Neutral citation number: [2023] EWHC 2298 (Ch)

Case No: PT-2019-MAN-000097

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Monday 15 May 2023

Before:

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between:

VALERIE MAY OLGA SIM

Claimant

- and -

KATIE ELLEN ELIZABETH PIMLOTT
AND 13 OTHERS

Defendants

- -
- -

The **Claimant** appeared **In Person**
MR JAMES FRYER-SPEDDING (instructed by **Pannone Corporate LLP**) appeared for the **1st, 3rd, 5th** and **11th to 14th Defendants**
The **Second Defendant** appeared **In Person**
The **Fourth Defendant** attended remotely solely to give evidence for the Claimant
The **Remaining Defendants** did not attend and were not represented

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APPROVED JUDGMENTS

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(*Transcript prepared without access to case documents*)

JUDGE HODGE KC:

First Judgment on Incidence of Costs

(11.37)

1. This is my extemporary judgment on the issue of costs in the claim brought by Mrs Valerie Sim for reasonable financial provision out of the estate of her late husband, Dr David Sim, under case number PT-2019-MAN-000097.

2. Following a trial starting on Tuesday 2 May 2023, on Friday 5 May, I delivered, over some four hours, an extemporary judgment largely dismissing Mrs Sim's claim for reasonable financial provision out of her late husband's estate under the Inheritance (Provision for Family and Dependents) Act 1975.

3. The one and only respect in which I found that the will had failed to make reasonable financial provision was that Mrs Sim, having challenged the reasonableness of the financial provision contained in the will, was denied the conditional legacies given to her of both £250,000 and £125,000 under clauses 4.2.2 and 4.2.3 of the will. The effect of that would have been to leave Mrs Sim with an entitlement to the income from the residuary estate during her lifetime under clause 6.1 of the will, but subject to the overriding powers of appointment and advancement vested in the trustees of the will by clause 7 of the will; and in circumstances where, by clause 12, the trustees (who, in the case of two of them, were themselves residuary beneficiaries under the will) might join in exercising any of those powers, notwithstanding that they were a beneficiary, and would, or might, benefit from any such exercise, or otherwise have a direct or other personal interest in the mode or result of exercising such powers. A further effect of

my judgment would have been that the former matrimonial home, Lothlorian House, would have had to be sold to meet the pecuniary legacies, totalling £180,000, in favour of the grandchildren, apart from any need to sell the property in order to meet the trustees' costs of defending the 1975 Act claim. To the limited extent that that would have left Mrs Sim without any home, albeit with her widow's pension from the National Health Service attributable to her late husband's many years' service as a general practitioner, and also her life interest in residue (subject to the overriding powers), it did seem to me that, to that limited extent alone, the will did fail to make reasonable financial provision for Mrs Sim because it failed to include any provision for part of the residuary estate to be applied in the purchase of a home for her personal occupation.

4. For that reason, I made an order effectively varying the terms of the trusts governing the residuary estate, so as to provide for the will trustees to raise a fund out of the residuary estate, in a sum not exceeding £400,000, to be applied towards the purchase of a property, within three miles of Lothlorian House, for the occupation of the claimant, on the terms which I have approved earlier this morning. I now have to deal, inevitably, with the costs of the litigation.

5. Mr Fryer-Spedding (of counsel) represents the first, third, fifth and eleventh to fourteenth defendants. For the identities and interests of those parties, I would refer to my substantive extemporary judgment, to which this extemporary judgment on costs is a sequel, and by reference to which this costs judgment should be read for further details relevant to my costs decision.

6. In summary, Mr Fryer-Spedding seeks his clients' costs from the claimant; and he also seeks an order that those costs be assessed on the indemnity basis from the outset of this Part 8 claim, which was issued as long ago as 19 September 2019.

7. Mr Fryer-Spedding points out that the represented defendants should be entitled to their costs, both on normal principles governing the incidence of costs, and by reference to certain admissible costs offers, copies of which he has placed before the court.

