

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
Property, Trusts and Probate List
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 13 September 2019

Before :

DEPUTY MASTER ARKUSH

Between :

RITA REA
(As Executrix and beneficiary of the estate of Anna
Rea deceased)

Claimant

- and -

(1) **REMO REA**
(2) **NINO REA**
(3) **DAVID MARK REA**

Defendant

John Ward-Prowse (instructed under the direct access scheme) for the Claimant
The Defendants in person

Hearing dates: 9, 10, 11 September 2019

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.

.....



DEPUTY MASTER ARKUSH:

1. The parties in this probate claim are the children of Anna Rea (“Mrs Rea”) who died on 26 July 2016 aged 85. Mrs Rea’s daughter as claimant seeks to establish the will dated 7 December 2015 (“the 2015 Will”) of her mother and asks for a grant of probate in solemn form. The claimant’s brothers defend the claim on the grounds that (1) Mrs Rea lacked testamentary capacity, (2) Mrs Rea did not know and approve of the contents of the 2015 Will, (3) the will was procured by the exercise of undue influence exerted by the claimant over Mrs Rea, (4) the will was procured by a fraudulent calumny practised by the claimant on Mrs Rea. They counterclaim for probate of Mrs Rea’s earlier will dated 29 May 1986 (“the 1986 Will”).
2. Directions for the trial were given by Chief Master Marsh on 13 March 2018. Delays put back the trial window by several months. The defendants recently decided that they had lost confidence in their solicitors and dispensed with their services. On 19 August 2019 the defendants applied for the trial to be adjourned, on the grounds that two witnesses who they regarded as crucial needed to be called, their cousin Angela Contucci and Paula Batson, and because they stated that they wished to obtain new legal representation. On 27 August 2019 Chief Master Marsh dismissed the application on paper with written reasons. He gave permission to any party to apply to set aside his order within 7 days of its service. The defendants made the application to set aside which came before me on 5 September 2019. I refused the application, essentially for the same reasons as Chief Master Marsh, but I directed that witness summonses be served on Ms Contucci and Ms Batson to attend on the second day of the trial. They did attend and I shall refer to their evidence later in this judgment.
3. On Monday 9 September 2019 at the opening of the trial the defendants applied again for an adjournment, on the grounds that they wished to obtain new legal representation. I refused the application. Among the reasons given by Chief Master Marsh in his order of 27 August 2019 to refuse an adjournment was that the claim did not involve complex issues and he was satisfied that the defendants were able to deal with the claim themselves. 2½ days of evidence and argument have borne out his judgment. The defendants have conducted their case with care, reasonableness and courtesy and I consider that they were not unduly or unjustly hampered in putting forward their case in person. Counsel for the claimant also acknowledged their competence and courtesy in putting forward their case and in their dealings with him outside court. This is to the defendants’ credit.

Factual background

4. Mrs Rea was born in 1930, in a village in Italy where she had a fairly basic education which was interrupted by the Second World War. Her sister came to this country in the 1950s to find work opportunities and she followed. She went to evening classes to improve her English. While in this country she met and married her husband, whose surname was Huda, who was of Bangladeshi origin. They spoke English to each other and at home with their children. He did not speak Italian.

5. Mrs Rea was divorced from her husband many years ago in about 1969 or 1970. At the time of her death she lived at 5 Brenda Road, Tooting Bec, London SW17 (“the House”) together with the claimant and the claimant’s friend Paula Batson who helped with her care. The House had been her home since 1964 and the parties’ childhood was largely spent there.
6. The parties are now in their 50s. I shall refer to them by their first names. The eldest is Remo, followed by Nino, Rita and David
7. As the parties grew into adulthood they left home to make their way in life in the normal way. Following a divorce Remo went back to live in the House for a period until 2009. In that year Mrs Rea suffered a heart attack and needed support and care while she was recuperating. Rita returned to live at the House to care for her. She and Remo did not have a good relationship and they avoided each other. Remo moved out in the same year. According to Paula Batson, who was called as a witness by the defendants, he was thrown out of the House by David for taking a gas bill to Mrs Rea for payment while she was being treated for the heart attack in the intensive care unit.
8. From 2009 onwards Mrs Rea required support and care. For the purpose of her evidence Rita prepared an account of her daily care of Mrs Rea from 7 a.m. to 9 p.m. every day. This was not seriously challenged by the defendants. The impression given by the evidence was that the level of care needed varied according to how well Mrs Rea felt at different times. She made a reasonable recovery in the months following her heart attack but needed the considerable daily care set out in Rita’s account when her health declined in the last two years of her life.
9. The level of care given to Mrs Rea by Rita was not disputed. The extent to which the defendants assisted or even visited Mrs Rea was more contentious, as I shall describe further when dealing with the salient oral evidence. However, even on the defendants’ account their involvement with Mrs Rea’s care was somewhat limited. From 2012 to 2015 Remo lived in the United States. Even when he returned in about October 2015, it was some time before he paid a visit to Mrs Rea. When a draft of the 2015 Will was prepared in the latter part of November 2015 as described below, Mrs Rea referred to Remo as being in America because he had not been in contact to say that he had returned. Nino’s statement refers to him doing repair jobs at the House over the years, but states that he rarely saw Rita. David was also away for approximately six months a year managing an international motorcycle racing team, but he told me that he was back in England every two or three weeks.
10. The defendants have several children between them, but once they grew older and went to secondary school their visits to Mrs Rea were mainly restricted to Christmas Day and her birthday.
11. By mid-2015, as it became clear that Mrs Rea needed an increasing level of care, Nino and David agreed to help more. Rita and Ms Batson spent occasional weekends away, when Nino or David would help during the daytime, and perhaps spent an occasional night at the House. In June 2015 there was an unfortunate incident when Nino forgot to close the blind in Mrs Rea’s room as he had been asked to do as she did not sleep if the light came in. Mrs Rea got up and attempted to close it, but she fell and was unable to get up by herself. Nino had left the house and Mrs Rea was not

