

Guardianship and Administration Board
Hobart

Mrs C.D.L. on the application of Mr C.O.K. (Administrator)

GAB No. XXXX of 2007

REASONS FOR DECISION

Anita Smith (President)

Decision: 20 December 2007

Application by administrator for gift or settlement – wishes of represented person – best interests – relevance of prior gift or settlement approved by Board – terms of represented person’s Will
Guardianship and Administration Act 1995 (Tas), ss 6, 58

1. On 26 November 2002, the Board made an order pursuant to Part 7 of the *Guardianship and Administration Act 1995* (‘the Act’) appointing Mr C.O.K. as administrator for his grandmother mother, Mrs C.D.L. That appointment was renewed on 24 November 2005. On 13 June 2003, Mr C.O.K. was granted an application pursuant to section 58 of the Act for a loan of \$14,000.00 from his grandmother’s estate to himself subject to certain conditions. Mr C.O.K. has now made application on behalf of one of his sisters, Ms Z.B. for a loan of \$15,000.00 in similar terms.
2. Mrs C.D.L. is 89 years old and lives in an Aged Care facility. She had three children, Mr F.L., Ms J.L. and Mrs C.R.. Only Mrs C.R. survives. Ms J.L. had three children, Mr C.O.K., Ms Z.B. and Ms I.K.. As a result of dementia, Mrs C.D.L. has become incapable of making reasonable judgments about her estate. Her estate is significant, having approximately \$165,000.00 invested with Tasmanian Perpetual Trustees.

The purpose of the application:

3. Ms Z.B. advised the Board that she has significant debts, a car in need of repairs and, contrary to an earlier agreement with her former partner, her daughter is moving back to live with Ms Z.B. meaning that she will have unexpected expenses associated with her daughter attending a new school. Ms Z.B. claims that the proposed loan will assist her to maintain her two children.
4. Mr C.O.K. stated that he was not of the opinion that Ms I.K. will make an application for a loan at any time in the near future. Apparently the application has only been made at this time because Ms Z.B. is experiencing financial difficulties similarly to Mr C.O.K.'s experience at the time of applying for his loan.

Effect upon Mrs C.D.L.'s estate:

5. The application states that the loss of \$15,000.00 from the estate will result in approximately \$220 per quarter less interest earned in the estate. Mr C.O.K. stated that the estate is still making money although at times they have had to use capital to pay expenses. Mrs C.D.L. has very limited scope for the use or enjoyment of the funds.

Mrs C.D.L.'s wishes:

6. Upon Mr C.O.K.'s application for a loan, Mrs C.D.L. seemed quite pleased to be in a position to assist Mr C.O.K. to proceed from an unhappy marriage. However, she could not be roused when a staff member from the Board attempted to interview her this time and nursing home staff indicated that there has been a significant loss of understanding in recent years. Mrs C.R., Mrs C.D.L.'s surviving daughter was of the opinion that these are not the kinds of gifts or

loans that Mrs C.D.L. may have given, that her gifts or loans were of a smaller order. Mrs C.R. is not comfortable with the making of these kinds of gifts or loans. Mr C.O.K. believed it was in Mrs C.D.L.'s nature prior to her disability to support her family financially. I find that Mrs C.D.L.'s attitude towards the last application under section 58 to be the most indicative of her wishes and therefore find that it appears to reflect her wishes.

Mrs C.D.L.'s best interests:

7. It cannot be argued that a payment from the estate of \$15,000.00 will be of any financial advantage to the estate. Equally, however, this disadvantage will also be limited to a loss of interest earned on the lump sum. As Mrs C.D.L. has limited need for the funds, she is unlikely to experience any deficiency as a result of a payment. Any deficiency may be felt by the eventual beneficiaries. I note that Mr C.O.K. and Ms Z.B. expect to be beneficiaries to the extent of one sixth of the estate, which in the present state of the estate, exceeds the amount sought in the loan.
8. The Board is in a difficult position with regard to this application because having granted one application, there is now an argument for parity and consistency. On the other hand, the funds administered by Mr C.O.K. should not be seen as the "Grandmother Bank" available each time a family member experiences a financial crisis. In future the Board should consider the 'floodgates' effect of making a gift to a single family member and the setting of expectations to other family members.
9. I am assured on this occasion that there will be no further applications for loans from Ms J.L.'s family members.
10. On the last application the Board set certain conditions for the loan and this loan is sought on similar conditions, which includes a

payment of \$40 per month in lieu of lost interest. The debtor acknowledged that the debt is repayable from an entitlement and should the loan exceed the eventual entitlement, the balance would be repaid to Mrs C.D.L.'s estate. In this manner the interests of persons in Mrs C.D.L.'s estate other than Mrs C.D.L. were met.

Conclusion:

11. Taking into account the views of all concerned, I am satisfied that a settlement from Mrs C.D.L.'s estate is appropriate in the same terms as the loan to Mr C.O.K..
12. The Board authorises the administrator to pay the sum of \$15,000.00 as a loan payable as a deduction from Ms Z.B.'s eventual entitlement under Mrs C.D.L.'s will. The administrator is instructed not to release those moneys until such time as Ms Z.B. has signed an agreement in terms similar to his agreement dated 25 June 2003. The administrator is also required to keep account of payments of \$40 per month and alert the Board if there should be any default in payment.
13. By way of direction to the administrator, if the terms of clause 1 of the agreement dated 25 June 2003 are implemented, that is, if Mrs C.D.L. should need the funds loaned for any purpose, then the funds should be called first from Mr C.O.K.'s estate and then from Ms Z.B.'s. In other words, Mr C.O.K. is the priority debtor to the estate, given that his responsibility as administrator to her best interests is greater than a mere debtor.

THE BOARD APPROVES the following:

An interest free loan to Ms Z.B. of \$15,000.00 payable as a deduction from her eventual entitlement under the represented person's will subject to the terms and conditions as follows:

- (i) The loan is repayable on demand if it is required by Mrs C.D.L.'s estate to ensure the quality of life and comforts for Mrs C.D.L..
- (ii) The debtor, Ms Z.B., shall acknowledge that the money is borrowed against future entitlements under Mrs C.D.L.'s will.
- (iii) The debtor shall acknowledge that if her future entitlements under Mrs C.D.L.'s will are less than \$15,000.00 then she shall repay the difference to the estate upon demand by the executor.
- (iv) If the debtor pre-deceases Mrs C.D.L., the debt shall be repayable to Mrs C.D.L.'s estate.
- (v) The debtor shall pay \$40 per month to the creditor as an offset to the interest that would have otherwise been earned on the moneys loaned.

THE BOARD DIRECTS:

That if moneys shall be called in pursuant to the first clause of the agreement detailed above, then it shall only be after the administrator has repaid his own debt to the represented person.

Signed:

Anita Smith
PRESIDENT