

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2017-404-960
[2017] NZHC 1928**

UNDER section 21 of the Administration Act 1969,
and the High Court's inherent supervisory
jurisdiction in relation to trusts

IN THE MATTER of the Estate of Thomas James Sprott,
probate of which was granted under CIV-
2014-484-8127 on 30 June 2014; the
Estate of Ethel Marion Sprott, probate of
which was granted under CIV-2014-484-
8126 on 30 June 2014, and the Sprott
Family Trust and the Rodleigh Family
Trust

BETWEEN LINDSAY ANNE HOEBERECHTS (NEE
SPROTT)
Plaintiff

AND ADRIAN JAMES SPROTT AND
RICHARD JOHN NOWACKI
Defendants

Hearing: 31 July 2017

Appearances: V Bruton QC and P Brown for the Plaintiff
TJG Allan for the Defendants

Judgment: 14 August 2017

JUDGMENT OF WOODHOUSE J

*This judgment was delivered by me on 14 August 2018 at 3:30 p.m.
pursuant to r 11.5 of the High Court Rules 2016.*

Registrar/Deputy Registrar

.....

Counsel/Solicitors:
Ms V Bruton QC, Barrister, Auckland
Ms P Brown (plaintiff's instructing solicitor), Solicitors, Auckland
Mr TJG Allan and Mr S F Powrie, Grove Darlow & Partners, Solicitors, Auckland

[1] The plaintiff, as a beneficiary under the wills of her parents, has brought an interlocutory application to remove the defendants as executors of the wills.

[2] The application is opposed by the defendants and Alison Sprott, a beneficiary, although the defendant Richard Nowacki says that he wishes to retire for personal reasons unrelated to the plaintiff's contentions.

[3] The plaintiff seeks further orders: (1) appointing an Auckland solicitor, William Patterson, as administrator of the estates; (2) for delivery to Mr Patterson of the assets of the estates; (3) to provide inventories and an account of receipts and disbursements for both estates; and (4) to provide information relating to two inter vivos trusts established by the parents – the Sprott Family Trust and the Rodleigh Family Trust. These orders are also opposed by the defendants and Alison Sprott.

Background

[4] The application relates to the estates of Ethel Marion Sprott, who died in 2008, and her husband Thomas James Sprott, who died on 15 April 2014. Mr and Mrs Sprott had three children, all of whom are beneficiaries: the plaintiff Lindsay Hoeberechts, the defendant Adrian Sprott, and Alison Sprott. The application for removal is directed in substance to alleged acts and omissions of Adrian Sprott.

[5] The parties, in their affidavits and submissions, referred to the testators and to each other using given names. I will refer to the testators as Marion Sprott and Jim Sprott. I will refer to the three beneficiaries as Lindsay (the plaintiff), Adrian (the defendant executor), and Alison. I will refer to the second executor as Richard. Richard is a family friend of the Sprotts.

[6] The relevant terms of Marion Sprott's will, and two codicils, are:

- (a) She gave all of her real estate to her husband if he survived her by 14 days, as he did. The real estate was a half interest in a residential property which I will refer to as Combes Road. The other half interest was held by her husband.

- (b) She gave specified paintings, jewellery and other chattels to each of her children. These included a gift to Lindsay of an historic painting by Alfred Sharpe. The trustees were directed to deliver the specified items to each beneficiary and declared that the costs of delivery were to be a charge on the residuary estate. Lindsay at all material times lived in Vancouver in Canada.
- (c) Marion Sprott gave her husband a life interest in the remainder of her chattels and, on Jim Sprott's death, a number of specified chattels were given to each of the children, including a painting by Aston Greathead which was given to Lindsay.
- (d) The residue was given to Jim Sprott.

[7] Under Jim Sprott's will, and two codicils, and given the fact that he survived his wife, Combes Road is to be sold and the proceeds, together with the rest of his estate after payment of debts and usual expenses, is to be divided equally between the three children.

[8] Probate of both wills and their codicils was granted on 8 July 2014. Neither estate has been wound up.

[9] In response to Lindsay's application for an order to produce inventories and accounts, inventories and accounts have been produced and verified by an affidavit of Adrian.

