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Judgment: approved by the Court for handing down | *Delivered:* **15.2.2008**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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2007 No. 105302

IN THE MATTER OF ISOBEL WELSH HALL, DECEASED

BETWEEN:

SAMUEL BLAIR CROSSEY, SAMUEL HALL COLEMAN AND JOHN KIRKPATRICK

Plaintiffs;

-and-

ROGER ARMOUR

First Defendant;

-and-

GEORGE BRODER

Second Defendant.

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DEENY J

[1] The plaintiffs are the executors of the estate of the late Isobel Welsh Hall and they bring this application under Order 85 Rule 2 for determination of the question as to which beneficiary under her will should benefit from the Single Farm Payment Entitlement under the Common Agricultural Policy of the European Union arising from the farmland owned by the deceased.

[2] Ms Sheena Grattan appeared for the plaintiffs in this matter; Mr Patrick Good for the first defendant and Mr John Coyle for the second defendant. The court is obliged to counsel for their helpful written and oral submissions.

[3] The Testatrix made her last will on 18 May 2000. Subsequent codicils of 24 June 2002 and 19 March 2003 are not relevant to this application. She died on 8 April 2004 and probate was granted to the plaintiffs as executors under the will on 1 September 2005. By her said will she left a number of pecuniary legacies. The will then continues:

> "I leave devise and bequeath all my farmlands, stock, machinery, buildings and my dwelling house to my farm manager Roger Armour subject –
>
> (i) To him taking over the overdraft on the farm accounts at First Trust Bank, Wellington Street, Ballymena and being responsible for their discharge."

Apart from some minor matters to which I need not advert the rest and residue of her estate was left as to two thirds to the second defendant George Broder who had formally worked on her farm and who had lodged with her for very many years. One third of the residue went to Killymurris Presbyterian Church. The church has elected not to take part in the proceedings but to abide by the decision of the court.

[4] The issue for determination arises in the following way. The Council of the European Union made Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy of the European Union. The scheme is to run until 2012 with the amount of direct payments being reduced by a small percentage in each year from 2005 until 2012 (Article 10).

[5] Member states were given discretion to some degree with regard to the entitlement of farmers within their jurisdiction to these payments. The approach to the payments differs between England and Wales and Scotland and Northern Ireland. In this jurisdiction the payments are arrived at by taking into account not only the number of hectares owned by the farmer but also the average amount of all payments which the farmer received under various schemes in the relevant period 2000-2002. (See the Common Agricultural Policy Single Payment and Support Schemes Regulations (NI) 2005). The scheme did not come into effect until 18 May 2005, or arguably, from 1 January 2005. The difference is not material in this case. What is material is that the testatrix had received payments under various C.A.P. schemes for her farmland which she owned from 2000 to 2002 inclusive. She had therefore under the Regulations and other Regulations to which I shall advert in a moment an expectation or inchoate right to such payments when

they came into effect. But at the time of her death on 8 April 2004 the scheme had not become operative. Nor were the payments legally transferable at that time. As can be seen from the quotation above she made no express reference to either this form of subsidy or any other form of subsidy in her will. The issue therefore for the court is whether the Single Farm Payment Entitlement belongs to the first defendant who inherited the farm or to the second defendant and the church who enjoy the residue of the estate.

[6] The executors formed the view that the first defendant was entitled but, entirely properly in the circumstances, given the novelty of the point and an argument to the contrary advanced on behalf of the second defendant, brought the matter before the court.

[7] Counsel for the plaintiffs does not dispute that unlike milk quotas which are attached to the land (Harries v Barclay's Bank [1997] 2 EGLR 15) it is accepted that the single payments are tradable and are in fact being traded. They are separable from the land. But that is after the scheme has come into operation in 2005. She submits that is not inconsistent with the view which the executors have taken.

[8] The matter could be approached in one of two ways. Firstly do the Regulations which enact this single payment address and deal with the point which has arisen? Or in the alternative is it a matter of succession law as to whether there was something which could be bequeathed and if so the proper interpretation of the will to ascertain the beneficiary. As community law takes precedence it seems appropriate to deal with that aspect of it first.

[9] Article 33 of Council Regulation No. 1782/2003 deals with eligibility for the single payment scheme.

> "1. Farmers shall have access to the single payment scheme if:
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> (a) they have been granted a payment in the reference period referred to in Article 38 under at least one of the support schemes referred to in Annex VI, or
>
> (b) they have received the holding or part of the holding, by way of actual or anticipated inheritance, by a farmer who met the conditions referred to in (a), or
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> (c) they have received a payment entitlement from the national reserve or by transfer."

