the deceased be granted to the Public Trustee or such other person or persons as the Court deems fit. Pending judgment, an interlocutory injunction was granted prohibiting the defendant from dissipating the monies paid out from his late father's estate.

[4] The defendant says that the relationship between the plaintiff and the deceased was a financial arrangement only in which the deceased paid the plaintiff for providing cooking, cleaning, household and sexual services.

[5] Section 66 and Schedule 6 Parts II and III of the *Administration and Probate Act 1969* (NT) make provision for de facto spouses to participate in intestate estates. In order to qualify under these provisions, a de facto spouse must be

the de facto spouse of the intestate for a continuous period of not less than two years immediately preceding the intestate's death.<sup>1</sup>

- [6] The definition of a de facto relationship is found in ss 3(1) and 3A of the *De Facto Relationships Act 1991* (NT):

**“3 Definitions**

(1) In this Act, unless the context otherwise requires –

...

*de facto partner*, of a person, means a person who is in a de facto relationship with the person.

*de facto relationship* has the meaning in section 3A.”

**“3A De facto relationships**

(1) For this Act, 2 persons are in a de facto relationship if they are not married but have a marriage-like relationship.

(2) To determine whether 2 persons are in a de facto relationship, all the circumstances of their relationship must be taken into account, including such of the following matters as are relevant in the circumstances of the particular case:

- (a) the duration of the relationship;
- (b) the nature and extent of common residence;
- (c) whether or not a sexual relationship exists;

---

<sup>1</sup> *Administration and Probate Act 1969* (NT), Schedule 6 Part II.

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(e) the ownership, use and acquisition of property;

(f) the degree of mutual commitment to a shared life;

(g) the care and support of children;

(h) the performance of household duties;

(i) the reputation and public aspects of their relationship.

(3) For subsection (2), the following matters are irrelevant:

(a) the persons are different sexes or the same sex;

(b) either of the persons is married to another person;

(c) either of the persons is in another de facto relationship.”

[7] The principal issue before the Court is whether the plaintiff and the deceased were in a de facto relationship, and if so, whether for a continuous period of not less than two years immediately preceding the death of the deceased. As stated above, a de facto relationship is defined as the relationship between two persons who are not married but who are in “a marriage-like relationship.”<sup>2</sup> Determining whether a de facto relationship exists between two persons requires a court to consider “all the circumstances of their relationship”.<sup>3</sup>

---

<sup>2</sup> *De Facto Relationships Act 1991* (NT), s 3A(1).

<sup>3</sup> *De Facto Relationships Act 1991* (NT), s 3A(2); *Roy v Sturgeon* (1986) 11 NSWLR 454.

- [8] Ex facie the relationship between the deceased and the plaintiff can be said to be a de facto relationship based on matters not in contest, namely, the relationship was sexual, they cohabited on board the *Agapantha* from approximately January 2005 until the deceased's death January 2008 (albeit that the plaintiff undertook five trips to Bali during this time, only one with the deceased) and the plaintiff who cooked, cleaned, and did other domestic duties and maintained a home was financially dependent on the deceased.
- [9] While these factors are important, they are not necessarily conclusive. The crux of the defendant's argument and the central question before the Court is the true character of the relationship. The defendant says the relationship between the two was essentially a financial arrangement, centred upon payment to the plaintiff for the provision of sexual and household services. As such, the defendant says it was not a de facto or "marriage-like" relationship.
- [10] Whether a "marriage-like" relationship existed between the deceased and the plaintiff is a question of fact.<sup>4</sup> The Court must have regard to the plaintiff and the deceased's personal relationship as a whole, having regard to all the circumstances of the case including the matters specified in s 3A. This requires the Court specifically to consider those factors which weigh against a "marriage-like" relationship and those which weigh in favour of such a relationship.<sup>5</sup> The legislation speaks of "a" marriage-like

---

<sup>4</sup> *Hibberson v George* (1989) 12 Fam LR 725 at 740; *Roy v Sturgeon* (1986) 11 NSWLR 454.

<sup>5</sup> Cf. *Pelka v Secretary, Department of Family and Community Services* (2006) 151 FCR 546.

relationship. Of course “marriage-like” relationships, like marriages, can be loving or loveless, weak or strong, happy or unhappy, lengthy or short-lived; indeed they are almost infinite in variety.

