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Case No: E30LV507

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

Liverpool Civil & Family Courts
35 Vernon Street,
Liverpool L2 2BX

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Before:

HIS HONOUR JUDGE HODGE QC

Sitting as a Judge of the High Court

Between:

REBECA OLIVIA LUCILLE FACE

Claimant

- and -

(1) ROWENA ELEANOR LIESA CUNNINGHAM

(2) RICHARD KAETHNER

Defendants

The **Claimant** appeared in person

MR PAUL LAKIN (instructed by **Pearl & Co**, Hendon) appeared for the **First Defendant**

The **Second Defendant** appeared in person

APPROVED JUDGMENT

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JUDGE HODGE QC:

1. This is my extemporary judgment following the trial, over nine days in Liverpool between 13th and 23rd October 2020, of a contested probate claim brought by Miss Rebeca Olivia Lucille Face (“Rebeca”) against her sister, Mrs Rowena Eleanor Liesa Cunningham (“Rowena”), and her elder brother, Mr Richard Kaethner (“Richard”), under case number E30LV507. This case raises one interesting issue of law on the burden of proof where an allegation is made that a will has been forged. This extemporary judgment is divided into seven sections as follows: I: Introduction and overview II: The trial III: The witnesses IV: The factual background V: The 2017 will VI: 120 Maryland Road VII: Conclusions. But although this judgment is divided into seven sections for structural reasons and for ease of exposition and understanding, I emphasise that the contents of each section of this judgment have informed the contents of the others. I also emphasise that a great many issues have been raised during the course of this case which are of no, or only peripheral, relevance to the issues I have to decide. The fact that they are not addressed in this extemporary judgment does not mean that the evidence relating to them has been overlooked.

I: Introduction and overview

2. If the late Sir Arthur Conan Doyle, or his worthy modern-day successor Mr Anthony Horowitz, were to write up the events which have led to this present, unhappy litigation, they would no doubt have titled the resulting chronicle “The Case of the Missing Original Will”. Sadly, this is the fourth significant contested probate claim involving one or more self-representing warring siblings upon which I have had to adjudicate in the Business and Property Courts in Liverpool within the space of the last two years. This case concerns the estate of the late Mr Donald Charles Face, who died in hospital at King’s Lynn, Norfolk, aged 73, late on 2nd October 2017. Mr Face had originally occupied a property at 18 Wray Crescent, London N4 which he had inherited from his mother and which he had occupied with his only son, the second defendant, Richard, who is now 47 years of age. Following a dispute with his son over his occupation of that property which led to litigation between them in the Edmonton County Court which was compromised on 15th February 2006, that property was sold. With the sale proceeds, Mr Face purchased a flat at 120 Maryland Road, Wood Green N22 as a home for Richard and a property near Downham Market in North-West Norfolk known as True Blue which Mr Face occupied as his home until his death.
3. In addition to his son Richard, Mr Face had two daughters Rowena (who is now aged 40) and Rebeca (who attained the age of 39 during the course of this trial). Upon Mr Face’s separation and divorce from his wife many years ago, Richard had gone to live with his father whilst Rowena and Rebeca had remained with their mother. Mr Face himself described his relationship with his family to his solicitor, Mr David Pearl, as “dysfunctional”, and this description was adopted by Rebeca’s partner, Mr Stuart Neal (“Stuart”) when he gave evidence to this court.
4. By a claim form issued in the Business and Property Courts in Liverpool on 25th October 2018 Rebeca claims to propound an alleged lost will of her late father dated 7th September 2017. The original of this handmade will has never been located, but Rebeca claims to have found a photocopy of this will, printed on the front and reverse

of a single page, within a clear plastic wallet within a red plastic ring-binder under a bedspread which was lying upon a bed in one of the bedrooms at True Blue on the night of 10th August 2018. I shall refer to this document as “the 2017 will” without thereby expressing any judgment about the status of the original document as a valid will. The 2017 will purports to have been witnessed by two individuals living at the same address in Linton, Cambridge: Mr Lee Humphreys and his partner Miss Sally McKenna, who are 50 and 51 years of age respectively. The 2017 will is a curious document. It is dated 7th September (spelt “Septemeber”) 2017. It describes itself as the “Will of Donald Charles Face”. It begins:

“This is the last will and testament of me Donald Charles Face of True Blue, Ten Mile Bank, Downham Market, Norfolk PE38 0EP.”

It continues:

“I hereby revoke all wills and testamentary dispositions heretofore made by me.

I appoint my daughter Rebeca Olivia Lucille Face of 5 Meadow Lane, St Helens, Merseyside, WA9 3R5 to be the executor of this my Will and my Burial wishes.

I give and bequeath my whole Estate and my residence True Blue, to my Daughter Rebeca Olivia Lucille Face, less the gifts described below. Rebeca we do not always agree, quit [sic] often we disagree. Regardless of this, you are the only one of my children to communicate with me, you are the only one to call me Dad. I promised I would take care of you for the rest of your life, you have done more for me than I thought you would, I look forward to a few more years as friends.

I do not leave anything to my son Richard Edwin Launcelott Kaethner. Richard, you do not talk to me, you do not answer the door when I visit. You call me when you want help, you make me do things I do not want to do. I help you and Ruby in anyway I can. Despite this I am excluded from your lives, you did not tell me you were married, you did not tell me of your child, I do not know why. The way you are with me, I can not believe you are my son.

I give and bequeath free of all taxes leviable by reason of my death the sum of £5000 to each of my Grandchildren by my son Richard, alive at the time of my death, as shall reach the age of 18 years. To be retained by my daughter Rebeca, until they are over 18 years old, subject to them not living in their Fathers house, only for the purpose of acquiring a property, in their own name.

I do not leave anything to my Daughter Rowena Eleanor Liesa Cunningham. Rowena, you have talked to me of how your

mother treated you, you told me she did not tell you the truth about me, yet you do the same to my Grand Children. You tell them their Grand Father is dead, you tell them not to talk to me, you tell them their Father has done bad things to them, you will not let their Father see them. You have accused me in court, you have called the police to my home. I have now seen the other side of you, your morals are not of a standard I can respect.

I give and bequeath free of all taxes leviable by reason of my death the sum of £5000 to each of my Grand Children by my Daughter Rowena, alive at the time of my death, as shall reach the age of 18 years. To be retained by my former Son in-Law, Kristofer Pautsch, until they are over 18 years old, subject to them not living in their Mother's house, only to be used for the purpose of acquiring a property, in their own name.

I witness whereof I have set my hand this 7th day of September [spelt correctly] 2017.”

There is then an attestation clause:

“Signed by the testator in our joint presence and then by us in his presence.”

Against this there appears the handwriting “DC Face”. There then follows the name Lee Humphreys and a signature and a date “07092017”, the address of Mr Humphreys in Linton and his description as a “Production operator”. There then follows the signature of Sally McKenna with the same address, described as a “Customer Team member”. That is the will that Rebeca seeks to propound in this litigation.

5. The first defendant, Rowena, contends that the 2017 will is a forgery concocted by Rebeca who has conspired together with the two attesting witnesses, aided and abetted by her partner, Stuart. Rowena contends that her late father died intestate and that all three siblings are entitled equally to Mr Face's estate on intestacy. The second defendant, Richard, originally contended for a will made in the second half of 2016 but at an early stage of this trial he accepted - in my judgment entirely sensibly and correctly - that there is no documentary or other reliable evidence establishing either the fact or the contents of this 2016 will and so he no longer seeks to propound any earlier will than that contended for by Rebeca. Richard, too, disputes the genuineness of the 2017 will, and on that basis Richard too now contends for an intestacy. But Richard also claims to be entitled to the whole, or alternatively a 51.97% interest, of or in 120 Maryland Road, which has been his home since about 2006. Richard contends that he was originally entitled to a 48.03% interest in this property, representing the proportionate share of the original £206,000 purchase price paid for the property by his father, by virtue of a handwritten contract dated 15th February 2006 whereby he agreed to vacate 18 Wray Crescent in return for a gift from his father of £100,000, to be applied in the purchase of a home for Richard. Thereafter, on 3rd August 2016, Richard contends that his father signed a written agreement to settle the property on protective trusts for Richard and his family. Richard seeks the specific performance of that agreement or damages for its breach.

6. Although she originally instructed Liverpool solicitors, Gregory Abrams Davidson, to act on her behalf, for much of this litigation Rebeca has acted as a litigant in person, although she has at various hearings been represented by Mr Graham Sellers (of Chancery counsel), frequently on a direct access basis. Rowena has throughout been represented by the firm of Hendon solicitors, Pearl & Co, who were the solicitors who had previously acted for her late father in a dispute over the repeated incursion of water into 120 Maryland Road from an adjoining flat, and also in connection with instructions received during the latter half of 2016 concerning the possible disposition, whether outright or by way of trust, of Mr Face's interest in 120 Maryland Road, and also in connection with the drafting of a will for Mr Face. At this trial Rowena has been represented by Mr Paul Lakin, (also of counsel). Richard has at all times acted as a litigant in person.
7. This case has been the subject of a considerable number of interim applications and case management orders. In Rowena's trial bundles I have counted no less than seven orders made by me and four orders made by Business and Property Court District Judges. In addition, I know that early on in this litigation I made at least one further order appointing an administrator pending suit to the late Mr Face's estate. On 1st April 2019 I made an order identifying the issues for trial as: (1) the validity of the 2017 copy will; (2) the validity of the alleged 2016 will (which is no longer an issue in this litigation); and (3) the beneficial/equitable interests affecting 120 Maryland Road. Other issues raised by the parties, including any potential claims under the Inheritance (Provision for Family and Dependants) Act 1975, were directed to be determined after the trial of these three - now two - issues. At the pre-trial review that took place before me on 4th September 2020, the identity of the witnesses for the various parties was recorded. The parties were also each directed to file with the court - which they did - a schedule identifying each of the witnesses to be called by them at trial, identifying the dates of their respective witness statements, and also identifying the dates when those witness statements were served on the other parties. With the agreement of all parties, I directed that the evidence of the witnesses to the 2017 will would be heard on the first day of the trial, before any other witness evidence.