found for 24 hours until his wife Elaine went in and found Mrs Rea on the floor and soiled. This upset Rita and Nino himself told me that it was a lapse on his part which he felt “a bit guilty about”.

12. In September there was a brief period of involvement by Nino and David when they drew up a rota to take it in turns with Rita to care for Mrs Rea over weekends to give Rita some respite. Unfortunately it fell apart after only a few weeks. David told Rita that he had work commitments and would not be able to help after 7 November 2015 and it does not seem that Nino was willing or able to undertake care tasks.
13. There is no doubt that this caused a major fallout between Rita, Nino and David. Rita’s anger and resentment was evident from her abusive text messages sent to Nino during this period. In my judgment the making of the 2015 Will just weeks later is not a coincidence and stems from frustration and resentment on Rita’s part that she was shouldering the main burden of caring for Mrs Rea without any or any adequate help from Nino and David. Mrs Rea must have known about this and no doubt she had her own feelings on the matter.

The 1986 Will and the 2015 Will

14. The 1986 Will appointed Remo to be the executor and divided Mrs Rea’s estate between her children in equal shares.
15. The 2015 Will appointed Rita and Ms Contucci as Executors and left the House to Rita. The House is effectively the only asset in the estate and was then worth about £750,000.
16. The gift of the House to Rita was at clause 7 in the following terms:

“**I GIVE** to my daughter Rita Rea my property known as 5 Brenda Road, Tooting Bec, London SW17 7DD absolutely as she has taken care of me for all these years. If there is any inheritance tax to be paid on this property then such tax must be paid from this gift.”
17. Clause 11 of the 2015 Will, headed **Declaration**, reads as follows:

“I DECLARE that my sons do not help with my care and there has been numerous calls from me but they are not engaging with any help or assistance. My sons have not taken care of me and my daughter Rita Rea has been my sole carer for many years. Hence should any of my sons challenge my estate I wish my executors to defend any such claim as they are not dependent on me and I do not wish for them to share in my estate save what I have stated in this Will.”

The witnesses

Claimant’s witnesses

18. The witnesses on behalf of Rita were Rita herself, Mrs Savita Sukul, the solicitor who prepared and arranged the execution of the 2015 Will, and Dr. Sajid Abdul Qaiyum, Mrs Rea's General Practitioner who conducted a mental capacity assessment on her on the advice of Mrs Sukul and subsequently attended when she executed the 2015 Will.