[10] There are detailed inventories of chattels of both estates, and no material issue was taken in respect of these inventories.

[11] The most recent accounts for both estates are for the year ended 31 March 2017. All of the accounts are detailed.

[12] As at 31 March 2017 the assets of Marion Sprott's estate consist of chattels only, valued at \$298,000. There are no liabilities.

[13] As at 31 March 2017 the assets of Jim Sprott's estate were valued at approximately \$4.49 million. There is one substantial liability, a loan of Canadian \$449,920, which is recorded in the accounts at NZ\$482,332.76. This is an interest free loan repayable on the winding up of Jim Sprott's estate. The net value of Jim Sprott's estate is assessed at just over \$4 million.

[14] The principal asset of Jim Sprott's estate is Combes Road. Adrian produced valuations, from a registered valuer, of Combes Road as at 14 April 2014, the date of Jim's death, and at 31 March 2015, 2016, and 2017. The valuation at 14 April 2014 is \$2.75 million. The valuation at 31 March 2017 is \$4.4 million.

[15] There is a body of evidence from Adrian of steps he took as an executor, with the support of Richard, to seek to increase the value of Combes Road. The first significant step was to remove a very large oak tree when it became legal to do so following an amendment to the Resource Management Act. Removal was a major exercise which took approximately seven months. The tree was fully removed by May 2016. The executors subsequently took steps to seek consent for subdivision of the section following ratification of the Auckland Unitary Plan in August 2016. The Unitary Plan came into force in November 2016. In June 2017 Auckland Council issued a "Pre-Application Consenting Memo" for a 4 lot subdivision of Combes Road. The valuation of Combes Road at 31 March 2017 took account of the changes resulting from the Auckland Council Unitary Plan and a subdivision feasibility report which had been obtained by the executors. It also took account of the fact that the oak tree had been removed, with the adverse effects on value of it having been noted in the valuation reports as at April 2014 and March 2015.

[16] Some of the increase in the value of Combes Road between April 2014 and March 2017 is likely to have resulted from the buoyant Auckland residential property market. But I am satisfied that another part of the increase, and perhaps a reasonably substantial part, is attributable to the steps taken by the executors, on the initiative and through direct effort of Adrian, to seek to enhance the value. I am also satisfied, on the evidence presently available, that the steps they took were prudent and appropriate steps for executors of the estate to take.

The grounds for the interlocutory orders sought

[17] Lindsay's counsel, Ms Bruton QC, in her written submissions, summarised the grounds for the orders sought as follows:

It is submitted that there are seven areas where the defendants have breached their duties:

- (a) The failure to gather in the assets and transfer them to their names as executors.
- (b) The failure to sell Combes Road within a reasonable time, acting in good faith, honestly and with due diligence. It is submitted that here the defendants have not acted even-handedly between all the beneficiaries, and are improperly acceding to the desires of Alison and Adrian.
- (c) The occupancy of Combes Road by Adrian and Alison and T J Sprott Limited for their personal benefit and without accounting for rent.
- (d) The failure to provide the Alfred Sharpe painting and remaining chattels to Lindsay in accordance with the directions in the will, when Alison was given the Frances Hodgkins painting bequeathed to her by Marion before the grant of probate and now has possession of the Alfred Sharpe painting without Lindsay's consent. It is submitted that again the defendants have not acted even-handedly between all the beneficiaries.
- (e) The failure to dispose of the Mercedes, as a wasting asset.
- (f) The failure to provide Lindsay with information to which she is entitled as a beneficiary.
- (g) The failure to keep and provide accounts and an inventory.

[18] It was also submitted that Adrian had shown hostility towards Lindsay, as had Alison who was said to have sided with Adrian.

[19] Not all of these matters were, in the end, advanced as grounds for removal on the interlocutory application. It is nevertheless relevant to note all of the grounds originally advanced because the fact that some of those grounds for complaint have been withdrawn at this stage is relevant in the assessment of the grounds that remain. This applies, in particular, to the original complaint of a failure to sell Combes Road and an alleged lack of even-handedness in that regard. This was the matter that had been given most emphasis in the written submissions and, from the affidavits, were seemingly central to Lindsay's concerns. Ms Bruton, in her oral submissions in

reply, advised that it was accepted that this ground could not be established on this interlocutory application. Lindsay's position in respect of this issue, and others not pursued on the interlocutory application, was reserved in relation to the substantive proceeding, the nature of which is noted later.