II: The trial

8. Unfortunately, although Rebeca had wished to assume the responsibility for producing the trial bundles, due to an unfortunate series of mishaps the court has ended up with one set of trial bundles from her, extending to 14 lever-arch files and some 4,500 pages, and a further set of 5 lever-arch files, extending to some 1,600 pages, from Rowena's solicitors. Neither set of bundles contains a complete, chronologically assembled series of letters, emails or text messages, and navigating the various bundles to obtain a full picture of events has been a complete nightmare.
9. One of the most telling pieces of evidence in this case are Mr Face's handwritten daily journals recorded in one-page-to-a-day diaries. The court has the original journal for 2016, but only selected photocopy extracts from the crucially relevant 2017 journal. There are 10 entries for January – 1st, 2nd, 5th, 6th, 9th, 10th, 23rd, 24th, 27th and 28th; 7 entries for February – 8th to 11th, 20th, 21st, 28th; 9 entries for March – 1st, 2nd, 3rd, 8th, 9th, 24th to 27th; 8 entries for April – 5th, 6th, 15th, 16th, 25th to 28th; 10 entries for May – 1st, 2nd, 5th to 8th, 23rd to 26th; 6 entries for June – 6th, 7th, 14th, 15th, 22nd, 23rd; only 2 entries for July – 6th and 7th; 2 entries for August – 9th and 10th;

and 9 entries for September – 22nd to 30th. The page for 1st October, the day before Mr Face’s death, is left blank. The provenance of these photocopies is a matter of dispute between the parties, Rebeca alleging that the original 2017 journal was removed from True Blue after Mr Face’s death – probably by Richard, but possibly by Rowena - whilst Richard and Rowena contend that Rebeca was probably the culprit. Rebeca says that the photocopy extracts from the 2017 journal, together with the original 2003, 2004 and 2005 journals, were found by her on the evening of 2nd May 2018 tightly wrapped in a Tesco “Bag for Life” which had been left underneath her car, she believes by Richard.

10. When the trial commenced on the morning of Tuesday 13th October 2020 the court was faced with a number of preliminary applications, both formal and informal. These were the subject of an extemporaneous ruling delivered that morning (to which reference may need to be made). Amongst other things, and for the reasons set out in that ruling, I permitted a very late application by Rowena, dated 1st October 2020, to admit in evidence a witness statement from Mr Kenneth Samuel Burns, dated that day, which was only served a few days before this trial was due to begin. As a condition of the reception of this late statement in evidence, I permitted Rebeca to call her partner, Mr Stuart Neal, to address this late witness statement by way of oral evidence.
11. On the afternoon of day 1 of the trial I heard from the two attesting witnesses to the 2017 will, Mr Lee Humphreys (for about 2 hours) and his partner Miss Sally McKenna (for just over an hour). Both gave their evidence in person. On the morning of the second day of the trial I heard, again in person, from Rebeca’s partner, Mr Stuart Neal, for about an hour and 40 minutes, of which about 55 minutes comprised his evidence-in-chief, after which there was a 15-minute break before he was cross-examined, first by Mr Lakin, and then by Richard. On the afternoon of day 2 and the whole of day 3 of the trial I heard in person from Rebeca for a total of about 7 hours, of which about an hour and 20 minutes on the afternoon of day 3 of the trial comprised Rebeca’s response to questions from the bench.
12. On the morning of day 4, I heard, remotely by Microsoft Teams, from two of Rowena’s witnesses: first from Mr Kenneth Burns, who gave evidence for about an hour concerning enquiries recently instigated by Rowena and directed towards establishing a link (through Stuart Neal) between Rebeca and the attesting witnesses to the 2017 will; and then again for about an hour from Mr Mark Taylor, who is the Managing Director of Inheritance Legal Services Limited, which offers will-writing services from shops in Cambridge, Ely and (in 2017) King’s Lynn, although the latter office is now closed. On the afternoon of day 4 of the trial and continuing after the weekend on the morning of day 5 I heard evidence in person from the first defendant, Rowena, for a little over 4 hours in total. For the remainder of that morning and the whole of the afternoon of day 5 I heard evidence in person from Mr David Pearl, Mr Face’s solicitor, who was briefly recalled the next morning (at my direction) to answer one additional question which I had omitted to put to him on the previous day. Mr Pearl gave evidence for about 3¼ hours in total.
13. On day 6 of the trial I heard in person from the second defendant, Richard, who was cross-examined by Mr Lakin for the remainder of that day. On the following morning, day 7 of the trial, Richard was cross-examined by Rebeca for about 1½ hours, and he then briefly re-examined himself. Richard’s evidence effectively took

about 5½ hours in total. On the afternoon of day 7 of the trial I heard in person (for about 50 minutes) from the first of Richard's witnesses, Mr Leszek Pracz, who was a long-standing friend of the late Mr Face, having had a common interest in photography and having lived near to him in Wray Avenue. On the morning and the early afternoon of day 8 of the trial I heard (remotely via Microsoft Teams) from Richard's remaining three live witnesses: Mr Paul Langley, who is 68; his wife, Mrs Deborah Langley, who is some 10 years younger than her husband; and one of their sons Mr Philip Langley, who is 33. All three of them lived near to Mr Face in Norfolk and he used to visit them, virtually on a daily basis, as evidenced by Mr Face's journal entries. Mr Paul Langley gave evidence for about an hour and a half, Mrs Langley for about an hour, and Mr Philip Langley for about 15 minutes. Another son, Mr Wayne Langley, was self-isolating in advance of his admission to hospital for an operation, and his short witness statement was admitted as hearsay evidence after both Mr Lakin and Rebeca indicated that they had no questions which they wished to put to him.

14. Exceptionally, either at the beginning or at appropriate points during the course of their evidence, I had to warn no less than six of the witnesses – Mr Humphreys, Miss McKenna, Mr Stuart Neal, Rebeca, Mr Burns and Rowena – about the privilege against self-incrimination: that they were not obliged to answer any questions that might tend to incriminate them in any criminal activity or conduct, but if that any of them declined to answer any questions, appropriate inferences might be drawn from their refusal to answer. None of the witnesses sought to avail themselves of that privilege.
15. There is also before the court the expert opinion evidence of a forensic document examiner, Mr Stephen Cosslett, who was instructed as a single joint expert. It is his expert opinion that the evidence is inconclusive as to whether or not the late Mr Face signed the 2017 will. Mr Cosslett was unable to offer any reliable opinion as to whether or not the signature of Mr Face on the 2017 will was genuine or a forgery. Mr Cosslett had found no evidence to support the proposition that the disputed signature on the 2017 will had been transposed from some other document using a cut-and-paste method, but he could not exclude such a possibility. Mr Cosslett also gave evidence that both the printed and the handwritten entries on the original copy will had been produced using an inkjet printer.
16. On Friday 23rd October, which was day 9 of the trial, I heard closing submissions. At the court's direction, Rebeca addressed me first on the issue of the validity of the 2017 will. I did not need to call on Mr Lakin or Richard to respond to Rebeca's submissions. I then heard from Mr Lakin, from Rebeca and from Richard (in that order) on the issue of the beneficial interests affecting 120 Maryland Road. At about 12.40 p.m. I adjourned until 10.30 this morning, Wednesday 28th October to read back through my 180-odd pages of notes and to map out this extemporaneous judgment.

III: The witnesses

17. This is a case that turns largely upon the reliability and the credibility of the witnesses. For reasons that will become apparent during the course of the following two sections of this judgment, I totally reject the evidence of Mr Humphreys and Miss McKenna. It is inherently incredible, and I am sure that it is pure fiction. It cannot be reconciled with the picture of Mr Face that is produced by the reliable evidence

presented by the journals, by Mr Pearl and by the Langleys. The only question is why Mr Humphreys and Miss McKenna should be prepared to lie so outrageously to the court. The answer is supplied by the investigations undertaken by Mr Burns, whose disinterested evidence I find to be wholly reliable.

18. Inspired, apparently, by an observation from me at the pre-trial review about the need to establish collusion between the claimant and the attesting witnesses if the 2017 will were successfully to be contested, and somewhat late in the day, Rowena instigated a line of enquiry which produced Mr Burns, who in turn established a connection between Mr Neal and Mr Humphreys. Despite their denials, I am satisfied that during 1998 they had both been serving with the Royal Electrical and Mechanical Engineers (REME) (in which Rebeca was also later to serve, as an armourer, between May 2000 and August 2008) in neighbouring military bases in Germany, and that they had got to know each other there at that time. On 23rd July 2018 I find that Mr Neal placed a social media posting on a private REME Facebook site seeking to locate Mr Humphreys. I acknowledge that there is no direct evidence that Mr Neal succeeded in making contact with Mr Humphreys at that time, but I am satisfied that this is what happened. Through Mr Neal, Mr Humphreys and his partner were enlisted to assist Rebeca in witnessing the forged will which she has produced purporting to be that of her late father. It was no coincidence that the will was purportedly witnessed in Cambridge, where Mr Humphreys and Miss McKenna were living; Cambridge was selected as the venue for the purported execution of the will because it fitted in with the attesting witnesses' home address. I reject the evidence of Mr Neal - who as well as giving evidence was present throughout the course of this trial - that the Facebook account visited by Mr Burns was either a dormant account belonging to Mr Neal, which had not been used since about 2014, or that it was a newly created account falsely represented as belonging to Mr Neal. I am satisfied that the photograph of Mr Neal and his two sons was posted to that Facebook account by Mr Neal. I reject his evidence to the contrary. I am satisfied so as to be sure that between 23rd July 2018 (the date of Mr Neal's social media posting) and 10th August 2018 (the date Rebeca allegedly discovered the copy 2017 will at True Blue) Rebeca and Mr Neal conspired together with Mr Humphreys and Miss McKenna to seek to pervert the course of justice by producing a forged will which they falsely and knowingly represented to be the last will of Mr Face.
19. In my eventual order I will direct that a transcript of this judgment is to be procured at public expense and referred to the Crown Prosecution Service. I am satisfied that Rebeca acted in this way because of her deep dislike of her two siblings (about which she is entirely open) and because she feels that her father let her down very badly at the time of his divorce by abandoning her and Rowena with their mother in the full knowledge that they would suffer abuse at her hands. In answer to questions from the Bench, and close to tears, Rebeca described her mother as a "brutal woman" and said that she (Rebeca) suffered from complex PTSD. It is not possible, nor would it be appropriate, for me to make any findings in this regard; but Rebeca clearly had a motive for trying to extract money from her late father's estate. Indeed, I accept the disinterested evidence of Mr Paul Langley that Rebeca had tried to involve him in making a claim against that estate. Having viewed Rebeca, both in the witness box for some seven hours and throughout this trial, particularly during her sustained and aggressive cross-examination of her sister Rowena, I am satisfied that I cannot accept Rebeca as a witness of truth, and that I should reject her evidence except where it is