- [11] The plaintiff and the deceased first met each other in Sanur in Bali in or around late August or early September 2004. They were introduced to each other through a prostitute named Ti Tin. At the time Ti Tin was the plaintiff’s neighbour and was involved in a paid sexual relationship with the deceased. The plaintiff’s evidence is that Ti Tin asked the plaintiff to accompany the deceased, a male friend of the deceased’s and Ti Tin on a cruise on board the *Agapantha* to Lombok in return for 500,000 Rupiah.
- [12] The defendant submitted there is a strong inference that there was a shared expectation that the plaintiff would provide sexual services to the deceased’s friend (known only as Arvin) on the cruise to Lombok. I agree. It is quite reasonable to conclude that a meeting in which a female prostitute brings a female companion to meet a regular male customer of the prostitute and another man involves prospects of paid sex. However, the plaintiff did not participate in this cruise, she says, because of this very expectation.
- [13] The plaintiff and the deceased met again some weeks later. On this occasion the plaintiff, the deceased, Ti Tin and the defendant had lunch in Sanur before going to the *Agapantha* which was moored in Benoa Harbour. According to the plaintiff, on returning to the boat, the deceased and Ti Tin went inside the main cabin for about five minutes while the plaintiff and the

defendant conversed on the deck. The defendant says in his affidavit that it was his understanding that his father had arranged for the plaintiff to provide him – the defendant – with sex on this occasion. His affidavit also maintains that, on the following day, he witnessed the plaintiff go down into the cabin of the *Agapantha* with the deceased, and that the deceased later paid money to the plaintiff which the defendant assumed was for sex.

[14] There is no suggestion from either party that sexual activity between the plaintiff and the defendant ever occurred or that there was ever any negotiation about sexual activity between the plaintiff and defendant while the plaintiff was on board the *Agapantha*. The plaintiff makes no mention of the occasion referred to by the defendant when he says she went down to the cabin with the deceased either in her affidavit or testimony before the court. She was not questioned about this alleged incident.

[15] Some days after the first meeting on the *Agapantha* the deceased offered both Ti Tin and the plaintiff jobs to undertake various cleaning and maintenance related tasks on board the *Agapantha* for a wage of 175,000 Rupiah per day each. The plaintiff's job apparently involved cleaning the engine room and painting. This sharing arrangement persisted for but a short period of time, a number of days - less than a week. According to the plaintiff, Ti Tin and the deceased stopped having paid sex and Ti Tin quit her job pressing the plaintiff to do the same. However, the plaintiff told the deceased that she wished to continue with her work and left a telephone number for the deceased to contact her. There is no suggestion the plaintiff

had sex with the deceased while she and Ti Tin worked on the *Agapantha* together.

[16] The deceased and the plaintiff met later the same week on the *Agapantha* and discussed the plaintiff's future employment. An agreement was reached. The plaintiff would shop, cook, clean and perform maintenance on board the *Agapantha* for a wage of 175,000 Rupiah per day. The plaintiff gave evidence that on this occasion the deceased had "made a signal" to go down to the cabin and have sex. She said she refused this request and explained to the deceased that she "really needed a job not doing sex" and that the deceased did not persist in his sexual advances.

[17] The plaintiff's testimony is that she and the deceased did not develop a sexual relationship until 2 October 2004. She says that this occurred only after she and the deceased had developed a friendship over the course of a number of weeks of her working on the boat and after the deceased had met various members of her family, including her son.

[18] The deceased, the plaintiff, the defendant and another passenger named Greg sailed on board the *Agapantha* from Bali on 24 December 2004. It was about this time that the plaintiff ceased paid work upon the *Agapantha* and was instead provided by the deceased with a monthly stipend of 5000 Baht (approximately 1,000,000 Rupiah) which she used to support her son.

[19] From that time to the death of the deceased, save for times the plaintiff spent with relatives in Bali, the plaintiff and the deceased cohabited on the

*Agapantha* and sailed around South East Asia - principally between Langkawi in Malaysia and Phuket in Thailand. The defendant joined them on a number of occasions. On one occasion the plaintiff's brother accompanied the deceased and the plaintiff. The deceased often docked the *Agapantha* in port for extended periods of time, during which the deceased and the plaintiff socialised with the expatriate boating community.