[20] The other original grounds not in the end pursued on this application are those relating to alleged use of Combes Road by Adrian and Alison, and the failure to keep and provide accounts and an inventory.

The law and principles

[21] The application is made under s 21(1) of the Administration Act 1969 which relevantly provides:

21 Discharge or removal of administrator

- (1) ... where it becomes expedient to discharge or remove an administrator, the court may discharge or remove that administrator, and may if it thinks fit appoint any person to be administrator in his or her place, on such terms and conditions in all respects as the court thinks fit.

[22] The principles were recently summarised by the Court of Appeal in *Frickleton v Frickleton*.¹ The Court said:

[29] Late last year, in *Tod v Tod*, this Court endorsed the following statement, from the judgment of Heath J in *Faruqhar v Nunns*, of the principles that should guide a court in dealing with an application under s 21 to remove an administrator:²

- “(a) The starting point is the Court's duty to see estates properly administered and trusts properly executed.
- (b) This jurisdiction involves a large discretion which is heavily fact-dependent.
- (c) The wishes of the testator/settlor (evidenced by the appointment of a particular executor or trustee) are to be given consideration, but ultimately the question is as to what is expedient in the interests of the beneficiaries.

¹ *Frickleton v Frickleton* [2016] NZCA 408, [2017] 2 NZLR 154.

² *Tod v Tod* [2015] NZCA 501 at [22], citing *Faruqhar v Nunns* [2013] NZHC 1670 at [13] (footnotes omitted).

- (d) Expedience is a lower threshold than necessity, and imports considerations of suitability, practicality and efficiency. Misconduct, breach of trust, dishonesty, or unfitness need not be established.
- (e) Hostility as between administrators/trustees and beneficiaries is not of itself a reason for removal, but hostility will assume relevance if and when it risks prejudicing the interests of the beneficiaries.”

[30] Heath J's summary in *Farquhar v Nunns*, in turn, drew heavily upon the excellent distillation of principles by Associate Judge Osborne in *Crick v McIlraith*.³ The *Crick* summary was subsequently followed in at least seven other High Court decisions.⁴

[31] In *Crick*, Associate Judge Osborne also emphasised the importance of the testator or settlor's selection of trustee. He stated:⁵

“In relation to any application for any removal the Court must retain due respects for the wishes and indeed the autonomy of a testatrix.

...

The testator's selection of executor should not lightly be set aside.”

[32] This Court's decision in *Tod v Tod* also endorsed those statements, the Court observing: “The courts will not readily replace an executor selected by a deceased to manage his or her estate.”⁶

[33] However, the interests of the beneficiaries must always be the focus. As it was put by the Privy Council over 100 years ago in *Letterstedt v Broers*:⁷

“... if [the Court is] satisfied that the continuance of the trustee would prevent the trusts being properly executed, the trustee might be removed. It must always be borne in mind that trustees exist for the benefit of those to whom the creator of the trust has given the trust estate.”

[34] Thomas J, in the judgment under appeal, also referred to *Letterstedt v Broers*, citing the following passage:⁸

³ *Crick v McIlraith* [2012] NZHC 1290 at [16].

⁴ *Harsant v Menzies* [2012] NZHC 3390 at [57]; *Bupa Care Services NZ Ltd v Gillibrand* [2013] NZHC 2086, [2013] 3 NZLR 701 at [19]; *Coote v Warren* [2013] NZHC 3210 at [11]; *Baird v Fisher* [2014] NZHC 1347 at [6]; *Allen v Morgan* [2015] NZHC 1139 at [18]; *Boyd v Connolly* [2015] NZHC 2884; and *Carter v Caldis* [2015] NZHC 2996 at [54]. Another case, *Nawisielski v Nawisielski* [2014] NZHC 1547, does not refer to *Crick v McIlraith* but adopts largely the same principles from the other cases in this footnote.