supported by other evidence which I find to be reliable. I am sure not only that Rebeca has forged the 2017 will but that she has also fabricated at least the first page of the letter from her father of 4th May 2017, referring to having made a will the previous day, and that her account of the discovery of the copy 2017 will is a total fiction. I am satisfied that it was Rebeca who removed the 2017 journal from True Blue and who produced a selection of photocopy extracts, suppressing those which might tend to demonstrate the falsity of her claims that her father had made wills on 3rd May and 7th September 2017, and also concealing evidence of the monies that she had received from her father on 14th February 2017.

20. I find that Mr Taylor was a wholly credible and reliable witness who was genuinely doing his best to assist the court and I entirely accept his evidence. The same applies to Mr Pearl who, when the discrepancy between his attendance note for 18th July 2016 (which was confirmed by Mr Face's journal entry for that day), referring to a telephone attendance, and paragraph 6 of his witness statement of 23rd November 2018, which referred to a meeting on that day, was drawn to his attention by the court (when he was recalled the morning after his evidence had formally concluded), readily accepted that it was his attendance note that was accurate and his witness statement that was in error. The accuracy of Mr Pearl's attendance notes is amply confirmed by the corresponding entries in Mr Face's journals, which match almost exactly; and I accept the attendance notes as an accurate contemporaneous record of Mr Pearl's dealings with Mr Face.
21. Where there is any conflict between the evidence of Mr Pearl and the recollection of Richard, I prefer Mr Pearl's evidence. Thus I find that Richard is mistaken in his evidence that he kept the appointment which his father had made for him to see Mr Pearl on Friday 22nd July 2016. I am satisfied that their meeting took place on the morning of Monday 3rd August. However, I also find that nothing turns on this. I also accept Mr Pearl's account of his meeting with Mr Face and Richard on Wednesday 5th October 2020 which Mr Pearl described (in cross-examination by Richard) as probably "the strangest meeting" he had ever had, leaving both Mr Face and Mr Pearl "dumfounded". It is clear that Mr Pearl felt genuine sympathy and pity for his client, Mr Face. I found Mr Pearl to be a competent, compassionate and caring solicitor who was genuinely concerned that his client should not die intestate, but who was faced with a client who simply could not make up his mind what to do for the best for his avowedly "dysfunctional" family, whilst also seeking to avoid paying more by way of tax than he possibly could. Mr Face's observation that Mr Pearl "once again started pushing about my will" in his diary entry recording their meeting on 6th July 2017 should be read in that context.
22. I utterly reject Rebeca's evidence that her father found either Mr Pearl's letter of 19th October 2016, or his draft will, to be (quoting from Rebeca) "completely unacceptable" and that he was "absolutely furious" or that he "refused point blank to sign it because he did not want it". I am satisfied that this is an example of Rebeca seeking to foist her own strongly held views on to others, in this case her father. There is no support for this alleged sense of outrage in the journal entries (of which there is a complete run in 2016). Indeed, Mr Face records, without adverse comment, having sent a cheque to Mr Pearl for his services on Wednesday 2nd November 2016; and Mr Face had a further meeting with Mr Pearl on 16th January 2017 to discuss the leaks afflicting 120 Maryland Road. (No journal entry has been produced for this

day.) The alleged conversation with her father about Mr Pearl could not have taken place before Rebeca's meeting with him on 9th February 2017 so it is inherently unlikely that the letter of 19th October 2016 would have been discussed in any event.

23. Mr Leszek Pracz was a wholly reliable and credible witness whose evidence I accept and who was seeking in his evidence to assist the court to the best of his ability. I accept his evidence.
24. Mr Paul Langley was a wholly credible witness whose evidence I accept save for the suggestion that the brown envelope that was retrieved from the beam at True Blue in the early hours of the morning of Tuesday 3rd October 2017, shortly after the death of Mr Face, had contained any will made by Mr Face. Mrs Deborah Langley was a voluble witness who was difficult to control; but her knowledge of a third paper in the brown envelope appeared to have been derived from what she had been told by her husband. Both of these witnesses gave evidence, which I accept, that Mr Face would never have travelled to Cambridge without telling them that he was going there, or without telling them that he had been there upon his return. Indeed, Mr Langley made it clear that, following an earlier burglary at True Blue, if Mr Face was going to be away from home for more than an hour or two he would always call by and ask one of the Langleys to keep an eye on the place. I accept Mr and Mrs Langley's evidence that they were never told of any trip to Cambridge by Mr Face or that he had executed a will there. Mrs Langley also mentioned that Mr Face would never go anywhere without his baseball cap, which he would wear all the time, even indoors. Again I accept this evidence. I also accept the evidence of Mr and Mrs Langley that after her father's death, Rebeca was seen at True Blue on a number of occasions, and that she had had the opportunity to remove items from that property. However, much of Mrs Langley's other evidence I found to be confused and confusing, and to be motivated by supposition and conjecture on her part.
25. Where the evidence of Mr and Mrs Langley differs from that of Rowena, I prefer, and accept, Rowena's evidence. I find that Mr and Mrs Langley both assumed that the brown envelope would contain a will because at some point Mr Face had suggested appointing Mrs Langley as an executor, and because he had said that the envelope was to be consulted after his death and contained his wishes. Both Mr and Mrs Langley jumped to the conclusion, which I am satisfied was incorrect, that the envelope would contain a will of Mr Face. I find that the envelope did contain three pieces of paper, as Mr and Mrs Langley repeatedly stated, but that there was no will amongst them. There were two, two-sided pages headed: "People. Their [spelt "there"] partners and children to be notified of my death." These two pages were retained by Mrs Langley after she had photographed both sides for Rowena using her mobile phone. (It should be noted that this list of contacts refers to Rowena as "Rowena EL Face", with no reference to her married name of Cunningham.) The third sheet of paper was the instructions for Mr Face's burial, which had been handwritten by Rebeca. This was retained with the envelope by Rowena and was later handed in to the court during the course of the trial. Copies of all three documents can be found at claimant bundle 9, pages 149-153.
26. When Rowena contacted Mrs Langley by text on 6th October (claimant bundle 11, pages 240-242) to ask who had put this third sheet of paper together for her father, Rowena referred to this third sheet of paper as "the other letter that was in the brown envelope with the list of contacts (could call it instructions on death)". When asked by Mrs Langley to identify the letter, Rowena sent her an image of the manuscript

instructions and asked: “Do you know who wrote this for Dad?” to which Mrs Langley replied: “Yes, your sister Rebeca”. I accept Rowena’s evidence that although she had recognised her sister’s handwriting on the letter, she had been confused by finding instructions for her father’s death, written in her sister’s hand, at her father’s house, and that she had been seeking confirmation as to the authorship of this handwritten document.

27. I find Mr Philip Langley to be an accurate and reliable witness. I accept his evidence that Rebeca was not inside True Blue for more than about 5 to 10 minutes on the night of 10th August 2018, and that she was not wearing any jacket. However, I make it clear that this evidence has not contributed to my conclusion that Rebeca has given a false account of her alleged discovery of the 2017 will at True Blue that night and that it is merely supportive of a conclusion at which I have arrived independently of Philip Langley’s evidence.
28. I find that Rowena was an entirely honest and, on the whole, reliable witness, who was trying to do her best to assist the court. The more she was subjected to a sustained, and aggressive, cross-examination by her sister, the more patently honest and genuine her evidence was demonstrated to be. I acknowledge that in an order I made on 29th October 2019 I directed that no reference was to be made to a judgment of the Family Court in proceedings concerning Rowena’s children by her first marriage (upon which Rebeca sought to place reliance) save for mentioning that there was a judgment of the Family Court which pre-dated the 2017 will in which it was found that Rowena had never wanted her children to have any contact with their father, and that she had constantly, and repeatedly, tried to stop, or undermine, the time the children spent with him. I have borne Rowena’s conduct in the family proceedings, and how it was viewed by her father in his journal entries, firmly in mind. At one point in her sustained cross-examination of her sister, Rebeca suggested that Rowena was “a consummate actress”. I reject any submission that Rowena was “acting” when she gave her evidence before me. There was some criticism, particularly from Rebeca, and from Mr and Mrs Langley, of Rowena for having consented to the withdrawal of further treatment for Mr Face on the night of his death. It is only fair to Rowena to record that I accept her evidence that she was told by the treating clinicians that treatment had to be withdrawn. Rowena had previously sought, unsuccessfully, to contact Rebeca with news of their father’s condition, calling at her home on the journey down to Norfolk, and, when Rebeca did not answer the door, leaving a manuscript note timed at 2.30 p.m. (claimant’s bundle 7, page 59). Rowena had also sought, again unsuccessfully, to contact Richard by phone. I accept that Rowena asked the clinicians for time to locate Richard but that they refused her request. I am satisfied that Rowena did the very best that she could for her father in the difficult circumstances in which she found herself on that night. Following her father’s death, Rowena followed Mr and Mrs Langley to True Blue in her car, arriving in the early hours of the morning. As previously indicated, I accept Rowena’s account of the contents of the brown envelope. I find that Rowena did not remove any will from True Blue, nor did she remove the 2017 journal. It is clear from the text message at claimant bundle 11, page 244 that she left True Blue to return home at about 7.07 on the morning of Tuesday 3rd October 2017.
29. I acknowledge that Rowena has made a few errors in her evidence and recollection; but I am satisfied that these were genuine errors on her part and that she has not in any

