Neutral citation: [2020] EWHC 1552 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No: PT-2019-000962**

IN THE BUSINESS AND PROPERTY COURTS
PROPERTY, TRUSTS AND PROBATE LIST

BY SKYPE

Rolls Building
7 Fetter Lane
London EC4A 1NL

Tuesday, 19 May 2020

BEFORE:

MASTER SHUMAN

BETWEEN:

ANTHONY ROBERT FANTINI
(as Executor of the Estate of Iris Mary Fantini deceased)

Claimant

-and-

(1) ANGELA MARY SCRUTTON
(2) ROBERT MARK ANDREW NESBITT
(as Personal Representatives of the Estate of Gloria Natalie Fantini Deceased)
(3) THE ROYAL COLLEGE OF MUSIC
(4) THE FOUNDATION AND FRIENDS OF THE ROYAL BOTANIC GARDENS, KEW
(5) EILEEN WHEELER
(6) SHIRLEY BRAILEY
(7) IAN MAYES
(8) VALERIE CANNON

Defendants

MR J POOLE, counsel, appeared on behalf of the Claimant
THE DEFENDANTS did not appear and were not represented

JUDGMENT

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(Official Shorthand Writers to the Court)

THE MASTER:

1. This is my judgment in claim number PT-2019-000962, Anthony Robert Fantini as executor of the estate of Iris Mary Fantini, deceased, against Angela Mary Scrutton and others. I heard this case on Monday 18 May 2020. Counsel, Mr Poole, appears on behalf of the claimant.

2. Iris and Gloria Fantini were mother and daughter. I shall refer to them by their first names. They were joint owners of the property at 7 Merlin Way, Mudeford, Christchurch, Dorset BH23 4BL, "the property". Both ladies have died; Gloria predeceased her mother, Iris. The property was sold on 18 November 2016. I am told that half of the proceeds of sale, which is approximately £211,847.34, are held by solicitors pending the determination of this court.

3. The claim is brought by the executor of Iris's estate under Part 64 of the CPR for the court to determine two questions. (1) Was the joint tenancy of the property severed by Gloria? (2) Should Iris' costs of the claim be met from the remaining proceeds of sale of the property?

4. As to the first question, the claimant is not neutral in this claim; his position is that the joint tenancy was not severed. The significance of that, of course, is that if Gloria predeceased Iris and the joint tenancy was not severed then under the doctrine of survivorship the proceeds of sale fall entirely into Iris' estate. If that is not the case and it was severed, then the half of the proceeds of sale that are held on a solicitor's account, will fall into Gloria's estate, and fall to be distributed in accordance with her will.

5. As to the second question, the claimant's position is that this issue needed to be determined and that he should be entitled to his costs regardless of the outcome. However, those coming to court in a representative capacity seeking a direction of the court usually adopt a neutral position, unless the court gives permission for them to do otherwise. If they do not do that, they risk losing the normal indemnity protection that

a trustee or executor enjoys. That is why the second question is of importance in this case.

The Parties.

6. The claimant and the eighth defendant are the residuary beneficiaries of Iris's estate. The claimant is also a pecuniary legatee under Gloria's will. He has filed a witness statement, dated 14 November 2019, supporting this claim and the claim has been brought by him in his representative capacity under Iris's will.

7. In terms of the other parties in these proceedings, the first defendant was named as an executor under Gloria's will but has renounced. The second defendant is an executor under Gloria's will. I am told that no steps have been taken in the administration but he consents to the order sought by the claimant.

8. The third and fourth defendants are residuary beneficiaries of Gloria's estate and do not consent to the order sought by the claimant. They have filed letters setting out their position but have elected not to attend the hearing in person or through legal representatives.

9. The fifth to seventh defendants are pecuniary legatees under Gloria's will. The fifth defendant is also a pecuniary legatee under Iris' will. The fifth defendant's position is neutral and the sixth and seventh defendants consent to the order sought by the claimant.

10. The eighth defendant, who attended the remote hearing through her daughter, who I am told has the benefit of a power of attorney over her mother's financial affairs, also consents to the orders sought by the claimant.