I observe that the English in 1(b) is a little odd in referring to farmers who "have received the holding or part of a holding … by a farmer who met the conditions …". There is also the phrase unusual to our eyes of anticipated inheritance. If one turns to the French text one sees that the relevant passage reads as follows:

> "1. Les agriculteurs ont accès au régime de paiement unique:
>
> b) s'ils ont reçu l'exploitation ou une partie de l'exploitation à titre d'héritage ou d'héritage anticipé, de la part d'un agriculteur qui répondait aux conditions visées au point a), ou."

[10] One reminds oneself that these Regulations have to cover a wide range of legal systems and the French points to this being a civil law concept. The Common Agricultural Policy Single Payment and Support Schemes Regulations (NI) 2005 contain a relevant passage at Regulation 15:

> "For the purposes of Article 33(1)(b) of the Council Regulation and Article 13(5) of Commission Regulation 795/2004 anticipated inheritance shall include circumstances where upon his retirement a farmer transfers a holding other than for valuable consideration."

It seems reasonable to conclude that if an anticipated inheritance includes an inter vivos gift for natural love and affection it would also include a legacy to a beneficiary where no assent has issued as yet to the legal title of the land transferring to the beneficiary. This was the situation of the first defendant in May 2005.

[11] On foot of the Council Regulations referred to above the Commission issued Regulation (EC) No. 795-2004. This Regulation lay down detailed Rules for the implementation of the single payment scheme. Article 13 is headed "Inheritance and Anticipated Inheritance" and in my view it is of central importance in resolving this question. Article 13(1) reads:

> "In cases referred to in Article 33(1)(b) Regulation (EC) No. 1782/2003, the farmer who has received the holding or part of the holding shall claim, in his name, the payment entitlements to be calculated for the holding or part of the holding received.
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> The number and value of the payment entitlements shall be established on the basis of the reference

amount and number of hectares relating to the production units inherited."

It is not in dispute here that Mr Roger Armour is a farmer within the meaning of the Regulations. It is not in dispute that he has received "the holding" which gives rise to the right to the single payment. It is not in dispute that he has done so by inheritance (or, in 2005, by anticipated inheritance). It does seem clear therefore that the Regulation intends and provides that he is entitled to the single payment, even though he was not the owner of the land in the reference period 2000 to 2002. I note that this interpretation accords with the view expressed at para. 7.77 in the official DARD Applicant's Guide (2005).

[12] Although perhaps not strictly necessary I will briefly deal with the alternative approach in succession law. I have quoted from the will above. Mr Coyle submits that while the deceased was not entitled to single payment at the time of her death, she had an inchoate right based on her ownership of the land from 2000 to 2002. This he submitted was an interest which could be passed on by her. However she made no express reference to it in her will (of 2000) nor in any subsequent codicil. Furthermore he relied on the fact that the wording in the will did not say that she was leaving "all of her farming business" to the first defendant. He relied on Re Verdonk 106 D.L.R. (3D) 450 a decision of Heinz Co. Ct. J. in the British Columbia Supreme Court and on Lewis v Williams [1984] 3 All ER 930. He also cited relevant passages from Williams on Wills. It is clear that the role of the court is to seek the intention of the Testator in the light of the circumstances known to him, or her, at the relevant times. It is not to re-write the will. However it seems to me that both these authorities are on significantly different factual bases than the case before me. I have little doubt that had the Testatrix been asked by an officious bystander where the farm payments ought to go from the European Union after her death that she would answered that they should go to Mr Armour who was inheriting the farm.

[13] One might, in the alternative, but consistently, ask what interpretation would give business efficacy to the will by way of analogy with contractual interpretation. Here Ms Grattan points out that neither the second defendant nor the church are in possession of 59 hectares of land, not otherwise used for payment entitlement, and could not therefore avail of the single payment even if they were the inheritors under the will. I do note that they both have some land and therefore pass the minimum land holding figure of 0.3 hectares but her point is a valid one.

[14] For my part on the language used here I am satisfied that under succession law the proper interpretation would be that the Single Payment Entitlement should go with "my farmlands, stock, machinery, buildings" and

the overdraft on the farm which apparently was of the order of some £80,000 and for which Mr Armour also became responsible.

[15] The determination of question 1A on the summons is that on its proper construction the bequest in the Testatrix's will of her "farmlands, stock, machinery, buildings and (her) dwelling house" does include the entitlement to the Testatrix's single farm payment. In those circumstances no other relief is required. The costs of the three parties shall be borne out of the estate.