- [20] The defendant says this history is consistent with the formation and maintenance of a paid sexual relationship, in which the deceased replaced Ti Tin with a younger and more useful woman, the plaintiff, who cleaned, cooked and provided sexual services in exchange for money.
- [21] In addition to the circumstances in which the plaintiff first met the deceased, it was submitted there is other evidence supporting this conclusion. It was submitted that the plaintiff's initial wage - 175,000 Rupiah per day - approximates the amount that the plaintiff would have received if she had gone on the boat cruise to Lombok (estimated to be some 166,000 Rupiah per day) and provided sexual favours.
- [22] It was submitted the plaintiff's initial job (of cleaning and undertaking maintenance) was at odds with her background as a beauty worker. It was submitted the wage she received for this work is inconsistent with the lesser amount she is currently receiving per week cleaning a similar boat in Telaga Harbour, Langkawi, leading to an inference that she was being paid by the deceased for more than merely boat maintenance. The wage that the plaintiff

at time of trial was receiving for cleaning a boat in Telaga Harbour was 400 Malaysian Ringit per month – approximately 155 Australian dollars as of 2 April 2009. The figure that she was initially paid to do a similar job by the deceased (175,000 Rupiah per day) is considerably more generous (some 26 Australian dollars per day) than the figure of 5 Australian dollars per day which the plaintiff is paid in Telaga, Malaysia for similar work.

[23] Other evidence submitted to be at odds with the existence of a genuine “marriage-like” relationship were the circumstances surrounding the holiday, split or “time out” taken in Bali by the plaintiff between 13 June 2005 and 6 August 2005. The defendant says that this split was precipitated because the deceased had refused to allow the plaintiff to have her son accompany them on the boat. The plaintiff admitted that her trip to Bali was taken partly to alleviate tensions between the plaintiff and the deceased. The plaintiff does not contest that the deceased had sexual relations with a number of bar girls in Phuket in the plaintiff’s absence during this time. However, while such behaviour could be inconsistent with the plaintiff’s claims that the couple were loving, having a sexual relationship with another person outside the relationship does not of itself bring a de facto relationship to an end, there being no legal requirement that a de facto relationship be sexually monogamous.<sup>6</sup>

[24] The defendant stresses that the onus of proof is upon the plaintiff.

---

<sup>6</sup> *In Re Fagan (deceased)* (1980) 23 SASR 454 at 464–465, per Jacobs J.

[25] In a case such as this the proper standard of proof is that referred to in *Briginshaw v Briginshaw*,<sup>7</sup> proof on the balance of probabilities but with due regard to the gravity of the consequences of making the declaration sought by the plaintiff and the circumstance that the deceased can not give evidence.<sup>8</sup>

[26] The defendant also raises the issue of the appropriate weight that should be given to the evidence of the plaintiff, citing a number of authorities, including *Nolan v Nolan and Another*<sup>9</sup> which rightly say that caution, even suspicion, should be employed when evaluating claims like that of the present plaintiff against a deceased's estate. Counsel for the defendant stressed the lack of corroborative evidence as to the circumstances surrounding the early stages of the relationship, and that neither Ti Tin nor another dock worker "Budi" were called to provide their accounts of the initial meetings between the plaintiff and the deceased or to testify as to wage rates for boat cleaning and maintenance in Bali at that time. I take into account that a great deal of the plaintiff's testimony is uncorroborated – for example that in January 2005 the deceased asked the plaintiff to stay on the *Agapantha* with him as his girlfriend, indefinitely – an account which seeks to confirm the genuine nature of the relationship in a blunt and obvious way.

[27] Of course arguments about the weight that is ascribed to the evidence of a particular party can cut both ways. The defendant also has much to lose if

---

<sup>7</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336.

<sup>8</sup> *In Re Fagan (deceased)* (1980) 23 SASR 454 at 464–465, per Jacobs J.

<sup>9</sup> *Nolan v Nolan and Another* (2003) 10 VR 626 at 650.

the plaintiff is to participate in his late father's not inconsiderable estate. Many of the defendant's allegations against the plaintiff likewise are uncorroborated. These include his account of the plaintiff going to the cabin with the deceased and then being paid, his contention that the separation between the deceased and the plaintiff was precipitated by the deceased's refusal to allow the plaintiff's child on board the boat as well as his insistence that his father had told him that "its all yours", in referring to what would happen to the deceased's assets after the deceased's death.

[28] The plaintiff has not shied away from including a number of uncomfortable details in her testimony. They include her evidence that Ti Tin was a prostitute, that the deceased had from time to time consorted with bar girls in Thailand, that she was aware of a conversation between the deceased and the defendant which alluded to a competition between father and son as to (presumably) who would sleep with the plaintiff first, albeit that the deceased may have been joking.