11. I am satisfied that all the relevant parties have been joined to the claim and have had the opportunity to engage with these proceedings. I am also satisfied, and I have considered this point, that counsel for the claimant has set out the legal arguments for both the claimant and the opposing defendants in sufficient detail for me to be able to make a determination. He has applied the relevant factual matrix to the law.

12. I also bear in mind that the only defendants who have said that they resist the order sought by the claimant have chosen not to engage any further in these proceedings other than to send letters to the court. So far as I am aware, all the parties in this claim are of full age and capacity.

The Factual Matrix.

13. The property was the Fantini family home. Iris formerly jointly owned the property with her late husband. On 18 June 2003, Iris and Gloria were registered as joint tenants of the property. At some stage, I presume in late 2013, Gloria was resident in a hospice, terminally ill with cancer, and she instructed solicitors effectively to put her affairs in order. Mr Rod Cowles of Morrisons Solicitors prepared a will on behalf of Gloria. Although there was reference to a property in Malta there was no reference to the property that is the subject of this claim in that will, or, indeed, Iris's occupancy of the property.

14. On 5 December 2013, the will was executed by Gloria. On the same day Gloria signed a notice purporting to sever the joint tenancy of the property. That is in standard form. It is addressed to Iris at the property address and records:

> "I, Gloria Natalie Fantini of 31 Sailmakers Court, William Morris Way, Fulham, London SW6 2UX, your fellow joint tenant at law and in equity of the property known as7 Merlin Way, Christchurch, Dorset, BH23 4BL and registered under title number HP26213 give you notice pursuant to the Law of Property Act 1925 Section 36(2) that I desire to sever our joint tenancy in equity, so that as from the date of the this Notice you and I shall hold the property on trust for sale for ourselves as tenants in common in equal shares as if there had been an actual severance."

15. That notice was attached to a letter from Morrisons solicitors to Iris dated 5 December 2013. The letter records that it was sent by registered post addressed to Iris and says:

> "We enclose herewith Notice of Severance of the Joint Tenancy in respect of which if you have any queries, please do not hesitate to contact us."

16. A few days later, on 9 December 2013, the solicitors completed a standard application form to enable a restriction to be entered against the property. They certified that the information in the form was correct and they used a Form SEV, which is only used when someone applies to enter a Form A restriction at the Land Registry after severance of joint tenancy by agreement or notice.

17. Following that application, on 11 December 2013, the Land Registry wrote to Iris at the property. The letter is headed "B61 Notice of Severance of a Joint Tenancy". It then goes on to explain that an application was made to sever the joint tenancy and that because of the application they have made an entry in the register, a restriction against the title. Several pages of explanatory notes are attached to the letter. On 11 December 2013, at approximately 2.50 pm, the Land Registry formally entered a restriction against the title to the property. On 15 December, which was a Sunday, Gloria died.

18. The reason all this background is relevant is because on 3 January 2014 the letter that had been sent to Iris by the solicitors with the accompanying notice of severance, and had been sent by registered post, was returned undelivered. Morrisons Solicitors have confirmed this prior to these proceedings being issued.

19. On 13 April 2017, Iris died.

<u>The Law</u>.

20. Section 36(2) of the Law of Property Act 1925 provides as follows:

> "No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest in the other joint tenants, or the right to sever

a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate have been effectual to sever the tenancy in equity, and thereupon the land shall be held in trust on terms which would have been requisite for giving effect to the beneficial interests if there had been an actual severance."

21. Section 196 of the Law of Property Act 1925 deals with notices. The relevant parts are at subparagraphs (3) and (4). Subparagraph (3):

Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

22. Subparagraph (4):

"Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business, office or counting-house, and if that letter is not returned by the postal operator (within the meaning of Part 3 of the Postal Services Act 2011) concerned undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered."

The Claim

23. Turning to the two questions that are before me.

(1) Severance of the Joint Tenancy

24. Mr Poole has set out the arguments in relation to the severance of the joint tenancy in a very fair and full manner. He reminds me that there are four ways in which there can be severance of the joint tenancy: (a) by service of a written notice in accordance with section 36(2) of the Law of Property Act 1925: (b) an act of any one of the persons interested acting on their own share: (c) by mutual agreement; or (d) by any course of mutual conduct sufficient to intimate that the interests of both Iris and Gloria were mutually treated as constituting a tenancy in common. Of those methods only (a) and (b), the notice and the act of any one of the persons interested, are relevant to the issues before me.