8. So far as the costs of the first and third defendants, incurred in their capacity as personal representatives and trustees, those should fall to be paid by the claimant and assessed on the indemnity basis, on the normal principles governing an award of costs in favour of parties to litigation appearing in a fiduciary or trustee capacity. As to all other costs, Mr Fryer-Spedding seeks an order that they be paid by the claimant and assessed on the indemnity basis, on the footing that that is due to the claimant's pursuit of what he describes as "egregious and deeply offensive allegations", against both the late Dr Sim and also his family.

9. He refers me to the summary of the principles that appears in the commentary at paragraph 44.3.10 of the current (2023) edition of Volume 1 of *Civil Procedure* (at pages 1395 to 1396). That commentary is derived from the costs decision of Tomlinson J in the case of *Three Rivers District Council v Bank of England* [2006] EWHC 816 (Comm), and reported at [2006] 5 Costs LR 714.

10. The judge listed various factors which were said to be of particular relevance in deciding whether the conduct of an unsuccessful claimant was a ground for ordering indemnity costs. Tomlinson J said at paragraph 25:

> "(4) The court can and should have regard to the conduct of an unsuccessful claimant during the proceedings, both before and during the trial, as

well as whether it was reasonable for the claimant to raise and pursue particular allegations and the manner in which the claimant pursued its case and its allegations.

(5) Where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to pursue it is taking a high risk and can expect to pay indemnity costs if it fails.

(6) *A fortiori*, where the claim includes allegations of dishonesty, let alone allegations of conduct meriting an award to the claimant of exemplary damages, and those allegations are pursued aggressively *inter alia* by hostile cross-examination."

11. At subparagraph (8), Tomlinson J identified certain circumstances which would take a case out of the norm, and justify an order for indemnity costs, particularly when taken in combination with the fact that a claimant had discontinued only at a very late stage in proceedings:

"(a) where the claimant advances and aggressively pursues serious and wide-ranging allegations of dishonesty or impropriety over an extended period of time;

(b) where the claimant advances and aggressively pursues such allegations, despite the lack of any foundation in the documentary evidence for those allegations, and maintains the allegations, without apology, to the bitter end;

(f) where the claimant pursues a claim which is irreconcilable with the contemporaneous documents."

12. Mr Fryer-Spedding submits that all of those considerations are engaged in the present case. He submits that the claimant advanced and aggressively pursued serious and wide-ranging allegations of impropriety in relation to her late husband over an extended period of time. She is said to have done so despite the lack of any proper foundation for such allegations in the documentary evidence; and she maintained them without apology to the bitter end. It is said that she pursued a claim as to her late husband's conduct, and that also of his adult children, Katie and David, that was in some respects far-fetched; and that she mounted a claim that was at odds with the

contemporaneous documents. Those submissions were advanced in Mr Fryer-Spedding's written skeleton argument that was filed last week.

13. Mrs Sim has produced a five-page printed response to that skeleton argument. She says that it was uploaded to CE-File last evening, although my searches of CE-File this morning have not disclosed that this has been done, even amongst unprocessed filings. However, I have been handed a copy of Mrs Sim's document at the beginning of this hearing. I have read through it and annotated it in court; and Mr Fryer-Spedding's solicitors have emailed a copy to me, which I have printed out so that Mrs Sim has been able to retain her copy whilst I have been able to look at a further copy of it.

14. It is fair to say that in her document Mrs Sim maintains the case that she advanced before me as a litigant in person at trial. She refers to an offer of 26 October 2020 which was made at a time when Myersons were representing her. She states that she steadfastly stands by that offer today. She says that it is what she believes to be truly hers in accordance with what her husband really expected her to have after his death. She also refers to the fact that his son, David, had acted in a deceitful manner to steal all that had belonged to them in a company called Brickies Ltd. The beneficial ownership of the shares in that company was the subject of the trial of a preliminary issue before His Honour Judge Stephen Davies, sitting as a Judge of the High Court, earlier last year; and Arnold LJ, in the week before this matter came on for trial before me, has refused permission to appeal from that decision. It is therefore not open to Mrs Sim to assert that the estate has any interest in the company Brickies Ltd.

