



Neutral Citation Number: [2022] EWHC 40 (Ch)

Case No: HC-2016-000523

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (Ch)

IN THE ESTATE OF JEAN EILEEN LECH (DECEASED)

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: Wednesday 12 January 2022

Before:

His Honour Judge Cawson QC
Sitting as a Judge of the High Court

Between:

ANNA MYFANWY ST CLAIR
- and -
(1) NICHOLAS HILTON KING
(2) JUNE MARION FARRELL

Claimant

Defendant

The Claimant appeared in person (by videolink)
Kathryn Purkis (instructed by Kiteleys) for the Defendants

Hearing dates: 7-10, and 13-16 December 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

.....

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, and by release to BAILII.

The date and time for hand-down is deemed to be 10.00 a.m. on 12 January 2022

His Honour Judge Cawson QC:

CONTENTS	PARAGRAPH
<u>Introduction</u>	1
<u>Key participants in the relevant events</u>	10
<u>Background</u>	22
<u>The issues to be determined</u>	84
<u>The evidential landscape</u>	89
<u>Credibility and reliability of the witnesses</u>	97
<u>Dynamics of the main relationships</u>	107
<u>Mutual Wills</u>	118
<u>The Law</u>	118
<u>Ms St Clair's case</u>	122
<u>Has Ms St Clair established that the 2007 Will was a mutual will?</u>	124
<u>Conclusion regarding mutual wills</u>	132
<u>Contract to make and not revoke a will in the terms of the 2007 Will</u>	133
<u>Undue influence/fraudulent calumny</u>	136
<u>Introduction</u>	136
<u>Ms St Clair's case as to fraudulent calumny</u>	139
<u>Legal principles</u>	144
<u>Is Ms St Clair's case of fraudulent calumny made out?</u>	153
<u>Conclusion regarding fraudulent calumny</u>	158
<u>Testamentary capacity</u>	162
<u>Introduction</u>	162
<u>Legal Principles</u>	168
<u>Did Mrs Lech lack capacity?</u>	169
<u>Conclusion as to testamentary capacity</u>	180
<u>Want of knowledge and approval</u>	181
<u>Introduction</u>	181
<u>Legal principles</u>	183
<u>Did Mrs Lech know and approve the contents of the 2009 Will?</u>	184
<u>Conclusion in respect of want of knowledge and approval</u>	187
<u>Overall conclusion in respect of Ms St Clair's claim</u>	188
<u>Counterclaim</u>	189

Introduction

1. This case concerns a challenge to the last will dated 20 May 2009 (“**the 2009 Will**”) of the late Jean Eileen Lech (“**Mrs Lech**”), brought by her stepdaughter, Anna Myfanwy St Clair (“**Ms St Clair**”).
2. Ms St Clair is the daughter, by an earlier marriage, of Mrs Lech’s late husband, Zbigniew Lech (“**Mr Lech**”), who predeceased her.
3. Ms St Clair is aggrieved by the fact that by the 2009 Will Mrs Lech has left the residue of her estate, which Ms St Clair considers derived entirely from Mr Lech’s efforts and resources, to the First Defendant, Nicholas Hilton King (“**Mr King**”), who Ms St Clair regards as, at worst, an impostor, and at best a distant relative, introduced to Mrs Lech by the Second Defendant, June Marion Farrell (“**Mrs Farrell**”), shortly prior to Mrs Lech making the 2009 Will.
4. Mr King and Mrs Farrell were named as executors by the 2009 Will, and Mrs Farrell and her children receive legacies of £10,000 (the gift to the children being a joint gift) thereunder.
5. Ms St Clair seeks to challenge the 2009 Will on the grounds that:
 - i) The terms thereof are subject to the terms of an earlier will made by Mrs Lech on 1 November 2007 (“**the 2007 Will**”), which such will Ms St Clair alleges was made as a mutual will contemporaneously with a will made by Mr Lech, with both Mr Lech’s and Mrs Lech’s wills benefiting Ms St Clair and her daughter, Carmen Lech (“**Carmen**”);
 - ii) The 2009 Will was executed under the undue influence of Mrs Farrell, or more precisely and as the case was, subject to a pleading point, refined for trial, that the execution of the 2009 Will was induced by a fraudulent calumny on the part of Mrs Farrell, acting in league with Mr King;
 - iii) Mrs Lech lacked testamentary capacity at the time that she made the 2009 Will; and
 - iv) The 2009 Will was made with a want of knowledge and approval on the part of Mrs Lech.
6. In addition, Ms St Clair maintains that Mrs Lech entered into a contract with her prior to the execution of the 2007 whereby Mrs Lech, in consideration for Ms St Clair procuring Mr Lech to leave his shares to Mrs Lech, agreed to leave her estate as provided for by the 2007 Will, i.e., with both Ms St Clair and Carmen benefiting as provided for thereby.
7. Ms St Clair now appears in person, having been legally represented at earlier stages of the present proceedings. She resides in Australia and given her age (72) and financial resources and having regard to the

difficulties created by the Covid 19 pandemic, directions were given for the trial to proceed on a hybrid basis, with Ms St Clair attending by video link, using the MS Teams platform, from Australia. One of the other witnesses, Margaret Ann Kirby (“**Mrs Kirby**”), also gave evidence remotely by video link. The other witnesses, Mr King and Mrs Farrell, gave evidence in person in court, as did Rosalind Paterson-Morgan (“**Mrs Paterson-Morgan**”) although her evidence was completed remotely after her evidence went into a second day.

8. Given the time difference with Australia, sittings were limited to 9.30am to 12.00 noon each day, hence the trial extending over eight days.
9. As I have mentioned, Ms St Clair appeared in person. The Defendants were represented by Ms Kathryn Purkis of Counsel. I am grateful to them both for their helpful written and oral submissions.

Key participants in the relevant events

10. Mr Lech was born in 1907 in Lvov, Poland (now Ukraine). He served in the Polish military in WWII, before being captured and serving as a prisoner of war. After WWII, he moved to the UK and worked as an architect, having previously qualified as an architect in Poland. In that capacity, from the early 1950s, he was employed by the London Regional Hospital Board earning a good salary. He retired in the early 1970s, receiving a generous lump sum, and an index linked public sector pension. Mr Lech died on 20 October 2008.
11. Mr Lech’s first marriage was in 1932 in Poland. There was one issue of that marriage, Jerzy Lech (“**Jerzy**”), from whom Mr Lech was estranged for many years prior to his death. Jerzy has one daughter, Lisa. Mr Lech’s first marriage was dissolved in 1939. Mr Lech remarried having moved to the UK, marrying Mona Margaret Roberts in 1949. There were two issue of this marriage, Ms St Clair born in 1949, and her brother Robert John, who at all relevant times has been in a care home. The only other identified blood relatives of Mr Lech are his granddaughter Carmen, Carmen’s own two children, and four nieces, Helena, Aleksandra, Theresa and Janina.
12. Mr Lech’s marriage to Mona Margaret broke down in about 1953, and was annulled in about 1960, apparently because Mr Lech’s divorce papers relating to his first marriage in Poland were not recognised in the UK.
13. Mr Lech met Mrs Lech in about 1968, and it is understood that Mrs Lech moved into Mr Lech’s flat in Earls Court the following year. Mr Lech and Mrs Lech married in 1979, after Mrs Lech had divorced her own first husband. There was no issue of the marriage.
14. On the breakdown of her parents’ marriage, Ms St Clair was brought up by her mother. She moved with her mother to Australia in 1966, but it is her evidence that she returned to London in 1968 due to issues regarding her mother’s mental health. She says that thereafter, at his invitation, she lived for a while with Mr Lech at his Earls Court flat. Although Ms St

Clair lived with Mr Lech, and subsequently with Mr and Mrs Lech, from time to time over succeeding years, Ms St Clair has spent significant periods of time living abroad, including in Oregon, USA, New Zealand and Australia. Her daughter, Carmen, was born in 1975.

15. Mrs Lech was born in 1932. Her maiden name was King, and she had a brother Peter King (who was born in 1933 and died, in Singapore, in 2007), and a sister, Irene. At the time that she met Mr Lech, Mrs Lech was married to Wiktor Noworyta, whose name she had taken.
16. In 1972, Mr Lech sold his flat in Earls Court, and 29 Kenilworth Ave, Wimbledon ("**Kenilworth Avenue**") was acquired as a matrimonial home in the joint names of Mr Lech and Mrs Lech. Ms St Clair has alleged that it was initially intended that Kenilworth Avenue be acquired in the joint names of Mr and Mrs Lech and Ms St Clair, and that the whole of the deposit for the purchase of Kenilworth Avenue, and all subsequent mortgage instalments were provided by Mr Lech. In 1976, and according to Ms St Clair using the lump sum obtained on Mr Lech's retirement, 36 Telford Avenue, Streatham ("**36 Telford Avenue**") was acquired in Mr and Mrs Lech's joint names. According to Ms St Clair, 36 Telford Avenue was purchased for only £12,000, a reflection of its then distressed condition and the fact that it contained sitting tenants. Kenilworth Avenue was sold in 1986, whereupon Mr and Mrs Lech moved to 36 Telford Avenue. 36 Telford Avenue was Mr and Mrs Lech's matrimonial home until Mr Lech's death on 27 October 2008. 36 Telford Avenue is now thought to be worth approximately £2 million, and her interest therein is the largest asset in Mrs Lech's estate.
17. Although 36 Telford Avenue became Mr and Mrs Lech's matrimonial home, rooms thereat continued to be let out to tenants, usually to three or four Polish girls. In addition, Carmen has, at all relevant times, lived at 36 Telford Avenue, with her own children. Whilst Carmen used to live with her partner, Laurent Andrjewski, she now lives with a man called Didi. Despite having an interest in challenging the 2009 Will, should there be any merit in doing so, Ms St Clair says that Carmen has refused to communicate with her, or to participate in the present proceedings.
18. Ms St Clair has continued to refuse to accept that Mr King is anything other than an impostor, unrelated to Mrs Lech. This is despite DNA tests having been carried out, the existence of a birth certificate, and the evidence of Mrs Kirby, in addition to that of Mr King himself. Attempts previously made by Ms St Clair to amend so as to formally plead that Mr King is an impostor unrelated to Mrs Lech have been unsuccessful. I am in any event satisfied that the evidence is clear to the effect that Mr King, who was born on 7 April 1959, is the son of a relationship between Peter King and Mrs Kirby. At the time that Mr King was born, Mrs Kirby was married to, but had been deserted by a Keith Pulsford, and was only 17 years old. In the light of Mrs Kirby's evidence, this amply explains why Keith Pulsford's name might, in rather different times in 1959, have appeared on Mr King's birth certificate. The relationship between Peter

King and Mrs Kirby came to an end some four years after Mr King's birth, and it was not until some years later that Mr King made contact with his father, but his evidence was that he did so.

19. Mrs Farrell was born on 9 February 1960, and has twins, now aged 21, by her deceased partner, Simon Riley. It is Mrs Farrell's evidence that she was a friend of Mrs Lech from the late 1980s, having been introduced to Mrs Lech by a tenant at 36 Telford Avenue known as Duda. She says that in later years, after a cleaner had left, she assisted Mrs Lech with cleaning, and also with other care needs such as shopping, and taking Mrs Lech to hospital and other appointments. Mrs Farrell says that she did this as a friend, assisting about 2 to 3 hours, 2 to 3 times per week. She says that she did not receive any remuneration, although she did latterly receive a carer's allowance of approximately £30 a week. Ms St Clair, on the other hand, has described Mrs Farrell as a "*cleaning lady*", or akin to a "*servant*", and as not being the "*equal*" of Mrs Lech, although it forms part of Ms St Clair's case that Mrs Lech and Mrs Farrell would drink (excessively) together.
20. Mrs Lech was also assisted about the house by Barbara Witzak-Cholewa ("**Barbara W-C**"), who was provided with a room at 36 Telford Avenue on the basis that she assisted with cleaning, cooking and other household chores. Ms St Clair has been informed by Barbara W-C's daughter that she is now dead. Correspondence from Barbara is relevant to the claim.
21. Also of relevance to the claim is correspondence with a friend of Mrs Lech, Annie Dammassa ("**Annie D**"). Annie D is also now dead.

Background

22. In 2006, Mr and Mrs Lech instructed Dale and Newbury, Solicitors, to draft wills on their behalf. The Senior Partner at Dale & Newbury, Sharon Pegler ("**Ms Pegler**"), acted on their behalf. Ms Pegler's file notes record discussions as to how the residue to Mr and Mrs Lech's estates should be shared as between Ms St Clair and Carmen. It is clear that a primary motivation behind making the wills in the terms that were then made was to make sure that they each made effective use of the nil rate band under the then Inheritance Tax regime.
23. Ultimately, Mr and Mrs Lech executed similar wills on 3 December 2006 ("**the 2006 Wills**") that provided as follows:
 - i) They each appointed the other of them and partners in Dale and Newbury as executors;
 - ii) They each gave their chattels to the other of them;
 - iii) If the other of them survived for 30 days, then they provided for discretionary trusts, making full use of the nil-rate band, in favour of the other of them, their children and the children of the other of

them, and remote issue and their respective spouses, widows or widowers;

- iv) They each provided for residue to go to the other of them provided that the other survived for 30 days, and failing that:
 - a) Mr Lech provided for residue to pass as to 25% to Ms St Clair and 75% to Carmen; and
 - b) Mrs Lech provided for residue to pass as to 50% to Ms St Clair and 50% to Carmen.

24. Mr and Mrs Lech also left letters of wishes relating to the discretionary trusts. There is some dispute as to what Mr Lech's letter of wishes provided for, and it is not now available. However, I do not understand it to be in dispute but that each of the letters of wishes provided for the other spouse to be primary beneficiary under the discretionary trusts within their lifetime.

25. In a *Larke v Nugus* letter dated 2 August 2012, Ms Pegler wrote that: *"Notwithstanding the age of Mr and Mrs Lech, there were absolutely no signs of any confusion, loss of memory or ill health (other than as mentioned in the attachments). Indeed, Mr Lech because of his age, and because he was aware he was making a Will with which certain family members may not be happy, provided us with a letter from Dr. I Pryde, a Consultant Psychiatrist to Mr Lech's GP, Dr Pudlowska on 23rd March 2006 addressing Mr Lech's competence to make a Will, a copy of that letter is attached."* It was not thought necessary that any similar such psychiatric report be obtained in respect of Mrs Lech.

26. It was Ms St Clair's evidence that Mr Lech and Mrs Lech both believed that the effect of the 2006 Wills was that residue would pass to Ms St Clair and Carmen under both wills, whether or not the other spouse survived for 30 days, i.e., that the interest of the other spouse was limited to the interest under the discretionary trusts provided for. Ms St Clair says that that was also her belief as to the effect of the 2006 Wills. It was Ms St Clair's evidence that this was a consideration behind Clint Jordan ("**Mr Jordan**") of Omega Wills Ltd ("**Omega**") being instructed in October 2017 to draft new Wills for Mr and Mrs Lech ("**the 2007 Wills**").

27. It is common ground that Ms St Clair, who was visiting the UK at this time from Australia, played a significant role in respect of the 2007 Wills, and in giving instructions to Mr Jordan in respect of them. Mrs Farrell recalls Ms St Clair spending considerable time with Mr Lech discussing the 2007 Wills, and Ms St Clair features heavily in Mr Jordan's contemporaneous file notes. Whilst it will be necessary to revisit these file notes in more detail in due course, I note that the first file note dated 15 October 2007 records Ms St Clair speaking to Mr Jordan and informing him that Mr and Mrs Lech wanted to leave *"the house or at least the largest part of the house"* to Carmen, but that Ms St Clair was concerned

that Carmen's boyfriend would manipulate the situation and force the survivor out of the house.

28. It is also Ms St Clair's case that, on the basis that Mrs Lech's only interest under the 2006 Wills had been as a discretionary beneficiary under the discretionary trust of the nil-rate band, she reached agreement with Mrs Lech that she would seek to persuade Mr Lech to leave Mrs Lech his shares if she agreed to make the 2007 Will in the terms that she did.
29. It is further Ms St Clair's case that in her discussions with Mr Lech, Mr Lech informed her that he had reached agreement with Mrs Lech that if they both made wills in the terms that they subsequently did make by the 2007 Wills, then Mrs Lech would not subsequently revoke her will. She says that Mr Lech described the 2007 Wills that they were respectively to make as being "*inviolable*", which he said was as close a translation as possible from a Polish word used by Mr Lech, which connoted some form of solemn undertaking between Mr and Mrs Lech.
30. On 1 November 2007, Mrs Lech executed the 2007 Will, revoking her 2006 Will. The 2007 Will provided as follows:
 - i) It appointed Mr Lech and Ms St Clair as executors and trustees;
 - ii) It gave Mrs Lech's personal chattels to the trustees to be disposed of in accordance with a memorandum of wishes, and if not disposed of pursuant thereto to fall into residue;
 - iii) It provided for Mrs Lech's share in 36 Telford Avenue ("*the Trust Fund*") to be held on trust for Mr Lech for life, if he survived Mrs Lech by 30 days, subject thereto to fall into residue. The trustees of the Trust Fund were named as Mrs Lech (presumably intended to be Mr Lech) and Ms St Clair;
 - iv) It provided for Mrs Lech's residuary estate to be divided as to 66% to Ms St Clair, and 34% to Carmen.
31. On 19 November 2007, Mr Lech executed a new will, that revoked his 2006 Will. This will provided as follows:
 - i) It appointed Mrs Lech and Ms St Clair as executors and trustees;
 - ii) It gave legacies of £5000 to Aleksandra Lech and Theresa Jesman, and legacies of £3,000 each to Helena Lech and Janina James, provided that Mrs Lech should not have predeceased Mr Lech leaving a will containing a mirror clause which had taken effect;
 - iii) It gave Mr Lech's premium bonds and shares to Mrs Lech;
 - iv) It provided for Mr Lech's share in 36 Telford Avenue ("*the Trust Fund*") to be held on trust for Mrs Lech for life, if she survived Mr Lech by 30 days, subject thereto to fall into residue. The trustees

of the Trust Fund were named as Mrs Lech, Ms St Clair and Carmen;

- v) It provided for Mr Lech's residuary estate to be divided as to 66% to Carmen and 34% to Ms St Clair.