Rita Rea

19. Rita had a happy childhood but when she was about 19 she experienced depression and mental health difficulties. She was hospitalised for about 3 months and told me that Mrs Rea visited her every day and cared for her. She was treated with medication and, as she put it, with patience, love and support from her mother. She recovered and went back to live at home. She left home in 1989 at the age of 27 and subsequently bought a flat in West Ham. She went to Newham College and studied multimedia design in preparation for university. She was then accepted for a degree course at Thames Valley University where she studied for 3 years and was awarded a degree in digital arts and video production. After graduating she worked in a number of jobs including as a tennis coach until she broke her knee. In 2009 she had a hysterectomy and in the same year Mrs Rea suffered a heart attack. Rita went back to live at the House to look after her mother and she became a virtually full time carer until Mrs Rea died in 2016.
20. Rita stated that the defendants were able to visit Mrs Rea whenever they wanted. They had their own keys to the House, at any rate until late 2015 or 2016 when her relationship with them was sufficiently bad that she changed the locks. However, the defendants rarely came and the care they gave Mrs Rea was limited as described above.
21. According to Rita's evidence it was Mrs Rea's idea to make the 2015 Will after she read a newspaper article on the subject earlier that year. I am sceptical about that and consider it to be far more likely that the subject of a new will arose as a result of the fallout with Nino and David referred to earlier in this judgment. As to the content of the 2015 Will, Rita strongly denied that she put the term 'abandon' into Mrs Rea's mouth. It was a word Mrs Rea used about her former husband. According to a letter in Mrs Rea's handwriting that was in evidence, her husband deserted her. Rita denied that she influenced or pressured Mrs Rea in any way or poisoned her mind against the defendants. She was emphatic that it was Mrs Rea's idea to leave the House to her and she neither asked nor encouraged her to do so.
22. Rita's evidence was detailed and given in a clear and open way. She was temperate, including when she was accused in cross-examination by David of lying. She did not reply in kind. She was able throughout to support what she said with a great deal of detail and clarity. I doubt whether the subject of making the 2015 Will came up just by chance but that is the only area on which I have reservations about her evidence. With that sole exception I regard her as a reliable witness whose evidence was clearly given honestly.

Savita Sukul

23. Mrs Sukul was and is the Principal of SJS Solicitors at 82 Balham High Road, London SW12. Her firm had been referred by the Law Society. She had not acted for

Mrs Rea before being contacted by Rita by telephone on 16 November 2015, when an appointment was booked for Mrs Rea to see her on the following day. At the time of the appointment Mrs Sukul had about 16 years' experience of preparing wills and had qualified as a solicitor some 10 years before.

24. Mrs Sukul's will file is in evidence. It demonstrates that she approached her task of taking instructions from Mrs Rea and preparing her will with a very great deal of care and detail. She was firm in making it clear from the outset that her instructions were to come from Mrs Rea alone. She preferred to see Mrs Rea alone but Mrs Rea made it clear that she wanted Rita to be present. Mrs Sukul acceded, but took her instructions only from Mrs Rea. Her evidence was that she had no problems communicating with Mrs Rea. She was confident that Mrs Rea understood her and that she understood Mrs Rea. This relates to a significant area of dispute between the parties as the defendants' case was that Mrs Rea spoke English to a very poor and basic standard. However Mrs Sukul was emphatic that Mrs Rea spoke English sufficiently well to communicate her wishes and instructions clearly and coherently. Mrs Sukul asked about previous will and was told about the 1986 Will, of which she made sure to obtain a copy. Mrs Rea told her that she wanted to leave the House to Rita to ensure that Rita had a home and because Rita solely took care of her. Mrs Sukul asked if she wanted her sons to inherit a share in the House and she said she did not because they had abandoned her. Mrs Sukul made a written note of her instructions which she asked Mrs Rea to sign as confirmation. The note reads in part as follows:

"I am leaving my property and contents at 5 Brenda Road, London SW17 7DD to my daughter Rita Rea absolutely as she has taken care of me all these years. My sons do not help with my care there has been numerous calls for help etc but they are not engaging with any help. The other children have abandoned her."

25. The instructions at that stage included gifts of Mrs Rea's car to David and of £1,000 to each of David, Nino and Remo followed by this note:

"None of my children have not taken care of me [sic] except my daughter. In the last 5 months David and Nino started to assist with my care and then abandoned my care."

26. Mrs Rea signed each page of the notes. Mrs Sukul was asked who used the term 'abandoned' and her evidence was that this was the word Mrs Rea used. Mrs Sukul pointed out to Mrs Rea that she could change her mind at any time and make a new will, but Mrs Rea was absolutely clear, saying that she did not want her daughter homeless and she wanted to leave her house to her.
27. Mrs Sukul advised that it would be prudent to obtain a medical report to confirm Mrs Rea's capacity bearing in mind her age and because she was changing her will drastically. Mrs Sukul's evidence was that she needed to make sure that Mrs Rea knew what she was doing. Mrs Rea agreed and Mrs Sukul therefore sent her firm's Confirmation of Assessment form to her General Practitioner Dr Qaiyum.
28. There was some discussion about executors and Mrs Rea named Rita and her niece Angela Contucci. Mrs Rea did not want to appoint a professional executor.

