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[PERRY & ANOR v NEUPERT \(2018\)](#)

Ch D (Carr J) 20/06/2018

CIVIL PROCEDURE - SUCCESSION

ESTATES OF DECEASED PERSONS : EXECUTORS : REMOVAL : SUMMARY JUDGMENTS

An appeal against an order granting summary judgment in favour of an executor was allowed where a judge had found that the claimants had not told the truth and had prejudiced the question of whether certain debts were due to be paid by the deceased's estate. It was fair that the claimants should have the opportunity to vindicate themselves during cross-examination and trial.

The claimants appealed against a master's order granting the defendant summary judgment on his counterclaim to be removed as executor of a will and replaced by another individual (G).

The claimants had made a claim under the [Administration of Justice Act 1985 s.50](#) to remove the defendant as executor of a deceased's will, and appoint either the claimants or the first claimant and G as personal representatives. The first claimant was the deceased's widow and the sole beneficiary under the will. The claimants alleged that the defendant had knowingly made a false statement that the deceased's estate was subject to a significant amount of liabilities. Various allegations of dishonesty against the defendant were being pursued. The master concluded that the claimants had effectively prejudiced the question of whether certain debts were due to be paid by the estate, rather than merely expressing a belief that that was the case. She believed that the claimants had not told the truth when claiming that they had not prejudiced the issues. She granted the defendant summary judgment on his counterclaim to be replaced with G.

HELD: Whether there was a real prospect of success - In [Bolton Pharmaceutical Co 100 Ltd v Doncaster Pharmaceuticals Group Ltd \[2006\] EWCA Civ 661](#), the court set out the summary judgment test of whether there was a real prospect of success in arguing a claim. It noted that application of the test could be difficult, and that the decision-maker at trial would usually have a better grasp of the case as a whole, compared with decision-makers preceding a trial. It was fair that having been accused of dishonesty, the claimants should have the opportunity to vindicate themselves during cross-examination and trial, Bolton Pharmaceutical applied.

Appeal allowed

Counsel:

For the claimants: Paul Chaisty QC, James Fryer-Spedding

For the defendant: Nicole Sandells QC, Nicholas Broomfield

Solicitors:

For the claimants: Bridge Law Solicitors Ltd

For the defendant: Mishcon de Reya

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