32. At some stage in 2008, possibly slightly earlier, Mr King was introduced to Mrs Lech. It is Ms St Clair's case that Mr King was introduced to Mrs Lech by Mrs Farrell. This is disputed by Mr King and Mrs Farrell. It was Mr King's evidence, supported by that of his mother, Mrs Kirby, that Mrs Lech contacted Mrs Kirby out of the blue with a request that Mrs Kirby ask Mr King to get in touch with Mrs Lech, which Mr King then did. Mr King says that he then arranged to meet Mrs Lech on his own. Mr King was unable to be precise as to when, exactly, this was, but he recalls visiting Mrs Lech at 36 Telford Avenue on one or two occasions whilst Mr Lech was still alive. Mrs Kirby expressed surprise as to how Mrs Lech might have obtained her telephone number in order to make contact with her but speculated Mrs Lech might have obtained the number from her brother, Peter King, prior to his death in 2007.

33. It was Mr King's evidence that, having first met Mrs Lech, he visited her and otherwise kept in touch with her on a regular basis thereafter. He says that initially he and Mrs Lech, joined also by Mrs Farrell, took Mrs Lech out for a meal when he visited, but that after Mrs Lech subsequently became confined to the house, this was no longer possible.

34. Mr Jordan made a file note recording a telephone call from Mrs Lech on 13 March 2008. This file note records that Mrs Lech was very unhappy, and that Mr Lech had wanted her to change the 2007 Will in favour of Carmen (who was due to receive 34% of residue as against 66% for Ms St Clair). Mr Jordan recorded Mrs Lech as saying that her life had been "hell" since she had made the 2007 Will, and that Carmen was not speaking to her. She said that she wanted to leave things as they were but was being pressurised. Mr Jordan recorded that he advised her to leave things as they were, which she did.

35. In March or April 2008, Mrs Lech was referred by her GP, Dr Pudlowska, to a Dr Fawzi following a fall at home. The medical records suggest that Carmen informed Dr Pudlowska regarding this. Dr Fawzi then produced a report dated 28 May 2008. I note therefrom that:

- i) The report diagnosed: "*Possibility of acute alcohol intoxication on several occasions.*" The report notes that Mrs Lech realised that she drank excessively at times, but that she did not think that this was a problem "*at the time being*" and did not want help from psychiatric services. The report recorded Mrs Lech as having described drinking alcohol every day, starting with a glass of wine with lunch at midday, and finishing about half a bottle daily.
- ii) As to Mrs Lech's medical history, the report said this: "*Mrs Lech suffers from COPD and this is followed up at Guy's and St*

Thomas' Hospital and she is receiving burst oxygen therapy at home over and above the inhalers. She was diagnosed with carcinoma of the right breast grade 2 invasive, adenocarcinoma and started on Tamoxifen ... She also suffers from osteoporosis and is on Arimidex 1 mg."

iii) The report included a "Mental State Examination", which said that: *"Mrs Lech is a well preserved 76-year-old lady she was dressed appropriately and establish reasonable rapport. She was not agreeable to the assessment initially and did not know why she was referred but eventually agreed to complete this. Good eye to eye contact. Speech was normal in tone, volume and quantity. Mood was subjectively and objectively euthymic rhythmic with reactive affect. There was no disorder in the form content or possession of thought. There was no evidence to suggest perceptual abnormality. Cognitively Mrs Lech scored 30 out of 30 on the mini mental state examination and did not show any frontal dysfunction. Mrs Lech had poor insight to her increased consumption of alcohol and was not willing to address this at this stage."*

36. Ms St Clair returned to the UK from Australia in August 2008, where she remained until November 2008, staying at 36 Telford Avenue until ejected following Mr Lech's death in the circumstances referred to below.

37. It is evident that Ms St Clair had concerns in relation to Mr Lech, in particular with regard to his safety in getting up and down stairs to his bedroom, and also with regard to what Ms St Clair perceived to be his treatment by Mrs Lech. In view of these concerns, Ms St Clair contacted, and entered into correspondence with Clive Simmons ("**Mr Simmons**"), Safeguarding Adults Coordinator with Lambeth Adult Protection Department ("**LAPD**"). Ms St Clair has produced, but not in its native format, an email chain of correspondence with Mr Simmons. The following extracts from the emails sent by Ms St Clair provide an insight into what was being said by Ms St Clair to Mr Simmons:

i) 16 September 2008 – *"My father (aged 101) is being repeatedly and constantly subject to verbal abuse by his wife, an alcoholic age 77 yrs ... Please advise what services are available? I am requesting intervention."*

ii) 16 September 2008 – *"The reason I emailed you rather than calling should be obvious. At this stage I do not want a phone call. Any knowledge in this household that I had contacted you could cause an increase in the problem rather than a decrease, as my father is in denial about the situation and so is my stepmother. If you called and/or came for a visit, they would take it as an attack on my part. Both of them would very likely pretend there was nothing wrong and I would be made the pariah. The problem would not be treated and would get worse."*

- iii) 26 September 2008 – *“My stepmother seems to be unaccountably angry about what she sees as interference. She sees no need to provide any care of (sic) support to him.*
 - iv) ... Please contact me direct about setting up a meeting. It is IMPERATIVE that the social worker does not initiate any questions about abuse as my father will deny it and reject ANY help whatsoever. If you can assure me that the Social worker will be sensitive and just focus on the balance problem, I think it will be possible to invite someone in.”
 - v) 27 September 2008 – *“I am very much afraid that my stepmother has no interest in providing any support for him. I would go further and say that she apparently does not wish to preserve his life. It is only a matter of time before he does fall. He was VERY shaky last night as he climbed the stairs.”*
 - vi) 30 September 2008 – *“Please would you try to arrange a meeting as soon as possible for my father. I am worried about him climbing the stairs and especially climbing down. Unfortunately both his granddaughter and his wife are encouraging him to continue to do so. It is only a matter of time before he falls as he can barely walk now. The situation is very sad and very hard for me to deal with as I can only interpret my daughter’s insistence that he climb as personally motivated.”*
38. In the event, a social worker, Magda Wollny (“**Ms Wollny**”) did visit 36 Telford Avenue on 13 October 2008. It is Ms St Clair’s case that the visit provoked an angry alcohol-fuelled reaction from Mrs Lech. It is also Ms St Clair’s case that Mrs Farrell was present during the course of the visit, and that, at one stage, she rushed into the living room, took hold of Ms St Clair by the shoulders, and shook her violently screaming: *“Anna, Anna what have you done?”*. It was Ms Farrell’s evidence that she had no idea that Ms St Clair had referred Mr Lech’s situation to LAPD, or to social services of any kind, and has no recollection of being present during Ms Wollny’s visit.
39. On 14 October 2008, Ms St Clair emailed Ms Wollny to say: *“I’m so glad you were able to stop by yesterday. I’m sorry that it might have been an unpleasant experience to meet my stepmother. Today she seemed to be much more at ease with your having stopped by, so the bad reaction may have been due to the alcohol she had consumed yesterday.”* I note that there is no mention in this email, or indeed in any correspondence with Mr Simmons of Mrs Farrell, or the relationship between Mrs Farrell and Mrs Lech.
40. Unfortunately, Mr Lech became unwell on 16 October 2008 and asked to be admitted to hospital. It is evident from further emails with Ms Wollny with regard to another visit, that Ms St Clair did not initially think that

there was anything seriously wrong with Mr Lech. However, whilst in hospital he contracted pneumonia, and sadly died on 27 November 2008.

41. There is one further alleged event of relevance in the period leading up to Mr Lech's death. Ms St Clair's evidence was to the effect that in the weeks before and after Mr Lech's death, Mrs Lech and Mrs Farrell would drink together excessively, with Mrs Farrell stirring Mrs Lech up. Ms St Clair says that on one occasion this led to Mrs Farrell's twins having to be collected from school because she was too drunk to collect them. Ms St Clair says that she informed Mrs Farrell that Mr Lech had told her to "*report June to the authorities and have those children taken away from her*". Ms St Clair says that although she told Mrs Farrell that she would do no such thing, Mrs Farrell reacted angrily and said: "*if you do that Anna ... If you do that ... you'll not get nothing*" (sic). Ms St Clair says that this did not bother her at the time, but now regards it as her "*undoing*". Mrs Farrell emphatically denies any such conversation, and whilst admitting that she did drink together with Mrs Lech when invited by Mrs Lech to join her for a drink, denies that she used that as an opportunity to stir Mrs Lech up, whether against her family or otherwise.
42. Mr Jordan's file notes record that he was telephoned on 29 October 2018 by Ms St Clair who informed him of Mr Lech's death. The relevant file note records Ms St Clair discussing "*various points regarding the hostilities that have broken out*". It goes on to record Ms St Clair saying that she would come and get Mr Lech's will that morning (Ms St Clair having been named as one of the executors therein). Mr Jordan's file notes refers to Ms St Clair having collected the will, seemingly at 9am the following day (the date on the file note is indistinct). Mr Jordan's file notes also record that, in the meantime, he had received a telephone call from Mrs Lech informing him as to Mr Lech's death and enquiring as to how to obtain Mr Lech's will. However, Mr Jordan then recorded that Ms St Clair had telephoned to say that Mrs Lech had agreed to her collecting the will. Notwithstanding, after the will had been collected by Ms St Clair, Mrs Lech is recorded as having telephoned Mr Jordan, denying that she had agreed to Ms St Clair collecting the will, and being very upset. Mr Jordan recorded that Mrs Lech: "*went on and outlined several complaints that she had against [Ms St Clair]*".
43. Mr Jordan further recorded that in a subsequent telephone call Mrs Lech was upset that Mr Jordan had given Mr Lech's will to Ms St Clair "*as she was the wife*" and said that she was so upset that she wanted to draft a new will. Mr Jordan's file note recorded Mrs Lech as accusing Ms St Clair of "*manipulating things*".
44. At around this time, and following Mr Lech's funeral, Ms St Clair was ejected from 36 Telford Avenue by the Police, apparently at the instigation of Carmen in circumstances that are not entirely clear.
45. It is common ground that after Ms St Clair had been ejected from 36 Telford Avenue, Mrs Farrell offered, and gave accommodation to Ms St

Clair for a while, until Ms St Clair moved on. Ms St Clair alleges that whilst she was staying with Mrs Farrell, she overheard Mrs Farrell discussing Mrs Lech's will and her estate with "*her boyfriend*" Peter. Mrs Farrell denies that the Peter in question is her boyfriend, but rather a friend of her late partner, Simon Riley, who has helped her out following Simon Riley's death, and she denies that there were any such conversations.

46. Mr Jordan's file notes record that he met with Mrs Lech on 27 November 2008, Carmen also being present. Mr Jordan recorded that Mrs Lech and Carmen "*expressed (at great length) that as far as they were concerned [Ms St Clair] was not a nice person.*" Mrs Lech is then recorded as being "*adamant*" that she "*definitely wanted to change her Will and exclude [Ms St Clair] from it.*"
47. Mr Jordan then took the view that it would be better if someone else were instructed with regard to Mrs Lech making a new will.
48. Mrs Lech therefore instructed Mrs Paterson-Morgan of Brice Drooglever, Mrs Lech having been introduced to Mrs Paterson-Morgan by Mrs Farrell whose late partner, Simon Riley, had lived next door to Mrs Paterson-Morgan.
49. Mrs Paterson-Morgan first met with Mrs Lech at 36 Telford Avenue on 19 December 2008. Mrs Paterson-Morgan's evidence was that this first meeting was primarily concerned with the question of obtaining probate in respect of Mr Lech's estate. However, in paragraph 7 of her witness statement, Mrs Paterson-Morgan states that at this meeting, Mrs Lech: "*explained that all previous Wills including her late husband's Will have been made at her late husband's instigation and did not truly reflect her wishes. I recall the Deceased being adamant that the 2007 Wills were never intended to be mutual wills. She told me that they had each put in their own money and she was therefore free to dispose of her assets as she wished.*" Unfortunately, Mrs Paterson-Morgan did not take a detailed file note of this conversation.
50. However, Mrs Paterson-Morgan did explain in giving oral evidence that it would have been her practice, at the time, to have enquired as to the possibility of there having been mutual wills given the circumstances in which she was instructed. Further, on 24 January 2012, Mrs Paterson-Morgan wrote to Matthew & Matthew, Solicitors instructed by Mr King and Mrs Farrell in the administration of Mrs Lech's estate, informing them that despite the similarities between the wills as made by Mr Lech and Mrs Lech respectively in 2007, there was: "*no evidence that mutual Wills had at any time been agreed.*" Further, Mrs Paterson-Morgan stated in this letter that when she met with Mrs Lech following Mr Lech's death: "*she was definitely not happy with the terms of the previous Will and was adamant that whilst her husband was happy with the terms of his Will, she had not really given proper consideration to the terms of her own Will at the time when it was made.*"

51. On 19 January 2009, Mrs Paterson-Morgan wrote to Mrs Lech referring to the fact that Mrs Lech had given her preliminary instructions in connection with her will, and Mrs Paterson-Morgan further referred to having advised Mrs Lech that she should consider granting power of attorney to one, or preferably two people jointly, noting that Mrs Lech had indicated that she would like to appoint Mrs Farrell with one other.
52. Following a meeting with Mrs Lech on 12 February 2009, on 13 February 2009, Mrs Paterson-Morgan wrote to Mrs Lech recording that Mrs Lech had indicated that she wished to give certain items of jewellery to Mrs Farrell, to give her gold jewellery and brown fox coat to Annie D, to leave a number of legacies to certain named charities, and also that she would like to leave £10,000 to her nephew, Mr King. However, the letter recorded that Mrs Lech was undecided as to what to do with the rest of her estate. The letter commented: *“if you feel strongly that you do not wish [Ms St Clair] or Carmen to inherit you really must make a decision soon.”*
53. In paragraph 14 of her witness statement, Mrs Paterson-Morgan refers to meeting with Mrs Lech and Carmen on 3 March 2009. Again, the primary purpose of the meeting was to discuss the administration of Mr Lech’s estate, but discussion turned to Mrs Lech’s will. Mrs Paterson-Morgan refers to Carmen having made clear that she wished Mrs Lech to leave at least a part share of 36 Telford Avenue to Carmen, but that Mrs Lech had indicated that she did not wish to discuss this with Carmen. This account is supported by Mrs Paterson-Morgan’s contemporaneous note of this meeting.
54. Mrs Paterson-Morgan says that on 10 March 2009, Mrs Lech telephoned her, and informed her that she had decided to leave everything to Mr King. This is recorded in a contemporaneous file note that she made that records: *“all to nephew but more legacies she’ll ring or write”*.
55. On 20 March 2009, Mrs Lech obtained a grant of probate to Mr Lech’s estate, power being reserved to Ms St Clair.
56. There was a further telephone conversation between Mrs Paterson-Morgan and Mrs Lech on 25 March 2009, when Mrs Lech informed Mrs Paterson-Morgan that she was still thinking about her will. There was then a further telephone conversation on 1 April 2009 when, according to Mrs Paterson-Morgan, Mrs Lech telephoned to say that Mr King *“did not want the house, only money”*. Mr King recalls Mrs Lech having asked him, during one of his visits to see her, whether he wanted *“the house”* or money. He says that it is his recollection that he sought to avoid the question.
57. On 1 April 2009 Mrs Paterson-Morgan wrote to Mrs Lech referring to their conversation earlier that day and enclosing a copy of *“your Will”*. The letter invited Mrs Lech to read the will carefully, and said that: *“I have, because he is the main beneficiary, inserted your nephew’s name as*

your executor which I hope is what you wish.” The letter gave instructions with regard to the execution of the will and referred to an earlier suggestion that “*your neighbours*” witness the will. Having received this will, on 6 April 2009, Mrs Lech spoke to Mrs Paterson-Morgan stating that she wished to leave a further legacy to Aaron King, as well as a number of legacies to named charities. Mrs Paterson-Morgan has produced a copy of the will sent to Mrs Lech on 1 April 2009 with handwritten amendments showing the further instructions given on 6 April 2009.

58. On the basis of these further instructions, Mrs Paterson-Morgan prepared a revised will, which Mrs Lech executed on 17 April 2009. By this will, Mrs Lech:
- i) Appointed Mr King as sole executor and trustee;
 - ii) Gave her gold jewellery and fur to Annie D;
 - iii) Gave a pecuniary legacy of £10,000 to each of Aaron King, Carmen, Mrs Farrell, and Mrs Farrell’s two children;
 - iv) Gave six legacies of £2500 each to named charities;
 - v) Gave her residuary estate to Mr King; and
 - vi) Included a request that her executor and trustee give Carmen the option to purchase her share in 36 Telford Avenue.
59. Shortly thereafter, Mrs Lech revised the will that she had made on 17 April 2009 by executing a new will on 20 May 2009 (i.e., the 2009 Will). This was in the same terms as the will made on 17 April 2009 save that it appointed both Mr King and Mrs Farrell as executors and trustees, and it omitted the legacy of £10,000 to Carmen and two of the £2500 legacies left to charities.
60. On the same day, 20 May 2009, Mrs Lech executed Powers of Attorney appointing Mr King and Mrs Farrell as attorneys.
61. There is a record of a visit by a doctor to see Mrs Lech in early July 2009, following what appears to have been another referral by Carmen. This record refers to Mrs Lech having felt faint and being unable to balance herself. The outcome of an examination records, amongst other things: “*Fully Conscious Alert. Fully oriented Communicating well ...*” A referral form dated 7 August 2009 records, amongst other things: “*Severe COPD, housebound, on oxygen therapy. Unable to look after herself since the episode of vertigo and the illness of her friend/carer.*” I note that her medical records show that in October of that year, Mrs Lech was well enough to have a cataract extraction.
62. On 29 August 2009, Ms St Clair wrote to Mrs Paterson-Morgan with regard to the letting of 36 Telford Avenue. However, she enclosed a letter

(“the August 2009 Letter”) that she had written to Mrs Lech prior thereto, to which she had not had a response. On the basis that it was possible that Mrs Lech had not received the letter, she asked Mrs Paterson-Morgan to pass it on saying: “*I wrote as an act of forgiveness and it was very conciliatory so I do think it deserved a response.*” Whilst the August 2009 Letter requires to be read in its totality, it included the following:

“I’m not going to focus on what took place back in November. I think you must be aware what a terrible thing it was, the more so because of being so soon after [Mr Lech] died....”