29. Mrs Sukul described Mrs Rea as being very clear and firm in her instructions. At one point Rita asked her whether she wished to leave a legacy to her grandchildren or whether Paula Batson should receive a gift. On these points Mrs Sukul's contemporaneous notes reads with regard to the grandchildren: "No. They do not care for me" and with regard to Ms Batson: "No she should not. She does not need it."
30. Mrs Sukul wrote this on her firm's testamentary instruction form:

"Ms Anna Rea strong willed. Knows what she wants"
31. On 7 December 2015 Mrs Sukul saw Mrs Rea again to go through the draft will she had prepared and to execute a final version. By that date she had received a completed Confirmation of Assessment form from Dr Qaiyum confirming that in his view Mrs Rea had capacity. She had also received a copy of the 1986 Will. Mrs Sukul told me that her usual practice is to send the draft will to the client in advance of the appointment and she thought she had done so in this case, although there appears to be no copy covering letter in evidence and it is not clear whether this happened. There seem to have been two meetings between Mrs Sukul and Mrs Rea on 7 December. Rita was present at neither and remained outside. In the first meeting Mrs Sukul went through the draft will clause by clause and explained in laymen's terms what each clause meant. This resulted in Mrs Rea instructing her to change the will to remove the gifts of the car to David and pecuniary legacies to Remo, Nino and David and to provide instead that the residue of the estate would be divided between her children equally. A fresh typed draft of the will incorporating those instructions was then prepared.
32. The will file contains a note of the second meeting on 7 December taking place from 1.30 – 2.20 p.m. The meeting was attended by Dr Qaiyum, apparently at Mrs Rea's request, in order that he be a witness to the execution of the will. The only other person present was Mrs Sukul's trainee. Rita was not in the room. Mrs Sukul's evidence was that she explained the will to Mrs Rea clause by clause, with explanations in lay terms what each clause meant. She raised with Mrs Rea that the House was going to Rita and the likelihood was that her sons were not going to inherit anything. Mrs Rea replied "Yes, I understand". Mrs Sukul reminded her that she could change her mind in the future and Mrs Rea replied that she would not be revoking this will. Mrs Sukul was satisfied at all stages that Mrs Rea understood everything said to her and was able to communicate her wishes. Mrs Sukul was not aware of any difficulties caused either by Mrs Rea's abilities using the English language or by virtue of any hearing loss for which Mrs Rea wore a hearing aid. The 2015 Will was then executed with Mrs Sukul and Dr Qaiyum acting as witnesses. Mrs Rea, Mrs Sukul and Dr Qaiyum signed each page.
33. Mrs Sukul also gave evidence about a meeting she had with Rita and Ms Contucci after the death of Mrs Rea for the purposes of reading the 2015 Will. David attended uninvited, apparently after Ms Contucci had told him about the meeting. David was very aggressive and kept interrupting Mrs Sukul. He said that he would challenge the will and that Mrs Rea did not have capacity. He called Rita evil. Mrs Sukul felt intimidated by him and asked him to leave.
34. Mrs Sukul was closely cross examined by David. None of her evidence was shaken in cross examination. She stated in answer to questions from me that Mrs Rea was

not suggestible and she was clear. She referred to Mrs Rea saying that she was giving her estate as she wanted to. Mrs Sukul definitely believed that Mrs Rea knew exactly what she was doing and if Mrs Sukul had any concerns she would have raised them with Dr Qaiyum. However Mrs Rea was engaging with her and she had no concerns.

35. Mrs Sukul gave her evidence with clarity and professionalism, as is to be expected of a solicitor with years of experience. It was supported by detailed contemporaneous notes. Mrs Sukul of course has no personal interest in the outcome of this claim. It seems to me that Mrs Sukul approached her instructions from Mrs Rea throughout with consummate care and skill and in a thoroughly professional manner. She gave highly sensible advice in recommending that her client obtained a mental capacity assessment. She recognised that the 2015 Will represented such a significant departure from the 1986 Will that careful precautions needed to be taken to ensure that Mrs Rea understood the implications and knew what she was doing. She addressed the concerns that presented themselves to her by going to considerable lengths to satisfy herself that Mrs Rea was acting with full knowledge of the changes to her will and their consequences. She likewise ensured to her satisfaction that Mrs Rea was acting of her own volition and without any pressure being exerted on her by others. If this level of care and competence was applied in every case there would doubtless be fewer disputes about wills coming before the courts.
36. I have no doubt whatsoever that Mrs Sukul's evidence was truthful and that I can safely rely upon it.