15. In her document, Mrs Sim maintains that she disagrees with the contents of her late husband's last will in many areas, maintaining it to be a grossly coercive one, and

asserting that her husband was not in a mentally and conscious state to have spent hours at a time discussing anything with anyone.

16. I merely observe that there is no challenge to the validity of the will, which has been duly admitted to probate; and that Mrs Sim's assertions are at odds with the careful file notes maintained by the solicitor who received instructions for the drafting of the will and attended upon the deceased, both to confirm those instructions, and, later, to have it executed, and duly witnessed.

17. In short, many of the points made by Mrs Sim are really not open to her in light of the findings made both by His Honour Judge Stephen Davies, in relation to Brickies Ltd, and by me, in relation to the 1975 Act claim.

18. Mrs Sim states, with feeling, that she is totally disgusted that in this court she has been made to look and feel totally dishonoured for forwarding the truth and reality of what she describes as "the grievous and heinous abuse" that she had endured over so many long years. She says that it is abhorrent that she must now live with what she describes as "this unjust and demoralising outcome of this case". When victims of abuse call upon the law, the courts, and organisations for help and understanding, only to find that there is no justification to be had, the realisation for victims so often is to take their lives or to be killed. Mrs Sim suggests that that nearly happened to her. She maintains that she was simply advancing the truth as it was and still is.

19. At paragraph 12 of her note, she states that none of the allegations against her husband, or his children, were egregious or offensive to her knowledge. She maintains that she relentlessly offered up her truth to this court as an abused victim, believing that every piece of evidence she provided to the court was of relevance and significant to the case. She says that she has nothing to apologise for; and she refuses to do so.

20. Mr Fryer-Spedding, in his oral submissions, submitted that this written response demonstrates Mrs Sim's continuing lack of insight and complete lack of contrition. She doubles down on the serious allegations she has made, both in relation to her late husband and his adult children. He describes her skeleton argument as "offensive".

21. At paragraph 25, Mrs Sim states that she should not have to bear the costs of the defendants. They were not honest and forthcoming from the outset, they minimised the value of the entire estate in a blatant attempt to deceive the court, excluding a bank account in Dubai, and they have still not explained where the contents went. She maintains that she has not been unreasonable in pursuing her claim. The court knows the reasons why she pursued it; and those reasons were supported by her then solicitors at the time of issue, although she earlier maintains a lack of satisfaction with her previous solicitors' costs.

22. In her oral submissions to the court, Mrs Sim asserted that she could have not made up allegations of the sort she has made had they not represented the truth. It is because she has not been believed about her allegations that she is in the position which she now finds herself today. She maintains that she would have had to be a very good storyteller indeed to have made the allegations that she has. She disputes that she has lied about anything. She does not believe that she should be held responsible for any costs at all; and she points out that she lacks the funds to meet any award for costs, asking, rhetorically, what is she supposed to live on? She maintains that her stepchildren all have successful businesses; and she maintains that her case was founded not on greed but on need.

23. I, of course, have a discretion as to costs. But if the court decides to make any order about costs, the general rule is that the unsuccessful party will be ordered to pay the

costs of the successful party, although the court may make a different order. In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including the parties' conduct, whether a party has succeeded on part of its case, even if that party has not been wholly successful, and must have regard to any admissible offers to settle which are drawn to the court's attention.

24. In the present case, I am entirely satisfied that the successful parties here are the defendants, with the exception of the fourth defendant, Mr Callum Sim, who is the claimant's son by her marriage to Dr Sim, and who supported his mother's case throughout the course of the proceedings. I am satisfied that the defendants who actively defended the claim are the successful parties.