I do not hold you responsible for this, as I understand Carmen made the call to the police and made up the story about a “domestic incident”. Who knows what stories she was telling you or what slights you are imagining I had committed for you to go along with it. In reality, I was trying to make the best of a very difficult period for all of us and trying to do what [Mr Lech] would have wished. I did nothing wrong and my conscience is clear....”

I am not stupid and I think it is most likely that you have rewritten your will, leaving everything to [Mrs Farrell]. It is your prerogative to do so, and I decided to write to you about this to make sure you are not living under some kind of deception based on lies told to either by Carmen or June about me.

I imagine the thing that you are most angry about has to do with the visit of [Ms Wollny] the day before [Mr Lech] went into hospital. Possibly Carmen or June told you I had called in an adult protection officer as a complaint against you. The reality is that it was just as I told you and [Mr Lech]. I was very worried that he would fall down the stairs and I wanted to have “an authority” that he could refer to, to let him know that he had to make a place on the ground floor into his bedroom. If you remember, I expressed these concerns to you on many occasions ... So this was not an attack on you. I know that you did not have any objection to [Mr Lech] moving downstairs so I can only surmise that you have been given a false report probably from Carmen about the reason for [Ms Wollny’s] visit. I was truly amazed that Carmen was so furious about it. It was astonishing to me to hear her berating him last thing at night while he was already in bed on the couch and then again first thing in the morning for sleeping downstairs. This behaviour was not motivated by love for her grandfather. I hesitate to imagine the worst, would like to think it was based on her selfish desire to keep him close to her own domain upstairs without any consideration for his safety.

“I am also aware that it is quite possible that June has made up some stories to you about my calling in social services.... As if my doing so was an attempt to punish you rather than simply try to make both your and [Mr Lech’s] lives easier. June’s motivation for this is obvious.

I have to say this though about June. I do not blame her, as she is basically a very good hearted woman who is helping you out of kindness not just for what she can get. However, I came to realise while staying at her house that Peter (I think that it is named) who is usually there in the evening he is constantly advising her about how to relate to you (and me indirectly)."

63. In a further email sent to Mrs Paterson-Morgan on 30 August 2009, Ms St Clair stated that: *"I think it is most probable that Mrs Lech would wish to have [Mrs Farrell] become her live-in caretaker. The problem for me (and of course also for my daughter) would be that since it is most likely that [Mrs Farrell] has been given Mrs Leach's half of the house, she would in effect become a sitting tenant at Mrs Lech's death."*
64. On 1 September 2009, Mrs Paterson-Morgan wrote to Mrs Lech. Apart from dealing with the question of the letting of 36 Telford Avenue, Mrs Paterson-Morgan forwarded a copy of the August 2009 Letter to Mrs Lech. In addition, Mrs Paterson-Morgan said this: *"In one of our conversations [Ms St Clair] tried to tell me that you and your late husband had agreed to make identical Wills and that if you changed your Will she would fight it. I refuse to discuss your Will in any way but on the second page of the enclosed five page email dated 29th of August you'll see that I have marked a particular paragraph. In this she clearly accepts that you have every right to change your Will so I will keep your copy of this email with your Will just in case."* Mrs Lech did not respond to this letter.
65. Ms St Clair wrote to Mrs Paterson-Morgan by an email dated 19 April 2010. In this email, Ms St Clair alleged that Mrs Lech and Carmen had not *"shown any moral scruples with respect to making a false and inflammatory report to the Streatham Police in order to evict me from the family home days after my father's funeral."* The email went on to describe Mrs Lech as a *"vicious and embittered widow."*
66. On 28 November 2011, Mrs Lech's GP, Dr Pudlowska obtained information, almost certainly from Carmen albeit not specifically identified, alleging that a carer was grooming Mrs Lech for her money. Dr Pudlowska's note records: *"The "carer" is drunk most of the time and has been executor of her will and beneficiary."* This would suggest that Carmen was referring to Mrs Farrell. During the course of the trial, Ms St Clair sought to suggest that Dr Pudlowska had, herself, observed a drunken carer grooming Mrs Lech as noted. However, when challenged on this, Ms St Clair accepted that Dr Pudlowska would not have known the identity of Mrs Lech's executor and beneficiary under will, and thus that what Dr Pudlowska had recorded was based on what she had been told. However, Dr Pudlowska wrote on 7 December 2011 to Dr Lorraine Marke in the following terms:

"Thank you for seeing this patient of mine I SENT a referral to you, as regards a vulnerable adult, the problem is she has an alcohol problem, and a lot of money, and a big house, I believe a friend, of

many years, who is also a drinker, is manipulating her to give her money, rewrite her will in her favour, the beneficiary is a step granddaughter, but I believe this long-standing friend of [Mrs Lech] wants [Mrs Lech] to re-write her will, obviously when drunk she is at risk of manipulation, please can you come and assess the vulnerability, it is not re-memory, it's re-manipulation/vulnerable adult .”

67. On 24 January 2012, Genal Raffington, a Community Psychiatric Nurse with the Lambeth South Community Mental Health Team, wrote to Dr Pudlowska, having carried out a mental health assessment on Mrs Lech. The letter noted that Mrs Lech had refused to comply with Home Care Support and had refused care. The letter reported that Mrs Lech had been visited on 10 January 2012 and included the following:

“She appeared pleasant in mood, she sat up in bed and appeared alert. I introduced myself and my role. Mrs Lech seemed perplex (sic) and stated that she was not mental, and asked for further information as to whom sent me. Mrs Lech was informed that the referral was sent by her GP, she was also asked to describe how she's feeling in terms of her mood. She stated that she was frustrated, but did not elaborate. She was asked about her appetite she report that she is eating, and try to eat (sic). I asked if she having any alcohol she stated she no longer drinks alcohol ...

In term of Mrs Lech's mental health state it appears that she has capacity at the time of visit and cooperate to the extent that she knew the day of the week the date, year and month. She was able to identify the live-in carer, Barbara. Barbara confirmed that she is eating and had scramble eggs for breakfast prior to my visit. The District Nurse is also involved.”

68. Sadly, on 12 January 2012, before the letter dated 24 January 2012 had been sent, Mrs Lech died.
69. Mr King was on holiday in Egypt when Mrs Lech died. On 1 February 2012, he wrote to Ms St Clair in the following terms:

“Hi my name is Nicholas King son of Peter King and nephew of Jean Lech I am sending you this message to let you know that my aunty unfortunately died.

I have been appointed and executor and wanted to let you know as I understand you were Jeans stepdaughter.

Aunty Jean is being cremated on Thursday 2nd February at 10:15am.”

70. Mr King spoke at Mrs Lech's funeral. Ms St Clair did not attend, being in Australia. Carmen attended but walked out during the course of the funeral.

71. Ms St Clair had in fact already been informed of Mrs Lech's death by an email from Carmen dated 21 January 2012. In this email, Carmen referred to having been contacted by "*this nephew of Jean's*", and to her having stated in response that the funeral should be a family matter. This email went on to say the following:

"You may or may not be aware of what has transpired since the death of [Mr Lech] in regard to [Mrs Farrell's] heavy involvement with [Mrs Lech].

[Mrs Lech] was in an extremely vulnerable position after losing [Mr Lech] coupled with her condition of COPD and [Mrs Farrell] has been highly motivated to gain her trust and guide her in all decisions. She also certainly did not advise her to remain active. They drank together and many discussions were made regarding [Mrs Farrell] being her daughter and those people were not her blood etceteras. Her input involved a slow progression of isolating her socially and exploiting any weak areas for her such as family relations. She also neglected to involve any medical or health professional input until both myself and our live in carer did based on our concerns for a quality of life.

My intention has been to alert you once a date was set so I could relay that information to you. However currently it is on hold and the behaviours of June Farrell and Nick King are not what I would deem as normal under the circumstances. This nephew Nick King has visited on perhaps three occasions and spent most of the time with [Mrs Farrell]. He stated that he knew [Mrs Lech] very well which I have difficulty to believe as that is simply not possible."

72. On 21 January 2012, Ms St Clair entered a caveat in respect of the 2009 Will.
73. Carmen wrote again to Ms St Clair in similar vein by email dated 14 February 2012. This email included the following:

"Where there are grounds for contesting a will is the fact that it was done under undue influence.

However, it was done very cleverly between them. Post bereavement, [Mrs Lech's] character and predictability, alcohol, her weaknesses [Mrs Farrell's] far supreme skills in manipulation and the focus on her aim.

All that was required after was for June Farrell to monitor the situation for the next two years as [Mrs Lech] deteriorated."

74. On 4 July 2012, Barbara W-C wrote to Ms St Clair by email. The email began by referring to being glad to have the chance to hear from Ms St Clair, but no email has been produced to which Barbara W-C might have

been responding to. So far as relevant, Barbara W-C's email said as follows:

"I was completely shocked of [Mrs Lech's] death and the contents of the will She left. I think you have some more details from Carmen.

[Mrs Lech] never told me truth about her decisions and the will what She made. [Mrs Lech's] answers never were straight always very tricky and told me probably what She wanted me to know. I think that [Mrs Farrell] knew everything about the will because first of all when was drunk talked much about it (what some of course could be truth or untruth) and then Jean was very concern about what I heard from her.

Feather (sic) more [Mrs Farrell] was in very close relationship with Nicholas. There were no doubts about it. You know mutual lunches and the fact she brought him here to [Mrs Lech] etc. etc.. Don't get me wrong. I don't want to say that he was a boyfriend we don't have proof for that but let me put it this way that he was her partner in this whole conspiracy about the will.

You told me Anna that she was doing everything for [Mrs Lech]. O.... WELL That is really really controversial subject and completely untruth. The best what she was doing with her was mutual drinking and fuelling hatred to family.

Let's live (sic) that subject may be for another occasion."

75. There is some evidence that Mrs Lech caused the proceeds of sale that she received following the sale of Kenilworth Avenue to be paid into an account with Abbey National, now Santander in her previous married name. Ms St Clair has maintained that, on 24 July 2012, Mr King and Mrs Farrell illicitly attended at a Santander branch with a view to removing the monies from this account. Ms St Clair claims that this is supported by conversations that she has had with employees of Santander. Mr King and Mrs Farrell emphatically deny that they attended at Santander on 24 July 2012, or on any other occasion. Ms St Clair sought disclosure of what she claims to be relevant documentation from Santander in 2016 and was then informed by Santander that they could not disclose anything without a court order. Ms St Clair has made several applications within the present proceedings for disclosure of such documentation, but those applications have been refused on two occasions, and not pursued on a third occasion. However, Ms St Clair made a further application during the course of the trial. In an oral judgment given on the final day of the trial, I rejected this further application on the grounds, not least, that it had been brought far too late. I note that the relevant Santander account is referred to in an account reconciliation in respect of various accounts held with Santander that has been prepared by or on behalf of the Defendants.
76. On 10 October 2012, Ms St Clair wrote to Annie D. The letter included the following:

“I only thought of contacting you quite recently when I took another look at [Mrs Lech’s] last will and saw your address. I put it off, but felt I should write now even if you don’t respond, as you are the only one who might be able to explain why [Mrs Lech] acted as she did three years ago.

...

The only explanation I can make of [Mrs Lech] doing such a thing was that two weeks previously I had invited an adult protection officer in to see [Mr Lech]. I did this because he was climbing the stairs to his room every day and I really feared that he would fall one morning especially coming down. His bones were very fragile, and it would have caused multiple fractures. ... Lambeth Council sent a woman over named Magda Wolney (sic) and [Mrs Lech] was absolutely livid because she was talking to [Mr Lech] in Polish. [Mrs Lech] - under the influence of [Mrs Farrell] – and they were both drinking that afternoon – assumed I had called Magda in to get her into trouble. In fact that was not the case, as I was trying to get help for both of them. It’s quite possible though that [Mrs Lech] felt guilty - as you well know she was in the habit of being very abusive towards [Mr Lech] after she had had a few.

My reason for writing now is that I’m hoping that you can throw light on something that will always remain a mystery to me otherwise ... why [Mrs Lech] always had so much hatred towards me.”

77. During the course of the trial, Ms St Clair produced Annie D’s handwritten letter response to Ms St Clair’s email dated 10 October 2012. Ms St Clair relies upon the fact that Annie D says in her reply that: *“Certain things you have stated are true. I am unsure whom has fed you with all this information”*. However, I note that the letter also included the following:

“[Mrs Lech] was very difficult, to say the least, just like your father. I do not understand why you and Carmen feel you should get any of [Mrs Lech’s] money, only your stepmother. She was in sound mind, only one way, her way, but you should respect her wishes. Often a troublemaker, as she always wanted to be the centre of attraction, she always played games, playing and sometimes, badmouthing, against everyone to get her own way. Probably insecure in her own way.

...

When I went to the funeral, Carmen would not stand up to say a thing, [indistinct] stormed out. Nick King on my behalf, said I hoped she finally found the peace she had always been looking for. Too (sic) my knowledge, Peter King, two sisters. No brother. I think he had two sons, Nick being the one who has been visiting Streatham for a couple of years, not from Singapore.

... I rest my case on [Mrs Farrell], they had a strained relationship, which [Mrs Farrell] and the twins did very well out of. But then again should (sic) would also be badmouthed behind her back. She did not hate you, or anyone really, you just had to be the flavour of the month.

...

I feel that Carmen and yourself honestly, should be grateful for what [Mr Lech] left you both. Free rent, food, ISA's, schooling, Oregon, Jerzy, cost a lot, never took sides. I do not know the truth – many versions. Any lawyer will tell you, [Mrs Lech] can change her will whenever, her wishes, so why contest it, and prevent the estate going thru.”

78. The present proceedings were commenced on 18 February 2016.
79. On 18 January 2017, the proceedings were struck out by Master Price. However, Ms St Clair obtained permission from Newey J (as he then was) to appeal that decision. The appeal was heard, together with an application to amend the Particulars of Claim, by Mr Andrew Sutcliffe QC, sitting as a Judge of the High Court, in December 2017. In a judgment dated 23 March 2018, Mr Sutcliffe QC allowed the appeal and granted permission to amend. However, he did not allow Ms St Clair to rely upon a case of fraudulent calumny on the basis that the claim was not properly pleaded or particularised. In paragraph 57 of his judgment, Mr Sutcliffe QC said this:

“... Allegations of dishonesty and fraud must be specifically pleaded and properly particularised. Either [Barbara W-C] has herself been unable to identify any specific allegedly dishonest statements made by the Second Defendant to the Deceased or the Claimant has failed to make proper enquiries of [Barbara W-C] before making an allegation of fraud and dishonesty against the Second Defendant. It is not acceptable for the Second Defendant to have to wait until the evidence of [Barbara W-C] is received before she is able to understand the case she has to meet. If the Claimant has sufficient material properly to allege fraud and dishonesty against the Second Defendant, then it is incumbent on her to identify the particulars which support that serious allegation. If the Claimant does not have that material, the allegation of fraudulent calumny should not be permitted to be made. For those reasons I am not prepared to allow the allegation in paragraph 19A of the new APOC to be made in the form in which it is currently pleaded.”

80. I note that on 28 January 2019, Solicitors acting for Carmen wrote to the Court acknowledging service of a Notice pursuant to CPR 19.8A and stating that Carmen did not wish to take any part in the proceedings. The letter went on to state that Carmen accepted that she will be bound by any judgment given in the claim as if she were a party thereto.

81. After several further interlocutory hearings, which it is not necessary for me to comment further upon, the proceedings came on for trial, commencing on 7 December 2021.
82. It was apparent from her Skeleton Argument produced for the trial that the case of undue influence that Ms St Clair sought to run in respect of the 2009 Will was, in reality, one of fraudulent calumny rather than undue influence in the sense of Mrs Lech's true will being overborn by pressure. Given the pleading deficiencies that had been identified by Mr Sutcliffe QC, Ms St Clair was required to produce between the first and second days of the trial draft amendments setting out in pleaded form her case as to fraudulent calumny. This Ms St Clair sought to do in a five-page document headed: "*FRAUDULENT CALUMNY Amended Undue Influence Claim*".
83. Without opposition on the part of Ms Purkis on behalf of the Defendants, I indicated that I would proceed on the basis of hearing the case as to fraudulent calumny *de bene esse*, and consider in my judgment, having heard the evidence and submissions thereupon, whether I ought to permit Ms St Clair to amend and, if the amendment was permitted, whether the case of fraudulent calumny was made out.

The issues to be determined

84. The issues that I am required to determine are, in broad terms, the following:
- i) Whether the 2007 Wills made by Mr Lech and Mrs Lech were mutual wills such that, if the 2009 Will is admitted to probate, Mrs Lech's estate requires to be administered so as to give effect to a constructive trust reflecting the terms of the 2007 Will as made by Mrs Lech;
 - ii) Whether Mrs Lech entered into a contract with Ms St Clair prior to the execution of the 2007 Will whereby Mrs Lech agreed that if Ms St Clair procured Mr Lech to leave his share portfolio to Mrs Lech, then Mr Lech would leave her estate as provided for by the 2007 Will, and not revoke the latter.
 - iii) Whether the 2009 Will¹ was executed under the undue influence of Mrs Farrell or, as Ms St Clair's case has been refined, whether Ms St Clair ought to be granted permission to amend to argue that the 2009 Will was executed in consequence of fraudulent calumny

¹ Ms St Clair also challenges on each of the same grounds the earlier Will of Mrs Lech dated 17 April 2009. It is not suggested by either party that different considerations apply in respect of this earlier will. Consequently, I shall proceed on the basis that the will dated 17 April 2009 stands and falls with the 2009 Will itself, and so if the 2009 Will is successfully challenged by Ms St Clair, then the will of Mrs Lech that would be admitted to probate would be the 2007 Will, being her last valid will. I shall therefore say nothing further about the will dated 17 April 2009.

on the part of Mrs Farrell such that it is invalid and ineffective, and ought not to be admitted to probate;

- iv) Whether Mrs Lech had testamentary capacity when she made the 2009 Will;
- v) Whether the 2009 Will was made without Mrs Lech's knowledge and approval.