way sought to mislead this court. First, I am satisfied (from the journal entries) that Rowena's telephone conversation with her father took place on 26th September 2019 and not, as Rowena said, on or about 20th September. That date, 26th September 2019, also accords more closely with the evidence at paragraph 2 of Mr Paul Langley's witness statement. However, again nothing turns on the precise date of this conversation. What matters is that Mr Face told Rowena - as I find as a fact - that he had not made any will as of that date. Rebeca relies upon text messages that Rowena exchanged with her on 5th October 2017 (claimant bundle 6, pages 192-197) in which Rowena informed Rebeca that she had been in touch with her father's solicitor and that there was no will, and later asking to be informed by Rebeca of where her father's will had been registered so that she (Rowena) could inform her father's solicitor. I accept Rowena's explanation that these queries were merely sent in response to an abusive email that Rowena had received from Rebeca asserting the existence of a will. They do not in any way alter my acceptance of Rowena's evidence that she was told by her father on 26th September 2019 that he had not made a will. The whole series of texts from Rebeca, which had started on 4th October, display no apparent grief at her father's death and merely show how difficult Rebeca was being. In any event, this evidence of what Mr Face had told Rowena about not having made a will merely supports my findings as to the falsity of the 2017 will; and I would have made that finding of forgery independently of this evidence from Rowena. Second, paragraph 19 of Rowena's witness statement, which was withdrawn by her during her cross-examination by Rebeca on the afternoon of day 4, was, I am satisfied, a genuine, but understandable, mistake on Rowena's part, based upon her acknowledged misinterpretation of an exchange of text messages between Rebeca and Deborah Langley on 10th November 2017 (claimant's bundle 7, pages 30 to 31). Third, Rowena's mistaken belief that her sister had spent six nights at True Blue (from Friday 5th to Thursday 11th November) was entirely genuine and was based upon her misinterpretation of the text messages which she had read. In fact, unbeknown to Rowena, Rebeca had not travelled to True Blue until early on 6th October, returning home to St Helens the following day; and she had then returned to Norfolk on 9th November, where she stayed for only one night. None of this detracts from the credibility, or the reliability, of Rowena as a witness overall.

30. Richard was subjected to a wide-ranging and sustained cross-examination by Rebeca which went as far back as a week's stay he had spent with Mr and Mrs Mike and Sue Knapman in Devon in August 1987, when Richard must have been aged 13. Richard clearly looks at the world differently from most other people. Richard does not seek to put his own interpretation on propositions and questions put to him but rather he tends to seek further clarification of what is meant; and this can create tensions with those who seek to react to, or to converse with, him. Rebeca had told the court that she had been diagnosed as being on the autistic spectrum. She said: "I am autistic, quite blunt"; and I had wondered whether the same might be true of Richard; but he told me - and I accept - that he has not received any similar diagnosis. I am satisfied that Richard was, at times, mistaken in his recollections, such as in his insistence that he had attended Mr Pearl's offices on 22nd July 2016. But I am also satisfied that Richard would not deliberately lie to, or seek to mislead, the court. I am satisfied that it was not he who removed the 2017 journals from True Blue. I am satisfied that Richard has not concealed or destroyed any will made by his late father. I am satisfied that he has found no such will. I am satisfied that Richard did not coerce his father into signing the 3rd August 2016 contract however odd I find his conduct in, first, covertly recording his father's words, and then, with his father's permission, videoing him holding the signed contract on the steps outside 120

Maryland Road, and acknowledging both the date of the agreement and the fact that it was entirely voluntary. At the beginning of Richard's evidence, I listened to the audio recordings and I viewed the video on Richard's laptop, and the written transcripts of these recordings (exhibits RK 122 to RK 124 in claimant's bundle 12, pages 82-88) would appear to be a fairly accurate record of them. Where Richard's evidence differs from that of Rebeca, I prefer Richard's evidence.

IV: The factual background

31. This begins with a letter that was sent to each of Rebeca and Rowena by Mr Paul Langley. The letter is undated but Mr Langley told me that it was sent by recorded delivery on 17th June 2016 and I accept Mr Langley's evidence on that point. The letter was written, as it states, without Mr Face's knowledge. The copy of the letter sent to Rebeca is at claimant's bundle 4, page 167. Mr Paul Langley stated that he was writing to Rebeca about her father without his knowledge. He explained how his family had met Mr Face (to whom he refers as "Don") when he had moved into the area several years previously and they had since become friends. He stated that he had been very concerned about Mr Face's health as it had gone downhill rapidly over the past year and continued to do so rapidly. Mr Face was said to refuse to go to his GP because Mr Face did not get on with him. The letter continues:

"Over the years we have learned that none of Don's children have anything to do with him. Don says he doesn't know what he has done to upset them (only you know if that is true or not). He is worrying himself silly over who gets what when he dies, and desperately wishes to have contact with each of you/all of you so that you can tell him what you would like of his assets. If you could find it possible to contact him in some way just so that he is able to explain a few things to you and maybe you can explain a few things to him, and to let him know of anything that you would like. He also has his house at Ten Mile Bank (un-mortgaged and worth quite a bit), and a considerable sum of money in the bank that he wants to divide up between you all, to as he says improve all your lives."

Mr Langley goes on to attempt to persuade Rebeca, and presumably also Rowena, to contact their father; and he gives them their father's address, phone number and email. The letter concludes:

"I apologise if you think I am intruding in your affairs but if any bridges are to be mended with you and your father, time is running out fast. Also if Don has no one to leave his possessions to, either the government or some other third party is going to be somewhere around half a million or more better off. Do you want that to happen?"

Consistently with Mr Langley's evidence that he did not tell Mr Face that he was sending this letter, there is no reference to it in the 2016 journal.

32. On 5th July 2016 Mr Face apparently wrote to both Rebeca and Richard. The letter to Rebeca is in claimant bundle 4 at page 163. It reads:

“Dearest Rebecca [sic],

A couple of months ago I became very weak, to the point where I had to have assistance to have a bath. On the 23rd of May, I was taken to hospital by ambulance due to breathing difficulties. The above gave me a sharp reminder that I must try and get things sorted out, relevant to my estate for you and Richard.

As I am sure you are aware, when someone passes away, their next of Kin normally sort out the Estate, Funeral, Probate, etc. When this condition arrives, you, and Richard, will need to be able to contact each other, with this in mind I will send Richard’s Address to you and your address to Richard. This I will not do until the beginning of August, giving you time to send to me a logical reason why I should not do this. Richard will be receiving a similar letter.

I sincerely hope life is all you want it to be.

Dad xxxxx

All my love.”

In his journal entry for 5th July 2016 Mr Face writes:

“Posted letters to Richard and Rebeca saying I would give their addresses to each other at the end of the month unless they have good reason for me not to.”

On Tuesday 12th July 2016 there is the first of Mr Pearl’s attendance notes:

“Mr Face telephoned. He made an appointment to meet with me on the 18th July. He said he was going to meet me together with his son Mr Kaethner.”

The journal entry for that day reads:

“Afternoon phoned Pearl & Co Solicitors and made an appointment for Rich on 18th at 3.30... Visited Langleys about 5.45. Left about 7. Deb kept talking about the conditions Richard’s living in and kept repeating herself. I had to keep repeating that I have done all I can to help him. I am feeling exhausted.”

There is an attendance note of Mr Pearl’s on Monday 18th July 2016:

“I received a call from Mr Face. He said that his son Richard wants the property at 120 Maryland Road to be held in Trust. I

explained that transferring a property into a Trust may not be tax efficient, but if he wishes to do so he could transfer it to him. However this would not be the best method because it would not qualify as a potentially exempt transfer for IHT purposes.”

The journal entry for 18th July reads:

“Phoned solicitor and told him that Rich wants the house held as a trust. Solicitor tells me this is no good for tax saving. Richard had phoned asking me to phone the solicitor. He also told me that more water was coming through the ceiling. He believes there is also faeces... Tried to phone Rich in the evening. NA [no answer]... Visited Langleys for a couple of hours in the evening. Paul, Deb and Craig were there, Carina, Ruby, Paula, Ned Langley and BJ all arrived. As usual it was difficult to complete a sentence, let alone have a discussion.”

The journal entry for 19th July reads:

“Phoned Rich 4 times between 12 p.m. and 4 p.m. and 3 times between 6 p.m. and 7.30 p.m. NA.”

The journal entry for Wednesday 20th July reads:

“At last managed to get Rich on the phone. He did not see the solicitor on Monday as I told him to go to the Tottenham office due to me having phoned that number. It seems they forgot to tell me that Richard had to go to the Hendon office. I made another appointment for 3 p.m. Friday at the Hendon office. Thank goodness Rich was okay about all this. Told him about the contractors going to 122 on Tuesday.”