25. It seems to me that Mrs Sim would probably have been better off financially had she not sought in any way to challenge the provisions of her late husband's will under the 1975 Act. She would have then received £250,000 in cash for giving up her interest in Lothlorian House, and she would also have received a further £125,000 for giving up her half interest in the Dubai apartment. That sum is slightly more than the value that has been placed upon that interest, and it would have avoided the need to take any steps to realise her interest in that property, although it is fair to mention that she would have received an additional one-eighth share in the estate's half share in that property under the provisions of Islamic law. Mr Fryer-Spedding also points to the potential effect of the overriding powers in the will.

26. On balance, it seems to me, particularly when one bears the incidence of litigation costs borne by the estate in mind, that Mrs Sim would have been better advised not to have mounted this challenge at all.

27. However, there is a more fundamental reason why it is the defendants who are the successful parties, and that is the effect of a Part 36 offer that was made by the solicitors formerly representing the represented defendants' (Bramhall Solicitors) on 18 September 2020. The letter began by acknowledging that a considerable time had passed after the issue of proceedings, and they had still received no offer from Mrs Sim or, indeed, any indication of what it was that she was claiming. Bramhalls did not consider that to be reasonable conduct. (I should point out that that letter was addressed to Myerson Solicitors LLP who, at that time, and until 14 November 2021, were acting for Mrs Sim.)

28. In an effort to provide certainty, and to save the unnecessary wasting of costs, resulting in the diminution of the estate, Bramhalls put forward an offer pursuant to CPR Part 36. That offer was advanced on the following basis:

    (i) The former matrimonial home was to be placed on the market and sold; after the payment of estate agents' fees, and any debts secured against the property, together with the legal costs of sale, the proceeds were to be divided, as to 55 per cent to the claimant and 45 per cent to the estate. Based on the current valuation of £1 million, that would equate to £550,000 to the claimant and £450,000 to the estate.

    (ii) The Dubai flat was to be sold and the net sale proceeds divided 50 per cent to the claimant and 50 per cent to the estate. On current valuation, that should produce another £100,000 to the claimant.

    (iii) The piano and the paintings currently in the former matrimonial home were to be vested in the claimant, with a value of about £20,000; and

(iv) All vehicles (including the Bentley) were to be the claimant's property, with a value of £85,000.

29. The rationale for that offer was that £300,000 to £350,000 should be sufficient to house the claimant in a two- or three-bedroom house in Bramhall, providing her with security. There would then be a remainder of around £200,000 to £250,000, excluding the chattels, which, if invested, would provide Mrs Sim with a reasonable annual income of around £22,000 per annum. Taken together with the pension that she received, an annual income of £46,000 would be hers. There would also then be the additional £100,000 to come from the sale of the Dubai apartment, and £105,000 in respect of cars and chattels, which could either be invested or used as capital. That offer was said to meet all of Mrs Sim's reasonable needs, both in terms of accommodation and income. Not only that and bearing in mind the matrimonial - and then there must be a misprint because the next word is "lock" - Mrs Sim would receive at least 57 per cent of the available estate. That would afford her the benefit of a settlement on what was effectively a clean break basis, as opposed to a life interest in assets. She would also have the benefit of the pension which was in payment to her. That offer was to remain open for acceptance until 16 October 2020, 21 days from the anticipated date of receipt. Provided it was accepted within that time, Mrs Sim was to be entitled to the costs of the proceedings on the standard basis.

30. I have no doubt whatsoever that Mrs Sim would have been well-advised - and at the time she was legally represented - to have accepted that offer. It was, in the light of the court's finding, a generous offer to her. However, it was not accepted.