25. It is common ground that the notice of severance was never served on Iris. It is said that it was sent pursuant to section 36(2) of the Law of Property Act 1925. As I have already referred to, service of the notice was governed by the provisions of section 196 of the Law of Property Act 1925. It was sent by registered post. Section 196(4) operates as a deeming provision where a letter is not returned by the postal operator. Here, it was returned.

26. In *WX Investments v Begg* [2002] 1 WLR 2849 at 2860A, Patten J, as he then was, held that "If the letter is returned undelivered section 196(4) expressly provides that it is not to be treated as 'sufficiently served'".

27. I am satisfied that the notice was never received by Iris. It was returned undelivered and that there was no service therefore in accordance with section 36(2) of the written notice of severance.

28. Mr Poole has also set out whether it could be argued that the notice was an act operating on Gloria's own share. He has referred me specifically to a number of legal

textbooks and authorities. Of particular relevance is paragraph 12-041 in *Megarry and Wade: The Law of Real Property* (9th edition), where it says:

> "It has been suggested that a mere declaration to sever by one joint tenant will affect a severance under this head. However, the better view is that such an act is insufficient and this method of severance is successful only where a joint tenant alienates his interest or in some other way acts so that there is a change in his equitable interest in the property."

29. In *Burgess v Rawnsley* [1975] Ch 429, specifically at 439C and 448A, it was held that a declaration that is not communicated to the other joint tenant or is in some way conditional or unclear will not sever the joint tenancy.

30. On the factual matrix before me I cannot see how a notice that was not served on the other co-owner can constitute an act operating on Gloria's share. It was not communicated to the other joint tenant and there are no other acts that could be relied upon. So I am satisfied that the notice alone is not an act operating on Gloria's share; it falls within *Burgess v Rawnsley*.

31. Mr Poole then dealt with the question of the application sent to the Land Registry. This was not a point taken by the third and fourth defendant. The question is whether the application that was made on behalf of Gloria by her solicitors can constitute an act operating on her share. This of course, it should be borne in mind, is an application that was made to the Land Registry and not copied to Iris.

32. In *Re Draper's Conveyance* [1969] 1 Ch 486, Plowman J held that a wife's summons under section 17 of the Married Woman's Property Act of 1882, coupled with her affidavit in support of that summons, showed an intention that was inconsistent with the continued joint tenancy and it operated to sever the joint tenancy of the property that she held with her husband. He was satisfied that the summons and affidavit provided sufficient notice in writing to satisfy section 36(2) of the Law of Property Act.

33. In *Quigley v Masterson* [2011] EWHC 2529 Ch, Henderson J (as he then was) held that an application to the Court of Protection, which included an application to sell a jointly owned property, could be deemed an unambiguous notice which severed the joint tenancy. Henderson J relied predominantly on the reasoning set out in *Re Draper's Conveyance* and, as in that case, found that the statements in a witness statement would also have constituted written notice of severance under section 36(2).

34. Here, though, the application that was submitted was not to the court but to the Land Registry. It is not an application that is copied to the co-owner of the property. It is part of an administrative process in order to register a restriction against a property. Mr Poole submits that there is a qualitative difference between issuing a claim supported by witness evidence or an affidavit which is served on the other co-owner for them to respond to and the making of an administrative application to the Land Registry to formalise a step that has, in the solicitor's belief when they completed the application, already taken place.

35. There is indeed a qualitative difference between a process in court which is served on the other co-owner and an administrative application to a third party, not copied to the co-owner. Whilst I bear in mind that the court will often prefer a tenancy in common over a joint tenancy, I am satisfied that the application to the Land Registry in isolation cannot constitute an act operating on Gloria's own share.

36. That leads me to the final point that was set out by Mr Poole and the issue that the third and fourth defendants take. That concerns the contents of the letter sent by the Land Registry to Iris. There is no evidence before me to suggest that that was not sent by the Land Registry. I accept that it was sent and received by Iris. There is a question mark over when that was received by Iris but I will come on to that.

37. In a letter from the third defendant to the solicitors acting for the claimant, dated 5 August 2019 Mr Voremberg, wrote as follows:

> "I am writing as a Member of the Council of the RCM [Royal College of Music] but I am also a practising solicitor and partner at Farrer & Co."

