

Mine is the power

In this note we consider the potential effect of a standard Will provision on previous appointments made by an individual.

In the recent case of *Equiom (Isle of Man) Ltd v Velarde [2022] EWHC 11 (Ch)* the English High Court considered whether the wording of a residuary gift in a Will implied a revocation of an earlier revocable appointment.

The wording in the Will was very generic, standard wording that is commonly used by will drafters. This case highlights the danger that the individuals may not consider the effect of a Will on previous appointments.

In the *Equiom* case, the testatrix held a power of appointment over a trust fund created by her father. The power granted the testatrix the right to appoint the fund amongst her children and remoter issue. The power was exercised in 1981 by the testatrix in favour of her three children. A power of revocation was reserved by the testatrix. The power was further exercised by the testatrix in 1997 in favour of her son who was going through a divorce. Again, this was subject to a power of revocation.

The testatrix made a Will in 2007 which included the following clause:

"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 after the payment thereof of my just debts funeral and testamentary expenses unto my children."

The testatrix died in 2017.

It was held at first instance and again on appeal that the testatrix did intend to revoke the 1997 appointment and that, therefore, the trust fund was held for her three children equally.

As part of the Will making process, careful consideration as to the existence of any powers of revocation and appointment vested in the individual must be carefully considered.

For more detailed information in either making or interpreting a Will, please contact DQ's Private Client Team who would be happy to assist.

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