31. Instead, Myersons made a counter-offer pursuant to Part 36. That involved the following:

(i) The transfer of Lothlorian House to Mrs Sim, together with its contents;

(ii) the return of the Bentley to her;

(iii) the sum of £500,000, which Mrs Sim averred was the deceased's investment in Brickies Ltd;

(iv) the transfer to Mrs Sim of $25,000 held in a Barclays account, together with a further £23,000 held in an NHS pension;

(v) the transfer to Mrs Sim of the balance held in the deceased's bank account in Dubai, together with the benefit of the debt owed to the estate by Hayat in the sum of £50,000;

(vi) the transfer to Mrs Sim of the estate's 50 per cent share in the Dubai property so that she would become its sole owner; and

(vii) that settlement did not include costs. The estate was to be liable to pay Mrs Sim's costs on the standard basis.

32. It is quite clear that Mrs Sim has achieved nothing like that as a result of these proceedings. The represented defendants' present solicitors (Pannone Corporate) put forward a further "without prejudice save as to costs" offer on 5 April 2023. That effectively would have secured for Mrs Sim 65 per cent of the net sale proceeds of Lothlorian House upon it being placed on the market. She would have also received certain contents and motor cars, with the exception of the Bentley. Again, that offer was not accepted.

33. I am entirely satisfied, against the background of the various offers, that the represented defendants, and also Alistair (who represents himself) are the successful parties in this litigation. I am also entirely satisfied that Mrs Sim's conduct in bringing this case, and in ignoring the offer made by Bramhall Solicitors as relatively early in

the course of the litigation as 18 September 2020, means that the defendants (other than Callum, who supported the claimant's claim throughout) should be entitled to their costs of the litigation; and that such costs should be assessed on the indemnity basis as from the date when the Bramhall offer of 18 September 2020 expired, namely 16 October 2020. Up until that date, the defendants should have their costs on the standard basis. But, as from that date, when Mrs Sim could have achieved a much better outcome than she presently has, she should bear the costs of this litigation on the indemnity basis. I recognise her lack of ready assets to meet that award of costs. But unfortunately, she chose to litigate; and she must, regrettably, bear the costs of doing so.

34. I reach that result without having regard to Mrs Sim's conduct of this litigation, and on the basis of the offer of 18 September 2020. Had that offer not been made, it would have been necessary for the court to consider whether the way in which Mrs Sim has conducted the litigation, of itself, merited costs being awarded on an indemnity basis. It seems to me that Mrs Sim's conduct of the litigation, since she dispensed with the services of Myersons on 14 November 2021, would, of itself, have merited an assessment of costs on the indemnity basis. I do not consider that matters of conduct, advanced at a time when Mrs Sim was in receipt of legal advice, should lead to an assessment of costs against her on the indemnity basis. But once she dispensed with the services of her solicitors, and pursued this litigation on her own, I do consider that the way in which she has conducted that litigation, in the light of the court's findings in its substantive judgment, is such that the court should reflect that conduct in an award of costs on the indemnity basis.

35. As I have pointed out to Mrs Sim, that has two consequences. First, whilst to be allowed on assessment, the defendants' costs must still be reasonable in amount and reasonably incurred, all issues of proportionality will disappear from the picture. Secondly, the benefit of any doubt will fall to be resolved in favour of the defendants, as the receiving party, rather than the claimant, as the paying party. In my judgment, that consequence is appropriate to reflect the way in which this litigation has been conducted.

36. I accept the various submissions advanced by Mr Fryer-Spedding as to the way in which this litigation was conducted, with serious allegations being levelled both against the late Dr Sim, at a time when he was not able to respond to them, and also other allegations being levelled against certain of the defendants, and, in particular, Katie and David. Louise Calder (the fifth defendant) was never the subject of any allegations. But as Mr Fryer-Spedding points out, Mrs Sim's latest document does demonstrate both a lack of insight and a complete lack of contrition; and it involves serious allegations being advanced against the three main defendants, in paragraph 11, which should never have been levelled against them. I say no more about them, exhibiting the same degree of restraint as did Mr Fryer-Spedding.

37. Strictly, however, it is unnecessary for me to decide the case on the basis of that aspect of conduct because it seems to me that indemnity costs are merited simply because of the failure to respond positively to the Bramhall offer of 18 September 2020, and the wholly inappropriate counter-offer put forward by Myerson on 26 October 2020. Both the estate and the claimant would have been much better off had this litigation been resolved at a much earlier stage.