⁵ *Crick v McIlraith*, above n 3, at [19]-[20].

⁶ *Tod v Tod*, above n 2, at [27(a)], citing *Crick v McIlraith*, above n 3, at [19]; *Farquhar v Nunns*, above n 2, at [13(c)]; and *Hinde v Cranwell* [2012] NZHC 63 at [27].

⁷ *Letterstedt v Broers* (1884) 9 App Cas 371 (PC) at 386 per Lord Blackburn, delivering the Privy Council's opinion. Cited with approval by this Court in *Hunter v Hunter* [1938] NZLR 520 (CA) at 529 and 530-531 per Myers CJ and at 552-553 per Callan J.

⁸ *Frickleton v Frickleton* [2016] NZHC 389 at [21], citing *Letterstedt v Broers*, above n 7, at 387.

“In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries. Probably it is not possible to lay down any more definite rule in a matter so essentially dependent on details often of great nicety. But they proceed to look carefully into the circumstances of the case.”

[35] In addition, Thomas J cited from this Court's decision in *Kain v Hutton*.⁹

“ ... mere incompatibility between trustees and beneficiaries is not enough ... Any incompatibility must be at such a level that the proper administration of the trust is seriously adversely affected and it has become difficult for a trustee to act in the interests of the beneficiary.”

[36] Both *Lettersted v Broers*, an appeal from South Africa, and *Kain v Hutton* were more concerned with trustees, although in the first of those two cases with testamentary trustees. However, as Thomas J pointed out,¹⁰ expedience is the touchstone of the Courts' jurisdiction under both s 21 of the Administration Act and s 52 of the Trustee Act (Power of Court to appoint new trustees). Heath J made exactly that point in *Farquhar v Nunns*.¹¹

Evaluation

The nature of the present application

[23] It is relevant to the assessment of this application that it is an interlocutory application. The application is made in a proceeding where, in the substantive claim, Lindsay also seeks orders for removal of the defendants as executors and the appointment of Mr Patterson. Lindsay also seeks, amongst other relief, a judgment for damages against Adrian in respect of his conduct as an executor.

[24] The orders Lindsay now seeks for removal of the defendants and appointment of Mr Patterson will, if made, effectively determine the substantive applications that are made for the same orders. But if the orders are made at this stage they will be made at the end of what has simply been an interlocutory hearing with submissions based on affidavits and no cross-examination of witnesses. Substantive relief would be granted without all of the evidence being before the Court. This includes, importantly, the evidence that would be elicited on cross-examination.

⁹ At [23], citing *Kain v Hutton* [2007] NZCA 199, [2007] 3 NZLR 349 at [267].

¹⁰ At [20].

¹¹ *Farquhar v Nunns*, above n 2, at [13(f)].

[25] I have started the evaluation with this point, which is also the point on which Mr Allan started for the defendants, because it has a material bearing on an assessment of the evidence that is presently available. A clear case will have to have been made out on the affidavits to make the orders sought. This was acknowledged by Ms Bruton in her advice, in her submissions in reply, that the complaints in relation to Combes Road were not being maintained on this application as grounds for removal.

[26] Assessing the remaining grounds on the basis just discussed and the principles outlined in *Frickleton*, I am not persuaded that it is expedient that Adrian be removed as an executor. Although there are some matters in respect of which Adrian's actions might be challenged, these fall well short of establishing that matters have reached a point where his continuing as an executor would be "detrimental to the proper and efficient management of the estate[s]".¹² To the contrary, I am satisfied that the "expedient" course, assessing that expression in the light of the principles, is for Adrian to continue as an executor, but with Richard to be replaced by a new executor independent of the parties.

[27] In relation to an independent executor, there was opposition from Adrian, Richard and Alison, to appointment of Mr Patterson, and opposition from Lindsay to appointment of another solicitor, Andrew Thomas, proposed by the executors and Alison. Following the hearing the parties advised, without prejudice to their positions conveyed at the hearing, that if I concluded that a new executor should be appointed in place of Richard, they did not object to the appointment of Mr Barry Stafford, another Auckland solicitor.