85. There is one further issue that arises. By an application dated 24 October 2021, Ms St Clair sought an order that she maintained would avoid the Court having to deal with the other issues that arise in the present case. In essence, she sought to allege that the effect of the 2007 Will was, on execution, to create an immediate binding trust in respect of her interest in 36 Telford Avenue in the terms of the testamentary trust provided for in respect thereof, such that the executors and trustees under the 2009 Will take 36 Telford Avenue subject to such trust. By paragraph 1 of the Order made by Edwin Johnson J at the Pre-Trial Review on 2 November 2021, it was ordered that this application be adjourned to trial, to be heard at a time to be determined by the trial judge. At the beginning of the trial, I indicated that I would hear submissions in respect of this application during the course of the trial, and deal with it in the course of my judgment.

86. I am satisfied that no immediate or binding trust was created by the 2007 Will on execution for the following reasons:

- i) The document executed was, plainly, executed as a will and not, either in whole or in part, as an inter-vivos trust deed.
- ii) S. 24 of the Wills Act 1837 provides that: *“Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.”*
- iii) I can identify no conceivable basis for reading the 2007 Will as expressing a contrary intention as to from when the 2007 Will should speak and take effect.

87. Consequently, I consider Ms St Clair's application dated 24 October 2021 to be without merit, and I shall dismiss it.

88. Before I deal in turn with the issues identified above, it is necessary for me to first consider the evidential landscape, the credibility of the respective witnesses, and the dynamics of the relationships between the key participants in the present dispute.

The Evidential Landscape

89. Ms Purkis draws my attention to the observations of Lord Neuberger MR, as he then was, in *Gill v Woodhall* [2010] EWCA Civ 1430. This was a case concerning a challenge to a will brought on the grounds of lack of testamentary capacity and want knowledge and approval. At [16] and [17], the Master of the Rolls highlighted the need for caution in dealing with challenges to wills by disappointed beneficiaries, saying this:

“16. Wills frequently give rise to feelings of disappointment or worse on the part of relatives and other would-be beneficiaries. Human nature being what it is, such people will often be able to find evidence, or to persuade themselves that evidence exists, which shows that the will did not, could not, or was unlikely to, represent the intention of the testatrix, or that the testatrix was in some way mentally affected so as to cast doubt on the will. If judges were too ready to accept such contentions, it would risk undermining what may be regarded as a fundamental principle of English law, namely that people should in general be free to leave their property as they choose, and it would run the danger of encouraging people to contest wills, which could result in many estates being diminished by substantial legal costs.

*17. Further, such disputes will almost always arise when the desires, personality and state of mind of the central character, namely the testatrix herself, cannot be examined other than in a second-hand way, and where much of the useful potential second-hand evidence will often be partisan, and will be unavailable or far less reliable due to the passage of time. As Scarman J put it graphically in *In the Estate of Fuld, deceased (No 3)* [1968] P 675, 714E; “when all is dark, it is dangerous for a court to claim that it can see the light. That observation applies with almost equal force when all is murky and uncertain.”*

90. Challenges to wills often, as in the present case, require the court to consider events surrounding the execution of a will that took place many years prior to when the court is asked to consider the evidence relating thereto, and determine the case on the basis thereof. Any such delay provides an additional reason for the court to proceed with caution in its approach to such evidence.
91. In the present case, much turns on events that took place up to 15 years ago, with the 2009 Will itself having been made over 12 years ago. In these circumstances, it is of importance to bear firmly in mind the much repeated observations made by Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15] – [22] with regard to the unreliability of memory, and his caution to place limited, if any, weight on witnesses’ recollections of what was said in meetings and conversations, and to strive at least to base factual findings

on inferences drawn from the documentary evidence and known or probable facts.

92. Leggatt J's observations in *Gestmin* at [15]-[22] are particularly relevant in the present circumstances, and bear setting out in full:

"15. An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.

16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

17. Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is

obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

20. *Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been 'refreshed' by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.*

21. *It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness is not a reliable measure of their truth."*

93. Although *Gestmin* was a commercial case, Leggatt J's observations about the inherent unreliability of testimony based on memory have been applied in other contexts – see e.g., the family and care cases of *Lachaux v Lachaux* [2017] EWHC 385 (Fam), [2017] 4 W.L.R. 57, and *Carmarthenshire County Council v Y* [2017] EWFC 36, [2017] 4 W.L.R. 136. How exactly the principles to be gained from these observations are to be applied will necessarily vary from case to case.

94. I would also refer to remarks made by Lord Pearce in his dissenting speech in *Onassis and Calogeropoulos v Vergottis* [1968] 2 Lloyd's Rep 403 at 431, cited in *Lachaux v Lauaux* (supra), which I consider have a resonance with the present case:

“Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighting the credibility of a witness. And motive is one aspect of probability.”

95. I take into account the importance emphasised by the Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645 at [88] of making findings by reference to all the evidence, that is both documentary evidence and witness evidence, placing such weight as the circumstances require on each. Necessarily, differences in approach are required dependent upon the nature of the case. Whilst in a heavily documented commercial case, it may be possible for the court to rest its decision on the documents, giving little or no weight to the recollection of witnesses as the circumstances require, that may not be possible in other contexts where documentation is limited or non-existent.
96. Further, in testing what has been said by a witness, it is plainly appropriate to do so as against the inherent probabilities of the relevant situation, and considerations such as the consistency (or otherwise) of a particular witness' evidence with other evidence, the internal consistency of that evidence, and the consistency of that evidence with what the witness might have said on other occasions – see *Kimathi v The FCO* [2018] EWHC 2066 (QB), at [98].

Credibility and reliability of the witnesses

97. I am left with the clear impression that Ms St Clair is motivated in bringing the present proceedings by a genuinely held sense of grievance that Mr King, and also Mrs Farrell, stand to inherit under the terms of the 2009 Will virtually the whole of Mrs Lech's estate, which largely comprises Mrs Lech's 50% beneficial interest in 36 Telford Avenue and premium bonds and shares inherited from Mr Lech. This sense of grievance stems from Ms St Clair's perception that her father, Mr Lech, paid for 36 Telford Avenue, without Mrs Lech having made any contribution thereto and without having made any other significant

contribution to the marriage. She therefore sees it as quite wrong that assets, which she sees as derived from her father's efforts, should end up in the hands of people she regards as strangers, rather than in the hands of herself and her daughter as Mr Lech's closest relatives.

98. It is evident from the way that Ms St Clair has presented her case, with different aspects of her challenge to the 2009 Will having gained prominence from time to time, and her case having evolved as time has progressed, that she has regarded the present proceedings as something of a mission to achieve the justice that she considers that her father's honour deserves with, as Ms Purkis put it on behalf of the Defendants in closing submissions, Ms St Clair having spent the last decade chasing down facts and shadows in order to vindicate her position.
99. Against this background, and in light of the considerations identified in the authorities referred to above, and in particular *Gestmin* at [16], [17], [18], [19] and [20], and *Onassis* at 421, with regard to the fluidity and malleability of recollection and memory over time, and the likelihood of engagement in civil litigation subjecting memories to powerful biases, in particular where the litigation is emotionally charged, I consider that I must treat all of the oral testimony in the present case with particular care, and a degree of scepticism unless supported by documentary evidence or the inherent probabilities of the situation. I consider that this must be particularly so in respect of Ms St Clair's evidence bearing in mind the nature of her claim, the time over which it has evolved, and the way it has been advanced.
100. It is fair to say that Ms St Clair conducted her own case at trial with commendable skill, and with courtesy and respect for the Court, save in respect of a couple of incidents in respect of which she unhesitatingly apologised.
101. However, I did not find Ms St Clair to be a good or reliable witness and I identify the following principal matters that have led me to this conclusion:
 - i) The evidence is, to my mind, clear that Mr King is the son of Peter King, Mrs Lech's brother. This has been demonstrated by DNA tests, comparing his DNA with that of Peter King's other son, Aaron, and the production of documentation such as Mr King's birth certificate. Further, Mr King's mother, Mrs Kirby, has provided a detailed, and in my judgment truthful and reliable explanation as to the circumstances in which she gave birth to Mr King at a young age. However, Ms St Clair has failed to recalibrate her case to reflect the reality of the position, making unsubstantiated allegations as to tampering in respect of the DNA tests, and continuing to maintain that Mr King is an impostor unrelated to Mrs Lech. Indeed, during the course of closing submissions Ms St Clair advanced, as I understand it for the first time, a "theory" to the effect that Mrs Farrell had gone to a

telephone directory and worked her way through the “*Kings*” listed therein by making telephone calls to identify a person prepared to play the role of impostor. In my judgment Ms St Clair was thereby engaging in pure fantasy. Whilst Ms St Clair might quite possibly have persuaded herself that this is what had occurred, it is so detached from reality as to cause me to seriously question whether other parts of her evidence, albeit conveyed with great conviction, were also the product of fantasy.

- ii) It forms a key part of Ms St Clair’s case, certainly in respect of the fraudulent calumny allegation, that Mrs Farrell was present, stirring up Mrs Lech and engaging with Ms St Clair, in the period leading up to, and immediately after Mr Lech’s death including the alleged incident that occurred during the course of Ms Wolny’s visit on 13 October 2009, when Mrs Farrell is alleged by Ms St Clair to have grabbed her by the shoulders and shaken her violently, and the alleged incident in the car when Mrs Farrell is alleged to have told Ms St Clair that she would “*get nothing*” if she was reported regarding her children. These allegations are strenuously denied by Mrs Farrell. However, if they had occurred as alleged by Ms St Clair, then not only would one have expected there to have been mention of Mrs Farrell in Ms St Clair’s communications with LAPD, which there was not, but also one would not have expected Mrs Farrell to have then taken Ms St Clair in as an act of kindness after she had been evicted from 36 Telford Avenue.
- iii) It is Ms St Clair’s case that Mr King was introduced to Mrs Lech by Mrs Farrell, and that it was through Mrs Farrell that Mr King developed a relationship with Mrs Lech. On the other hand, it is Mr King’s case, supported by the evidence of Mrs Kirby, that Mrs Lech contacted Mrs Kirby asking to be put in contact with Mr King, that Mr King followed up on this approach to Mrs Kirby, and that he then visited Mrs Lech alone, catching the train and walking from the station to 36 Telford Avenue. He said that he used the side gate in order to gain access to 36 Telford Avenue. It was put to him by Ms St Clair that this would not have been possible because the side gate had been nailed up and was not accessible. This was disputed by Mr King. Significantly, when she gave evidence, Mrs Paterson-Morgan stated in answer to a question that on her various visits she had also gained access to 36 Telford Avenue through the side gate, which she said had been left open for her to enable her to gain access having arranged times for her visits to see Mrs Lech. This evidence, to my mind, wholly undermined Ms St Clair’s evidence regarding the side gate being nailed up at the relevant time.
- iv) It is Ms St Clair’s case that Mrs Lech, amongst other things, was illiterate and unable to read, took no interest in what was going on in the world and did not think in abstract terms. However, when

cross-examined, Mrs Farrell gave what I consider to be highly credible spontaneous evidence to the effect that Mrs Lech enjoyed listening to the BBC World Service, and, having already referred in her witness statement to Mrs Lech having played Scrabble with Mrs Farrell and also with Ms St Clair herself, added that she could recall one particular occasion where Ms St Clair had put down the word “*GUYS*”, which Mrs Farrell had commented at the time was a good Scrabble word, and also that Mrs Farrell had bought a Scrabble Dictionary for Mrs Lech as a present.

- v) It was Ms St Clair’s evidence that Mr Lech disliked Mrs Farrell intensely. However, Mrs Farrell gave what I considered to be very credible and spontaneous evidence to the effect that Mr Lech had, on several occasions, taken Mrs Farrell along to his Polish club when Mrs Lech had not wanted to go with him, and also that Mrs Farrell took Mr Lech shopping, including to IKEA. Further, the suggestion, emphatically denied by Mrs Farrell, that Mr Lech disliked Mrs Farrell does not tie in with Ms St Clair’s evidence that Mrs Lech had informed her on one occasion that she had found Mrs Farrell sitting on Mr Lech’s lap on one occasion.
- vi) It was Ms St Clair’s evidence with regard to Mrs Lech’s medical condition that by the time that she made the 2007 Will, her medical condition was poor and deteriorating rapidly. However, this does not accord with the medical evidence, and in particular Dr Fawzi’s report of 28 May 2018 that I have referred to above.
- vii) There was a tendency on Ms St Clair’s part to make toxic allegations against individuals without the evidence to support those allegations. I refer, by way of example, to the following:
 - a) The allegation that there was some sort of relationship between Mrs Farrell and Mr King, which included an offer by Mr King to marry Mrs Farrell so as to share the spoils of Mrs Lech’s estate;
 - b) The allegation, inconsistent with the last allegation, that Mrs Farrell was in a relationship with Peter, a friend of her late partner and father of her children;
 - c) An allegation that Mrs Farrell stole from Mrs Lech;
 - d) An allegation that Mrs Lech abused tenants at 36 Telford Avenue, and stole cats belonging to neighbours;
 - e) An allegation that Mrs Kirby had burst into tears whilst giving evidence because Mr King had promised her money for a cruise should he win the case, the implication being that Mrs Kirby had given false evidence in return for this promise.

- viii) It is also necessary to bear in mind that Ms St Clair was living abroad for most of the time. While she had returned to London between approximately July/August and November in 2007 and 2008, she was not present in London, and at 36 Telford Avenue for much of the time. In particular, she was not present in 2009, or again prior to Mrs Lech's death. Consequently, her knowledge of events was necessarily limited.
102. Ms St Clair accuses Mrs Farrell of avoiding telling the truth, giving selective answers, and displaying selective amnesia. She alleges that Mrs Farrell herself suffers from alcohol induced dementia, which, I understand her to suggest, affects the reliability of Mrs Farrell's evidence. On the other hand, Ms St Clair, rather oddly given the serious nature of the allegations that she makes against Mrs Farrell, says that she finds her "*likeable*". In asserting that Mrs Farrell's evidence was untruthful and unreliable, Ms St Clair focused, in particular, on two matters:
- i) A reply that Mrs Farrell gave to a question regarding an alleged conversation in a car when, according to Ms St Clair, she and Mrs Farrell were driving into the City of London to work at a pub some 30 years ago, during the course of which Mrs Farrell is alleged to have mentioned the Santander Account, and Mrs Lech putting monies therein, to Ms St Clair. It was suggested that Mrs Farrell had backtracked on an answer that she had initially given to Ms St Clair's questioning that had appeared to suggest that she accepted that there had been a conversation in the car, by then saying that she had travelled into the City by Tube and not by car, so that there could have been no conversation as alleged; and
 - ii) That Mrs Farrell had given the incorrect name of a cookbook with a French name that Mrs Farrell had mentioned in giving evidence in order to substantiate the Defendants' case that Mrs Lech could read and write.
103. It is true that Mrs Farrell did hesitate in some of the answers that she gave and did say that she could not recall matters in some instances where one might have expected her to have been able to give a rather fuller and more definitive answer notwithstanding the passage of time. However, I do not accept that this was due to Mrs Farrell pretending not to recall matters that she did recall that might be adverse to her own interests or those of Mr King, and I am satisfied that she was doing her best to assist the Court.
104. As to the alleged drive into the City, it is necessary to take into account that this was something relating to an event alleged to have taken place some 30 years ago put to Mrs Farrell for the first time during cross-examination, and therefore I do not consider that there can be any great surprise that there might have been some hesitancy in the answers that she gave, and hesitancy in recalling that she would not have driven into the City. I take into account that there may be no Tube from Streatham itself into the City, but a combination of travel methods including the Tube

being used to travel from Streatham into the City strikes me as entirely credible, and rather more credible than driving into the City to work in a pub. As to the cookbook with the French name, a mistake in recalling the name after some 10 years is, again, as I see it, entirely understandable.

105. So far as Mr King is concerned, it remains Ms St Clair's position that he is a lying impostor whose evidence should not be accepted by the Court. He is said by Ms St Clair to be supported by his lying mother, who it is said, is prepared to give false evidence in order to have a cruise paid for by the monies that Mr King stands to receive from Mrs Lech's estate.
106. Notwithstanding Ms St Clair's criticisms of their evidence, and subject to the inherent potential for unreliability in their evidence given the passage of time, I found each of Mr King, Mrs Farrell, Mrs Kirby and Mrs Paterson-Morgan to be honest witnesses doing their best to assist the Court. Certainly, where their evidence conflicts with the evidence of Ms St Clair, I prefer their evidence to that of Ms St Clair. However, it is the case that significant parts of the present case do not turn on conflicts of evidence as between Ms St Clair and other witnesses, but rather on the reliability of the evidence that Ms St Clair bases her case upon.

Dynamics of the main relationships

107. The impression that I am left with from the evidence is that Mr Lech was a kind but frugal man, necessarily affected in his outlook on life by his difficult wartime experiences. He clearly had had a successful career as an architect that had left him well able to provide for his family, something that his family rather took for granted.
108. As to Mrs Lech, she was clearly a larger-than-life and strong-willed character, who was capable of being difficult if she wanted to be. The impression that I get, supported by the observations of Annie D, is that she required to be the centre of attention, and had a tendency to take it out on others if she was not. On this basis, she was prepared to play games, and speak ill of others in order to get her way. On the other hand, I accept the Defendants' contention that there is evidence of that she was prepared to be kind to those who helped her.
109. So far as the relationship between Mr and Mrs Lech was concerned, it is significant that by the date of Mr Lech's death, they had been married for nearly 30 years, and had lived together for nearly 40 years. They might, latterly at least, have spent much of their time living in separate rooms at 36 Telford Avenue given their separate interests, but they were in no sense estranged. Mrs Lech plainly liked to drink, on occasion to excess. I accept that this is likely to have led to tensions as between Mr and Mrs Lech, and that Mrs Lech is likely to have taken out her frustrations on Mr Lech whilst the worst for wear through drinking. I can understand how this, as well as the somewhat laissez-faire attitude of Mrs Lech and Carmen (and her partner) to Mr Lech using the stairs might have led to Ms St Clair raising the concerns that she did with LAPD in September 2008.