[29] There is considerable uncertainty surrounding the true circumstances of the plaintiff's initial relationship with the deceased. It would be naïve to say that the circumstances in which the plaintiff first met the deceased were bereft of any hint of paid sex. The deceased's overtures to the plaintiff during this period indicate that he was pursuing – and was willing to pay – her for sexual favours. Such is consistent with the evidence before the Court that the deceased had engaged in numerous paid sexual relationships, including in Indonesia with Ti Tin, and with bar girls in Thailand. It is also

consistent with the plaintiff's assertion that once she had agreed to work on the boat, the deceased had promptly "made a signal" for her to go down to the cabin to have sex. Moreover the plaintiff was first introduced to the deceased by Ti Tin, a prostitute, or, as the defendant would have it, a fellow-prostitute.

[30] However, none of these circumstances necessarily lead to a conclusion that the plaintiff entered into a financial arrangement to provide sexual services which endured to within two years of the death of the deceased. If the plaintiff's evidence is to be accepted the times she was directly approached by the deceased to provide sex in exchange for money she rejected it. According to the plaintiff this only happened twice, once when she was invited on the cruise to Lombok, and again, when first hired to work on the boat. This is at odds with the defendant's account that he witnessed a "third" meeting in which the plaintiff visited the deceased and was paid.

[31] Evidence was led that the deceased told the defendant that the deceased had a will and that the defendant would alone inherit the deceased's estate. No will has ever been found despite the defendant searching therefor. The evidence led was hearsay. It was not admissible to prove the truth of the deceased's statement, or as supportive of the deceased's relationship with the plaintiff being no more than, at most, a casual sexual liaison. The evidence was only admissible as relevant to the defendant's belief or state of

mind as to his expectation and background to his conduct immediately following the grant to him of Letters of Administration.<sup>10</sup>

- [32] There was also evidence of a serious rift between the deceased and the defendant and of the deceased speaking in grossly disparaging terms of the defendant and if the deceased did speak of a will to the defendant it may well have been a ruse. On the other hand it may have been true at the time and the deceased may have decided later to destroy it. None of the evidence about the deceased having a will can assist the Court in its conclusion as to the true nature of the relationship between the plaintiff and the deceased.
- [33] Whatever the true circumstances as to the initial relationship, I am satisfied that the relationship between the plaintiff and the deceased developed into something other than a mere financial arrangement, and at a time well before the deceased's death on 24 January 2008. Much of the evidence for this is found in the affidavits and testimony of the people with whom the couple came into contact as they cruised together around South East Asia.
- [34] James Gilbert Watt, who met the couple in February 2005, gave evidence that while there was a considerable amount of conflict between the plaintiff and the deceased at the time, "from almost the first time I met the deceased and Ika [the plaintiff] I regarded them as a couple." Watt's wife Caroline also attested to conflict – including that the deceased had hit the plaintiff when he had been drinking – but she also states that it was her impression

---

<sup>10</sup> *Hughes v National Trustees, Executors and Agency Company of Australasia Ltd* (1979) 143 CLR 134.

that the couple, even at this early stage of their relationship, were making plans for a shared future, noting that they were making plans to build or rent a plane together. She states that it was her impression that “their relationship blossomed and grew over time.”

[35] Other evidence supports the conclusion that the plaintiff and the deceased were in a genuine de facto relationship. I was particularly impressed with the testimony of Luke Hendrick Van der Vlies, who, along with wife Eva, met the plaintiff and the deceased in November 2006. In both his affidavit and testimony before the court Mr Van der Vlies stated that he had often observed situations wherein older Western men would retain younger Asian women to cook, clean and to provide them with sexual favours while travelling. He clearly distinguished the plaintiff and deceased’s relationship from such arrangements stating that “I look upon it like I said before, how I love my wife, how I treat my wife, and I also see Bob [the deceased] and Ika [the plaintiff] in the same situation.” He went on to state that “They treat each other respectfully when they – every time we met at functions and parties and they were always a respectful couple, a loving couple together. Now, you know, it’s just not the same when you see what you call a commercial arrangement.” Eva Van der Vlies supported this evidence stating that the plaintiff and the deceased behaved in a manner that was similar to her and her husband.