[28] Although the preceding observations record the essence of my conclusion, it is appropriate to consider each of the grounds for removal of the executors which remained for consideration.

¹² *Hunter v Hunter*, above n 7, at 553 per Callan J, applied in *Frickleton v Frickleton*, above n 1, at [51].

Transfer of assets into the executors' names

[29] When the proceeding was issued, title to Combes Road remained in the names of Jim and Marion Sprott, and the Mercedes car which had been owned by Jim Sprott had not been transferred into the names of the executors.

[30] I am not persuaded that these facts come close to indicating a breach of duty which, individually, or with other matters to which I will come, could justify removal of the executors.

[31] There is a further issue relating to the Mercedes. It appears that the Mercedes was recently transferred into Adrian's sole name. It is an asset of Jim Sprott's estate forming part of the residue to be divided equally amongst three beneficiaries. The car was put into running order by Adrian. It appears that there is no claim on the car itself by Lindsay, or by Alison, and in those circumstances the car could go to Adrian at appropriate value (the value is recorded in the accounts as \$2,800). It would nevertheless have been prudent for both executors to have obtained the consent of Lindsay and Alison to transfer of ownership into Adrian's sole name. However, and even assuming that there has been a technical breach (the evidence is not clear), I am not persuaded that this would make it expedient to remove Adrian. There is no suggestion that there will not be a proper accounting for value.

[32] There was also a concern that Adrian had used the Mercedes before it was transferred into his name, but without accounting for its use. The evidence falls short of establishing any improper use of the car by Adrian. This was similar to the concern Lindsay had that Adrian and Alison had used Combes Road for their personal benefit without accounting for rent. This was one of the other matters not in the end pursued, but originally part of the body of grounds said to require Adrian's removal.

Delivery to Lindsay of the Sharpe painting and other chattels

[33] As recorded earlier, Marion Sprott in her will gave to Lindsay a painting by Alfred Sharpe. Lindsay expressed concern that Adrian, but not Richard, had acted

improperly in failing to deliver these items to her, or to allow her to collect them when she was in New Zealand.

[34] The main focus was on alleged actions of Adrian, in conjunction with Alison, in relation to the Sharpe painting. The essence of Lindsay's contention was that Adrian was determined that Lindsay should not get the painting. This was put in the written submission as follows:

The truth is that Adrian simply does not want Lindsay to have the painting, notwithstanding the view of Mr Nowacki that Lindsay ought to receive the painting.

Lindsay relied on emails to her from Richard. I discuss those emails below.

[35] The essence of Adrian's evidence is that he was concerned that export of the Sharpe painting from New Zealand to Lindsay in Canada, as would be required if the terms of Marion Sprott's will were strictly followed, would be in breach of the Protected Objects Act 1975 unless and until consent had been obtained from the chief executive of the Ministry for Culture and Heritage.

[36] I am satisfied that Adrian's handling of this matter was unsatisfactory up to the date of the hearing before me, but satisfactory arrangements were then made resulting in this painting, and other items to which Lindsay was entitled under her mother's will, being delivered to her.

[37] The evidence sufficiently establishes that export of the Sharpe painting from New Zealand without the requisite approval under the Protected Objects Act (or advice from the Ministry that approval was not required) could have been in breach of the Act. But that issue should have been sorted out long ago. The provisions of Marion Sprott's will are quite clear and no issue arose in that regard. As earlier recorded, Marion Sprott died in 2008.

[38] At the hearing Ms Bruton advised that the chattels given to Lindsay by her mother and which Lindsay required delivery of, were the paintings by Sharp and Greathead, Marion's wedding ring, a silver jewellery box and a silver dressing table set. Following the adjournment of the hearing over lunch I was advised that the ring

and silver items had been delivered to Lindsay and the two paintings would be delivered the following day to an address Lindsay had specified. These arrangements taken by the executors, and in substance I assume by Adrian, go some way to diminish the weight to be attached by the failure to get these items delivered earlier.

