



Implied Revocation of Deeds of Appointment?

Equiom v Velarde

COMMENTARY BY [ELIZABETH HOUGHTON](#), 5TH AUGUST 2021

In the recent case of *Equiom (Isle of Man) Ltd v Velarde* [2021] EWHC 1528 (Ch) it was held that a wide power of appointment contained in a will had the effect of impliedly revoking previous deeds of appointment and making a new appointment.

This case concerns the will (“the **Will**”) of a Mrs Patricia Moores, who died in 2017, and a settlement created many years before by her father (“the **Settlement**”). During her lifetime Mrs Moores had a special power of appointment over property in a sub-fund of the Settlement. The power could be exercised by deeds revocable or irrevocable, or by will or codicil.

The special power of appointment over the sub-fund had been exercised twice by Mrs Moores during her lifetime. First, in 1981, Mrs Moores, appointed (with effect from her death) the sub-fund between her 3 children (Christian, Rebecca and Matthew). That appointment was expressed to be revocable by deed, will or codicil (“the **1981 Appointment**”)

Secondly, in 1997, Mrs Moores revoked the 1981 Appointment and instead appointed (from and after her death) the sub-fund on trust to Christian and Rebecca, cutting out Matthew (“the **1997 Appointment**”).

Mrs Moores’ Will was made in 2007. Clause 7 of the Will provided (emphasis from judgment):

*“I LEAVE DEVISE BEQUEATH AND **APPOINT** the whole of my real estate and the rest residue and remainder of my personal estate wheresoever situate and of whatsoever kind of or to which I shall be seised possessed or entitled at the*

date of my death or over which I shall have any power of testamentary disposition whatsoever... unto my children [...]."

The question for the Court was whether or not clause 7 of the Will revoked the 1997 Appointment. If it did, then the sub-fund would be shared equally between the siblings; if not, then it would be shared only between Christian and Rebecca.

The Claimant trustees took a neutral stance. Christian argued that clause 7 did not revoke the previous 1997 Appointment. Matthew argued that it did. Rebecca did not participate in the proceedings but supported Matthew's position.

The Court repeated the now well-established principles governing the interpretation of wills, and set out how those principles differ from those applicable to commercial contracts.

The Master found (para 23) that, absent the previous Appointments, clause 7 would have had the consequence of appointing the sub-fund equally between Christian, Rebecca and Matthew. The position was complicated because of those two Appointments. Both sides accepted that it was necessary for clause 7 to revoke the 1997 Appointment before a fresh appointment could take effect, but they disagreed as to whether it did effect such a revocation.

After reviewing the relevant authorities and commentary, the Master summarised the position (at para 55) as:

1. An intention to exercise a power of revocation must be apparent from the instrument.
2. A power of revocation is distinct from a power of appointment.
3. Thus the mere exercise of a power of appointment will not, without more, operate as a revocation.
4. However, a power of revocation may be exercised other than in express terms.
5. If a testamentary gift framed in general terms will fail altogether unless it is construed as entailing the exercise of a power of revocation (so as to bring within the ambit of the will the property which is the subject of such power), the instrument will be taken as an exercise of the power.

Turning to the interpretation of clause 7, the Master found that the following were relevant and admissible facts:

1. Mrs Moores was well aware of the existence of the Settlement and her powers when she made her Will.
2. Mrs Moores had no other power of appointment vested in her under other trusts. The only power was her power of appointment conferred by the Settlement.

The Master concluded that if Christian's interpretation were adopted, the relevant part of clause 7 would be meaningless. Bearing in mind the relevant factual matrix, the Master concluded that the Court should approach the Will on the basis that, so far as possible, every part of it was to have meaningful effect (para 64). He therefore concluded that clause 7 intended to revoke the 1997 Appointment and make a fresh appointment in favour of all three children equally (paras 66, 67).

Practitioners in this area might well be initially surprised at this decision, and possibly concerned to learn that a general power of appointment in a will might have the (unintentional) effect of revoking earlier appointments. However, the specific facts in this case meant that the "power" referred to in clause 7 could only be a reference to the special power of appointment held and previously exercised by the deceased. That fact coupled with the very wide words of clause 7 brings the decision in line with established principles. The case is not authority for a broader principle that general powers of appointment in a will should generally be read as revoking previous appointments. If the words in clause 7 had been narrower, the decision in this case might well have been different.

It is understood that permission to appeal has been granted by the Master.

For more information on our Trusts, probate and estates: non-contentious practice, [please click here](#).



If you are viewing this document on LinkedIn, you can download it by clicking on the icon in the top-right-hand corner when in full screen view.

This material is provided free of charge by Wilberforce Chambers for general information only and is not intended to provide legal advice. No responsibility for any consequences of relying on this as legal advice is assumed by the author or the publisher; if you are not a solicitor, you are strongly advised to obtain specific advice from a lawyer. The contents of this material must not be reproduced without the consent of the author.