[36] There is other evidence which indicates the deceased and the plaintiff had a genuine “marriage-like” relationship over the course of the last two or more

years prior to the death of the deceased. This includes the accounts of other expatriate boaters such as Gregory Sutherland who said “It was obvious to me that they not only shared a romantic relationship but loved one another” and that he had observed that the plaintiff had adopted a carer role towards the deceased in the last month of the deceased’s life. Similarly, Sutherland’s wife said that she saw or met with the plaintiff and the deceased on an almost daily basis between August 2007 and December 2007, and provided a similar account of the relationship between the couple.

[37] The fact that the deceased and plaintiff were together from approximately January 2005 until the deceased’s death in January 2008 is in itself indicative of something more than a financial arrangement. While there is evidence before the Court that it is not uncommon practice for some Westerners to employ Asian girls to cook, clean and provide sexual services for some months while they are sailing around South East Asia it seems to me that if the relationship between the plaintiff and the deceased was a purely commercial one the deceased, given his wants, would in all likelihood have found a new girl or girls to supplement or supplant the plaintiff within this period. It is unlikely that the deceased would have invited the plaintiff’s brother on board the boat for a holiday from November to December 2005 or that the deceased would have consented to meet plaintiff’s family, including her father, in or around December 2006, if the relationship between the parties was merely commercial.

[38] In *Quijarro v Robson*,<sup>11</sup> the Court said:

“As in many of these matters the evidence adduced by either side, although it seems to some extent contradictory, is often generally truthful. It is just that people see things partly as they want to see them or as they think they should see them and partly in accordance with statements made to them by the persons involved in a relationship. It is usually not possible to reject the evidence of witnesses of one side and accept the evidence of witnesses of another in coming to a decision as to whether or not a de facto relationship has been established. It is also necessary to bear in mind it is incorrect to think that perfection and harmony is a necessary requirement in de facto relationships but not in married relationships: *Bar-Mordecai v Hillston* [2004] NSWCA 65. Nevertheless for a de facto relationship to continue to exist it is necessary for there to be a sense of commitment on both sides.”

[39] It is apparent from the witnesses to which I have referred that the plaintiff and the deceased were generally supportive of each other and an affectionate couple. I find there was a good deal of mutual affection and support.

Their relationship was manifested by their cohabitation, their sharing of meals, their exchanging gifts, their entertaining friends aboard the *Agapantha*, their joint visits to friends, the deceased mingling with family members of the plaintiff, the deceased’s financial assistance in support of the plaintiff’s young son, his paying the costs of the plaintiff’s divorce and the plaintiff’s care and attention to the deceased leading up to his death.

[40] I am satisfied that the relationship between the plaintiff and the deceased was not a purely commercial one. Nor do I think it was merely a casual sexual liaison without the requisite elements of mutual commitment.

The plaintiff and the deceased whilst cohabiting substantially shared their

---

<sup>11</sup> *Quijarro v Robson* [2008] NSWSC 818 at [36].

lives at emotional and mutually supportive levels. They were, in the words of the witnesses, “a couple”, living together as husband and wife, a circumstance not ended by their physical separation when the plaintiff went alone to Bali visiting her young son and other relatives. I am satisfied that the deceased treated his relationship with the plaintiff as much more than a casual sexual liaison and that they had planned to live together for their foreseeable future sharing their lives together.

[41] I find the plaintiff and the deceased were in a de facto relationship for a period of not less than a continuous period of two years immediately preceding the death of the deceased and that the plaintiff was a de facto partner of the deceased for the purposes of ss 66 and 67 and Schedule 6 of the *Administration and Probate Act* (NT).

[42] I turn to the second issue raised by the plaintiff, namely whether the defendant’s Letters of Administration over the estate of the deceased should be revoked. The power of the court to do so is under ss 26 and 41 *Administration and Probate Act* (NT). The plaintiff relies primarily upon s 41(1)(c) which provides that the court may discharge or remove an executor or administrator if, after appointment, he or she refuses, or is unfit, to act in the office, or is incapable of acting therein.

[43] The plaintiff says the defendant is unfit to administer the estate of the deceased because whilst aware of the plaintiff’s potential claim he completely disregarded it and having obtained Letters of Administration,

in ignorance of his statutory duties, inter alia, to advertise to alert creditors or other claimants upon the estate, he distributed the entire cash assets of the estate to himself and entities controlled by him.

[44] Throughout the proceedings the defendant has maintained his belief that the plaintiff was only in a commercial relationship with the deceased.

