

# SUPREME COURT OF QUEENSLAND

CITATION: *Helg v Sergiacomi & another (No 2)* [2011] QSC 349

PARTIES: **ROSINA MARIA HELG**

Applicant

**And**

**ROBERT SALVATORE SERGIACOMI**

First Respondent

**PETER GERARD SERGIACOMI**

Second Respondent

FILE NO/S: S491/11

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court Rockhampton

DELIVERED ON: 23 November 2011

DELIVERED AT: Rockhampton

HEARING DATE: 21 November 2011

JUDGE: McMeekin J

ORDERS:

- 1. The application is dismissed**
- 2. The applicant is ordered to pay the costs of the respondents on the standard basis but excluding the costs incurred in the second day's hearing.**

CATCHWORDS: SUCCESSION – EXECUTORS AND ADMINISTRATORS – Proceedings against executors and administrators – where applicant seeks filing and passing of accounts – where complaints made pertaining to the administration of the estate and the performance of duties as executors – whether evidence sufficient to merit intervention

*Helg v Sergiacomi & Anor* [2011] QSC 322

COUNSEL: Applicant in person

A. Arnold for the respondents

SOLICITORS: Applicant in person

Finemore Walters & Story for the respondents

- [1] **MCMEEKIN J:** These reasons are intended to be read as supplementary to the reasons given in these proceedings reported as [2011] QSC 322. The application relates to the conduct of the respondents in their role as executors of their deceased father's estate. The applicant is self represented.
- [2] Following a hearing on 24 October 2011 I directed that the respondents file and serve such further affidavits as they might be advised concerning:
- (a) the withdrawals from the account number 3876-27157 held at the ANZ bank in the deceased's name between 11 August 2006 and 18 August 2006; and
  - (b) the matters raised in paragraphs 59 and 61 of the applicant's affidavit filed 11 October 2011.
- [3] The executors have filed a further affidavit as directed and Mr Peter Sergiacomi has given oral evidence at the adjourned hearing.
- [4] The first matter on which I sought further evidence related to the passing of cheques on the deceased's account following his death. As I had supposed the evidence provided by the executors is to the effect that the cheques were drawn by the deceased and presented following his death. Mr Peter Sergiacomi has explained the transactions in which he was involved. There is no evidence of any impropriety by the respondents in their conduct as executors and the documentary evidence tendered supports his claims.
- [5] As to the second matter I sought further clarification concerning the executors' handling of income from a shopping centre business. The applicant raised concerns about the failure to open accounts in a timely way and a consequent inability to account for monies received.
- [6] Again the executors have explained their actions. They assert, and the contrary is not shown, that the income received from tenants in the shopping centre has been distributed in accordance with each beneficiary's entitlements. The applicant has not attempted to demonstrate by way of evidence that the executor's claims are inaccurate or wrong.
- [7] The applicant has taken advantage of the adjourned hearing to place further evidence before me. The only relevant paragraph of the applicant's affidavit is the

final one in which she asserts, without any effort at demonstrating the truth of her assertion, that the respondents have “not performed their duties in the interests of the beneficiaries but have abused their position as executors”. In the absence of some demonstration by way of evidence it would be inappropriate to order the taking of accounts as the applicant seeks.

- [8] The bulk of the applicant’s affidavit deals with her complaints about the conduct of her brothers in relation to the family transaction in which she gave up her entitlement under the Will to the company Multifield Pty Ltd. As I pointed out in the reasons at [11] and [35] this application is an inappropriate vehicle to agitate those concerns.
- [9] The balance of the applicant’s affidavit deals with the conduct of the respondents before the deceased’s death. Her affidavit is relevant to her allegations that they have exercised undue influence or otherwise acted inappropriately during the deceased’s lifetime in the use of a Power of Attorney granted to them by the deceased. Again these are not matters properly agitated in this application which concerns the respondents’ conduct as executors.
- [10] The application is dismissed. While it is appropriate that the respondents be protected as to costs those costs should be limited to only one day’s hearing and not two. If it had been properly prepared, the application could have been disposed of on the first day.