[39] It remains to consider whether the comments made in the emails from Richard to Lindsay indicate earlier conduct by Adrian establishing that it would be expedient for Adrian to be removed notwithstanding the fact that delivery has now been made. The real question here is whether what had occurred, assessed in light of the evidence presently available, establishes that Adrian is not capable in the future of meeting the duties incumbent on him as an executor; in particular, to ensure that the remaining benefits to which Lindsay is entitled, as a beneficiary of both estates, are managed properly and then transferred to her as soon as that may reasonably be done, consistently with an executor's obligations to act prudently in the interests of all three beneficiaries.

[40] The delay by Adrian in relation to the chattels, and for which he may appear to bear primary responsibility as one of the two executors, does not in my judgment provide sufficient grounds for his removal. That conclusion is not altered by the comments made by Richard in his emails to Lindsay. There is criticism of Adrian. The most serious suggestion is that "in the past" Adrian had "mentioned" to Richard that Lindsay was not getting the painting because of the way she had behaved since her parents had died. This allegation is disputed by Adrian, and Richard records in the email that it is also disputed by Alison.

[41] Given the conflict of evidence on this matter, improper conduct on Adrian's part has not been established, let alone conduct requiring his removal. This issue also has to be put into the broader context of the best course of action from this point in the interests of all three beneficiaries. That broader context, coupled with my conclusion that Mr Stafford should be appointed as an independent and experienced executor in place of Richard, also satisfy me that the established facts in relation to the Sharpe painting, and the other chattels, fall short of justifying removal of Adrian.

Failure to provide estate and trust information to Lindsay

[42] In respect of estate information, this ground was directed to the provision of inventories and accounts. These were in fact provided reasonably promptly after the formal application for an order to provide them was served.

[43] There had been earlier requests by a lawyer on Lindsay's behalf for a range of information relating to the estates, but following two letters from the lawyer Lindsay advised that she wished "to withdraw from further participation in the winding up of the estates". That was an email in April 2016. Although there were later emails from Lindsay to Adrian enquiring about various matters, and in particular progress in getting Combes Road on the market for sale, and requests for chattels, there do not appear to have been any formal requests for inventories or accounts until the proceeding was issued, with the interlocutory application, in May 2017. And it is to be noted that the substantive claim and interlocutory application were issued without any preceding notice from a lawyer on behalf of Lindsay.

[44] I am not persuaded that there was any breach of duty by the executors in failing to provide inventories and accounts before the application was served. The prompt provision of them, including a full financial accounting, provides support for a positive conclusion that Adrian should remain as an executor.

[45] The application for an order for provision of trust information relates to the Rodleigh and Spratt trusts. To the extent that the executors may have information relating to these trusts, there has been no breach of duty by them in failing to pass this information on to Lindsay. The responsibility in that regard, in a legal sense, rests with the trustees of those trusts. Those trustees are not parties to this proceeding. Adrian's unchallenged evidence is that neither he nor Richard is or was a trustee of either of the trusts. His evidence is that no member of the Spratt family has ever been a trustee of either of the trusts.

[46] Adrian did advise, in an affidavit provided almost four weeks before the hearing, that he and his siblings are beneficiaries of both trusts, that the Spratt Family Trust was wound up in May 2016 with the assets paid out to the

beneficiaries, and that the Rodleigh Family Trust remains in existence but is domiciled in Jersey.

[47] The executors may have further information relating to the trusts, including copies of the trust deeds. If that is the case, and if there is no legal impediment to doing so, it may be sensible for the executors voluntarily to provide the information to Lindsay, and to Alison. But I am not persuaded that an order can be made in this proceeding, against the executors of the two estates, to disclose information in respect of two trusts for which they have no legal responsibility. This complaint also does not provide any foundation for an order removing Adrian as an executor.

Hostility

[48] On the evidence available on this application I am not persuaded that Adrian has shown hostility towards Lindsay. The best evidence on this is the contemporaneous emails between Adrian and Lindsay. These do not indicate hostility on Adrian's part, or between the two of them.