38. For those reasons, I will award the defendants - other than the fourth defendant - their costs, to be assessed on the standard basis up to 16 October 2020 and on the indemnity basis thereafter. That concludes this first extemporary judgment.

(12.21)

Second Judgment on Payment of Costs

(12.36)

39. This is my second ruling on costs during the course of this consequentials hearing on the claim brought by Mrs Sim for reasonable financial provision out of the estate of her late husband, Dr David Sim. This extemporary costs judgment should be read in conjunction both with the extemporary judgment I handed down, on Friday 5 May, on the substantive claim, and also the costs judgment I have delivered earlier today. In that costs judgment, for the reasons I there gave, I ordered Mrs Sim to pay the defendants' costs of the claim; and I directed that those costs should be assessed on the standard basis up until 16 October 2020 and on the indemnity basis thereafter. I now have to decide two further matters.

40. The first is the application by Mr Fryer-Spedding, acting for the represented defendants, for a payment on account of costs under CPR 44.2(8):

> "Where the court orders a party to pay costs subject to detailed assessment [as the court has done], it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.

41. In the present case, the court has budgeted the costs; and the budgeted costs, as of about September 2022, were in the total sum of £117,571, of which £29,456 (which I am told was a VAT-inclusive figure) had been incurred prior to costs budgeting. The costs budgeted total was therefore £88,115, excluding VAT. I am told that, excluding

the costs of today's hearing, the actual costs are in the order of almost £184,000. I am also told that the represented defendants' solicitors, Pannone Corporate, have agreed not to call for payments of those costs for the time being, but on the footing that interest falls to be paid on the costs incurred at the rate of 2 per cent per annum over base rate. Therefore, the longer costs remain unpaid, the more interest falls to be paid upon them by the represented defendants. Mr Fryer-Spedding invites the court to order a payment on account of costs of £100,000.

42. To that, Mrs Sim's response is simply that she has no money. She is not working; and apart from any state pension, to which she has only recently become entitled, and the NHS pension in payment from her late husband's employers, she has no resources. She does have the interest in the Dubai apartment, but the other 50 per cent interest in that apartment is an asset of the estate. She simply has no money, she has no earning capacity, and she only has her pension. She says that she is never going to be able to make any payment on account of costs.

43. I am afraid that I do not consider that that is any good reason not to order an interim payment on account of costs. Those costs have been incurred, and they are going to have to be paid at some stage. Mrs Sim is going to be in no better position to meet those costs following detailed assessment than she is now. So I do not consider that that impecuniosity on her part is any good reason not to make an interim payment on account at the present time. Doing so will presumably mean that interest falls to be paid on those costs, to the extent that Mrs Sim is unable to meet them; and that will go some way to offsetting the interest that is payable to the solicitors acting for the represented defendants. It seems to me, therefore, that there is good reason to order an interim payment on account of costs, even though there is no prospect of Mrs Sim

being able to make any payment. That, as I say, is a situation that will be the case after detailed assessment as well as now.

44. Bearing in mind, firstly, the budgeted figure for costs and, secondly, the indemnity basis of assessment, I am satisfied that the appropriate sum to order by way of an interim payment on account is the £100,000 for which Mr Fryer-Spedding asks.

45. The normal rule is that that would fall to be paid within 14 days. What I propose to do is to defer the date for payment by three weeks, rather than the usual 14 days, so that it falls at the same time as the date to which the time for Mrs Sim to appeal to the Court of Appeal has been extended, in other words to 5 June 2023.

46. The second matter I have to address is the existing costs awards. I have already made reference to the trial of the preliminary issue before His Honour Judge Stephen Davies. That was the subject of an award of costs against the claimant, and in favour of the third defendant, Mr David Sim, who was the effective protagonist in that litigation.

