

Article Information

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Supreme Court Confirms Principles for Validity of Copy of Lost Will

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In the Estate of Frances Ponikvar (Deceased) [2016] SASC 95, Justice Stanley agreed that the common law presumption that the lost original will of Frances Ponikvar had been destroyed by her had been rebutted. Justice Stanley found that it was unlikely that the Deceased had destroyed the original of the copy will and had not made a later will.

The Judgement may be read [here](#).

The case is useful for Justice Stanley's summary of the applicable principles that were submitted to rebut the presumption that a copy of the will only existed because the deceased had destroyed the original with the intention of revoking it. The case is also notable for the number of potential relatives who may be affected and who did not reside in Australia.

Our Private Client Services team were originally instructed by the executor to approach those relatives to obtain their consent to his Court application to admit the copy of the will to Probate, however, one surviving relative of the deceased declined to consent and opposed the admission of the copy will to probate. Partner, Rod Jones, assisted by Associate, Christina Flourentzou welcomed the decision that the deceased did not intend to destroy the original of her will and that the copy of the will could be admitted to Probate. The intended beneficiaries will thereby benefit rather than an intestacy occurring and a distribution of the estate to numerous foreign resident relatives and the significant administrative costs that would entail.