He goes on to say at the fourth paragraph:

> "In your letter of 20th June addressed to the RCM you have set out your understanding of the facts relating to the intended severance of the joint tenancy of 7 Merlin Way, Mudeford. I do not believe that the RCM is in possession of any other information or evidence relating to those events. Nevertheless, whilst I note your view on whether the events concerned constituted notice of the joint tenancy being severed, the Royal College of Music does not accept that the events concerned necessarily preclude the effectiveness of what was clearly an intended severance on the part of Gloria. In particular, whilst it appears that the notice of severance which was sent to Iris Fantini by Morrisons on behalf of Gloria on 5 December 2013 by "Registered Post" was returned "undelivered" to Morrisons on 3 January 2014, nevertheless, it appears probable that the Land Registry's notice to Iris Fantini, dated 11 December was received prior to Gloria's death and was sufficient evidence of Gloria's intention to effect a severance. It is also apparent from the case law on the severance of joint tenancies, most recently *Chadda v HMRC* [2014] UKFTT 1061 the courts have interpreted LPA 1925 s.196 increasingly liberally in order to give effect to a severance where one was clearly intended."

38. For completeness, I should say that the fourth defendant has sent a short letter confirming that they agree with the analysis of the third defendant.

> "I concur with the views expressed in the letter from RCM and, so far as I am aware, we cannot assist in shedding any more light on the severance of the joint tenancy by Gloria Fantini."

39. In *Chadda v HMRC [2014] UKFTT 1061* the husband and wife were both terminally ill and decided to make new wills to ensure that after H's death there would be as much money as possible available to provide care for W and their disabled daughter. The accountancy firm who had acted for them for many years gave advice on the tax advantages of using both of their inheritance tax nil rate bands by severing the joint tenancy of their home. C was a partner in the accountancy firm

and an executor under their wills. H died first. On W's death HMRC treated the full value of the property as falling into her estate, the signed notice of severance having been lost. C's evidence was that the notice of severance was signed after the will had been executed because his firm were checking with the bank, who held the deeds, to see if the joint tenancy had already been served. C had attended the parties' home and going between separate rooms had handed the notice to H and then W to sign. The notice was supposed to be sent by a member of staff to the bank, however the bank suggested that it remain at the accountancy firm. Reviewing the evidence it was accepted that the original document had been signed by H and W but lost when in the hands of the accountancy form. A draft document, extracted from the firm's records, was in the same form as the signed notice. It was accepted that there had been severance by H or W giving the signed notice to the other through C.

40. The third and fourth defendants rely on the letter from the Land Registry to Iris. The same point arises in respect of the letter as arose in *Re Draper's Conveyance* and *Quigley* to which I have already referred.

41. I bear in mind in relation to this letter that it is a template letter formatted by the Land Registry with the relevant information tailored to the application inserted within it. I ask myself, what would a reasonable recipient of this letter have thought? Would a reasonable recipient of this letter have thought that this was a notice of severance, or potentially one that constitutes an act operating on Gloria's share?

42. It is also significant, in my view, that the trigger for this letter is an application by Morrisons Solicitors that was sent, now with hindsight, in the mistaken belief that a notice sent to Iris had been properly served. That is the basis on which they entered the certification on the application.

43. The application that Morrisons Solicitors used can only be used when severance is either by agreement, which does not arise in this case, or by notice. In box 7 of the application, under the heading "Evidence of severance", there are three discrete headings. "(A) Application is by all the registered proprietors." This does not apply here. "(B) Application is not by all the registered proprietors, severance is by documents signed by all the registered proprietors." That does not arise here. "(C)

Application is not by all the registered proprietors - notice of severance has been served." The solicitors ticked the last box which records that:

> "I am the applicant's conveyancer and I certify that I hold the original notice of severance, and that it was served on the other registered proprietors in accordance with sections 36(2) and 196 of the Law of Property Act 1925."

44. That is a certification by the solicitors that service had been effected. That was made on 9 December 2013, four days after the letter and notice was sent by registered post to Iris. It had not been returned at that stage. In the circumstances, when the solicitors were dealing with a terminally ill client, I can see why they completed the necessary formalities in the way that they did. However, the certification was not correct because the notice had not been served in accordance with the relevant parts of the Law of Property Act 1925 or at all.