Dr Qaiyum

37. Dr Qaiyum is a General Practitioner partner at Trinity Medical Centre in Balham. London SW17. He qualified as a GP in 1998 so that by 2015 he was a doctor with some 17 years' experience in general practice. He conducts mental capacity assessments about once a year. He had been Mrs Rea's General Practitioner since 2010. During consultations they spoke in English and Rita would be present to interpret or explain if needed. He was requested to conduct a mental capacity assessment of Mrs Rea by letter of 17 November 2015 and saw her on 24 November 2015. His evidence was that he spoke to her in English slowly, so that she would understand. He described her as not having a good grasp of English but if you spoke slowly she understood. He asked her why she was making the will and she replied that it was because she was getting old. She said that she wanted to give the House to Rita. He asked if she had any other children and she said she had 3 sons. He asked if she needed to include any other children in her will. She replied that her daughter had looked after her all this time. Her daughter did everything for her and she wanted to give her house and her money to her.
38. Dr Qaiyum wrote in the Confirmation of Assessment form that Mrs Rea did not have impairment or disturbance of mind or brain. She could understand the information relevant to the decision, retain the information, use or weigh the information as part of the process of making the decision and communicate her decision whether by talking or any other means. These factors are of course taken from the definition of capacity in the Mental Capacity Act 2005. Dr Qaiyum left blank the box in which evidence of these factors should have been stated. He admitted in his statement that this was an error and paragraph 7 of his statement sets out the questions he would have asked Mrs Rea. It is fair to comment that the questions fall somewhat short of a Mini-Mental

State Examination (MMSE) that would be appropriate to use. In the event the defendants have not pursued the case as to capacity as I shall mention later in this judgment. Nonetheless Dr Qaiyum's evidence remains significant in relation to the other grounds of defence. He was present on the occasion when Mrs Rea attended Mrs Sukul's office to confirm her approval of the 2015 Will and execute it. He confirmed that he was present when Mrs Sukul explained the 2105 Will paragraph by paragraph and waited for answers from Mrs Rea. He understood that he was present to make sure that she understood all that was being said to her. His evidence was that Mrs Rea did understand because she was spoken to slowly. He was satisfied as to her capacity and he had no concerns whatsoever. He saw nothing to suggest that she was under any pressure. Mrs Rea was asked if she was acting under her own free will and she confirmed that she was.

39. Like Mrs Sukul, Dr Qaiyum attended court as a witness in his professional capacity and has no axe to grind in this case. I am completely satisfied as to his veracity and I can rely on his evidence to support my findings.

Defendants' witnesses

Angela Contucci

40. Ms Contucci attended court in response to a witness summons as referred to at the start of this judgment. At the hearing on 5 September 2019 I warned the defendants of the obvious risk that a witness who was brought to court by them unwillingly might give evidence that was unhelpful to their case. It appeared from documents attached to their application to adjourn the trial that counsel previously instructed on their behalf had given the same warning. The defendants nevertheless wished Ms Contucci to give evidence as they regarded her as a crucial witness for their case who would tell the truth. They said the same about Ms Batson. In the event, as will appear, the evidence given by both Ms Contucci and Ms Batson was more adverse than helpful to the defendants' case.
41. Ms Contucci's mother and Mrs Rea were sisters. Ms Contucci was therefore the niece of Mrs Rea and first cousin of the parties. She told the court that Rita and Mrs Rea got on very well and Mrs Rea was very protective of Rita. Ms Contucci saw no problems with their relationship. She also got on well with Rita but said that Rita could be volatile if you disagreed with her and could become aggressive. She referred to Rita as not holding her emotions well and that she could be manipulative. She could not say anything about the time when the 2015 Will was made because she did not see Mrs Rea for about a year before she died. This was because her own mother had dementia and her mobility decreased, so that she could no longer be taken to visit Mrs Rea. Ms Contucci described Mrs Rea's English vocabulary as basic and that her hearing impairment did not help. When asked about the 2015 Will Ms Contucci pointed out that the term 'abandon' was almost the same word in Italian ('*abbandonare*') with virtually the same meaning. Ms Contucci said that Mrs Rea would recognise the word although in her view Mrs Rea would not know its implications.
42. Ms Contucci was surprised that Mrs Rea had left the defendants out of the 2015 Will. She said that she felt at the same time that Mrs Rea may have felt that Rita was in need of being set up for life and Mrs Rea would want to help her. It was possible that

Mrs Rea felt that she had her reasons to leave her house to Rita and to leave her secure. Rita had a difficult start in life together with personality issues and Mrs Rea may have felt that she needed to be protected. Ms Contucci thought that may have been the situation as Mrs Rea was very protective of Rita. Ms Contucci's own view was that Mrs Rea might have left half her estate to the defendants. Ms Contucci said that she felt a bit put out that Mrs Rea had not asked her first whether she would be an executor. She renounced her executorship because she did not want to be in the middle of a conflict between the parties. She said that Mrs Rea could be strong willed and stubborn. She would need help with a legal document but if it was explained to her in English in simple terms she would have been able to understand it, to which she added "of course".

