



## HIGH COURT OF AUSTRALIA

11 May 2016

### ROBERT BADENACH & ANOR v ROGER WAYNE CALVERT

[2016] HCA 18

Today the High Court unanimously allowed an appeal from a decision of the Full Court of the Supreme Court of Tasmania. The Court held that, in the circumstances of the present case, a solicitor did not owe a duty of care to a beneficiary under a will to advise the testator of the options available to the testator to avoid exposing his estate to a claim under the *Testator's Family Maintenance Act 1912* (Tas) ("the TFM Act").

The first appellant ("the solicitor") is a legal practitioner and was a partner of the second appellant, a law firm. The solicitor received instructions from Mr Jeffrey Doddridge ("the client") to prepare his will, by which the entirety of his estate was to pass to the respondent (who was the son of the client's long-term de facto partner). The client's principal assets were two properties which he owned as a tenant in common in equal shares with the respondent. The client died later that year having executed a will drawn by the solicitor in accordance with his instructions. Following the client's death, his daughter from a previous marriage (and for whom he made no provision in his will) brought proceedings under the TFM Act and was successful in obtaining a court order that provision be made for her out of the client's estate. As a result, the client's estate was substantially depleted.

The respondent brought proceedings against the appellants in which the respondent claimed that the solicitor had been negligent in failing to advise the client of the possibility that his daughter might make a claim under the TFM Act and the options available to him to reduce or extinguish his estate so as to avoid such a claim.

At first instance, the Supreme Court of Tasmania held that the solicitor owed the client a duty of care to enquire as to the existence of any family members and, upon discovering the existence of the client's daughter, to advise the client of the risk to his estate of a successful claim under the TFM Act. However, the primary judge was not satisfied that the solicitor's advice about a possible claim under the TFM Act would have triggered an enquiry by the client about how to protect the respondent's position.

The Full Court allowed the respondent's appeal. In their Honours' view, the solicitor's duty to the client extended to advising of the possible steps the client could take so as to avoid exposing his estate to a TFM claim, even if the client did not make any enquiry about those steps. The Full Court also held that the solicitor owed a duty of care to the respondent that was co-extensive with that owed to the client. By grant of special leave, the appellants appealed to the High Court.

The High Court held that the duty to the respondent recognised by the Full Court did not arise. The interests of the client were not coincident with the interests of the respondent and as such the solicitor could not owe any duty to the respondent that was co-extensive with the solicitor's duty to the client.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*