The journal entry for Saturday 23rd July reads:

“After dinner I went to Langleys for a couple of hours. Paul and Deb were out. Craig, Jamie, Ned, Paula Langley, Corina, Ruby and [something illegible] were all there, and of course the dogs. Rich phoned about 8. It seems water is coming through the ceiling again. Said I will phone the estate agents again on Monday. Must also phone Mr Pearl the solicitor to tell him a trust is okay. Said I will phone Derek Fricker to see if he will take part in the trust.”

The journal entry for 24th July records:

“Phoned Derek. Asked if he would be a trustee for Rich. Said he would think about it.”

The journal entry for 25th July reads:

“Phone D Pearl to tell him a letter from Rich should arrive soon.”

33. Mr Pearl’s next attendance note is for Wednesday 3rd August:

“Mr Kaethner turned up without making an appointment. I spoke with him and tried to explain that a transfer into a Trust would not be efficient from an Inheritance tax point of view. I also mentioned that there might be Capital Gains Tax implications of a lifetime transfer to him. I found it difficult to talk to Mr Kaethner, he would not accept anything I had to say.

I then called Mr Face and reported to him on the meeting.”

The journal entry for 3rd August is as follows:

“Lost most of the morning. Mr D Pearl solicitor phoned telling me Rich arrived without an appointment. Mr Pearl was also concerned about Richard’s way of dealing with things relating to the property. I got ready and drove to Nicole’s who was not at home, so then to Richard. We had a good long talk. Said he had not answered the phone as he has been unwell. I explained to him about why Rowena is not talking to me. I also explained why Jeff is not talking to me. Also told him of ideas I have about helping my children regards their old age. I got home about 9.30. Visited Nicole’s place on the way. She has a new housemate who tells me she is in France. Phoned Patsy to ask if her brother John has any exhibitions at the moment. None. I talked to Rich about doing artwork or printing. Hope he thinks about it. Phoned Mr D Pearl. NA.”

Wednesday 3rd August 2016 was, of course, the day of the contract on which Richard relies in this case. In bundle C4 at page 164 there is a letter from Mr Face to Rebeca dated 3rd August 2016:

“Last month I wrote to you and Richard, saying I would give each of you the other’s address, providing I did not receive any logical reason for me not to do this.

I have received no comment from either of you. Richard’s address is ...”

It is then set out.

“I do not know if you are aware that Richard has changed his surname, from Face to Kaethner.

I sincerely hope and prey [sic] that you and Richard will communicate with each other and in the long term get back to being the loving and caring, brother and sister you once were.”

There is an attendance note from Mr Pearl dated 4th August 2016:

“Mr Face telephoned and we discussed the meeting I had with his son Richard. I explained my concerns regarding the advice which I had given to his Son which his Son would not accept.

I explained that the best method would be to transfer the property to his son outright and not create a Trust. I also discussed with Mr Face the idea of having a Will because he said he had not made one and it was important for him not to die Intestate.”

Mr Face’s journal entry records:

“Lost morning. Afternoon worked in the garden cutting the lawns and trimming overgrown areas. Tried phoning Richard at least 3 times. NA. Phoned Mr D Pearl. He seems concerned about Rich wanting a trust. Said I will talk to Rich... Evening after dinner checked about trusts on the computer and found there are on HMSO 181 pages of titles and amendments for trusts.”

The journal entry for Friday 5th August records:

“Once again phoned Rich at least 3 times. NA.”

Mr Pearl’s next attendance note is dated Tuesday 9th August 2016:

“Mr Face telephoned and instructed me to prepare a Trust Deed for his Son Richard. I told him I was about to go on holiday and therefore it would be difficult for me to do anything until I returned.”

The journal entry for that day reads:

“I tried several times to get Rich. NA. I’m finding it very difficult to know what to believe from Rich. Phoned Derek Fricker. We chatted for about half an hour. He like others thinks I should have a good time and forget about my children. My nature does not allow me to do this. I’m finding it extremely difficult to make any decision about my will. Phoned Mr Pearl and said to carry on with the trust for Rich.”

The next relevant journal entry is on Monday 5th September 2016:

“Phoned Kris. It seems he and Rowena are still arguing over seeing the children. Rowena it seems is not obeying the court instructions. I am told that I have two more grandchildren: Luke 3 years and Jessica born in June.”

The next attendance note from Mr Pearl is dated 19th September 2016 and reads:

“Mr Face telephoned. I explained to him that the Trust of 120 Maryland Road had not been transferred into his Son Richard’s

name. I explained that I was a little unclear as to what his Son Richard actually wanted.

I took his instructions regarding his Will. I asked him for his instructions and suggested that if he had nobody to act as his Executor that he employed me being his Solicitor who would be familiar with his affairs. Obviously if he has somebody else he can appoint that would be preferable but in the absence of anyone in the family he trusts or any friends then I could be the default Executor.”

The journal entry for Monday 19th September reads:

“Lost morning... Phoned Mr Pearl, solicitor. It seems Richard did not continue with having 120 put into his name. It seems he might be a little unsure of his legal position and responsibilities. Mr Pearl has started on my will with himself as executor.”

34. Mr Pearl’s attendance note for 23rd September 2016 reads as follows:

“I discussed the Will with Mr Face and took his instructions. I asked for details of his family, and he gave me details of his son and two daughters.

The son is Richard Kaethner but he did not know the married name of his daughter Rowena so I suggested that he call her by her maiden name which would suffice. He has another daughter called Rebeca. I took down the full details of his son’s full name, his daughter Rowena’s maiden name and also his daughter Rebeca’s name. He told me about the various bequests which he wished to make of his motor bikes and cars and the rest of his estate would be divided equally between his three children.

The property at 120 Maryland Road would be left to Richard for life then to his wife and then to his grandchildren.

He agreed that I should be his executor because he did not have anybody else. He mentioned that he has a very dysfunctional family. I prepared the draft Will and sent it to him by email together with a client care letter.”

There is also a typed attendance record dated 23.9.2016 relating to Donald Face. It gives the full names of Mr Face’s three children including Rowena Eleanor Liesa Face. Reference is made to a Sunbeam S7 motor bike, with its registration number, and to the 120 Maryland Road flat. The email address and telephone number of Mr Face are recorded. There is an email of 23rd September from Mr Pearl to Mr Face at that internet address timed at 17.12. It attached a “client care letter”, “will draft” and “Instructions for Signing Wills”. The email simply states:

“Dear Mr Face,

Please see the attachments including the draft will and covering letter.

Regards

David Pearl.”

The letter of 23rd September 2016 is headed “Standard Will Instructions” and invites Mr Face to confirm his instructions by signing the duplicate letter and returning it. I have not seen any signed version in evidence. One of the attachments to the email was the draft will prepared by Mr Pearl. It was expressed to be the last will and testament of Mr Face, whose address is given. Clause 1 revokes all wills and testamentary dispositions. Clause 2 expresses a wish to be either cremated or buried, with one to be deleted. Clause 3 appoints David Pearl as the executor and trustee. Clause 4 is a gift “free of all taxes leviable by reason of my death” of the Sunbeam S7 motorbike to Richard. Clause 5 provides:

“I give my share in the freehold and also my leasehold property at 120 Maryland Road London N22 5AP to my trustees to hold upon the following trusts

(a) for my son Richard Edward Launcelott Kaethner for his lifetime

(b) subject thereto to his wife for her lifetime and in the event that my son shall have children then to such of his children as shall reach the age of 18 years and if more than one in equal shares

(c) subject thereto in the event that my son has no children living at my death or en ventre sa mere then this bequest shall pass to such of my grandchildren living at my death or en ventre sa mere who attain the age of 21 years and if more than one in equal shares”

Clause 6 is a gift of the residue of Mr Face’s property to his trustees on the usual trusts for sale and conversion, to be held on the trusts declared by clause 7. By that clause, the trustees were to hold the trust fund upon trust for such of Mr Face’s three named children as should be living at his death and if more than one in equal shares, with the usual substitutionary provision in favour of their children in the event of any of Mr Face’s children predeceasing him. Clause 8 provides for the standard provisions of the Society of Trust and Estate Practitioners (2nd Edition) to apply with one modification. The journal entry for Friday 23rd September reads (so far as material):

“Lost morning. Managed to talk to Rich. He still wants the property. I told him the £300 for the fridge is a present to him and Ruby. Talked to Mr Pearl. Told him I would have to talk further with Rich. Mr Pearl sent to me by email paperwork for

my will. Evening I visited Langleys. Took with me the instructions I wrote on what to do when a person dies. Paul was happy to keep it.”

35. The journal entry for Wednesday 28th September records:

“Rich and I talked on the phone. He thinks that him getting the house in trust will give the same tax relief as being a part-owner. I do not think so. He wants us to meet Mr Pearl about the tax. I intend to talk to the tax people... Spent hours on the computer checking probate and tax. Downloaded some to send to Rich.”

The journal entry for Thursday 29th September reads:

“Afternoon talked to Rich on the phone. Told him how I am getting tired of life. Made an appointment with Mr Pearl solicitor for Wednesday 5th October at 1 p.m.”

36. On 28th September Rowena sent a letter to her father (at bundle C8, pages 200-201). She described him as “Dad” and simply signed the letter “Rowena”, without any expression of love or affection. The letter reads as follows:

“I received a letter from your neighbour back in June whilst I was in hospital giving birth to your fourth grandchild, Jessica. Your neighbour has asked me to contact you because you would like to know what inheritance I would like. I must admit I was taken aback on many levels receiving this letter.

I don't have much time to write letters so please accept my apology this is written in haste while Luke and Jessica are having a nap. I will have to be very much to the point without flowery language. I will say this at the beginning that I have not expected to be thought of at all with regards to your will and arrangements you make. In that itself, if it is true, I am grateful. I think you know me well enough to know that I am not a materialistic person and don't have any interest in taking anything for myself. If there are things that are important to you. Please let me know and I will do what I can.

