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**UNDER** the Insolvency Act 1976

**IN THE MATTER** of the Independent Manager appointed in  
respect of Wilbour Terrence Rawleigh and  
Beverley Margaret Rawleigh

**BETWEEN** **D R PETTERSON**

**Applicant**

**AND** **W T RAWLEIGH and B F RAWLEIGH**

**Respondents**

**Date of Hearing:** 15 November 2001

**Counsel:** D J Friar and K F Quinn for Applicant  
N Levy and J L Williams for Respondents

**Judgment:** 28 November 2001

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**JUDGMENT OF MASTER J C A THOMSON**

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[1] This application is brought to determine the ownership of three pictures. The Independent Manager appointed considers that they should be declared by the Court to be owned by Wilbour Terrence Rawleigh (Terry). As stated in the application and as submitted by his counsel, he asked the Court to infer ownership basically from three facts:

[a] Terry has been in possession of the paintings since 1975.

[b] In June 1997 he claimed ownership of the paintings.

[c] Given that Terry's mother, Ruby Rawleigh, died in 1991 and probate of her estate was granted in 1996, it stretches credibility to suggest that the estate has not yet been distributed.

[2] Before me Terry and Brent Rawleigh were cross-examined on their affidavits. The three paintings the Court is concerned with are:

[a] "The Anna Rupea Maori painting"

[b] A cattle scene with gold plaster cast frame by an American artist.

[c] A 16th Century Flemish painting by House of Nicholas (unsigned).

[3] There is no dispute that the paintings were owned originally by Ruby Rawleigh, probably jointly with her husband. They were the parents of Terry. The Anna Rupea painting was bought in 1954 by Terry's parents in Wellington, and the other two paintings were given them by W T Rawleigh, the founder of the Rawleigh Company, when they were in America. Beverley Rawleigh's (Terry's wife) evidence is that the paintings were given to Terry and herself. She claims in her first affidavit that they were given to them by Terry's mother and father in 1975. In her second affidavit she says they were given in 1979. Other members of the Rawleigh family, however, have sworn affidavits to the effect that after Ruby left New Zealand in 1987 she left the Anna Rupea with Thora Appleyard for safekeeping and the other two paintings, the family say, had been placed with Heidi Rawleigh in 1986. She is the daughter of Terry who it is claimed ultimately finished up in possession of them.

[4] As I have said, the Independent Manager (who properly takes a neutral stance on the ownership of the paintings) directs attention to the fact that in June 1997 Terry Rawleigh completed a Statement of Financial Position to the ANZ Bank claiming to own artwork (which included the three paintings) valued at one million dollars. He gave a copy of that statement to IBM Global Financing NZ Limited.

[5] In his affidavit and in cross-examination, Terry Rawleigh admits such statements were untrue, indeed lies.

[6] The evidence of Brent Rawleigh, the other son of Ruby, is that she died in April 1991. Terry and he were appointed executors of her will. Her will left a \$1,000 legacy to each of her grandchildren and a ring to each of her daughters. The residue of the estate was left to her children equally. There was initially no need to probate the will because no duties were payable. Probate was finally obtained in 1996. That was because repayment of a loan, which had been made by Ruby in her lifetime to a trust company, could not be repaid immediately on her death because the trust company concerned was then in financial difficulty. A lesser sum than lent was finally paid out some years later. Probate was necessary to obtain that payment.

[7] An important matter is that just prior to Ruby's death a valuation of the paintings was sought. Before then the family were under the impression that they were of very considerable value. The valuation, however, placed a value on them, in total, of only \$20,000. Before me Brent Rawleigh gave evidence that after the death of Ruby, the family had a meeting and agreed how the estate was to be distributed. Brent Rawleigh's evidence is that an equitable distribution was agreed which involved transferring property to the two sisters and forgiving loans that Ruby had made to Terry and Brent in her lifetime. Brent's evidence is that he was to receive the paintings as part of his share of the estate. He says he has done nothing about selling them since his mother died because during the nineties, unlike the eighties, the art market has been generally depressed. Brent said the arrangement agreed by the family was that if and when he sold the paintings, and if they happened to fetch a much higher figure than was used when distributing the estate, there would have to be a further adjustment made by way of a further payment to the family, who he said was a close knit one.

[8] It seems to me there are four possibilities on the evidence as to the present ownership of the paintings:

[a] That ownership remained with Ruby during her lifetime (after her husband died) and thus on her death became part of her estate.

[b] That the paintings were given to Terry or to Terry and Beverley Rawleigh jointly in 1979.

[c] That they now belong to Brent Rawleigh pursuant to the family agreement reached after Ruby's death.

[9] Terry Rawleigh and other family members hotly dispute the claim by Barbara Rawleigh that they were given to Terry and Barbara in 1979. There is an acrimonious on-going matrimonial dispute between Beverley and Terry, as yet unresolved. Given that at the time the alleged gift was made, as asserted by Beverley, the paintings were believed by all the family to be very valuable, I find her evidence difficult to accept, particularly in the light of the other affidavits filed by family members and in particular the evidence of Thora Appleyard, that when Ruby went to Australia she gave the Maori painting to her in Hawera and that she returned it to Terry after Ruby had died. Also given that loans to her sons were documented, one would have thought that the gift of the paintings, thought during Ruby's lifetime to be very valuable, would also have been documented. There is the further point that Beverley appears not to be sure whether the alleged gift was made in 1975 or 1979. Also there is no explanation as to why they should have been given to Terry and Beverley jointly and not to Terry alone.

[10] There is also the evidence of Heidi Rawleigh, that the American and Flemish paintings were lent to her by Ruby when she moved into a property at Sunny Glen, Waikanae, which was in 1986. That evidence is quite at odds with Beverley Rawleigh's.

[11] As to reliance on Terry Rawleigh's Statement of Assets supplied to the ANZ Bank and IBM, Terry Rawleigh admits that he was wrong to include his mother's paintings in that Statement of Assets but he strongly denies in his affidavit (as he did during cross-examination) that the paintings were ever given to him.


[12] Given, then, the evidence of members of the family that the paintings were left with family members on loan after Ruby went to Australia, I conclude that there is not sufficient evidence for me to conclude that the paintings were ever gifted to Terry, or to Terry and Beverley Rawleigh jointly, during Ruby's lifetime. I think the fact that the family, just prior to Ruby's death, sought valuations lends some support to that conclusion. It seems to me valuations were probably sought at that time

because the family would want to know whether the paintings were valuable or not, as that would have a bearing on how the family would ultimately agree as to how the estate should be distributed after Ruby's death, and who should get what.

[13] Finally, I think Brent has reasonably explained the fact that he has not yet taken action to sell the paintings. Certainly the fact that to date he has taken no action to at least take possession of them since Ruby's death raises some doubts, but I do not think such a situation is all that unusual in a family context. Elderly parents moving into a smaller house often give furniture and paintings to members of their family, because they have no place to put them without an agreement being made as to what should ultimately happen to them.

[14] I declare therefore that at Ruby's death, the three paintings became part of her estate and that they were not gifted to Terry, or to Terry and Beverley Rawleigh jointly, and are therefore not an asset in their estates. Counsel were agreed such a finding is sufficient for the purposes of this application. Costs reserved.

DELIVERED at 2 a.m./p.m. on the 28<sup>th</sup> day of November 2001.

  
Master J C A Thomson

**Solicitors:** KPMG Legal, Wellington for Applicant  
Sladden Cochrane, Wellington for Respondents