43. The defendants called Ms Contucci before the court because they believed she would tell the truth. On this point I share their view and I consider that Ms Contucci told the truth as she saw it.

Paula Batson

44. Ms Batson met Rita in 2008 and for about a year they were partners in a relationship. After the relationship ended they stayed good friends. She had lived at the House since 2009 where she was a carer or helper to Mrs Rea. She referred in her evidence to the care rota falling apart by early November 2015 and at the end of that month Nino did not come to the House to help. She said that Rita was upset that she asked Nino to come one weekend or when she wanted a holiday and Nino replied "get a carer". Ms Batson said that when she spoke to Mrs Rea she made sure that Mrs Rea was looking at her so that she understood what was being said. She described Mrs Rea's English as clear and that her command of the language was better than fair. Ms Batson was obviously fond of Mrs Rea and she momentarily lost her composure when recalling how Mrs Rea had been left on the floor after falling while under Nino's care and had been found 24 hours later wet from urine.

45. I accept Ms Batson's evidence as truthful.

Remo Rea

46. Remo described his mother's English as very poor, basic and "someone with a low IQ would understand". He said that she understood "nothing". When asked about Mrs Sukul's evidence, he said it was a "joke". He accepted that Rita's relationship was loving but that she was "an absolute burden on mum". That seemed to me to be a strange thing to say about a sibling who had borne virtually the sole care of an ailing parent for seven years. This is all the more so when it came from Remo who had been absent abroad during Mrs Rea's years of failing health. In cross examination he said that he had no time for Rita. When asked further about Mrs Sukul's evidence he repeated that he accepted what she said about explaining the 2015 Will to Mrs Rea but it was a joke because she would not have understood and would simply have nodded and smiled. In answer to a question from me he accepted that during the last two years of Mrs Rea's life Rita was the child who was around most and was the principal carer.

47. I regard Remo's evidence as characterised by exaggeration to the point of hyperbole. I consider that his overriding aim was to denigrate Rita and downplay his mother's

ability to speak and understand English. His flippant dismissal of Mrs Sukul's evidence points to a cavalier disregard for the truth. Overall I cannot place reliance on his evidence.

Nino Rea

48. Nino maintained that Mrs Rea always struggled with the English language. She took The Sun newspaper "mainly for the bingo". She was a completely honest person and always told the truth. At the same time he claimed that she told a lie in the 2015 Will about her sons not caring for her and that lie must have come from a person who would benefit from saying that. He said that he would pop into the House often but he was not able to be clear as to specific events as he was terrible on dates. He said that from 1986 to 2015 Mrs Rea's English deteriorated and her lack of hearing contributed. She probably could not read an entire sentence without help. In cross examination he said that he did not accept Mrs Sukul's evidence and he did not know why Mrs Rea would say what she did to Dr Qaiyum. He thought she was confused. When a note in the medical records stating that Mrs Rea spoke reasonable English and could explain her symptoms was put to him, he said he was surprised.
49. Like Remo, Nino sought to downplay Mrs Rea's ability to use English but his evidence was somewhat less exaggerated. While I felt that in general he tried to tell the truth, his evidence was characterised by vagueness and on a number of occasions he seemed to be unable to comprehend the questions put to him even when they came from David in examination in chief.
50. It is difficult to reconcile Nino's statement that Mrs Rea was completely honest and always told the truth with his insistence that she told a lie in the 2015 Will, especially when viewed in the context of the evidence of Mrs Sukul and Dr Qaiyum about the meeting on 7 December 2015 when they saw her alone for the 2015 Will to be explained and signed.
51. I cannot place much reliance on Nino's evidence.

David Rea

52. David was the most articulate of the defendants and spoke for them in the course of the trial. He accepted that the statement in paragraph 7 of the 2015 Will that Rita had taken care of her mother for all these years was true. He said that you had to talk to Mrs Rea slowly and loudly, in language which was "very very very simple and avoiding long words". She was always under pressure if she was with anyone in authority and would just nod. On a scale of ability in English from 1-10, she was at 1½. He accepted that if Mrs Sukul had spoken to her at a level of 1½ she would have understood. He said that he accepted the statements of Mrs Sukul and Dr Qaiyum. Later in his closing speech for the defendants he said that when Mrs Rea was with Mrs Sukul she felt obliged to comply. In cross examination he said that Mrs Rea always had a soft spot for Rita. He also accepted that the defendants did not have evidence that Rita poisoned her mind. When he was asked about paragraph 31 of his statement in which he said that "Rita had hit the jackpot" in getting the House, he did not resile from that.