Conclusion

[49] The grounds relied on by Lindsay for removal of Adrian as an executor have not been made out. There are positive reasons for Adrian to continue as an executor. It is clear that he has undertaken a lot of work in the practical management of the assets of the estates and has detailed knowledge in that regard. The principal task for the executors is to get Combes Road on the market and proceed with a sale in an appropriate way. In the course of the sale process the executors may be called on to make important decisions in the interests of the beneficiaries. In relation to practical issues that may arise in that regard, Adrian's continued involvement will, in my judgment, be beneficial.

[50] Richard asks that he be relieved of his responsibilities. As earlier noted, this is for personal reasons unrelated to the management of the estates. None of the beneficiaries, or Adrian as a co-executor, are opposed to Richard's effectively retiring.

[51] There is a further issue. This is whether a new executor should be appointed. Lindsay's preference was for an order for removal of both executors and appointment of Mr Patterson as sole executor, although there may now be a willingness for appointment of Mr Stafford as sole executor. Because I am not persuaded that Adrian should be removed as an executor I am not persuaded that this is the appropriate course.

[52] Adrian's preference is that he continue as sole executor. The main arguments in support of that position are that he has demonstrated his capacity properly to manage the estates and perform his duties as an executor, and that the appointment of a lawyer as a second executor is an unnecessary expense.

[53] In my judgment a second executor should be appointed. I am satisfied that Mr Stafford is a person well able to meet the responsibilities he will have as an executor. I consider that Adrian will in fact benefit from the assistance he will get from an executor who is independent from all of the parties and who has a wide range of experience, in respect of estates and real property, which is likely to be of real benefit to Adrian as an executor and, for that reason, in the interests of the beneficiaries as a whole. The appointment of an executor to replace Richard also recognises, in an appropriate way in the circumstances that have arisen, the decisions of Marion Sprott and Jim Sprott that, for their estates, it was appropriate that there be two executors and that one of them should not be a family member. Appropriate weight should be given to their wishes if that can be done without prejudice to the interests of the beneficiaries. The appointment of Mr Stafford is not contrary to the interests of the beneficiaries; it is supportive of those interests.

Result

[54] There is an order, by consent, discharging Richard John Nowacki as an executor and trustee of the wills and codicils of Ethel Marion Sprott and Thomas James Sprott in respect of which probate was granted, in each case, by this Court in the Wellington Registry under CIV-2014-484-8126 and CIV-2014-484-8127 on 9 July 2014.

[55] There is a further order appointing Barry Vaughan Clive Stafford of Auckland, solicitor, as administrator of the estates of Ethel Marion Sprott and Thomas James Sprott under the wills and codicils referred to in the preceding order with the intent that Barry Vaughan Clive Stafford shall have the same duties and powers under each will and in respect of each estate as the duties and powers of Adrian James Sprott as the remaining executor and trustee under each of the wills.

[56] Save for the order discharging Richard John Nowacki, the orders sought in the interlocutory application of the plaintiff, Lindsay Anne Hoeberechts, are dismissed.

Costs

[57] I am satisfied that costs should be reserved on this application, and referring here to costs of all parties. A reason for that conclusion is that the parties may well be able to agree on costs when the estates are wound up. It may also be that, if agreement can be reached, this will include agreement for disposal of Lindsay's substantive claim. The fact that there is the outstanding substantive claim of itself is a further consideration which in this case justifies reserving costs. There are likely to be other considerations.

[58] In case it is of some assistance to the parties I note that my provisional view is that on the interlocutory application it would be appropriate for the reasonable costs of all parties to be met out of the residue of one of the estates, or in parts from the residue of both estates.

[59] The formal order is that costs are reserved. Because the substantive proceeding remains to be disposed of, the parties are directed to file a joint memorandum, if agreement can be reached, or if agreement cannot be reached to file and serve separate memoranda, recording proposals for the further conduct of the proceeding. This is to be done by 8 September 2017.

[60] If all parties agree that it would be sensible to adjourn the substantive proceeding for a reasonably lengthy period of time, to allow the winding up of the estates to progress, I can indicate that that there would be no resistance to this from

the Court. If this is the preference of the parties a joint memorandum should be filed and referred to me for an appropriate order. Otherwise, if steps are to be taken in the substantive proceeding at this stage, the proceeding should be referred to an Associate Judge for case management in the usual way.

Woodhouse J