However, I consider it extremely unlikely that there was any justification for Ms St Clair's comments in her correspondence with Mr Simmons to the effect that Mrs Lech had no wish to preserve Mr Lech's life.

110. Clearly, both Mr Lech and Mrs Lech had a fraught relationship with Ms St Clair herself. Ms St Clair's evidence was that she considered that Mrs Lech hated her, and that she had a difficult relationship with her own father, not least because of her father's old-fashioned attitudes to certain things. Given what I have found to be the propensity of Ms St Clair to make toxic remarks and unfounded allegations about others, it is perhaps not surprising that a tense relationship between Ms St Clair and each of Mr Lech and Mrs Lech existed.
111. It is clear that neither Mr Lech nor Mrs Lech welcomed interference in their lives. Such is evidenced by Ms St Clair's own remarks to Mr Simmons in the correspondence in September and October 2008. Further, one sees in Mrs Lech's medical records a number of references to her declining the opportunity for assistance. Mrs Lech plainly reacted badly to the intervention of LAPD, and the visit of Ms Wollny on 13 October 2008. It is quite possible that she perceived this visit to be the catalyst to Mr Lech requiring admission to hospital and dying fairly shortly thereafter. In any event, Mrs Lech clearly saw Ms St Clair as behind Ms Wollny's visit, and this, coupled with Mrs Lech's anger at the fact that, as she saw it, Ms St Clair had further interfered by collecting her husband's will, is likely to have served to alienate her even further from Ms St Clair. The relationship was in all probability further damaged by the circumstances behind Ms St Clair's eviction from 36 Telford Avenue, although this would seem to have been precipitated by Carmen rather than Mrs Lech involving the Police.
112. As to Carmen, there is no dispute but that she had, at all relevant times, a difficult relationship with her mother, Ms St Clair. I am in no doubt that when Ms St Clair was staying at 36 Telford Avenue, this difficult relationship between Ms St Clair and Carmen served to make the atmosphere at 36 Telford Avenue particularly fraught and toxic.
113. The relationship between Carmen and Mr and Mrs Lech appears to have been somewhat more anodyne. However, the evidence does suggest that Carmen, who has enjoyed the benefit of free accommodation at 36 Telford Avenue, took a keen interest in what Mr and Mrs Lech might, on their deaths, do with their respective interests in 36 Telford Avenue. I consider that it is likely that she took steps to seek to manipulate the position so as to try and ensure that she was left with as big an interest therein as possible. Thus:
 - i) One can see from Ms Pegler's file note dated 20 October 2006 that Ms Pegler was contacted at that time by Carmen, who appeared to be aware as to what Mr Lech proposed to do with his will and was anxious that Mrs Lech might change her will so that she would lose the roof over her head. Ms Pegler, understandably, made it

clear that this was not something that she could discuss with Carmen.

- ii) Mr Jordan's file note of 13 March 2008 refers to Mrs Lech having said that Mr Lech wanted her to change "*the % in her [2007] Will in favour of [Carmen]*", to Carmen not having spoken to her since she made the 2007 Will, and to being pressurised into changing her will.
- iii) Further, as we have seen, Carmen was present with Mrs Lech on 3 March 2009 when she met with Mrs Paterson-Morgan. Mrs Paterson-Morgan recalls, supported by her file note, that Carmen pressed for Mrs Lech to leave Carmen part at least of her share of 36 Telford Avenue, but that Mrs Lech made clear that she did not wish to discuss this with Carmen, who was ultimately excluded from provision.

114. So far as the relationship between Mrs Lech and Mr King is concerned, I accept Mr King's evidence, and that of Mrs Kirby, that Mrs Lech did approach Mrs Kirby, perhaps having obtained Mrs Lech's contact details from Peter King, and asked her to ask Mr King to contact her, which Mr King did without reference to Mrs Farrell, who he did not then know. Further, I accept that Mr King did initially meet Mrs Lech alone, visiting Streatham by train, and doing so prior to Mr Lech's death on at least one occasion. I further accept that it was having been so introduced to Mrs Lech, and during one of his visits to see Mrs Lech that Mr King was introduced to Mrs Farrell, who, apart from being a friend of Mrs Lech, was assisting Mrs Lech about the house, with shopping, and taking her to appointments. I accept that he, accompanied by Mrs Farrell, took Mrs Lech out to eat on a number of occasions before Mrs Lech became too ill to go out, and that Mr King visited Mrs Lech on a regular basis prior to her death, as well as keeping in touch by telephone.

115. Put at its highest, Ms St Clair's case is that Mrs Farrell was a housekeeper or gopher who has come good by striking up a relationship with Mr King and introducing him to Mrs Lech. Apart from the fact that I do not accept that Mrs Farrell introduced Mr King to Mrs Lech, I accept the evidence of Mr King and Mrs Farrell that there has never been any personal relationship between them apart from the fact that they were both known to Mrs Lech and were appointed as executors and trustees of the 2009 Will. Further, I reject Ms St Clair's evidence that Mrs Farrell was some kind of servant or gopher for Mrs Lech, and I accept her evidence that, despite the age difference between them, she was a good friend of Mrs Lech who, out of kindness, assisted her with household and other tasks, initially on an entirely voluntary basis, but subsequently receiving a modest sum each week by way of a care allowance. One can well understand why, in these circumstances, Mrs Lech considered it appropriate to leave a significant, but by no means particularly large legacy of £10,000 to each of Mrs Farrell and her twins.

116. In view in particular of the considerations referred to in paragraph 101(ii) above, I reject Ms St Clair's evidence with regard to Mrs Farrell having allegedly grabbed her by the shoulders and shouted at during the course of Ms Wollny's visit on 13 October 2008, and I reject Ms St Clair's evidence with regard to her conversation with Mrs Farrell regarding Ms St Clair mentioning that Mr Lech had said that Mrs Farrell should be been reported in respect of her children, and Mrs Farrell responding to the effect that Ms St Clair would "*get nothing*". I would add that I also do not accept Ms St Clair's evidence that, whilst staying with Mrs Farrell following her eviction from 36 Telford Avenue, she overheard Mrs Farrell talking to a boyfriend called Peter about Mrs Lech's will and estate. I accept Mrs Farrell's evidence that the Peter referred to was not her boyfriend, and that there were no such conversations.
117. I accept that it was a feature of the relationship between Mrs Lech and Mrs Farrell that they did drink together as friends, on occasion to excess, and that in the course of those discussions they are likely to have exchanged robust views and that, in the course thereof, Mrs Farrell might well, given the events that had occurred, have made derogatory remarks with regard to Ms St Clair and Carmen, even to the extent of suggesting that Mrs Lech should not leave anything for them in her will. It is quite possible that Barbara W-C, being at 36 Telford Avenue at the relevant time, might have overheard these conversations.

Mutual Wills

The Law

118. The doctrine of mutual wills was described by Morritt J in *Re Dale* [1994] Ch 31 at 31D-E as follows:

"The doctrine of mutual wills is to the effect that where two individuals have agreed as to the disposal of their property and have executed mutual wills in pursuance of the agreement, on the death of the first ('the first testator') the property of the survivor ('the second testator'), the subject matter of the agreement, is held on an implied trust for the beneficiary named in the wills. The survivor may thereafter alter his will, because a will is inherently revocable, but if he does his personal representatives will take the property subject to the trust".

119. The following needs to be demonstrated for the doctrine of mutual wills to apply:
- i) Agreement between the first testator and the second testator governing the future dispositions of both their estates, either as set out in their wills themselves, or as established by extrinsic evidence.
 - ii) The mere existence of wills in substantially identical form, even if made at the same time, is not in itself sufficient, although the

existence of such facts will be relevant to the determination of the question as to whether an agreement might exist, although the whole of the evidence must be looked at – see *Re Cleaver* [1981] 1 WLR 939 at 945 per Nourse J.

- iii) The agreement must be of a kind that amounts to a contract at law, i.e., it must be supported by mutual consideration and be intended to be binding, whether made orally or in writing.
- iv) The following will not be sufficient for this purpose:
 - a) A moral obligation or an “*honourable engagement*” – *Re Cleaver* (supra) at 947G;
 - b) A simple desire on the part of the testators – *Re Goodchild* [1997] 1 WLR 1216 at 1224-5; or
 - c) A mere understanding – see Williams, Mortimer and Sunnucks, *Executors, Administrators, and Probate*, 21st Edition at 7-26.
- v) The necessary agreement to the effect that the survivor should not revoke the will requires to be established, and therefore proved by “*clear and satisfactory evidence*” – *Olins v Walters* [2008] EWCA Civ 782 at [36].
- vi) Notwithstanding, the appropriate standard of proof to apply is the balance of probabilities – *Re Cleaver* (supra) at 949.
- vii) On appropriate facts the necessary agreement might be established by inference, and without direct evidence – see *Fry v Densham-Smith* [2010] EWHC Civ 1410.

120. Where mutual wills are established, then the parties’ intentions are protected by a floating trust which becomes irrevocable on the death of the first to die and crystallises over the estate of the second on their death – see *Re Goodchild* (supra) at 1225, and Williams, Mortimer and Sunnocks (supra) at 7-23.

121. I consider that it is likely to require strong facts clearly pointing to an agreement between the first testator and the second testator before the requisite agreement can be established by inference. In *Fry v Densham-Smith* (supra), the first testator and the second testator, were married and each had a son from a previous marriage. The mutual wills contended for were ones whereunder each testator left their estate to the other, with a gift over to the two sons in equal shares. One can see how, in those circumstances, one might infer that the parties had orally agreed that they should not revoke their respective wills after the death of the first to die so that only the son of the survivor benefited, effectively from both their estates.

Ms St Clair's case

122. It is Ms St Clair's case that an agreement to make mutual wills in respect of the wills made by Mr Lech and Mrs Lech in 2007 is established on the present facts.
123. Ms St Clair relies, in particular, upon the following:
- i) Ms St Clair relies on a number of conversations with Mr Lech referred to in paragraphs 17 and 18 of her witness statement, and on a conversation with Mrs Lech referred to in paragraph 19 of her witness statement. As to these:
 - a) In paragraph 17 of her witness statement, Ms St Clair says that Mr Lech believed that his and Mrs Lech's wills were "*mutual and irrevocable*". She says that on two occasions when she asked him if he was sure that Mrs Lech could not revoke, he told the wills were "*inviolable*", one of these occasions being after Mr Lech's 100th birthday party in November 2007. Ms St Clair further says that Mr Lech informed her that he had asked Mr Jordan to insert a testamentary trust into the wills "*to protect them from being discarded.*" She then says that when she spoke with Mr Lech with regard to the matter again in August 2008 and asked him if he was sure about the wills being inviolable, Mr Lech said "*Look, Jean and I have an agreement about the wills. She said I should trust her. I do trust, and so should you*", then adding "*when we went on holiday to Egypt, Jean promised she wouldn't drink. If you remember, she kept her promise, so don't bother me anymore with this business.*"
 - b) In paragraph 18 of her witness statement, Ms St Clair refers to another conversation shortly before Mr Lech's 101st birthday on 1 September 2008 when, after challenging Mr Lech as to why he had not bought her anything for her own birthday, Mr Lech is alleged to have said: "*Yes, I know, but when I die, and when Jean dies, you will have enough money to buy all the presents you want.*"
 - c) In paragraph 19 of her witness statement, Ms St Clair refers to being present at all three meetings that took place with Mr Jordan prior to Mr and Mrs Lech making their wills in 2007. She refers to the agreement that she alleges that she concluded with Mrs Lech with regard to Ms St Clair procuring Mr Lech to leave his shares to Mrs Lech in return for her making the 2007 Will in the terms that she did. She says that shortly before the first of the meetings with Mr Jordan she said to Mrs Lech that she expected her to follow Mr Lech's wishes in return for him giving his shares to her,

to which she is alleged to have responded: “*Of course. Why wouldn't I? What are you trying to suggest?*”.

- ii) In paragraph 17 of her witness statement, Ms St Clair refers to speaking to Mr Jordan in 2016 on the telephone, when Mr Jordan is alleged to have told her that he had inserted testamentary trusts into Mr and Mrs Lech’s respective wills made in 2007 in order to “*to prevent hanky-panky*”.
- iii) Ms St Clair maintains that the existence of mutual wills is supported by the agreement that she says she reached with Mrs Lech in relation to Mr Lech’s shares. She says this agreement was reached because everybody, including herself and Mrs Lech, understood that the effect of the 2006 Wills was to leave nothing to the survivor of Mr and Mrs Lech apart from the interest under the discretionary trust in respect of the nil rate band provided for thereby, and because Mrs Lech was upset by this and by being left with potentially nothing. Hence Ms St Clair agreeing to seek to procure greater provision for Mrs Lech in Mr Lech’s will made in 2007. However, the quid pro quo for this is alleged to have been Mrs Lech agreeing to make the 2007 Will in the terms that she did providing, in respect of residue, for both Ms St Clair and Carmen.
- iv) Ms St Clair says that it is a relevant consideration that, as Ms St Clair put it: “*any and every asset owned by Mrs Lech derived from her husband*”, the principal point being that Mr Lech had purchased Kenilworth Avenue and 36 Telford Avenue, and that Mrs Lech had not worked after having ceased work at the Hard Rock Café in 1972. Although not actually expressed in such terms by Mrs Lech, I understand her position to be that even in the absence of direct evidence as to an agreement for mutual wills, such an agreement is to be inferred on the facts on the basis that it cannot have been intended that Mr and Mrs Lech’s joint assets should pass otherwise than to Mr Lech’s blood relatives, Ms St Clair and Carmen, given from where those assets were derived.

Has Ms St Clair established that the 2007 Will was a mutual will?

- 124. Applying the principles that I have referred to above, I am not satisfied on the balance of probabilities that Ms St Clair has established that Mr Lech and Mrs Lech agreed to make mutual wills, and in particular that Mrs Lech ever agreed, pursuant to a binding agreement, not to revoke the 2007 Will. I reach this conclusion essentially for the reasons contended for by the Defendants.
- 125. Ms St Clair primarily relies upon the conversations that she says she had with Mr Lech in the period leading up to the execution of the wills in 2007. It is certainly correct that Mr Jordan’s notes record that Ms St Clair played a significant part in the providing of instructions to Mr Jordan as recorded by his file notes. However, there are, as I see it, a number of

evidential difficulties with the contention that agreement was reached as between Mr Lech and Mrs Lech in relation to the making of mutual wills. In particular:

- i) I have little confidence in the reliability of Ms St Clair's evidence in respect of her conversations with Mr Lech in view of my overall concerns as to the reliability of her oral testimony as to events going back to 2007 in the light of the considerations that I have identified above.
- ii) I cannot accept that some 14 years after the event Ms St Clair is able reliably or credibly to recollect in the detail that she maintains that she can the conversations that she said that she had with Mr Lech dating back to 2007.
- iii) I note that in her letter to Mrs Lech dated 1 September 2009, Mrs Paterson-Morgan did refer to Ms St Clair having mentioned in a conversation that Mr and Mrs Lech had: "*agreed to make identical Wills and that if you changed your Will she would fight it.*" However, I consider to be of more significance the fact that in the August 2009 Letter to Mrs Lech, sent at a time when Ms St Clair assumed that Mrs Lech had made a new will leaving everything to Mrs Farrell, Ms St Clair recognised that it was Mrs Lech's "*prerogative to do so*". This would be an extraordinary thing to say if, at the time, as a result of her discussions with Mr Lech in 2007, Ms St Clair believed that Mrs Lech was contractually bound not to change the 2007 Will, or even be morally bound not to do so as a result of matters discussed in 2007. Surely, if the relevant conversations had taken place with Mr Lech and Mrs Lech in 2007, Ms St Clair would at least have flagged up the issue rather than expressly recognising that Mrs Lech was entitled to do that which he did? Ms St Clair was asked about this during the course of her evidence, and her explanation was that she did not, by the August 2009 Letter, want to upset Mrs Lech. I simply do not find that a credible explanation as to why Ms St Clair said what she did in the August 2009 letter regarding Mrs Lech's "*prerogative*".
- iv) Ms St Clair clearly took a keen interest in the wills made in 2007 and the contents thereof and attended meetings with Mr Jordan. Mr Jordan might have been a will writer rather than a legally trained solicitor, but if there had been an agreement in respect of mutual wills of the kind contended for, then one would have expected that to have been mentioned to Mr Jordan and recorded by him. However, his file notes are entirely silent as to any agreement in respect of mutual wills. To the contrary, I consider there to be force in the Defendants' contention that Mr Jordan's attendance notes of 18, 23 and 24 October 2007, and 13 March, 27 November and 8 December 2008 point to the opposite for the reasons advanced in paragraph 11(4) of the Amended Defence. So far as the October 2007 file notes are concerned, the overall

impression given is of a series of instructions being given leading to the execution of wills on different dates, rather than the parties working towards giving effect to an agreed position reflected in wills executed at the same time.