53. David was the most moderate of the defendants in the way he gave his evidence. It shared with Remo and Nino the claim that Mrs Rea's English was very basic. I consider that David tried to tell the truth and when he did so it was revealing in its acceptance that Mrs Rea could have understood Mrs Sukul and that Mrs Rea always had a soft spot for Rita. His description of Rita having hit the jackpot points to a strong degree of resentment about the 2015 Will, without being willing to take account of the reasons that Mrs Rea may have had in giving her property in the way that she did.
54. To the extent that I regard David's evidence as reliable, it did little to help the defendants' case.

Issues

55. In David's closing submissions on behalf of the defendants, he made it clear that they did not pursue their case that Mrs Rea lacked testamentary capacity. He submitted that it was never their case to question her mental competence but claimed that they were ignored by their previous legal team.
56. The issues for determination are therefore:
- (1) Whether Mrs Rea knew and approved the contents of the 2015 Will;
 - (2) Whether the execution of the 2015 Will was procured by the exercise of undue influence;
 - (3) Whether the 2015 Will was procured by a fraudulent calumny practised by Rita on Mrs Rea.

Legal principles

57. The legal principles applicable to this case are well established and it is not necessary to set out a detailed discussion of them. In relation to knowledge and approval I will adopt the summary in the judgment of Master Clark in *Nutt v Nutt* [2018] EWHC 851 (Ch) at paragraph 34 onwards.

Knowledge and approval

58. The legal principles applicable to the issue of whether Mrs Rea knew and approved of the contents of the 2015 Will are set out in the judgment of Lord Neuberger MR in *Gill v Woodall* [2011] Ch. 380 at [14]:
59. "Knowing and approving of the contents of one's will is traditional language for saying that the will "represented [one's] testamentary intentions" see per Chadwick LJ in *Fuller v Strum* [2002] 1 WLR 1097, para 59. ..."
60. Previous case law (going back to the 19th century) approached the issue of knowledge and approval on a two stage basis. The court first asked whether the person challenging the will had established sufficient facts to "excite the suspicion of the court", i.e. whether they had made out a prima facie case that the testator did not in fact know of and approve the contents of the will. Secondly, if the court held that the

person challenging the will had excited the suspicion of the court, it then turned to consider whether or not those suspicions were allayed by the propounder of the will.

61. However, in *Gill v Woodall*, Lord Neuberger approved a one stage or holistic approach, in which the court should
62. "consider all the relevant evidence available and then, drawing such inferences as it can from the totality of that material, it has to come to a conclusion whether or not those propounding the will have discharged the burden of establishing that the testatrix knew and approved the contents of the document which is put forward as a valid testamentary disposition. The fact that the testatrix read the document, and the fact that she executed it, must be given the full weight apposite in the circumstances, but in law those facts are not conclusive, nor do they raise a presumption." [21]
63. I respectfully adopt that approach.

Undue influence and fraudulent calumny

64. The law was summarised by Lewison J (as he then was) in *Re Edwards* [2007] EWHC 1119 (Ch) at para 47 as follows:

“There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:

- i) In a case of 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 of proving, 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;
- 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."

Discussion and findings

Knowledge and approval

- 65. A central theme running through the defendants' evidence was that Mrs Rea was a simple person with almost no ability to use the English language and without a mind of her own. However, the evidence of Ms Contucci and Mrs Sukul in particular paints a rather different picture of Mrs Rea. I find that that she had clear views of her own and could be strong-willed and determined. English was not her mother tongue, but she could speak it to a moderate standard. She was well capable of communicating her wishes and understanding what was said to her in English if it was said in simple straightforward language and not too fast.
- 66. The evidence of Mrs Sukul and Dr Qaiyum as to the occasions when they spoke to Mrs Rea about making the 2015 Will, and as to the occasion when it was explained to Mrs Rea and she signed it before them as witnesses, was truthful and compelling. It demonstrates clearly and beyond any reasonable doubt that Mrs Rea knew and understood the effect and implications of the 2015 Will and its terms represented her genuine testamentary intentions. I am left in no doubt that Rita has discharged the burden of establishing that Mrs Rea knew and approved of the contents of the 2015 Will.

Undue influence

- 67. The second central theme of the defendants' evidence was to paint Rita as angry, violent and vindictive, to cite just some of the many pejorative terms they adopted. I

accept that the relationship between the parties was fractious and had been for many years. This could on occasions spill over into threats and actual violence. Remo alleged that Rita had threatened him in an incident in 2005, while Rita referred to a violent incident after Mrs Rea's funeral when the defendants broke into the House, removed papers and caused damage. It is not necessary for me to make findings as to these and other occasions, but they are illustrative of the fraught relationships between the parties which had been a longstanding issue.