One thing that I will say in regards to your will. You have four beautiful grandchildren here - Sebastian (12 years old), Natalie (10 years old), Luke (3 years old) and Jessica (3 months old) and my only wish would be if you could think about making life better for them. I can think of only one thing that you might be able to help with them in the future. I will explain. The six of us currently live in a small 3 bedroom house which is situated just off one of the worst council estates in Preston. It has become a nightmare to live there. Just 2 days ago while Luke was playing in the garden, a group of three teenagers decided to go behind the bins on the other side of our fence and

take drugs while having the most sordid, disgusting conversations which we could easily overhear. While heavily pregnant with Jessica I have had to chase kids over the fence who were climbing over trying to break in. We suffer drunks outside our bedroom window on a regular basis all night swearing, shouting, fighting. We contact the police, but there's not much they can do. Where we are living is absolutely awful. I will cut straight to the point - I want my children, your grandchildren, to grow up in a lovely neighbourhood, have their own bedrooms and have access to good schools - Natalie starts secondary school next year and the catchment area that we are in means there is a very high chance she will end up going to one of these awful secondary with these horrible kids. She deserves so much better. And right now we cannot afford to do anything. We can't afford to move or change the situation that we are in.

Therefore, to answer the question you have asked through your neighbour - what would I like to inherit - my answer is nothing for me, but I would ask you to think about what you could do to improve the life chances of your grandchildren. My dream would be if my family could have a home in a good area and the children all had their own bedroom growing up. Therefore I suppose maybe you could think about providing a sum that could be a substantial deposit for a house with 5 bedrooms that would make the mortgage manageable for us to pay. That is all I can think of. I live for my children and I want the best for them. I don't want anything for myself. I just want to give them what I never had and if you want to, and are able to help them with that. Please think about it.

I feel awful writing such a letter that is all about this, but I do agree that these things need to be spoken so that everyone understands what each other are thinking. Apologies I don't have time to proof read this letter so probably contains many mistakes. Rowena.

The journal entry for Friday 30th September records the receipt of that letter:

“Afternoon. A shock. Received a letter from Rowena saying she received a letter from my neighbour. Tells me she needs money for a deposit on a house and that I now have 4 grandchildren. The letter began with my first name and ended with her first name. No ‘dear’ or ‘love’ anywhere.”

37. Mr Pearl's next attendance note is dated 5th October 2016:

“Attending Mr Face and his son Richard.

We discussed at length the transfer of the property at 120 Maryland Road. We had a very lengthy discussion but for whatever reason Richard seems to have a persecution complex

and did not want the property at 120 Maryland Road transferred into his name.

We discussed having a Trust and various options and I also mentioned the tax implications.

Richard Kaethner then abruptly left the meeting. I continued discussing the matter with Mr Face and in particular ensuring that he has a Will to ensure that his assets go where he wishes. He mentioned that he had been divorced and had a very dysfunctional family. He had looked after Richard and his two daughters were looked after by his ex-wife. I felt very sorry for Mr Face at this point because he seemed very alone and very sad.

I mentioned that I could act as his Executor if he wished me to in the absence of anyone else.

I printed off the Will for him to sign but he said he did not want to sign it because he was not sure as to where his assets should go bearing in mind the rather fraught relationships he had with his children. I could not force him to sign his Will this would be something he could only do willingly. If he did not know to whom he should leave his assets then he could always leave it to charity. However, bearing in mind he wishes his son not to be homeless this would be a bad idea and he would be best served leaving him the property as a specific legacy in his Will.

The Will I had prepared left the property at 120 Maryland Road to Richard for his lifetime then to his wife and then to his grandchildren if he has any.

Time spent 1 hour.”

The journal entry for Wednesday 5th October reads:

“Up early for once at 8.50. Went and collected Richard before going to see Mr Pearl solicitor. We all chatted for about 45 minutes. Rich then asked that he and I go outside to talk. He said I did not understand but would not say why. He then walked away. I completed the chat with Mr Pearl. I then went to the cemetery, having looked for and failed to find Rich, and got some help at the cemetery to find my grandparents. I went to Richard’s home and waited for about 20 minutes until he arrived. We then chatted. He’s now thinking of an offshore company to look after number 120. We agreed to meet Monday or Tuesday to tidy the graves. Called at Langleys on the way home. Deb has agreed to visit Rowena with me.”

The journal records on Thursday 6th October that:

“The rest of the afternoon and evening were spent on the computer trying to find work that Richard might be interested in. Also checked the value of 120 Maryland. Found it has gone up from £206,000 to £400,000.”

The journal for Wednesday 12th October reads:

“Rich said he would phone to wake me between 8 and 8.30. He phoned at about 9.10, just 3 rings, and again at 9.40. I got to Rich about 1.25 p.m. We went to the cemetery and made a start on clearing the graves of my grandparents. We got back to Maryland about 5 p.m. Rich is now talking about registering the house with a company he will set up abroad to avoid tax. Says he will give me the details.”

The journal for Saturday 15th October reads:

“Phoned Derek Frick. We had a 23-minute chat. He has to go to hospital to have some of his blood changed. I am now thinking that if Rich buys the property from me this might avoid the inheritance tax.”

On Monday 17th October the journal records that Mr Face phoned Mr Pearl the solicitor twice:

“No answer. Kris phoned. Rowena was disobeying court orders and not allowing Kris and the children to talk on Skype. They’re going to court again. Kris is also concerned about a holiday he has booked.”

38. There is an attendance note from Mr Pearl on 19th October. It reads:

“Mr Face telephoned. He mentioned selling the property to his son Richard for a nominal sum or for a reduced sum and I said that selling the property at a reduced amount would be deemed to be a gift for tax purposes.”

On the same day, 19th October 2016, Mr Pearl wrote to Mr Face. The letter is headed “Your Draft Will and 120 Maryland Road”.

“Further to our recent consultation and meetings, I enclose my firm’s invoice and should be grateful if you would please let me have your cheque in settlement.

When we last met you were undecided as to the contents of your Will and therefore please would you let me know if the draft I prepared is acceptable and if not, how you would wish to change it. Please remember if you do not make a Will then your estate will be divided equally between your 3 children and I note from speaking to you that this is not really what you want to happen. In particular, you wanted to make sure that

120 Maryland Road goes to Richard although he is unwilling to receive it directly. May I suggest assuming you do not transfer the flat to him in your lifetime that you make sure that you leave it to him in your Will so that he gets it as you intend him to receive it.

I have given the matter some thought and the alternative would be for you to declare a Trust in his favour and leave it to him for his lifetime and thereafter to your other children or to your grandchildren. This would however mean that inheritance tax may become payable when you transfer it to him at the lifetime rates assuming that the property is worth more than £325,000.00.

The lifetime rate is 20% which is half the amount of the death rate of 40%. In view of this possibility and as you do not live in the property it could also be subject to capital gains tax so therefore it may not be such a good idea after all and your best bet may be to leave it to him in your Will and he can then deal with it after you go.

Please let me know if there is anything further I can assist you with.”

The invoice was in the total sum of £450 plus VAT. The description is as follows:

“Our professional charges in acting on your behalf and meeting with your son on 3rd August 2016 and taking his instructions regarding the property at 120 Maryland Road.

Meeting with you again on 23rd September 2016. Preparing your draft Will and submitting it to you for your approval. The Will has not yet been signed due to the fact that you are still undecided as to whom you wish to leave your estate to.”

The journal entry for Wednesday 19th October states:

“Managed to phone and talk to Mr Pearl. Asked about selling the flat to Rich. He said the tax might consider it as a gift for tax purposes.”

The journal entry for Thursday 20th October reads:

“Went to the CAB at King’s Lynn. They could not help me directly due to the computer system not operating. They gave me information about local solicitors I could talk to... This afternoon into evening I’ve been feeling very low, wondering why I’m bothering to continue living.”

There is no suggestion in the journals that Mr Face ever followed up his enquiry about local solicitors. The entry on Friday 21st October records:

“Evening on the computer reading and downloading info about inheritance tax.”

The entry for Saturday 22nd October reads:

“Evening as usual. Fell asleep in the chair for a while. Worked on the computer writing a list of those to be notified when I die.”

The entry for Sunday 23rd October records:

“Spent a lot of time reading about inheritance tax. Feeling very tired yet I’ve done very little physically. Tried phoning Rich yesterday and today. NA.”

On Wednesday 2nd November Mr Face records that he wrote and sent a letter and cheque to Mr Pearl for his services. He also:

“Sorted letters to and from the High Court for the Information Commissioner Office.”

There is no recorded criticism of the level of Mr Pearl’s fee. The entry for Sunday 6th November reads:

“Phoned Rich. NA. Phoned Derek and Carol Fricker. Derek was sleeping. Chatted to Carol for 15 minutes... With nothing definite about the High Court, ICO, Rowena, DVLA my driving licence, 120 change of ownership, 120 repairs to flood damage, seeing so little of my grandchildren, no contact with Rebeca, no contact with Rowena, difficult contact with Rich, all of the above causes me great concern and worry, depression. Is life worth living? How can I sort things for my children when the Government wants 40%?”

The entry for Monday November 7th reads:

“Rest of day similar to yesterday. Wondering what I’m going to do or achieve with what’s left of my life. My children aren’t talking to me. For a year now I’ve been asking Langleys to take some rubbish from my garden which Wayne said he would move a year ago. Phoned Rich. NA.”

On Wednesday 7th December the journal entry reads as follows:

“For once I got up at 6 a.m. I left home at 8.05 a.m., arrived at Richard’s home at 10 a.m. Rich expressed he did not wish to talk from the moment he opened the door. Rich seems to be of the opinion that I have little to no rights regarding the property. Our conversation became heated after a relatively short time, especially when I asked to see their marriage certificate. Rich soon tried to push me out. He refused my request for a drink of water and then pushed me along the hall to the front door where I

started coughing and could not move for a few moments. Rich started telling me to sit down. When I tried to go out he held my jacket. I slipped out of it and sat on a wall. Rich then got next door to phone for an ambulance, which soon arrived, and checked me. Rich refused to talk to me after this. On the way home I stopped in a layby for an hour's sleep. When I got home I got out of the car about 4.10 p.m. My left knee was painful. It was difficult to walk. I sat down for most of the evening watching TV and resting the knee.

