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10th Annual Wills and Estates Conference

THURSDAY 5 SEPTEMBER 2024

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Independent Administrators

APPOINTMENT, DUTIES, RESPONSIBILITIES & RISKS

TAMARA GOODWIN – GLASS GOODWIN SOLICITORS

5 SEPTEMBER 2024

What is an Independent Administrator?

- A person appointed by the Court to manage and administer an estate.
- Usually a solicitor experienced in estate law.
- NSW Law Society – List of Independent Administrators.
- Interim or final basis.
- Limited to the jurisdiction in which the appointment is made.



What are the benefits in appointing an Independent Administrator?

- Specialised knowledge and experience.
- Objectivity.
- Efficiency.
- Savings in costs, time & court resources.



In what circumstances are Independent Administrators appointed?

- Most often when there is a dispute involving:
 - The validity of a Will
 - Fighting executors
 - Inactive executor/s
 - Absence of an appropriate defendant



Types of Appointments – Interim

- Interim Basis
 - Grant of administration *pendente lite*
 - S 23 of Administration & Probate Act 1928 (ACT)
 - S 73 of Probate & Administration Act 1898 (NSW)
 - Ritossa v. Ritossa [2022] NSWSC 1083
 - Discretionary matter for the Court.
 - Must advance the due & proper administration of the estate.
 - But no need for the estate to be in jeopardy.



Form of Orders (In the Estate of Cervo [2023] ACTSC 283)

- 48. I order that:

(1) Subject to further orders of this Court, Tamara Jayne Goodwin be appointed as:

- (a) administrator *pendente lite* of the personal estate; and
- (b) receiver of the real estate

of the late Renato Antonio ← **Cervo** → late of 8 Wickham Crescent, Red Hill in the Australian Capital Territory

(2) Tamara Jayne Goodwin shall have the following powers:

(a) general powers:

- (i) in the name, and on behalf, of the estate of the deceased, to receive and give a discharge for all money and property to which the estate of the deceased is, or may become, entitled;
- (ii) to do all such acts and things to execute for and on behalf of the estate of the deceased any and all documents relating to the estate's property;
- (iii) to take custody of all papers and documents belonging to the estate of the deceased; and
- (iv) to furnish all necessary income tax, land tax and other returns;

Usual Orders re Charging & Liberty to Apply

(3) Tamara Jayne Goodwin shall be entitled:

(a) to make and be paid from the estate all usual and proper charges at the usual hourly rates charged by the legal practice in which she is engaged and on the usual terms as to payment of that practice:

(i) for her work as administrator or trustee of the estate, or both;

(ii) for the professional and non-professional services rendered by her or that legal practice in the administration of the estate of the deceased or the trusts of the will, or both; and

(b) to engage the services of any other legal practitioner, accountant or other professional adviser in relation to the administration of the estate where she considers it necessary to do so and to pay from the estate the costs incurred in having those services provided.

(4) Tamara Jayne Goodwin, Angelo Didio, the caveator and the beneficiaries of the deceased's estate have liberty to apply to the Court on 7 days' notice.

Differences in Procedure (Interim Appointments)

- New South Wales
 - Administrator can act on sealed copy of the orders. No grant issued.
- ACT
 - Administrator can only act on grant.



Types of Appointments - Final

- Final Basis
 - By order of the Court.
 - By consent of the relevant parties.
 - S 24 of Administration & Probate Act 1929 (ACT) – General power.
 - S 74 of Probate & Administration Act 1898 (NSW) – General power.
 - S 12 of Administration & Probate Act 1929 (ACT) – Intestate Estates
 - S 63 of Probate & Administration Act 1898 (NSW) – Intestate Estate
 - If testate estate, Grant of Letters of Administration with the Will Annexed.
 - If intestate estate, Grant of Letters of Administration.
 - If by Court order, probate requisitions are issued.
 - If by consent of the parties, application done in usual way.



Form of Orders

1. Notes that the parties to the proceedings consent to an independent administrator being appointed to administer the estate of X (“the deceased”).
2. Notes that the parties agree that there are special circumstances, namely that it is in the best interests of the administration of the estate, for an independent administrator to be appointed.
3. Notes that the parties to the proceedings consent to Ms Tamara Goodwin, solicitor, of Glass Goodwin Solicitors (“Ms Goodwin”), being appointed as the independent administrator.
4. Notes the consent of Ms Goodwin to being appointed as the independent administrator.
5. Orders subject to compliance with the Probate rules of Court that Letters of Administration with the Will dated 7 February 2019 of the deceased annexed be granted to Ms Goodwin.
6. Orders that the matter be remitted to the Senior Deputy Registrar in Probate to complete the grant.

Duties & Responsibilities

- Identify, gather & take control of all assets
- Settle debts
- Comply with tax obligations
- Handle claims or demands on the estate
- Pay legacies & make distributions
- Maintain proper records
- Communicate & account to beneficiaries



When Things Get Complicated

- Judicial Advice.
 - S 63 of Trustee Act 1925 (NSW) & (ACT)
 - “A trustee may apply to the Court for an opinion advice or direction on any question respecting the management or administration of the trust property, or respecting the interpretation of the trust document.”
- Other applications.



When Things Get Complicated.....

- Re Estate of Ahmed Abou-Khalid [2024] NSWSC 253
 - “...pay debts, funeral and testamentary expenses, death, estate duties and Zakat payments.”
 - Question – Would I be justified in distributing the estate without applying any part of the estate towards the payment of Zakat?



Estate of Ahmed Abou-Khalid

- “Zakat, in Australia, is taken to be a voluntary payment of money by an observant Muslim during his or her lifetime.”
- No single organisation that accepts Zakat payments.
- No set rate for Zakat payments.
- Payments are voluntary.
- No obligation on administrator to pay Zakat as it is a personal commitment made by a living person.
- Administrator could distribute the estate without paying Zakat.



When Things Get Complicated.....

- In the Estate of Margaret Anne Cervo (administrator pendente lite appointed) [2024] ACTSC 253
 - Access to prior records of the deceased, specifically the files of former solicitor, to advance estate administration.
 - Question – Would I be justified in taking steps to compel production of a number of solicitor’s files and associated documents.



In the Estate of Margaret Anne Cervo

- Helpful analysis of the judicial advice process.
- Discussion of whether lien could be asserted.
- Administrator was justified in taking steps against the solicitor to compel production of the deceased's files.



When Things Get Complicated.....

- The Estate of Lorenzo Antonio Pastrello [2024] NSWSC 734
 - Deceased was the sole shareholder in a company that ran a pub business.
 - Deceased's son was licensee.
 - Cash deficiencies in pub business.
 - S 67 of Supreme Court Act 1970 – Court may appoint a receiver by interlocutory order.
 - Receivers were appointed.



Personal Liability and other issues

- Personal liability & the Role of Lawcover
- Directorship Appointments
- Personal funding of disbursements prior to a grant
- Delay in payment of costs and disbursements until realisation of assets.



The image features a dark gray background with a faint, starry sky pattern of small black dots. Overlaid on this is a complex network diagram. The network consists of numerous nodes, represented by colored circles in shades of red, green, cyan, and black. These nodes are interconnected by a dense web of thin, dark gray lines representing edges. The network structure is intricate, with many nodes having multiple connections, creating a highly interconnected web. The text "Any questions?" is centered in the middle of the image in a white, serif font.

Any questions?



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