68. It is unfortunate that the defendants adopted the line of denigrating Rita. They did not shrink from raising the mental health problems which she suffered more than 30 years ago and from which she recovered. I have concluded that the defendants either set out to blacken Rita's character to the court as a deliberate and dishonest aim or they have persuaded themselves that she is as bad a person as they described her.
69. I cannot accept the defendants' evidence in this regard. Moreover, as David accepted in the defendants' closing submissions, there is no evidence of Rita exerting any coercion or pressure on Mrs Rea to change her will. The defendants' case is based purely on inference or supposition said to be based on features of her personality. Even if I was inclined to accept the basis of the inference (which I do not), this would still fall far short of discharging the burden of proof which lies on a person who asserts undue influence. Adopting the dicta of Lewison J in *Re Edwards* cited earlier, there is a wholesale lack of evidence which would point to facts consistent with the hypothesis of undue influence. Still less could it be said that the facts are inconsistent with any other hypothesis.
70. I accept the evidence of Dr Sukul and Dr Qaiyum in particular which establishes a strong basis for concluding that Mrs Rea made the 2015 Will of her own volition because that is what she wanted to do. Her motive was declared at clause 7 of the will itself ("because [Rita] has taken care of me all these years"). Those words were true, as acknowledged by David in his evidence. In recognising their truth, and wishing to act accordingly to benefit Rita, Mrs Rea acted as a free agent.
71. This conclusion is supported by the defendants' witness Ms Contucci, who thought that Mrs Rea would have wanted to help Rita and was very protective of her. It is also consistent with David's comment that Mrs Rea always had a soft spot for Rita.
72. I therefore conclude that the defendants have failed, by a long way, to establish a case of undue influence.

Fraudulent calumny

73. In *Re Edwards* Lewison J treated fraudulent calumny as a type of undue influence. His statement of principle was referred to by Morgan J in *Christoloulides v Marcou* [2017] EWHC 2632 (Ch).
74. For a claim under this head to succeed, the defendants must show that Rita poisoned Mrs Rea's mind by casting a dishonest aspersion on the defendants' character.
75. The central problem for the defendants is that there is no evidence that Rita did so. The case is based on inference or supposition based on Rita's alleged bad character, as was the position with regard to undue influence. I have rejected the supposed basis

for the inference, and I do so in this regard also. I need not consider whether Rita believed that the defendants had abandoned Mrs Rea (and if she did the will would not be set aside on the authority of *Re Edwards*) for the simple reason that I find that Rita at no time poisoned Mrs Rea's mind.

76. The evidence of Mrs Sukul, Dr Qaiyum and Ms Contucci instead establishes that in making the 2015 Will Mrs Rea acted of her own volition and on the basis of her own free decision and conclusion that she wanted to benefit Rita who had looked after her for years, in contrast to the defendants who had not. It was indeed true, as David accepted, that Rita had cared for Mrs Rea for a number of years. At the time of making the 2015 Will it was also true, or at the least very largely true, that the defendants were not engaging with any help or assistance as declared at clause 11 of the 2015 Will, as the care rota was short-lived, had broken down and there was no sign of it being resumed. Even if the declaration had not been true, I am satisfied that the words and feelings behind them were those of Mrs Rea herself. She had reached her own decision on the matter and her mind had not been poisoned by anyone.
77. The defendants maintained that the term 'abandoned' which Mrs Rea used about them and which appeared in Mrs Sukul's notes did not represent Mrs Rea's language and was a calumny introduced by Rita. For reasons indicated earlier in this judgment I cannot accept this. I find that Mrs Rea understood the term as it meant the same or was closely similar to the same word in Italian which Mrs Rea would have known. Mrs Rea used the same word herself in relation to her husband who had apparently deserted her. I also find that it represented Mrs Rea's own description of the relative lack of care shown by the defendants. While it may have been a somewhat harsh judgment, as accepted by Mr Ward-Prowse in his closing submissions for Rita, it represented Mrs Rea's own view, as told by her to Mrs Sukul. Mrs Sukul told me that she did not believe that Mrs Rea was under any pressure whatsoever and she concluded that Mrs Rea was able to and was communicating her own genuine view and I accept her evidence.
78. The defendants have therefore failed to prove a case based on fraudulent calumny.

Conclusion

79. On one level it is understandable that the defendants feel disappointed, upset and resentful that they have not benefited from their mother's will. In my judgment they have allowed these emotions to override a more considered reflection that Mrs Rea had reason to benefit Rita for all the care that Rita had given her over six years and more as her principal carer. But, like Master Clark in *Nutt v Nutt*, it is not my task to decide whether the 2015 Will was justified or fair. I am only required to decide if it is valid. For the reasons set out above I find that it is valid, and that it should be admitted to probate. The counterclaim therefore stands to be dismissed.