

50 Ways to Leave your Loved Ones or how to “disappear” assets

It is a principle of German as well as Canadian estate law that every person is entitled to dispose of his or her assets after death as he or she sees fit. German estate law is governed by the principle of freedom of testamentary disposition. There are only two limitations on this principle. The first is that a disposition may not be immoral as defined in the German Civil Code. The second is that the testator may not exclude his family members completely. We once had a case in which the testator did just that and got away with it.

Our case started in Canada where the testator successfully built up a business in which he and his wife had worked for most of their lives. The trouble started when the business was sold. She wanted to stay in Canada. He wanted to return to Germany. They got into such a fight that they separated. He took the bulk of the cash to Germany and did his best to spend it.

After glorious months in Hamburg’s red-light district, he went back to his old home town in Bavaria. Once there, he took up relations with a couple who served as his chauffeur and housekeeper. He bought a house big enough for them all and gave them big cars. He also transferred big chunks of his money to them and told them to invest the money as they liked. During this stage of the game he became ill and was placed in hospital. A nurse was assigned to him.

When he got out of the hospital, he bought another house, this time for himself and the nurse. Again, he transferred big chunks of his money, this time to the nurse. He must have really liked her because he made a series of notarized contracts in which he put mortgages on his part of the house in her name and gave her valuable antiques and paintings in exchange for her “nursing services”. When he sold the first house he had bought he transferred further money to the nurse to pay for future and yet un-quantified “nursing services”. Apparently, he died in her arms.

In his will, he left everything to the nurse. In the meantime, the wife had obtained a divorce and sought to enforce the judgment against the estate. Strangely, the estate was bankrupt when the testator died. The money in his account was just enough to pay the court-appointed receiver.

Now, generally in Germany, if an estate is depleted by gifts made to third parties by a testator before his death and these gifts were made with the express intention of depleting assets, an heir can claim them back. But if the heir is the same person who got the gifts, that doesn’t apply. The children of the testator, of course, have compulsory rights of inheritance but these only apply to assets of the estate that can be traced. If the estate is bankrupt and there were contracts providing for payment

münchen

hohenzollernstr. 84
80801 münchen
Deutschland

tel +49.89.33 04 07 07
fax +49.89.33 04 07 06

toronto

480 university avenue, suite 1600
toronto, ontario m5g 1v6
canada

tel +1.416.597 99 22
fax +1.416.597 33 70

principal: sylvia jacob

barrister & solicitor (ontario, canada)
solicitor (england & wales)
rechtsanwalt (deutschland)

www.jacoblaw.com



of services, launching a credible claim requires clear evidence. Suffice it to say that things become less clear with the passage of time. And, in any event, any assets that could be uncovered would, of course, be subject to the wife's divorce judgment.

So, was all of this just clever planning on behalf of an angry man or was he taken advantage of by unscrupulous people who were able to cover their tracks? You decide.