- v) Further, given the terms thereof, if there had been agreement as to the wills made in 2007 being mutual wills, then one would have expected there to have been a similar agreement in relation to the 2006 Wills. However, again, Ms Pegler's file is entirely silent on the question of mutual wills, or as to the existence of any agreement in respect of mutual wills. Ms Pegler is a qualified solicitor and a member of the Society of Trust and Estate Practitioners, the Law Society's Private Client section and Solicitors for the Elderly, who had had some 13 years' experience at the time that she prepared the 2006 Wills. She is therefore highly likely to have been attuned to the issue of mutual wills had the parties intended the 2006 Wills to be such. Ms Pegler kept fairly detailed file notes, and had mutual wills been intended, then one would have expected there to have been some mention therein as to the reasons contended for by Ms St Clair as to why mutual wills were agreed, including a recognition that the joint matrimonial assets were derived from Mr Lech and not Mrs Lech.
 - vi) In addition, there is Mrs Paterson-Morgan's evidence that, in view of the terms of the wills made in 2007, she would have explored the possibility of there being mutual wills when she was instructed by Mrs Lech to make a new will, and that there was nothing to support the 2007 Wills being mutual wills, Mrs Lech proceeding on the basis that she was free to enter into a new will making very different provision to that provided for by the 2007 Will. Of course, it is possible that Mrs Lech was deliberately ignoring an agreement that she had reached with Mr Lech, but in the present circumstances, I consider that to be unlikely.
 - vii) Each of Ms Pegler, Mr Jordan and Mrs Paterson-Morgan provided *Larke v Nagus* letters none of which raised any suggestion of the existence of mutual wills.
126. So far as any conversation between Ms St Clair and Mr Jordan in 2016 is concerned, and his observation that testamentary trusts had been inserted into the wills in order to "*prevent hanky-panky*", I consider that this is more readily explicable on the basis that the life interest trusts in question in respect of Mr and Mrs Lech's respective interests in 36 Telford Avenue provided a mechanism to ensure that the residuary beneficiaries provided for by the 2007 wills could not eject the survivor of Mr and Mrs Lech from 36 Telford Avenue, thereby providing them with security until the death of the survivor. This is the "*hanky-panky*" that I consider that Mr Jordan is more likely to have been referring to. I note that Mr Jordan has not, as he might, been called as a witness by Ms St Clair. However, it is fair to say that Ms St Clair informed the Court that Mr Jordan is now

suffering from Parkinson's disease, and not in a position readily to give evidence.

127. So far as Ms St Clair's reliance on a contract with Mrs Lech is concerned, I consider that there are a number of evidential difficulties with this as well, in particular:

i) Apart from the more general issues as to the credibility and reliability of Ms St Clair's evidence regarding events of some 14 years ago, one might again have expected there to have been some reference to the alleged contract in the August 2009 Letter, and in Mr Jordan's file notes of the conversations leading up to the execution of the 2007 wills. Whilst there is mention in one of Mr Jordan's file notes of October 2007 to Ms St Clair providing instructions in relation to how Mr Lech's shareholdings might be dealt with, there is no mention of any contract in relation thereto, which one might have expected had there been an agreement of the kind alleged.

ii) In addition, it is difficult to understand the rationale for the alleged contract. It is based on the premise that Mr and Mrs Lech, and Ms St Clair, each believed that the effect of the 2006 Wills was to make no provision for the other of Mr and Mrs Lech otherwise than under the discretionary nil rate band testamentary trust. Ms St Clair contends that it was as a result of Mrs Lech's dissatisfaction, and a desire that Mr Lech should make further provision for her that agreement was reached that if Ms St Clair persuaded Mr Lech to leave her his shares, then in return she would make the 2007 Will in the terms that she did and not revoke it. However, this was not the effect of the 2006 Wills. After the nil rate band discretionary trusts, each of Mr Lech and Mrs Lech provided for residue to go to the other of them provided that they survived for 30 days. Whilst it is conceivable that Mrs Lech might have misunderstood the position, it is very difficult to believe that Ms St Clair did so. She has certainly demonstrated a full understanding of other documentation, and the terms of the 2006 Wills could hardly have been in clearer terms. I am more inclined to conclude that any concern as to what the 2006 Wills provided for was concern on the part of Ms St Clair or Carmen as to how Mr and Mrs Lech had dealt with residue, thus prompting the new wills made in 2007 that divided residue between Ms St Clair and Carmen subject to the life interest trusts.

128. In short, therefore, I do not accept that the alleged contract is made out on the facts, and therefore I do not consider that the existence of any such contract provides assistance to a case that there was agreement as to mutual wills.

129. So far as concerns the argument that there is support for an agreement as to mutual wills from the fact that the joint matrimonial estate was derived

from Mr Lech's assets rather than any significant contributions made by Mrs Lech, there are again, as I see it, a number of difficulties with this argument.

130. Firstly, as I have already mentioned, had this been a relevant consideration at the time, then one would have expected it to have been picked up by Mr Jordan's file notes, if not also those of Ms Pegler. To the contrary, the file notes produced proceed on the basis of Mr and Mrs Lech regarding themselves as having separate estates. In this respect, whatever the source of the finance to acquire Kenilworth Avenue, and later 36 Telford Avenue, at the time of Mr Lech's death, Mr and Mrs Lech had been living together for nearly 40 years sharing their lives together. Both Kenilworth Avenue and 36 Telford Avenue were purchased in Mr and Mrs Lech's joint names, rather than solely in Mr Lech's name. Whilst Ms St Clair may believe that she and/or Carmen have a moral claim on the whole of the joint matrimonial assets on the basis that the latter largely derived from Mr Lech's efforts, I consider that to be an unrealistic position particularly given the length of the relationship and marriage and the provision that Mr Lech had made for Ms St Clair and Carmen in his own will. It is not without significance that Annie D was of the same view in her letter dated 10 October 2012. The circumstances were, in my judgment, very different from those that pertained in *Fry v Densham-Smith* (supra), where the basis for inferring an agreement as to mutual wills was much more obvious.
131. There is the further point that the relationship between Mrs Lech and Ms St Clair was never particularly good. The evidence is, as referred to above, that Mrs Lech knew her own mind, and was not somebody to be pushed around, even in 2007. Hence despite coming under pressure in 2008 to change her will, she did not do so, having consulted Mr Jordan. It strikes me as inherently unlikely that Mrs Lech would have been prepared to commit herself to a situation where she was bound to leave the residue of her estate to Ms St Clair and Carmen. Further, if, contrary to the above, Mr Lech did make any observations or assurances to Ms St Clair about what Mrs Lech would do in her will, then I consider it more likely than not that he did so in order to pacify Ms St Clair rather than to accurately describe a binding agreement that he might have concluded with Mrs Lech regarding mutual wills.

Conclusion regarding mutual wills

132. On the basis of the evidence before me, I am unable to find, on the balance of probabilities, that any agreement in relation to the making of mutual wills was concluded between Mr Lech and Mrs Lech in respect of the wills that they made in 2007. Consequently, I do not consider that the Defendants, as Mrs Lech's executors appointed by the 2009 Will, are bound to give effect to the terms of the 2007 Will.

Contract to make and not revoke a will in the terms of the 2007 Will

133. For the reasons set out above in dealing with the case in respect of mutual wills, I do not consider that the alleged agreement on the part of Mrs Lech to make, and not revoke, a will in the terms of the 2007 Will in return for Ms St Clair procuring Mr Lech to leave his shares to Mrs Lech is established on the facts.
134. Apart from any other difficulties, I consider it inherently unlikely that Mrs Lech would have agreed in such clear terms to any such contract. In any event, I consider that there would have been real difficulty in establishing that, in relation to any such contract, there was an intention to create legal relations.
135. Had the contract been established, it would merely have given rise to a claim for breach of contract against Mrs Lech's estate. However, that is not how Ms St Clair's case is put or pleaded, there being no claim for damages for breach of contract. It is asserted that the breach of the agreement gives rise to a constructive trust but is impossible to see how that can follow unless the case in respect of mutual wills is made out, which it is not.

Undue influence/fraudulent calumny

Introduction

136. As already mentioned, Ms St Clair's case in undue influence is, as pleaded, pleaded in terms of a more traditional case of undue influence involving an allegation that Mrs Farrell put improper pressure upon Mrs Lech so as to cause her to execute a will that did not reflect her true volition, there being no allegation of fraud. Her case was as summarised in paragraph 19(19) of the Amended Particulars of Claim in which she pleaded:

“In the premises, the overwhelming inference is that, to the extent that the 2009 wills represented the Deceased's instructions and were executed with knowledge and approval, the Second Defendant exerted undue influence over the Deceased by poisoning her mind against the Claimant and Carmen and putting improper pressure upon her, thereby inveigling her into executing both of the 2009 wills in favour of the First Defendant as principal beneficiary, as well as including the gifts to herself and her children.”

137. In support of this case, Ms St Clair relied, amongst other things, upon allegations that:
- i) Mrs Lech drank excessively, was subject to irrational delusions, and was lonely, fearful of death, increasingly depressed and very vulnerable;

- ii) Mrs Lech came to regard Mrs Farrell as her only friend such that Mrs Farrell acquired considerable influence over her, which she used to maliciously denigrate Mr Lech's family, and Ms St Clair and Carmen in particular, thus poisoning Mrs Lech's mind against them, including during sessions when they would drink together in excess;
- iii) Mrs Farrell introduced Mrs Lech to Mrs Paterson-Morgan's firm as well as subsequently arranging for the wills executed in 2009 to be witnessed by her neighbours, one of whom was a close confidante of Mrs Farrell;
- iv) There was a close personal relationship between Mrs Farrell and Mr King, and it was Mrs Farrell who first brought Mr King to see Mrs Lech;
- v) Mr King made promises of marriage to Mrs Farrell who accordingly expected to share in his good fortune under Mrs Lech's will;
- vi) After Mrs's Lech's funeral, Mr King and Mrs Farrell went to Mrs Farrell's home, spent the evening drinking together and then retired to bed together.

138. As mentioned above, Mr Andrew Sutcliffe QC, in determining Ms St Clair's application to amend the Particulars of Claim, refused permission to amend to introduce an allegation of fraudulent calumny given that such a case was not properly particularised. However, by her Skeleton Argument prepared for trial, Ms St Clair has sought to advance a case of fraudulent calumny. I have set out in paragraphs 82 and 83 above how I have dealt with this case as a matter of procedure.

Ms St Clair's case as to fraudulent calumny

139. The document produced by Ms St Clair on the second day of the trial is, as referred to above, headed: "*FRAUDULENT CALUMNY, Amended Undue Influence Claim*" ("**the Fraudulent Calumny Particulars**").
140. In this document, Ms St Clair proceeds on the basis that the requirements for a successful fraudulent calumny claim are as considered by Mr Jonathan Klein (now HHJ Klein), sitting as a Deputy Judge of the High Court, in *Re Hayward, Kunicki v Hayward* [2016] EWHC 3199 (Ch) at [122], namely that it is necessary to show that there has been: (a) a false representation; (b) to the testator; (c) about the character of an existing or potential beneficiary; (d) for the purpose of inducing the testator to alter his testamentary dispositions; (e) in the knowledge that the representation is untrue, or reckless as to its truth; and that (f) the disputed will was only made because of the fraudulent calumny.
141. The essence of Ms St Clair's case as set out in the Fraudulent Calumny Particulars is that there is "*concrete evidence as well as circumstantial*

evidence” which shows, on the balance of probabilities, that Mrs Farrell poisoned Mrs Lech’s mind about Ms St Clair, her “*natural beneficiary*”, and by this means convinced Mr Lech to make new wills in 2009 by which she disinherited Ms St Clair (and Carmen).

142. On the basis that the test as set out in *Re Hayward* (supra) is the correct test, Ms St Clair’s case can be summarised as follows:

- i) *False representation* – Ms St Clair alleges that a false representation was made by Mrs Farrell to Mrs Lech that Ms St Clair had lodged a report against her for abusing Mr Lech in 2008. Ms St Clair alleges that Mrs Lech’s furious reaction to Ms Wollny’s visit on 13 October 2008 made it clear that Mrs Lech had been warned in advance that an LAPD officer would be paying her visit, and that the purpose of that visit had been misrepresented to her. Ms St Clair says the misrepresentation must have been that of Mrs Farrell, because Mrs Farrell was the only person that she had confided in. Ms St Clair further says that whilst she had made enquiries with LAPD, it is not true that she did so for the purpose of having Mrs Lech prosecuted or to “*get [Mrs Farrell] into trouble*”, but rather she was seeking to support her father to move downstairs. She says that an examination of her correspondence with Mr Simmons and Ms Wollny in September and October 2008 demonstrates the representation alleged to have been made to be false.
- ii) *To the Testator* – The relevant representation is said by Ms St Clair to have been made by Mrs Farrell to Mrs Lech. She says that Mrs Lech’s angry reaction to Ms Wollny “*strongly suggests*” that a false representation was made by Mrs Farrell to Mrs Lech. She further says that Mrs Farrell put on a display by shaking Ms St Clair violently whilst shouting “*Anna, Anna, what have you done?*”, and that this “*performance*” was put on for Mrs Lech’s benefit to make it appear that Mrs Farrell perceived the visit by Ms Wally to be punitive, and that Ms St Clair had arranged the visit with the intention of harming Mrs Lech.
- iii) *About the character of an existing or potential beneficiary* - Ms St Clair says that she was the beneficiary in question, and that the representations were clearly made about her.
- iv) *For the purpose of inducing the testator to alter his testamentary dispositions* - The Fraudulent Calumny Particulars recognise that there is “*No concrete evidence*” that the representations were made in order to induce Mrs Lech to alter her will, but Ms St Clair says that a number of facts set out “*indicate that [Mrs Farrell] was also engaged in assisting Mrs Lech in making drastic changes to her testamentary plan.*” Reference is then made to Mrs Farrell driving Mrs Lech to Mr Jordan’s offices to collect the 2007 Will, Mrs Farrell making the initial phone call to Mrs Paterson-Morgan

inviting him to assist Mrs Lech to make the will, and Mrs Farrell then procuring the next-door neighbours and friends to witness both of the Wills made by Mrs Lech in 2009.

- v) *In the knowledge that the representation is untrue, or reckless as to its truth* – As to this, Ms St Clair says that Mrs Farrell knew that Ms St Clair had concerns for Mrs Lech as well as for Mr Lech, and that that was what was behind her approach to LAPD, but that as Ms St Clair’s approach to LAPD was represented by Mrs Farrell to Mrs Lech, it was represented in terms of Ms St Clair approaching LAPD in order to seek to get Mrs Lech into trouble by alleging that Mrs Lech was abusing Mr Lech, representations which it is said Mrs Farrell knew and must have known were false.
- vi) *The disputed will was only made because of the fraudulent calumny* – In essence, Ms St Clair maintains that it was the making of this false representation that effectively turned Mrs Lech against Ms St Clair in such a way that she changed her will so as to exclude Ms St Clair. Ms St Clair says that whilst Mrs Lech might, at the time, have sought to explain the change in intentions upon the fact that Ms St Clair had collected Mr Lech’s will from Mr Jordan, that explanation does not bear scrutiny.

143. Ms St Clair says that her case is supported by the following evidence in particular, namely:

- i) Paragraphs 23 to 31 of her own witness statement, which sets out the events between August and November 2008 from her perspective;
- ii) The matters referred to in Barbara W-C’s email dated 4 July 2012;
- iii) The circumstances behind Dr Pudlowska’s referral in respect of grooming as reported to Dr Pudlowska by Carmen in November 2011; and
- iv) The contents of Carmen’s emails to Ms St Clair dated 21 January 2012 and 14 February 2012.

Legal Principles

144. A helpful summary of the approach to be adopted by the Court in considering a case of undue influence in respect of the execution of a will, incorporating the principles to be derived from the older cases², is provided in *Edwards v Edwards* [2007] EWHC 1119 (Ch), per Lewison J at [47]:

² See in particular: *Boyse v Rossborough* (1856) 6 HL Cas 2, and *Parfitt v Lawless* (1872) LR 2 P&D 462.

- “i) *In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;*
- ii) *Whether undue influence has procured the execution of a will is therefore a question of fact;*
- iii) *The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;*
- iv) *In this context undue influence means influence exercised either by coercion, in the sense that the testator’s will must be overborne, or by fraud.*
- v) *Coercion is pressure that overpowers the volition without convincing the testator’s judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator’s free judgment discretion or wishes, is enough to amount to coercion in this sense;*
- vi) *The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness’ sake to do anything. A “drip drip” approach may be highly effective in sapping the will;*
- vii) *there is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is “fraudulent calumny”. The basic idea is that if A poisons the testator’s mind against B, who would otherwise be a natural beneficiary of the testator’s bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside;*
- viii) *The essence of fraudulent calumny is that the person alleged to have been poisoning the testator’s mind must either know that the aspersions are false or not care whether they are true or false. In my judgment if a person believes that he is telling the truth about a potential beneficiary then even if what he tells*

the testator is objectively untrue, the will is not liable to be set aside on that ground alone;

ix) *The question is not whether the court considers that the testator's testamentary disposition is fair because, subject to statutory powers of intervention, a testator may dispose of his estate as he wishes. The question, in the end, is whether in making his dispositions, the testator has acted as a free agent."*

145. We are presently concerned with the "separate ground" identified by Lewison J at [47(vii) and (viii)] et seq in *Edwards*. It was based principally upon this analysis that Mr Jonathan Klein, in *Re Hayward*, formulated his six requirements for fraudulent calumny. However, the correctness of his requirements (d) and (f) referred to in paragraph 140 above were called into question by Morgan J in *Christodoulides v Marcou* [2017] EWHC 2632 (Ch). In this case, Morgan J was concerned with an application for permission to appeal, with an appeal to follow if permission were granted, against a County Court decision where the Recorder sitting at first instance had found that a case of fraudulent calumny had been established on the facts.
146. So far as concerns requirement (d) identified by Mr Jonathan Klein in *Re Hayward*, the question that arose was as to whether it was, in fact, necessary to show that the representation had been made "for the purpose" of inducing the testator to alter their testamentary disposition, or whether it was sufficient to rely upon the more general principle applicable for the purposes of civil liability for fraud, that it must be shown that the representor intended that the representee should rely on the representation, there being a rebuttable presumption that the representor did so intend, and it not being necessary to show that the representor intended the representee to act on the representation in the precise way in which he did act – see e.g. *Goose v Wilson Sandford & Co* (No. 2) [2001] Lloyd's Rep PN 189. It was argued on behalf of the appellant in *Christodoulides v Marcou* that the older authorities demonstrated that a stricter approach than the general principle was applicable in the case of fraudulent calumny, requiring that it be established that the relevant representation had been made for the purpose of inducing the testator to alter their testamentary disposition, and that the trial judge had failed to make any finding as to purpose.
147. Morgan J considered the relevant authorities, including in particular *Allen v McPherson* (1847) 1 HL Cas 191 and *Boyse v Rossborough* (1856) 6 HL Cas 2. Morgan J at [55] identified that in *Boyse v Rossborough* at pages 48-49, Lord Cranworth LC had stated a test for undue influence, including fraud, which turned upon the will being executed in consequence of the fraud, rather than specifically turning on the purpose of the fraudster. This would, of course, be consistent with the general principle. However, as Morgan J went on to say, at page 51, Lord Cranworth stated that the undue influence must be exercised "in relation

to the will itself, not in influence in relation to other matters or transactions". Further, at page 53, in relation to the allegation of fraud in that case, Lord Cranworth asked whether there was evidence to show that the representations were made "*in order to induce*" the testator to change his intentions.