On Thursday 8th December the journal entry records:

“Evening wrote to Rich apologising for my part of the bad behaviour yesterday and saying we should sort out the reason he does not want the flat in his name.”

The final relevant entry in the 2016 journal is on Tuesday 27th December:

“Linda Fricker phoned today to tell me Derek, her dad, died yesterday. I've offered any help they might require, including financial.”

39. At C4, pages 165-166 there is a letter to Rebeca dated 10th January 2017. It reads:

“Dearest Rebeca,

I have no idea why you stopped writing to me or why you ran away when I came to your house.

When you first got your house, I gave you some gardening equipment. When you said you were writing a Book I sent you some good quality writing implements. When you told me about the Pig Farm I offered you a Land Rover for free. When you said you needed some farm equipment, I said tell me what you need and I will try to help you. I am sorry there have been times, when you needed help and I did not know.

What I do know is that from the day you were born as my daughter, I have loved you dearly and always wanted to give help when needed, that I am sorry to say was not always possible.

I now wish to offer and give you help that will continue long after I say goodbye to the world. I would like you to have part ownership of my house and home. I wish for this to happen as soon as possible so no other person can make any false claim after I am gone. Should I leave the house to you in my Will, a Will can be challenged in Court and the house could go to another person. If you agree to become a joint owner with me, when I pass away the House automatically becomes yours. There can be no challenge to ownership.

You would then have a choice, to sell this house or the one you are living in and invest the money, or rent out one of the houses and have a regular income. Renting would give a better income, than any investment which is available right now.

Recently I have been Harshly reminded of just how fragile life can be. I had two very dear friends who I went to school with. Bob Frost who was just a month older than me, who never smoked or drank alcohol at any time in his life, died on his Birthday the 14th April 2016. Derek Fricker, who had the occasional drink but never smoked and was just two weeks younger than me, died on Boxing Day 2016.”

The letter continues over the page:

“Please contact me as soon as possible, so that we can discuss me, or give me, authority in writing that you wish to become a joint owner. Should the joint ownership survive for seven years or more, no Inheritance tax will be payable, the house will not even have to be mentioned in probate. Should I not survive for seven years you will still get a tax reduction for the time I have been alive. You could of course sell the house to pay the inheritance Tax if you needed to.

All my Love,

Dad.”

The word “Dad” is both handwritten and typed, and the typed signature is followed by lots of typed kisses. The journal entry for 9th January 2017 reads:

“Wrote a letter to Rebeca asking her to become part owner of my house.”

On 16th January Mr Face met with Mr Pearl to discuss the problem his son Richard had encountered with the owner of the upper maisonette at 120 Maryland Road. There was no apparent discussion of any will or trust, or any change of ownership of 120 Maryland Road. Because there are no journal entries before the court from 11th January to 22nd January 2016 there is no corresponding journal entry for this attendance note.

40. On Thursday 9th February Rebeca visited Mr Face. The previous afternoon, according to his journal entry for 8th February, he had worked on the computer about the High Court’s ruling preventing Kris (her ex-husband) from telling him Rowena’s address. The entry for 9th February reads as follows:

“At lunchtime I received a letter from Rebeca saying she will be visiting me today. This meant I had to tidy the place a little. Rebeca and Stu arrived about 6 p.m. Rebeca insisted I have everything wrong regarding leaving my property when I die. Rest of the time was okay. Think she has some idea about my

state of health now. I think we could talk again. They left about 8.15... Got to Langleys about 9.30. Told Paul and Deb how wonderful it was to see Rebeca today. Got home about 10.35.”

In his journal for Saturday 11th February 2017 Mr Face recorded:

“Rebeca having visited on Thursday made me feel a little better and happier today.”

Rebeca visited True Blue again on 13th February and apparently stayed overnight, going with her father to his bank at Downham Market on the morning of 14th February. There are no journal entries available for those two days. The bank statement for 14th February records that on that day Mr Face transferred £15,000 from his savings to his current account. Two cheques are recorded: cheque no 101250 is recorded as having been debited from the account in the sum of £4,000 on 14th February; cheque no 101251, in the sum of £11,000, was debited from the account on 21st February. From those entries, I infer that a cheque for £4,000 was cashed at the bank on 14th February, and that a cheque for £11,000 was handed over on that day and was cashed subsequently. I am satisfied that that cash, and that cheque, were both handed to Rebeca. Mr Paul Langley said that he himself had never borrowed any money from Mr Face, although his sons had done so. I therefore reject Rebeca’s suggestion that the money was handed over, or loaned, to Mr Paul Langley.

41. On 1st March 2017 there is a letter from Mr Face to “Rebeca/Stu”. It reads:

“Thank you, thank you, thank you for your visits on 9th and 13th February. I was to say the least very surprised and probably in a state of shock, having little warning of one visit and none about the next. To say you made me happy and elated would be an understatement. During the short time we had together many things were mentioned, but nothing really talked about or discussed. I most sincerely hope that at some time, in the future, the three of us can meet and have enough time to discuss things and clarify them a little.

There is an old saying ‘What you don’t use you lose’. You probably noticed while you were here, that there were no callers or visitors, that is normal. My social life generally consists of calling on the family down the road, once a week for about two hours, sometimes twice a week. Paul who wrote to you, is the Father of the family. This means I have people to talk to for only about four hours a week. What I am trying to say is, that if sometimes my way of putting things seems a bit different, it could be because I do not get much practice these days.

The two of you calling on me made my life seem so much brighter and happier, unfortunately since then a shadow has fallen over my life, I will now explain.

On 13th Feb you arrived a bit after 6 o'clock, earlier in the day I had written a letter to Rich and posted it. The letter said I would visit him on Tuesday 21st Feb, if this was not OK to tell me which day would be. Rich did not reply. I went to his home, I spent 15 minutes at the door and got no answer. I called next door and talked to the Lady who lives there. Said she had not seen him for three weeks. I reported this to the Police. Since then the Police have phoned me twice, but so far no news on Rich.

Sorry to end with some sad news, keep your fingers crossed. Hope my assistance has helped with your problem and that all is OK."

All of that is in typescript. The letter concludes in manuscript:

"All my love

Dad xxxxx"

The journal entry for Tuesday 21st February records that Mr Face had left home at about 12 noon to go to the doctors to collect his prescription and that he had then travelled on to Richard's flat. It records that he arrived at Richard's address at about 2.15 p.m. By 2.30 Richard had not answered the door and Mr Face therefore talked to the lady at No 118. She said she had not seen Richard for three weeks. Mr Face then records that he went to the police as he was very concerned for Richard. The police were treating him as missing. I must say that the statement about Mr Face's social life, and its comparative barrenness, does not accord with the entries that I have read in Mr Face's journals, particularly in relation to his much greater degree of contact with members of the Langley family. The journal entry for 1st March does record posting a letter to Rebeca on that day. There is, however, no way of knowing for certain whether that is a reference to the letter of 1st March, the terms of which I have just read out. The journal entry for 2nd March records that Mr Face received an email from the police complaining about the age of the photographs of Richard and asking for Rebeca's address. The entry for 3rd March records that Mr Face wrote and posted a letter to Rebeca explaining that the police could try to contact her. That letter is at C4 page 172 and reads:

"Dear Rebeca/Stu.

In my last letter I told you that Rich had not been seen for three weeks and I had reported this to the Police. Richard has now been missing for five weeks. The Police are making enquiries, including asking for your Address. I have told them that to the best of my knowledge the two of you have not spoken since 2003. They still might want to talk to you, thought it best I let you know.

Hope everything is OK, look forward to hearing from you."

There is then a PS in capital letters in manuscript:

“Could we use a phone?”

On 27th March Mr Face forwarded an email about the problem of damage to 120 Maryland Road to Mr Pearl. His email to Mr Pearl recorded:

“At last, I have found how to transfer an E Mail. Thank you for your patience with me.”

On Wednesday 5th April there is a journal entry:

“Received letter from Rebeca asking about Richard and how I am getting on with the E-cig she gave me. Phoned police trying to get more information about Richard and Ruby going to the Philippines. Would only tell me they left on 11th December 2016. Said they would give British Embassy more info. Started writing to the court about not getting a proper answer to my questions about Rowena. That took until late evening due to me making mistakes on the use of the computer.”

On 12th April 2017 (claimant’s bundle 7, page 84) there is another letter to “Rebeca/Stu”:

“It was wonderful to have you visiting, a greater surprise I could not have dreamt of. Thank you also for your letter.

I am persevering with the electric smoke, but not getting on to well.

I now know that Richard went to the Philippines on the 11th December 2016. This means he has been gone for four months. I contacted the British Embassy last week and waiting for a reply.

While you were both here Stu expressed my thoughts exactly, that we need to have a lot more discussion. I realise that travelling between our two homes, takes a lot of time and money. I also recall that you said you do not want me to visit your home or farm. I therefore suggest that at some time in the future, I book a caravan or room not to far from you, for a week, so we can meet and clarify things between us.

While visiting me you mentioned that you have a Legal matter that needs sorting. I would like to help you with this as I do have some experience. I stopped the local council from knocking down in excess of a hundred houses to make an open space. I sued the Police for wrongful arrest, my case was so strong that they settled out of Court. A person tried to sue me for money they had no right to, at the court I showed there Solicitor my written case. The Solicitor then told the Court that there was no case to answer and cancelled the case. Court

cases are often won or lost on the preparation of the case. I would be happy to assist if you will let me.