The defendant says he genuinely held this belief at the time he applied for Letters of Administration of his late father's estate. The defendant had only been in sporadic contact with the deceased in the last years of the deceased's life as a result of an argument they had had. The defendant had only met the plaintiff and the deceased together on a number of limited occasions.

The first occasion was when the plaintiff first met the deceased in Bali and the occasion when the *Agapantha* initially sailed to Phuket from Bali in early 2005. Given the presence of Ti Tin at the initial meeting, it would have appeared to the defendant that the plaintiff might well have been available for sexual activity with the defendant. The deceased's known predilection for paid sex also may well have led the defendant to his conclusion concerning the nature of the relationship between the plaintiff and the deceased. In the circumstances I think it is probable that the defendant was ignorant of the true relationship between the plaintiff and the deceased. The plaintiff has not made out her case of bad faith against the defendant.

[45] It is a matter of significance however that the defendant sought neither legal advice nor information from elsewhere as to his basic duties and obligations

as administrator of his late father's estate. That and given the obvious acrimony between the parties and my conclusion that the plaintiff as the former de facto of the deceased is entitled to a share of the intestate estate as provided for in Item 2 of Schedule 6 to the *Administration and Probate Act* (NT) it is preferable that the estate be administered by Public Trustee. I note that the assets of the estate are said to comprise the monies paid by the defendant to himself and his entities, the *Agapantha* which is currently moored at Telaga Harbour Marina in Langkawi, Malaysia in respect of which accumulated unpaid management, mooring and power fees are due and a Cessna 182 aircraft situate at Darwin Airport in respect of which some fees may well be owing.

[46] So far as the plaintiff's application to remove the defendant as an administrator of the estate of the deceased is concerned, the question is, as stated in *Mavrideros v Mack*:<sup>12</sup>

“... whether the due and proper administration of an estate had either been put in jeopardy or had been prevented either by reasons of acts or omissions on the part of the executor or by virtue of matters personal to him, for example, mental infirmity, ill health, or by virtue of the proof of other matters which established that the executor was not a fit and proper person to carry out the duties he had sworn to perform.”

[47] The burden which lies on the plaintiff to prove the defendant's unfitness for office is an onerous one. A finding that the defendant is unfit is a finding not to be made lightly.

---

<sup>12</sup> *Mavrideros v Mack* (1998) 45 NSWLR 80 at 108.

[48] I am satisfied in the present case that the defendant's conduct in immediately paying to himself and his entities the entire cash assets of the estate in ignorance of his statutory duties and without reference to the interests of creditors of the estate known or unknown or of others possibly interested in the estate constituted a serious dereliction of duty which demonstrates unfitness for office and that this in combination with the manifest antagonism he displays towards the successful plaintiff renders it proper that the future administration of the estate of the deceased be in the hands of a neutral party, such as the Public Trustee. The fact is, the administration of the estate of the deceased by the defendant has not been "due and proper".

[49] There will be judgement for the plaintiff, and subject to any further submissions of counsel, with orders of the Court as follows:

(1) Declare

- (a) that the plaintiff and Robert David Walters deceased at the time of the death of the deceased and for a continuous period of more than two years prior to his death were in a de facto relationship within the meaning of s 3A(1) *De Facto Relationships Act* (NT);
- (b) that the plaintiff as a de facto partner of the deceased is entitled to a distribution from the estate of the deceased in accordance with s 66 *Administration and Probate Act* (NT).

- (2) Order that the grant of Letters of Administration of the estate of the deceased by this Honourable Court to the defendant on 22 April 2008 be revoked.
- (3) Order that the defendant do forthwith deposit the said Letters of Administration in the Registry of this Honourable Court.
- (4) Order that the administration of the estate of the deceased be granted to Public Trustee.
- (5) Order that the defendant do within 7 days account to Public Trustee as administrator of the estate of the deceased for all monies of the deceased got in or dealt with by the defendant and pay or cause to be paid to Public Trustee as administrator of the estate of the deceased all monies transferred by the defendant from the estate of the deceased together with interest thereon from date of transfer to date of payment at the rate of eight per cent per annum.
- (6) Order that the plaintiff's costs of and incidental to these proceedings be allowed out of the estate of the deceased on a solicitor-client basis.
- (7) Order that the defendant bear his own costs of and incidental to his administration of the estate of the deceased and of these proceedings.

-----