148. On this basis, Morgan J concluded that there was "*obviously scope for argument*" as to whether in considering a challenge to a will, the Court ought to apply the general principle, or a stricter principle that requires the challenger to show that the fraud was practised for the specific purpose of inducing the testator to change their testamentary disposition. In the event, because the point had not been taken below, Morgan J refused permission to appeal on this point.
149. Ultimately, as in *Christodoulides v Marcou*, the present case does not turn on a resolution of this issue, and I do not need to decide. However, in the light of the approach taken by the older authorities, and in particular the remarks of Lord Cranworth in *Boyse v Rossborough* at pages 51-53, should it have been necessary to do so, I would have been inclined to proceed on the basis that a stricter test based on establishment of purpose is required in the case of fraudulent calumny.
150. Courts of Probate have historically taken a stricter approach to establishing a case of undue influence than have Courts of Equity, holding that undue influence is not to be presumed as against a will proved to have been executed with due solemnities by a person of competent understanding and apparently a free agent – see e.g., *Parfitt v Lawless* (1872) LR 2 P&D 462 at 468-469, per Lord Penzance. This stricter approach requiring the case to be made out on the basis of affirmative evidence rather than the application of a presumption is, as I see it, justified on the basis that a Court ought to be slow to upset a duly executed will not least because a challenge to a will on the grounds of undue influence will often involve a challenge made years after the event of the making of the will against parties who were unlikely to have been involved in the process. A stricter approach that further requires the purpose of the representation to be shown to be to induce the testator to alter his testamentary dispositions, rather than something else, is, in my judgment, entirely justified on a like basis.
151. So far as Mr Jonathan Klein's requirement (f) in *Re Hayward* is concerned, the issue is as to whether it is correct that it is necessary to show that the disputed will is "*only*" made because of the fraudulent calumny. At [59] in *Christodoulides*, Morgan J stated that this formulation might well be appropriate on the facts of *Re Hayward*, but that he would not regard it as a correct statement of the relevant law. He went on at [59] to say:

"The question for the court is one of causation or inducement. The calumny must induce the change in the testator's intentions. The challenger must prove that on the balance of probabilities. If it is

possible that the calumny did induce the change, but the court is not persuaded on the balance of probabilities that it did induce the change, the challenge will fail. If there are other possibilities or other explanations and those other explanations persuade the court to find on the balance of probabilities that the calumny did not induce the change, the claim will fail. Conversely, although the court is given other possible explanations, if the court is nonetheless satisfied that on the balance of probabilities that the calumny did induce the will, then the claim succeeds. That is what is meant by the references to consistent and inconsistent hypotheses in re Edwards, which is itself based on Craig v Lamoureux [1920] AC 349. However, the use of the word “only” should not be understood as requiring a finding that there must have been no other reason operating in conjunction with the effect of the fraud for the testator to change his or her intentions.”

152. Based on well-established authorities, I am satisfied that this must be the correct approach, and I consider that Mr Jonathan Klein’s requirement (f) is better restated as: *“The fraudulent calumny induced the testator to make the disputed will.”*

Is Ms St Clair’s case of fraudulent calumny made out?

153. Based on the principles that I have considered above, I consider that it is appropriate to consider two broad questions:

- i) Firstly, whether it has been established that Mrs Farrell made false representations to Mrs Lech that she knew to be untrue, or was reckless about, to the effect that Ms St Clair had lodged a report against Mrs Lech for abusing Mr Lech in order to get her into trouble, and did so for the purpose of inducing Mrs Lech to alter the 2007 Will, or at least intending Mrs Lech to rely upon the representations made (should I be wrong in my analysis of Mr Jonathan Klein’s requirement (d) in *Re Hayward*) ?
- ii) Secondly, if any representations were made, did they induce Mrs Lech to execute the 2009 Will?

154. As to the first of these questions, I am far from satisfied on the balance of probabilities that the evidence establishes Ms St Clair’s case. Indeed, I consider it falls well short of doing so.

155. Ms St Clair’s case is advanced on the premise that Mrs Farrell must have made the representations in question because she was the only person that Ms St Clair told about her approach to LAPD, but Ms St Clair’s case depends not simply upon Mrs Farrell having passed on to Mrs Lech that Ms St Clair had approached LAPD, which is quite possible without Mrs Farrell now being able to recall it, but also that Mrs Farrell then falsely, and knowing it to be false, represented to Mrs Lech that Ms St Clair had lodged a report against her for abusing Mr Lech in order to get her into trouble (or that the approach was tantamount to so doing).

156. I am unable to accept that Mrs Farrell made such false representations as alleged for the following reasons:

- i) Mrs Farrell said that she does not recall the intervention of LAPD or Ms Wollny's visit on 13 October 2008 and denies making the representations alleged. I accept her evidence that she cannot recall matters after this length of time, but that does not in itself exclude the possibility that representations were made. However, the essence of the case against her is that she made false representations that she knew to be untrue and did so with the objective of poisoning Mrs Lech against Ms St Clair and/or Carmen to Mrs Farrell's own advantage and specifically to get Mrs Lech to change the 2007 Will; if that had been her motivation, then I am satisfied that she would have recalled these matters.
- ii) As I have already held above, for the reasons set out above, and in particular given the inconsistency between such events and Mrs Farrell putting up Ms St Clair after she had been evicted from 36 Telford Avenue, I do not accept Ms St Clair's version of events in relation to Mrs Farrell allegedly grabbing Ms St Clair by the shoulders, and shouting at her during the course of Ms Wollny's visit, and in respect of the allegation that, in the context of the possible report by Mr Lech in respect of her children, Mrs Farrell had said to Ms St Clair that she would "*get nothing*". Ms St Clair's case is, as I understand it, that Mrs Farrell had riled up Mrs Lech ahead of Ms Wollny's visit, and that this was behind Mrs Farrell's outburst during the course thereof. But if these events never occurred, then this undermines, in my judgment fatally, the suggestion that false representations were made as alleged.
- iii) Ms St Clair's case ultimately depends upon a theory that the alleged false representations uttered by Mrs Farrell were about poisoning Mrs Lech's mind against Ms St Clair so that Mrs Farrell could benefit, either by personally benefiting under Mrs Lech's will, or benefiting through Mr King (with whom she is alleged to have been in league). However, there are a number of what I consider to be fundamental difficulties with this theory, namely:
 - a) Whilst Mrs Farrell and her children did benefit under the 2009 Will, the legacies given were comparatively modest having regard to the size of the estate and reflect the type of legacy that a testatrix such as Mrs Lech might well have left to a good friend who had helped out in the way that I have found that Mrs Farrell did. There is, I consider, nothing unusual or surprising about them.
 - b) So far as Mr King is concerned, as considered above, I accept his evidence as to the circumstances in which he came to meet and maintain contact with Mrs Lech. I reject

any suggestion that he was introduced in some way to Mrs Lech by Mrs Farrell.

- c) Apart from what Barbara W-C has to say in her email dated 4 July 2012, there is nothing to support the allegation that Mrs Farrell and Mr King were or are in any sort of personal relationship, which they both emphatically deny. Even Barbara W-C's email lends no support to Ms St Clair's allegation, which I consider to be wholly unsubstantiated, that they slept together after Mrs Lech's funeral, or that Mr King had promised marriage, allegations which I emphatically reject.
 - d) Consequently, there is absolutely no evidence to support the suggestion that Mrs Farrell stands to benefit in any way through Mr King.
 - e) In the circumstances, a motive for Mrs Farrell making false representations as alleged is simply not made out.
- iv) On proper analysis, Barbara W-C's email dated 4 July 2012 lends no real support to Ms St Clair's case. Apart from the fact that what she has said in this email has not been tested under cross examination, and is therefore of limited weight, the following points arise in relation to it:
- a) Whilst it asserts that Mrs Farrell was in a very close relationship with Mr King, this assertion seems to be based primarily on "*mutual lunches*" and that Mrs Farrell "*brought him here to Jean*". I have, for the reasons set out above, already rejected the suggestion that Mrs Farrell did, in fact, introduce Mr King to Mrs Lech. I accept that Mrs Farrell did join Mr King and Mrs Lech in going out for meals whilst Mrs Lech was able to do so. Mrs Farrell and Mr King are likely to have become quite familiar to each other in doing so, but I do not read anything more into this than that.
 - b) As to the suggestion that it was "*completely untrue*" that Mrs Farrell did everything for Mrs Lech, and that the "*best what she was doing with her was mutual drinking and fuelling hatred to Family*", it is necessary to bear in mind that Mrs Lech required and obtained further outside assistance as her condition deteriorated after she had made the 2009 Will. Barbara W-C was writing in early 2012, and not in 2009. In her August 2009 Letter, Ms St Clair had, herself, described Mrs Farrell as "*a basically very good hearted woman who is helping you out of kindness not just for what she can get.*" Further, the reference to "*mutual drinking and fuelling hatred*", probably was, I consider,

simply a reflection of the fact that Mrs Lech and Mrs Farrell did drink together, and in the course thereof probably did discuss in not particularly complimentary terms, “*Family*”. This does not, to my mind, go anywhere near establishing a case of fraudulent calumny.

- v) Further, I do not consider that the emails from Carmen dated 14 February 2012 and 21 January 2012 significantly advance Ms St Clair’s case. The premise of these emails is that Mrs Farrell had manipulated Mrs Lech over a period of time after Mr Lech’s death as Mrs Lech’s condition deteriorated so as to weaken the ties with her family. This would be consistent with Carmen’s reference to Dr Pudlowska in November 2011, where the question of grooming had been raised. Had the Court been concerned with a will made shortly prior to Mrs Lech’s death, then there might be more relevance in what Carmen had to say, particularly if she had been prepared to come to court to give evidence. However, the 2009 Will was executed some 2¾ years prior to Mrs Lech’s death, and within some six months of Mr Lech’s death. Carmen’s emails do not, as I see it, address the case that Ms St Clair is actually advancing.

157. Turning to the second question as to whether false representations made by Mrs Farrell induced Mrs Lech to change her testamentary dispositions by making the 2009 Will, again, I do not consider Ms St Clair’s case to be made out for the following reasons:

- i) The evidence suggests that there were a number of factors that had led to Mrs Lech being upset with regard to Ms St Clair following Mr Lech’s death including the very fact that Ms St Clair had brought about the visit of Ms Wollny, without any embellishment by false representations on the part of Mrs Farrell of the kind alleged, and that Ms St Clair had collected Mr Lech’s will, i.e., the 2007 Will from Mr Jordan. It is, therefore, reasonably clear that a variety of factors had led to Mrs Lech deciding to make a new will that excluded Ms St Clair from benefit.
- ii) The 2009 Will excluded not only Ms St Clair, but also Carmen. Carmen was not the subject matter of the alleged false representations.
- iii) The 2009 Will was not made in a rush in the immediate aftermath of LAPD’s and Ms Wollny’s intervention and/or following Mr Lech’s death, but some six months later after a period of reflection and deliberation.
- iv) As referred to above, Mrs Lech had a number of meetings with Mrs Paterson-Morgan over several months in which her testamentary intentions were discussed at some length with Mrs Paterson-Morgan. Mrs Paterson-Morgan was, even then, an

experienced probate solicitor who did not detect any “*warning flag*” regarding Mrs Farrell, or indeed anybody else, influencing Mrs Lech’s thinking – see paragraphs 17 and 18 of her statement.

- v) Mrs Paterson-Morgan recalls Mrs Lech explaining that her previous Wills had been made at Mr Lech’s instigation and did not truly reflect her wishes. This accords with Mrs Lech’s attendance on Mr Jordan on 13 May 2008, when she had referred to pressure being placed upon her by Mr Lech to alter her will in favour of Carmen.
- vi) I am, as I have said, satisfied that Mr King was introduced to Mrs Lech as a result of Mrs Lech having approached his mother, Mrs Kirby. It cannot be known why Mrs Lech contacted Mrs Kirby when she did, although I note that Mrs Kirby suggests that this may be because Mrs Lech wanted to make some redress to Mr King on his father’s/her family’s behalf. In any event, the evidence of Mr King, which I accept, is that he developed, albeit in a relatively short period of time, a good relationship with Mrs Lech, having visited her on a number of occasions before she made the 2009 Will, and thereafter until her death. Mr King’s evidence was that they got on well, in contrast to the relationship between Mrs Lech and Ms St Clair and Carmen.
- vii) Mr King was not known to Mrs Lech when she made her Wills in 2006 and 2007. By the time she came to decide that Mr King should benefit from the residue of her estate, Mr Lech was no longer around to influence her testamentary dispositions, and she had established a relationship with Mr King. In the circumstances, there was a certain rationale to not benefiting Ms St Clair and Carmen with whom she had had a fractious relationship but benefiting Mr King instead.

Conclusion regarding fraudulent calumny

158. I do not consider that the evidence establishes a case of fraudulent calumny, i.e., that Mrs Farrell made false representations, knowing them to be untrue or reckless in that respect, that induced Mrs Lech to make the 2009 Will. Indeed, I consider that the evidence falls well short of so establishing. In the circumstances, I do not consider that it would be appropriate for me to grant permission to Ms St Clair to amend in order to maintain a case of fraudulent calumny.

159. Had I considered a case of fraudulent calumny to have been made out, I would have permitted Ms St Clair to amend, satisfied that the Defendants had had a proper opportunity to deal with the allegations made, especially after I had allowed a significant number of additional questions in chief to be put to the Defendants’ witnesses, including in particular Mrs Farrell.

160. I do not consider that the evidence establishes any other case of undue influence so far as the execution of the 2009 Will is concerned, whether based on coercion or fraud.
161. Consequently, this undue influence/fraudulent calumny ground for challenging the 2009 Will must fail.

Testamentary capacity

Introduction

162. Ms St Clair's Skeleton Argument deals with the allegation of lack of testamentary capacity in over 12 pages raising facts and issues going well beyond her pleaded case, including matters going beyond what the Defendants were able fairly to deal with, including, for example, an allegation that Mrs Lech suffered from a narcissistic personality disorder, unsupported by any medical evidence.
163. As to Ms St Clair's pleaded case as set out in paragraph 20 et seq of her Amended Particulars of Claim, the essence of her case is that:
- i) The 2009 Wills, and the manner in which they came to be drawn up, demonstrate that Mrs Lech was acting irrationally because she had no sound reason to make Mr King, who she hardly knew, her principal beneficiary.
 - ii) Mrs Lech's health problems, alcoholism and isolation led her to become increasingly suspicious of others (apart from Mrs Farrell), particularly Ms St Clair and Carmen, and preoccupied with perceived slights by such other persons, and increasingly irrational or paranoid.
 - iii) Mrs Lech was increasingly prone to irrational delusions as regards Ms St Clair and Mrs Farrell to an extent sufficient to deprive of testamentary capacity, and such as to influence her in making fresh testamentary dispositions cutting Ms St Clair out of her will. By way of particulars, reliance is placed upon an allegation that Mrs Lech believed that:
 - a) Ms St Clair had killed Mr Lech, Mrs Lech so suggesting in a telephone call to Helena Lech in November 2008;
 - b) Ms St Clair was poisoning her plants, which she suggested at Mr Lech's wake whilst Ms St Clair was watering plants; and
 - c) Mrs Farrell was her adopted daughter in whom she could place complete trust.
 - iv) Mrs Lech also suffered from other irrational delusions, such as that a microphone had been hung inside her bedroom chimney from

the room above to record her conversations, which she expressed to Helena Lech.

164. In her Skeleton Argument, Ms St Clair recognises that where a will is professionally drawn up by a solicitor, there is a presumption that the testator has capacity. However, she submits that this will not be the case where the solicitor has not followed “*correct protocols*”. As to this, Ms St Clair relies on:

- i) The paucity of the contemporaneous notes kept by Mrs Paterson-Morgan;
- ii) An allegation that “*the Golden Rule*” was not followed because, so Ms St Clair maintains, the circumstances called out for a psychiatric report, which was not obtained before Mrs Lech made the 2009 Will. These circumstances were, according to Ms St Clair, that Mrs Lech was: “*bedridden, terminally ill and bereaved*”, and because there were numerous other suspicious circumstances apparent; and
- iii) An allegation that Mrs Paterson-Morgan was subject to a conflict of interest given that: “*a solicitor contracted to conduct the probate for a deceased party, simultaneously assists his widow to betray her husband’s wishes has a serious conflict of interest warranting an investigation by the SRA.*”

165. Ms St Clair submits that the circumstances mean that the burden of proof must move to Mr King and Mrs Farrell to prove that Mrs Lech had testamentary capacity.

166. As to authority, Ms St Clair refers to *Banks v Goodfellow* (1870) LR 5 QB 549 as identifying four questions that require to be asked in the present case, namely:

- i) Does the testatrix understand the nature of the act: executing a will and its effects?
- ii) Does the testatrix comprehend and appreciate the claims to which she might give effect?
- iii) Was the testatrix able to understand the extent of the property of which she is disposing?

