

SUPREME COURT OF QUEENSLAND

CITATION: *Re: Yu* [2013] QSC 322

PARTIES: **JASON YU**
(applicant)
KARTER YU
(deceased)

FILE NO/S: BS10313 of 2013

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: Delivered *ex tempore* on 6 November 2013

DELIVERED AT: Brisbane

HEARING DATE: 6 November 2013

JUDGE: Peter Lyons J

ORDER: **I make an order in terms of the draft.**

CATCHWORDS: SUCCESSION – MAKING OF A WILL – EXECUTION – INFORMAL DOCUMENT INTENDED TO BE WILL – MEANING OF “DOCUMENT” – where the deceased took his own life – where shortly before he died he created a series of documents on his iPhone – where an application has been made for a declaration that the electronic document is the Will of the deceased and that it be admitted to probate – whether something created and stored on an iPhone is a “document” for the purposes of s 18 of the *Succession Act* 1981 (Qld)

SUCCESSION – MAKING OF A WILL – EXECUTION – INFORMAL DOCUMENT INTENDED TO BE WILL – GENERALLY – where the document commenced with the words “This is the last Will and Testament...” of the deceased – where the document dealt with the whole of the deceased’s property – where the document demonstrated an intention to appoint Mr Jason Yu as the executor under the document – where the document authorised the executor to deal with the deceased’s affairs in the event of his death – whether the document purports to state the testamentary intentions of the testator – whether the deceased intended the document to form his Will

Acts Interpretation Act 1954 (Qld) s 36
Succession Act 1981 (Qld) s 5, s 10, s 18

Macey v Finch [2002] NSWSC 933

Oreski v Ikac [2008] WASCA 220

Proctor v Klauke [2011] QSC 425

The Estate of Masters, Hill v Plummer (1994) 33 NSWLR 446

SOLICITORS: Bennett & Philp for the applicant

- [1] **PETER LYONS J:** Karter Yu died on 2 September, 2011. He took his own life. Shortly before he died he created a series of documents on his iPhone, most of them final farewells. One was expressed to be his last Will. An application has been made for a declaration that the electronic document which I have just mentioned, and which is exhibit JY2 to the affidavit of Jason Yu, is the Will of the deceased, and that it be admitted to probate, and that probate be granted to Mr Jason Yu.
- [2] Section 10 of the *Succession Act 1981 (Qld)*, identifies requirements for the execution of a valid Will in Queensland. However, section 18 of that Act provides that if the Court is satisfied that a person intended a document to form the person's Will, then the document forms a Will if it purports to state the testamentary intentions of the deceased person.
- [3] It has been said on more than one occasion that where a document does not satisfy section 10 there are three conditions to be satisfied before an order might be made under section 18. See *Macey v Finch* [2002] NSWSC 933 at [10], *Proctor v Klauke* [2011] QSC 425 at [35].
- [4] The first condition is the existence of a document. In the present case, what is relied upon is something created and stored on an iPhone. Section 5 of the *Succession Act* defines a document for the purposes of section 18 of the Act, specifically, as something so defined in section 36 of the *Acts Interpretation Act 1954 (Qld)*. Section 36 of the *Acts Interpretation Act* defines a document to include any disc, tape or other article, or any material from which writings are capable of being produced or reproduced, with or without the aid of another article or device.
- [5] In *Alan Yazbek v Ghosn Yazbek & Anor* [2012] NSWSC 594, Slattery J held that a Microsoft Word document created on a laptop computer was a document for the purposes of New South Wales legislation substantially similar to that which I am asked to consider in the present case. Both by reference to his Honour's judgment, in which he cited a number of authorities (see paragraphs 79 – 81) and by reference, similarly, to the language of the definition in section 36 of the *Acts Interpretation Act*, I am satisfied that the record on the iPhone of the document, which I have mentioned a short time ago, is a document for the purposes of section 18 of the *Succession Act*.
- [6] The second condition is whether the document purports to state the testamentary intentions of the deceased. Testamentary intentions are intentions about what is to be done with a person's property upon that person's death: see *The Estate of Masters, Hill v Plummer* (1994) 33 NSWLR 446, cited in *Proctor* at [37].

- [7] An examination of the document makes it absolutely plain that it set out the testamentary intentions of the deceased. It dealt with the whole of the deceased's property, and provided for its distribution at a time when the deceased was plainly contemplating his imminent death. Ordinarily, a person does not attempt to dispose of the whole of the person's property except upon the person's death. That, and the fact that the document demonstrated an intention to appoint Mr Jason Yu as the executor under the document, as well as nominating an alternative; and the fact that the document authorised the executor to deal with the deceased's affairs in the event of his death, confirm the general impression which I obtained from the document as to its stating the testamentary intentions of the deceased.
- [8] The third condition is whether the deceased intended the document to form his Will. A will has been described as a revocable disposition of property intended to take effect on death: see *Lee's Manual of Queensland Succession Law* (Thomson Lawbook Co, 6th ed, 2007), para 2.10; see also *Oreski v Ikac* [2008] WASCA 220 at [55], cited in *Proctor* at [42]. As was pointed out in *Oreski*, it is not sufficient that a document state a deceased person's testamentary wishes. To satisfy the requirements of section 18 of the *Succession Act*, it must also be intended to be legally operative so as to dispose of the person's property upon the person's death: see in particular *Proctor* at [41].
- [9] The document for which probate is sought, in my view, plainly satisfies that requirement. The document commenced with the words, "This is the last Will and Testament..." of the deceased, who was then formally identified, together with a reference to his address. The appointment of an executor, again, reflects an intention that the document be operative. The deceased typed his name at the end of the document in a place where on a paper document a signature would appear, followed by the date, and a repetition of his address. All of that, it seems to me, demonstrated an intention that the document be operative. Again, the instructions contained in the document, as well as the dispositions which appear in it, all evidence an intention that it be operative on the deceased's death. In particular, the circumstance that the document was created shortly after a number of final farewell notes, and in contemplation of the deceased's imminent death, and the fact that it gave instructions about the distribution of his property, all confirm an intention that the document be operative on his death. I am therefore satisfied that the deceased intended the document which he created on his iPhone to form his Will. I am prepared to make the orders sought.
- [10] Mr Young. I have inserted my name, including my first name at the top of the draft order, and initialled it. I make an order in terms of the draft.