45. There is on the top of the letter from the Land Registry the heading "B61 Notice of Severance of a Joint Tenancy". It would say that because that is what was triggered by the application in Form SEV. It goes on to record:

> "I am writing to inform you that we have received an application by Gloria Natalie Fantini to 'sever the joint tenancy', being one of the joint proprietors of the property referred to above."

46. I pause at that point, because, of course, they had not received an application to sever the joint tenancy. This is the Land Registry. They are concerned with changes to the title to the property. In this case, the application was to register a restriction, not an application to sever the joint tenancy. On the form completed by Morrisons the position was that Morrisons believed, albeit erroneously, that severance had actually been effected at the time that they completed the application to the Land Registry.

47. It then goes on to record who the application was lodged by and it says:

"As a result of the application we have made the following entry in the register of the above title:

RESTRICTION No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court."

48. It goes on to say:

"You and Gloria Natalie Fantini remain the registered proprietors of the property referred to above and together you may still sell or otherwise deal with it in the usual way. However, as a result of the entry of the above restriction on the register, the position will now be different if one or more of the proprietors dies, so that only one proprietor is left.

Please read the explanatory notes which form part of this notice."

49. The explanatory notes set out, under various headings, guidance for a person receiving the letter. At 1, under the heading of "Joint proprietors", it says:

"Where proprietors hold the property as tenants in common, they own it together, but each is treated as having a separate share in the value of the property. Typically, each tenant in common will share in the value of the property equally according to their number; a half share if there are two and a one-third share if there are three and so forth."

50. If goes on to say at 2, "Severing the joint tenancy":

"Where two or more proprietors hold property as joint tenants it is possible for them to alter the way in which they hold the property so that they become tenants in common. This will happen, for example, if one of the proprietor(s) sells or otherwise deals with his/her interest in the property, or notifies the other proprietor(s) that he/she wants the property to be held by them as tenants in common. This is called severing the joint tenancy."

51. It is relevant that when this letter was received by Iris no notice of severance by Gloria had been served on her, either then or at all.

52. The guidance goes on to then say at 3, ”Purpose and effect of the restriction”:

> "The purpose of the restriction is to safeguard the rights of the people who may have an interest in the property but who are not themselves proprietors (such as those to whom property has been left by a proprietor who has died)."
>
> …
>
> "With the restriction on the register, you and the other proprietors of the property acting together will still be able to deal with the property in any way you could before the entry was made. However, if one or more of the proprietors dies, so that only one of them remains, the restriction will mean that we will not be able to register any transfer or other dealing with the property for money. In practice it means that the remaining proprietor would not be able on his or her own to sell, mortgage or otherwise deal with the property for money, because the restriction would stop registration. The remaining proprietor would then need to arrange for at least one other person to become joint proprietor(s) of the property and to act with him or her as a trustee. Then, for example, a purchaser could safely complete a purchase because a transfer would be by two or more proprietors, so the restriction would not prevent registration."

53. So they are very helpful but quite anodyne guidance notes. The purpose of the letter is to explain to a registered proprietor that a restriction has been entered and what impact that has. That is set out in the explanatory notes. The focus is clearly to explain that if one or more of the registered proprietors dies the remaining registered proprietor needs to appoint a second trustee in order to effect a sale or disposition of the property to a third party, whose title can be registered free of the restriction.

54. When one looks at the letter in its context, I am not satisfied that it can constitute a notice of severance. What it constitutes, and is, is a notice that a restriction has been entered against the registered title to the property. That is what a reasonable recipient receiving that letter would have understood by it, notwithstanding the heading of that letter. Furthermore the letter needs to be read with the guidance notes and they are not sufficiently unambiguous to constitute sufficient notice of severance.

55. Given the factual matrix of the case before me it is not open to the court to liberally interpret section 196 of the Law of Property Act 1925 as is suggested by the third and fourth defendants: there is no evidential foundation for doing so. Here there is no suggestion that Iris was involved with the decision to sever and moreover there is irrefutable evidence that the letter enclosing the notice of severance was returned undelivered by the postal service to Gloria's solicitors. All that the third and fourth defendant can point to is the pro forma letter from the Land Registry and the guidance notes which were triggered when Gloria's solicitors submitted an application made on an erroneous assumption that notice had been effected. In fact the notice was not served and it was not open to Gloria's solicitors to make the application to enter the restriction as they did.

