5 Stone Buildings

Accepting Foreign Property for a child

Ruth Hughes

5 March 2021

www.5sblaw.com



Accepting Foreign Property on behalf of a child

- A common problem with inheritance of minors under civil legal systems
- Hays v Hays [2015] EWHC 3825 (Ch)
- *Re AC* [2021] 4 WLR 12

- Section 8 of the Children Act 1989





Hays v Hays - Master Matthews

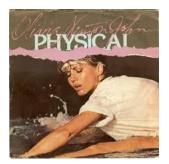
- Property in the 1st Arrondissement of Paris
 - Parents co-owners, father died
 - Was is en tontine or en indivision
 - Wanted to contract for sale
 - Property was in poor condition
 - Notary wanted authorisation of the English Court
 - Minor was habitually resident in England







Hays v Hays - Problems



- A minor cannot contract to sell property *Doe d Thomas v Roberts* (1847) 16 M & W 778
- French immoveable property Roman Law dominium (a physical approach)
 - English immoveable property estates and interest in land (metaphysical)
 - Under section 1(6) Law of Property Act 1925 a minor cannot be a legal owner of land and has to hold through a trust





Hays v Hays - More Problems

- Children Act argument but claim in Chancery Division
 - Judge lacked knowledge / refused to transfer
- Section 53 of the Trustee Act 1925 (vesting order)
 - but only if the minor is beneficially entitled to property
 - And not immoveable property in France
 - Does not extend to authorising a sale
- Juge des tulles French Court could authorise a French child's parents
 - Judge found a French advocate and did his own translation of the French code
 - English judge could perform this function
 - Sale was in the child's interests



In re AC [2021] 4 WLR 12 - Peel J

- Mother and Father owned Italian immoveable property in equal shares half went to child
- Father died. Mother wanted to accept inheritance she was not asking for an order for sale
- Child was habitually resident in England



Re AC - solutions

- English Court had jurisdiction on matters concerning parental responsibility under Art 8(1) EC Reg 2201/2003
- Section 3(1) Children Act 1989 was very widely drafted and parent responsibility included all the rights, duties, powers, responsibility and authority by law a parent had in relation to the child and his property
- Mother had a responsibility under section 3(1) to act in the child's interests in relation to property to which the child was entitled
- Could not receive property in the parent's own name but could take steps to make sure it was received in the child's own name



Re AC

- The Court was not being asked to enter into a sale
- If it were then *Hays v Hays* would need to be revisited because this would amount to a disposal of property but acceptance obviously did not and acceptance was plainly in the child's best interests
- Parties should not be dissuaded from making applications of this type but they should be made to the Family Court.

5 Stone Buildings

Thank you. Any questions please email marketing@5sblaw.com

5 March 2021

www.5sblaw.com