167. Ms St Clair addresses each of these questions in page 13 et seq of her Skeleton Argument maintaining that each of the above questions requires to be answered in the negative.

Legal Principles

168. I take the relevant principles in determining whether a testator has testamentary capacity to be as follows:

- i) Capacity is to be presumed in the case of a duly executed rational will. The evidential burden is on the party challenging the will to raise a real doubt about capacity, if this presumption is to be displaced – see *Cowderoy v Cranfield* [2011] EWHC 1616 at [130] – [137] per Morgan J, citing *Key v Key* [2010] WTLR 623 at [97] per Briggs J.
- ii) Having capacity means that when giving instructions and executing the will, the testator was of sound mind, memory and understanding such that:
 - a) The mind must be able to form the testamentary intentions in the will;
 - b) The memory must be sound to recall the possible objects of benefit and their ties to the testator; and
 - c) The understanding must extend, or be capable of extending, to the acts of testamentary disposition and their effects, the extent (although not the detail) of the property being disposed of, and the claims on it;

Cf. *Banks v Goodfellow (supra)*, and see Williams, Mortimer and Sunnocks (*supra*) at 10-03.

- iii) The question is whether the choice of testamentary dispositions was unaffected by a disorder of the mind or insane delusions, not whether the choices were justifiable on an objective basis. Thus, it is possible for a testator to make a valid will even where the provisions are unfair or vindictive or perverse – see *Cowderoy v Cranfield (supra)* at [133] per Morgan J.
- iv) The so-called “*golden rule*” is to the effect that where there is any doubt about the capacity of a prospective testator, his or her will should if possible be witnessed or proved by a doctor, ideally a specialist in old age psychiatry, who satisfies himself of the testator’s capacity and records his examination – see Williams, Mortimer and Sunnocks (*supra*) at 10-08.
- v) In *Burgess v Howes* [2013] EWCA Civ 94 at [60], Mummery J commented:

“My concern is that the courts should not too readily upset, on the grounds of lack of testamentary capacity, a will that has been drafted by an experienced independent lawyer. If, as here, an experienced lawyer has been instructed and has formed the opinion from a meeting or meetings that the testatrix understands what she is doing, the will so drafted and executed should only be set aside on the clearest evidence of lack of testamentary capacity.”

- vi) Mummery LJ's obiter comments in that case have been applied at first instance by Newey J in *Graeves v Stolkin* [2013] EWHC 1140. However, the editors of Williams, Mortimer and Sunnocks (supra) at 10-09 have expressed the view that these cases represent an apparent watering down of the "golden rule", which is described as a "concerning trend".
- vii) I consider that the question is probably one of degree, and that it is incumbent upon the Court to carefully consider the circumstances of the lawyer's retainer, and to ask the question whether, having regard to the lawyer's role in the taking of instructions and the drafting of the will, there remain doubts about the capacity of the prospective testator when the other evidence available to the Court is considered. If they do, then the "Golden Rule" should be applied.

Did Mrs Lech lack capacity?

169. As I have already identified, Ms St Clair is extremely aggrieved that what she perceives as assets derived from Mr Lech have been disposed of otherwise than to herself and Carmen as his blood relatives. As part of the process of her chasing down facts and shadows in support of the case that I have already identified, Ms St Clair has pulled together a number of facts that are said to go to Mrs Lech's testamentary capacity. However, I consider it plain that, in reality, these facts do not do so even if true, e.g., allegations of affairs going back many years, and other conduct cited as being irrational going back many years. These may demonstrate a degree of lack of judgment on Mrs Lech's part, if true, but not that Mrs Lech lacked testamentary capacity as at the time that she made the 2009 Will.
170. Further, it is plain to me that Ms St Clair's case is premised upon Mrs Lech's physical and mental state being significantly worse at the time that she made the 2009 Will than is evidenced by the contemporaneous medical records, and the accounts of other witnesses, i.e., Mr King, Mrs Farrell and, critically, Mrs Paterson-Morgan.
171. It is true that Mrs Paterson-Morgan's contemporaneous file notes may not have been as full as they might have been. Nevertheless, the file notes, taken together with correspondence sent by Mrs Paterson-Morgan to Mrs Lech does demonstrate, even apart from Mrs Paterson-Morgan's oral testimony, a genuine engagement by Mrs Lech in the process of deciding upon a testamentary disposition.
172. In paragraph 10 of her witness statement, Mrs Paterson-Morgan says:

"From my initial dealing with the Deceased, I never had any concerns regarding her mental capacity. Her physical health was not good and she had heart and breathing problems but her mental acuity seemed fine consistently throughout our dealings. Had I had any concerns at all regarding the Deceased's capacity I would have

involved a doctor. I also would never have drawn up and registered Lasting Powers of Attorney after a risk of lost capacity.”

173. Of course, the events in question took place over 12 years ago, but I take into account that Mrs Paterson-Morgan was, even in 2009, an experienced probate solicitor who I am satisfied would have been attuned to seeking a report from a suitable doctor if the circumstances suggested that that was appropriate, not least to ensure that Mrs Lech’s true wishes were given effect to. I also note that neither Ms Pegler nor Mr Jordan, who had seen Mrs Lech some two to three years earlier, consider that a doctor’s report in respect of Mrs Lech was required, despite Ms Pegler having considered that a report was appropriate in the case of Mr Lech.
174. There is nothing, in my judgment, seriously to gainsay Mrs Paterson-Morgan’s assessment. To the contrary, a consideration of the contemporaneous medical evidence supports her assessment, rather than in any way undermining it. I agree with the assessment made by Ms Purkis in her submissions that a review of the medical records gives the impression of a strong minded, independent older woman, who declined significantly only at the end of her life, and that while she may have been difficult, wrongheaded, or eccentric at times, that is not the test that I should apply.
175. Certainly, the medical records show nothing to throw in doubt Mrs Lech’s capacity at the relevant time, i.e., May 2009. The notes are entirely silent about any disorder of the mind, or insane delusions. There is no mention in the medical records of dementia, apart from one entry on 18 March 2008 requesting a blood test for dementia. However, given that there is subsequently no mention of any adverse report in respect of dementia, it can, as I see it, safely be assumed that no dementia was revealed.
176. Of particular significance, in my judgment, are the medical interventions in May 2008 and July 2009 that I have referred to above, namely:
- i) Dr Fawzi’s fairly detailed report dated 25 May 2008 that stated that there was *“no evidence of cognitive decline, or psychiatric illness.”* This intervention appears to have followed on from Carmen having raised the question of Mrs Lech’s drinking, but Dr Fawzi noted that: *“The assessment did not reveal any increased risks that would justify breaching Mrs Lech’s confidentiality and seeking an informant interview”*.
 - ii) When Mrs Lech was examined by doctor in July 2009 following an earlier dizzy episode, the doctor noted that Mrs Lech was *“alert, fully orientated, communicating well”*.
177. It is evident from the medical notes that Mrs Lech’s medical condition did not seriously deteriorate until nearer to her death in January 2012. A matter of days before her death, Mrs Lech was seen by the Community Psychiatric Nurse that I have referred to above, Genal Raffington. Even then, in her letter dated 24 January 2012 Genal Raffington suggested that

Mrs Lech had capacity, certainly in respect of the questions that she was asked.

178. As to other suspicious circumstances, Ms St Clair's case essentially rests on the contention that the 2009 Will was, itself, irrational, in leaving the residue of her estate to Mr King, and disinheriting Ms St Clair and Carmen. However, in light of the family tensions, and given the circumstances in which Mr King was introduced, and came into her life, I do not consider that it can be assumed that Mrs Lech's conduct was in any sense irrational in leaving her residuary estate to Mr King and making the comparatively modest provision for Mrs Farrell that she did. Indeed, as I have already held, there was a certain rationality in what she did.
179. However, in any event, it is entirely open to a testator to act unfairly, vindictively, perversely, or otherwise irrationally, although I recognise that, in appropriate circumstances, such conduct might point to the possibility least of a lack of testamentary capacity.

Conclusion in respect of testamentary capacity

180. I consider that, on the evidence, the 2009 Will is properly to be regarded as a duly executed rational will, and that Ms St Clair has failed to raise any real doubt about capacity so as to invoke the "golden rule". However, even if I should be wrong about that, and a failure to obtain a doctor's report has placed the burden of proof on the Defendants to prove testamentary capacity, on the facts of the present case the Defendants have, in my judgment, established that Mrs Lech, at the time that she made the 2009 Will, had testamentary capacity.

Want of knowledge and approval

Introduction

181. Ms St Clair says that Mrs Lech executed the 2009 Will without knowledge and approval of its contents. She puts her cards on the table on page 25 of her Skeleton Argument by saying that: "*The grounds for this claim is based on the fact that the Testator had the rudimentary reading capacity of a seven year old child.*"
182. The following particulars are pleaded in paragraph 21 of the Particulars of Claim:

"Particulars of the Facts and Matters Relied Upon

- (1) *The Deceased's education had been seriously disrupted by the Second World War, having been evacuated from London at the age of seven. She had a very low level of literacy and very limited aptitude and lack of temperament for any type of reading. In particular documents of a complex or legal nature. She never read a book, a magazine or newspaper and rarely, if*

ever, wrote anything down, even a shopping list, and was unable to follow even a simple written recipe.

- (2) *These in abilities were exacerbated by her poor health by 2009 as hereinbefore pleaded. In particular, her cataracts severely compromised her ability to focus visually on print or other writing clearly enough to read it. She used a telephone within large numbers on it.*
- (3) *In the premises, when the 2009 Wills was sent to the Deceased by or on behalf of [Mrs Paterson-Morgan] for execution as hereinbefore pleaded it is overwhelmingly unlikely that the Deceased read them, or even that she could have read them, certainly in any detail.*
- (4) *There were no solicitors or other professions present when the Deceased executed the Wills or who otherwise read the Wills to the Deceased. It is unlikely that anybody else read the Wills to the Deceased.”*

The legal principles

183. The relevant legal principles can be summarised as follows:

- i) The testator’s knowledge and approval of the contents of the will is part of the burden of proof assumed by the party seeking to propound it. However, in ordinary circumstances, the burden of proof will be discharged by proof of testamentary capacity and due execution, from which knowledge and approval by the testator of the contents of his will are assumed.
- ii) However, there will be an additional evidential burden on the party seeking to propound the will if the circumstances in which the will was drafted or executed are such as to arouse the suspicions of court that the testator did not know of its contents – see *Fuller v Strum* [2002] 1 WLR 1097 at [33]-[34] per Peter Gibson LJ, and at [64]-[72] per Chadwick LJ.
- iii) Where the additional evidential burden requires to be satisfied, then the court is concerned with the single question as to whether the testator (a) understood what was in the will when he or she signed it, and (b) what its effect would be – see *Gill v Woodall* [2010] EWCA Civ 1430 at [22] per Lord Neuberger MR and [71] per Lloyd LJ.
- iv) The relevant understanding can be proved in any way, including by proving that instructions were given to a solicitor, that the testator actually read the document, or that they allowed an executed will to stand – see *Williams, Mortimer and Sunnocks* (supra) at 10-30 and 10-33.

Did Mrs Lech know and approve the contents of the 2009 Will?

184. I accept the Defendants' submission that the grounds for saying that the court's suspicions should be aroused simply do not exist for the following reasons:

- i) The 2009 Will was not a complex will, in providing for a gift of gold jewellery, giving a number of legacies, and then leaving the residuary estate to Mr King.
- ii) The evidence from Mr Jordan's file notes and those of Mrs Paterson-Morgan is that the initiative to make the 2009 Will was that of Mrs Lech, who wished to replace the 2007 Will, and thereby make no provision for Ms St Clair.
- iii) Mrs Paterson-Morgan's evidence, supported by her contemporaneous file notes, limited though they are, demonstrates that Mrs Lech took time to decide what provision she wished to make, giving clear instructions that she wished her residuary estate to go to Mr King. I note, in particular, Mrs Paterson-Morgan's file note dated 10 March 2009 where she records: "*all to nephew but more legacies ... She'll ring or write.*"
- iv) Mrs Paterson-Morgan's evidence, when read together with her file notes, and her correspondence with Mrs Lech, shows Mrs Lech to have been engaging with Mrs Paterson-Morgan with regard to the terms of the proposed new will. Thus, the file notes record further dialogue leading to the execution of the will dated 17 April 2009, with further instructions then being given that led to the execution of the revised 2009 Will itself. Thus, for example, there were telephone conversations between Mrs Paterson-Morgan and Mrs Lech on 1 April 2009 and 6 April 2009 as referred to in paragraph 17 of Mrs Paterson-Morgan's witness statement. This led to Mrs Paterson-Morgan preparing an engrossment which was sent to Mrs Lech and discussed with her and 6 April 2009, when revisions were made thereto in accordance with the instructions that Mrs Lech gave. Having made those revisions, the revised will was then sent to Mrs Lech and executed by her on 17 April 2009. The evidential trail then shows that will being returned to Mrs Paterson-Morgan together with a note signed by Mrs Lech referring to adding Mrs Farrell as an executor, deleting a couple of the charitable legacies, and expressly stating that no money was to be left to either Ms St Clair or Carmen. There was a further meeting with Mrs Paterson-Morgan on 23 April 2009, and a further telephone conversation between Mrs Paterson-Morgan and Mrs Lech on 11 May 2009 before Mrs Lech executed the 2009 Will and returned it to Mrs Paterson-Morgan. Given this engagement and dialogue between Mrs Lech and Mrs Paterson-Morgan, I consider that it can safely be inferred that Mrs Lech did

read the wills that she executed, but that she was, in any event, fully aware of the terms thereof, and the effect of those terms.

- v) Ms St Clair's case, again, essentially rests on the proposition that Mrs Farrell contrived the making of the wills by Mrs Lech in April and May 2009 and was aware of the terms thereof when Mrs Lech was not. However, this makes little sense given the comparatively small proportion of Mrs Lech's estate that was left to Mrs Farrell and certainly does not, in my judgment, give rise to any adverse inference. I note that in *Re Fuller* (supra) (see at [41] and [53]) the fact of some 30% of an estate being diverted to the executors/beneficiary and his family was held to be not in any way surprising. A modest legacy to a friend such as Mrs Farrell who had helped Mrs Lech out is, as I have already said, in no way surprising.
- vi) It is not insignificant that Mrs Lech remained in contact with Mrs Paterson-Morgan following the execution of the May 2009 Will without raising any query or questioning the terms thereof.

185. The key element of this aspect of Ms St Clair's case is that Mrs Lech was illiterate, and unable to read or write. However, this is not supported by the evidence in that:

- i) This is contradicted by the evidence of Mrs Farrell, which I accept, that Mrs Lech followed recipes and wrote shopping lists etc. Ms St Clair seeks to undermine this evidence of Mrs Farrell by criticising her ability to correctly remember the identity of Mrs Lech's recipe book with a French name. However, as I have already said, an inability to remember the name is hardly surprising given that Mrs Lech died nearly 10 years ago.
- ii) There is, in particular, Mrs Farrell's credible evidence, which I accept, with regard to Mrs Lech playing Scrabble with Mrs Farrell and Ms St Clair and being bought a book about Scrabble by Mrs Farrell.
- iii) Mrs Paterson-Morgan and others wrote to Mrs Lech, and there is no evidence that she did not read the letters in question, albeit that she often responded by telephone. If Mrs Lech had been unable to read and write, then one would have expected at least one of Ms Pegler, Mr Jordan, or Mrs Paterson-Morgan to have picked up on this and noted it in their files.
- iv) A Patient Registration Questionnaire has been produced which certainly would appear to have been completed by Mrs Lech in her own handwriting. The form is completed to state that English is the language that Mrs Lech would prefer to read, and the form states that no one had assisted her with the form. Presumably on the basis thereof, on 27 February 2007, her GP noted on her records that she reads English.

v) During the course of her evidence, Mrs Kirby volunteered that Peter King used to write to his sister, Mrs Lech and firmly rejected any suggestion that Mrs Lech could not read. In submissions, Ms St Clair asserted that Peter King did not write to Mrs Lech, but when I challenged as to how she knew this, she was unable to provide any sensible explanation.

186. A further aspect of Ms St Clair's case that Mrs Lech could not have knowledge of and did not approve the 2009 Will was that her cataracts severely compromised her ability to focus visually on print or other writing clear enough to read it. However, the records show that shortly after the 2009 Will was executed, on 12 June 2009, Mrs Lech's optician referred her to an ophthalmologist to investigate for cataracts. This investigation was undertaken on 14 August 2009. As at that date the ophthalmologist gave visual acuity scores of 6/24 (R) and 6/36 (L), and no comment on visual field. There is therefore no suggestion that there was any impediment to reading a document close-up before this time, although cataract surgery followed.

Conclusion in respect of want of knowledge and approval

187. I am satisfied on the evidence that the 2009 Will was executed with Mrs Lech's knowledge and approval.

Overall Conclusion in respect of Ms St Clair's claim

188. It follows from the above that each of the challenges made by Ms St Clair to the validity of the 2009 Will must fail, and therefore that her claim should be dismissed.

Counterclaim

189. By their Counterclaim, the Defendants seek to prove the 2009 Will in solemn form. This requires them to prove both the formal and substantial validity of the 2009 Will - see Williams, Mortimer and Sunnocks (supra) at 34-02.

190. Substantive validity is proved in the present case by the rejection of Ms St Clair's claim.

191. As to formal validity, the question is as to whether the 2009 Will was executed in accordance with s.9 of the Wills Act 1837. Mrs Farrell provides circumstantial evidence as to due execution. However, this is unnecessary given that there is a presumption of due execution, in particular given that the witnesses to the 2009 Will are now dead – see Williams, Mortimer and Sunnocks (supra) at 9-31 and 9-34. No evidence has been advanced to rebut the presumption of due execution.

192. In the circumstances, I have no hesitation in pronouncing in favour of the force and validity of Mrs Lech's will dated 20 May 2009 in solemn form

of law, and in ordering that of a grant of probate be issued in the Defendants' favour as the executors named in the 2009 Will.