56. Mr Poole also made submissions that it was potentially relevant to my consideration that the letter from the Land Registry was based on a mistake, the mistake being that the notice was never served on Iris. The process was triggered because Gloria intended to sever the joint tenancy. That was her clear intention. There was no mistake with that. She signed a notice of severance to that effect. Her solicitors posted a letter accompanying that notice to Iris. The problem was that the technical requirements of service were not fulfilled. But, for the reasons I have already stated, I do not need to go on to determine this issue.

57. Mr Poole for completeness has also referred me to an issue of service. Had I found that the letter constituted notice of severance, or perhaps was an act operating on Gloria's share, then there is a question as to whether it was served in time. That arises because the letter from the Land Registry is dated 11 December 2013. As I have said, the restriction was entered at about 2.50 pm. The Land Registry are unable to confirm whether the letter was sent on 11 December or the following day, on 12 December.

58. Rule 199 of the Land Registration Rules 2003 and *Practice Direction* [1985] 1 All ER 889, which are in the same form as the CPR, provide that service by first-class post, and this letter we can see from the top of it was served by first-class post, will be deemed to be served on the second working day after it was posted. Here the letter was marked sent by first class post and absent any evidence to the contrary I accept that it was so sent. Either the letter from the Land Registry was received by Gloria : if it was posted on 11 December it would have been received before she died; and if it was posted on 12 December, it would have been deemed to have been served on 16 December and that would have been too late.

59. The evidence in relation to this point is ambiguous. Mr Poole quite rightly accepts that the burden falls on him. The Land Registry have indicated in a letter that they are unable to confirm what date it was sent but the assumption is that it was sent on 11 December 2013. So had this fallen to be an issue in this case, it seems to me that in the absence of other evidence and given that Mr Poole has accepted the burden is on the claimant, I would have accepted that the letter was sent on the day that it was dated, which was 11 December 2013, and that it would have been served on time on Iris. But for the reasons that I have already set out, I am satisfied that there was no severance of the joint tenancy by notice or act of Gloria on her own share, so that when Gloria died the property passed under the doctrine of survivorship to Iris. Therefore, the proceeds of sale that are currently held in a solicitor's account must be paid to the estate of Iris.

(2) Should the claimant's costs of the claim be met from the remaining proceeds of sale of the property?

60. This would have been a more complicated question to answer, perhaps, had I found that the joint tenancy was severed during Gloria's lifetime but I have not. I accept that this case falls within the known categories of the principles set out in *Re Buckton* [1907] 2 Ch 406 and specifically set out at pages 413 to 417. This case falls within category 1 or 2. Costs were necessarily incurred and quite clearly the issue had to be determined to enable the estates of Iris and Gloria to be fully administered. The claimant has acted reasonably and properly in not only bringing this claim but in how they have conducted these proceedings. That also encompasses the manner in which Mr Poole comprehensively set out the legal arguments on both sides in relation to this

matter and how he has set out fairly the factual matrix to be applied to the legal principles. The sole executor of Gloria's estate has consented to the claimant receiving their costs of these proceedings. Indeed, I am told all parties consent to the claimant receiving the costs.

61. There is a relatively modest amount of costs in this case. All the parties have engaged with the claimant, and, as I said, the claimant's counsel has adopted a very thorough analysis of the legal issues. So had I found that the tenancy was severed during Gloria's life-time, I would still have ordered the costs to be paid from the share of the proceeds of sale held in the solicitors' account.

62. In other cases it would be appropriate for the executor to raise the issue of costs in advance of any directions hearing or disposal hearing, so the court can consider whether, in the absence of an engaged and active party opposing the claim, either someone should be nominated to do so from the pool of defendants or someone else appointed to raise points in defence of the claim. I particularly bear that in mind if one has a case where there is an unascertained class of beneficiaries. But, as I have indicated, I am satisfied that these were necessarily incurred costs, it was proper to do so and at the moment there is an impasse in the estates which is caused by the fact that the sum of money is sitting in the solicitors' account and until a determination by the court it cannot be paid out.