47. The parties had agreed a consent order when Mrs Sim applied for time to pay the costs award by an order sealed on 25 November 2022. It was provided that the claimant should pay David Sim's costs of the preliminary issue, in the sum of £80,000 plus VAT, being £96,000 in total. By paragraph 3 of that order, those costs were to be paid by way of monthly payments of £100 until the conclusion of the claimant's 1975 Act claim, either by way of settlement or determination by the court at trial, following which the balance of the costs outstanding as at that date were to be paid to David Sim from any award made to Mrs Sim, or any settlement sum agreed by the parties in the main claim. There was express provision for the claimant to be permitted to apply to vary the order in the event of the Court of Appeal giving permission to appeal Judge

Davies's decision on the preliminary issue. As I have already indicated, permission to appeal has in fact been refused.

48. There is one further costs order in favour of the represented defendants. That was made following the dismissal of an application that came before me on 24 April by the claimant to adjourn the trial. I ordered the claimant to pay the represented defendants' costs of that application, which I summarily assessed in the sum of £5,400 inclusive of VAT. I made a similar order to that which had previously been agreed: for that sum to be paid by way of monthly payments of £100, and on similar terms to those in the previous consent order.

49. The difficulty is that both orders contemplated that the result of the 1975 Act claim would be the payment of an award to the claimant, or agreement on a settlement sum to be paid to the claimant. That, of course, has not happened; and the provision that the court has ordered is by way of the making available to the claimant of accommodation for her to live in, rather than by way of any lump sum.

50. In those circumstances, I am satisfied that the court has the necessary power to vary the existing two orders for payment by instalments under CPR 3.1(7). I am satisfied that there have been subsequent events which were not foreseen at the time which have destroyed the basis on which those orders were agreed or made. The subsequent event is the court's failure to award any sum of money to the claimant pursuant to her 1975 Act claim.

51. I am satisfied that, in those circumstances, given that there is no fund available to the claimant as a result of her 1975 Act claim from which those sums can be paid, it is appropriate to address that change of circumstance by varying the existing orders. I am satisfied that the appropriate way of doing that is to say that the monthly payments

should now cease to be paid, and that the sums should be paid at the same time as the extended time for appealing to the Court of Appeal runs out. In other words, I will vary paragraph 2 of the order I made on 24 April, and paragraph 3 of the consent order that was sealed on 25 November, by providing for the costs awards to be paid on or before 5 June 2023.

52. Once again, I recognise, with regret, that Mrs Sim has no funds from which to make those payments. She will, of course, be entitled to make a further application to one of the district judges for time for payment.

(12.52)

Third Judgment on Permission to Appeal

(12.59)

53. Finally, I have to consider Mrs Sim's application for permission to appeal to the Court of Appeal.

54. On an application for permission to appeal, the prospective applicant must satisfy the court that there is a real prospect of any appeal succeeding, or that there is some other compelling reason why their appeal should be heard. The Court of Appeal will only allow an appeal on the basis that the decision of the lower court was either wrong or unjust, because of a serious procedural or other irregularity in the proceedings in the lower court.

55. Mrs Sim does not point to any irregularity in the proceedings. Her complaint is that her allegations of domestic abuse have not been addressed by the court in its judgment, but rather have been swept under the carpet. She regards the will of her

late husband as what she describes as a "coerced will", due to the level of abuse throughout. She maintains that everything that she has said has been the truth; and she makes no apology for the allegations that she has made because to apologise would amount to accepting that she had made those allegations up, which Mrs Sim says is not the case.

56. Unfortunately, the court has made certain findings of fact against Mrs Sim and her case. Those findings were open to the court on the evidence. I see no real prospect of Mrs Sim persuading the Court of Appeal that it erred in its findings of fact; and, on that basis, I can see no real prospect of her appeal succeeding. There is no other reason, still less any compelling reason, why her appeal should be heard. I will therefore refuse permission to appeal.

(13.02)