Look forward to meeting you both again, hope everything is going OK.

All my love.

Dad xxxxx”

Unfortunately there are no journal entries from 7th to 14th April. The journal entry for Wednesday 26th April records that Mr Face left for London at about 12.15 p.m. He met “George” at 1.50 p.m.

“Richard took a while to open the door. Then went in and tidied before allowing George and I in. He thought George was a builder and showed him all the damage. Richard also showed me what he considered to be further damage. When I approached Rich about being in the Philippines he denied this and indicated I had just been unlucky when I called. I am going to have to get the surveyors in again. George had to walk out after about 15 minutes talking to Rich. He could not believe how complicated Rich tries to make things ... I explained to Rich that the money I have is to pay inheritance tax so that the houses do not have to be sold to pay it.”

The journal entry for Friday 5th May records:

“Printed and posted the letter I have written to Rebeca and Stu.”

42. At C4, pages 173 and 174 there is a letter printed on two pages which, according to Rebeca, was originally printed on two, separate pages (and not with the second page printed on the reverse of the first). The court does not have journal entries for either 3rd or 4th May so all we know is that Mr Face did write to Rebeca and Stu at about this time. I am satisfied that the first page (at least) of this letter is a fabrication and that the author is Rebeca and not Mr Face. The letter reads:

“Good news Richard is back and OK, we have met and chatted. All is well. He denies being in the Philippines.

As you both know, rather than leave you a mess to sort out, I had been writing my Will and I have now written it. I have decided, as the friend I asked has said ‘no’, that you, Rebeca, will be the Executor.

I hope this is not to unexpected, as I have explained Richards behaviour, and actions, towards me, both physically and verbally, over the last year, due to him making me do things I do NOT want to do. This relationship is difficult to explain in writing, he is treating me as some sort of enemy.

I would not ask Rowena, as you will, I have no doubt, understand that communications between us are not possible at this time, and after her last Letter to me, not desirable. I have not included Rowena in my Will for the reasons that will be clear to you after you talk to Kris. Please, Please, Please, communicate with Kris about the children, his telephone number is ...”

and this is then provided. The letter continues:

“You said you would not accept ownership of my House while Richard is keeping his furniture in it. I have offered Richard £3000-00, in purchase of all, ALL, of his possessions in my home. I hope this offer will be accepted soon, my health is not improving and is unlikely to.

I did not ask the Lady, and her Husband, to witness the Will, as I said I would. I love there family, I do not trust them completely, as they do not pay there debts. I met a young couple, last weekend, on holiday, and chatted with them again yesterday, when I was walking along the river bank. I asked them if they would be the Witnesses, I invited them in and we all had Tea. After the Lady insisted that I listen to her jumping from one subject, to another, with no logical connection, they signed the Will.

Continuing over the page:

Generally speaking life continues along the usual daily path, the only variation has been two days, of removing weed and unblocking the filters and pond pumps, still have lots of weed to remove. Otherwise everything OK.

The Piano is now in full working order and ready to be collected. Please let me know when you will be collecting the Piano, as even small ones like mine, are heavier than they appear to be. I will arrange some help to load it. The piano is 41 inches tall, 21 inches wide and 50 inches long it has to be transported in an upright position, to place it on its front, rear or side would cause a lot of damage, as there are no lateral supports internally.

The Books you selected are still here, perhaps next time we meet you will collect or I will deliver.

What do you think of me renting a place near to you so we can have a chat. I realise that this is not the best time of year to meet, as the animal world is busy increasing the population and therefore keeping farmers busy.

Hope to see you both in the not too distant future and that all is well for you.

Love

Dad xxxxx”

(Five-minute break at Mr Kaethner’s request)

43. The next relevant journal entry available to the court is on Tuesday 23rd May 2017. That records that Mr Face wrote to “Rich and Ruby” and sent a copy of some document about inheritance tax and a cheque for £3,000. Mr Face’s journal entry for 6th July (a Thursday) records that he got to Richard’s flat at about 2.45 p.m.

“He seemed happy that I had taken a box of his school work and cards, birthdays etc. Told him Rebeca called last week. He asked some questions but made no comments.”

The court does not of course have available the journal entry recording Mr Face’s meeting with Rebeca the previous week. The journal entry goes on to record:

“Went to the solicitors and gave him a copy of the builder’s estimate. Mr Pearl once again started pushing about my will.”

After Friday 7th July there is no further entry until Wednesday 9th August. After Thursday 10th August there is no further entry until Friday 22nd September. There is however a letter to Rebeca dated 9th September 2017 (at C4 page 175):

“Dearest Rebeca,

Thank you for your letter. I did not think I would hear from you again, receiving your letter has made me so happy. I offer my sincere apologies, for my part, in our disagreement. I have talked to the Langleys, they have explained how you might feel about the photographs. I did not want to disrespect you, I did not want to take away your privacy, I do not want to own you. I have deleted the photographs on the computer, I sincerely hope, we can continue with our agreement, cooperation, and communication.

You will we will never be an ordinary Father and Daughter, I agree, I hope we can be friends in time, you have done for me, than I thought you would. I would rather fight, over the truth, than whisper, over a lie. Your letter did make me laugh, I had forgotten, about the bathroom problems, when I wrote to you, it would be quite a sight for the neighbours.

I have made some progress here, I met a builder in town, I asked him to write a quote for the staircase, wall and bathroom. he will look at it next week. Can you bring some new particulars with you, for something larger?

In answer to your question, I have worked through one box, with varying results, the colours are not right. The Langleys have agreed to help me, while you are away. Deb certainly seems a lot closer to being her old self.

Since your last visit, I went to see Richard, he did not answer the door, I knocked next door, and talked to the Lady there, she told me some worrying news. I have to alter the arrangements, regarding the legal situation, with Richard and the property.

Look forward to seeing you soon, hope everything is going OK with the sheep.”

The letter is signed (in manuscript):

“Dad xxxxx”

and then in typescript:

“All my love”, with a lot of crosses.

What is surprising about this letter is that if Mr Face had made a will only two days earlier, he did not mention this fact (as he is said to have done in the 4th May letter). He does not mention that he has left virtually all of his estate to the recipient of this letter. He does not mention that he has appointed her to be his sole executrix. Mr Face also talks, in language of futurity, about having to alter the arrangements regarding the legal situation with Richard and the property. If the 2007 will was valid, however, Mr Face had made no testamentary arrangements about Richard and 120 Maryland Road because virtually everything had been left to Rebeca.

44. The journal entries available to the court resume on Friday 22nd September. The entry for Tuesday 26th September records:

“Rowena phoned and spent an hour saying the problems between her, Kris and the children are my fault, even though we have had no contact.”

There are a few later references to the fact that Rowena’s ex-husband, Kris, arrived with their two children, Sebastian and Natalie, at about 10.45 p.m. on Friday 29th September. The last entry in the journal was on Saturday 30th September but it contains nothing of relevance. Poignantly, the page for Sunday 1st October is blank. At about 11.30 a.m. on Monday 2nd October Rowena received the telephone call informing her of her father’s condition, after which she travelled to the hospital in Norfolk, via Rebeca’s house in St Helens.

45. That concludes my recital of the relevant factual background.

V: The 2017 will

46. I have already recited the terms of this will. In his written skeleton argument Mr Lakin accepts that the burden is on the defendants to establish that the will is a forgery and that the standard of proof is the normal civil standard. For this, Mr Lakin relies

upon the decision of Barling J in the case of *Haider v Syed* [2013] EWHC 4079 (Ch), reported at [2014] WTLR 387. The sole issue in that case was whether the signature of the testatrix on the will in question was a forgery. Barling J addressed the law at paragraphs 10-12.

“10. Mr Charles Machin of counsel, who appeared for the Defendant, accepted that given the serious nature of the allegation of forgery the legal burden of proving that the signature on the Will was forged rested on the Defendant. He also accepted that cogent proof is required from the party making an allegation of forgery, albeit that the civil standard viz the balance of probabilities still applies ...”

At paragraph 12 Barling J recorded that since there was “general agreement as to the principles” he should follow, he “need dwell no further on the law”. I note that *Haider v Syed* is cited, without adverse comment, at paragraph 9-76 of *Williams, Mortimer and Sunnucks: “Executors, Administrators and Probate”* (21st edn) at footnote 382. It is also cited, again without disapproval, at paragraph 3-034 of *Theobald on Wills* (18th edn) at footnote 145. In a section dealing with undue influence and fraud, it is said that the burden is on the person alleging forgery, and that cogent evidence is required, albeit to the civil standard of proof. I do not accept that the burden is on a person alleging forgery to establish that fact (albeit to the civil, rather than the criminal, standard of proof). It is a formal requirement of the validity of a will that (amongst other things) it is in writing, it is signed by the testator (or by some other person in his presence and by his direction) and it is duly witnessed. It therefore seems to me that the burden must rest on the party propounding a will to establish that it has been validly executed and witnessed. That is one of the formal requirements for proof of a will. I can well understand that where a will is challenged on the grounds of fraud or undue influence, the burden is on the party asserting that; but where the forgery of a will is alleged, then the ultimate burden of proving that the will is not a forgery must rest on the party propounding the will, as part of the formal requirements of proving that the will was duly executed by the testator and was duly witnessed. It seems to me that *Haider v Syed* is no authority for the proposition that the burden of proof rests on a party alleging that a will is forged because the position was in no way challenged in argument in that case. A concession was made by Mr Machin (of counsel); and Mr Flavin (also of counsel) did not take any issue with it. (It was, of course, not in the interest of his client for him to do so.) However, in the present case it makes no difference to the ultimate outcome of this litigation because I am satisfied, so as to be sure, that the 2017 will is a forgery which has been concocted by Rebeca. I am led inexorably to that conclusion by the following four particular features of this case which, considered separately, are all highly suspicious, and which, when taken together, in my judgment clearly demonstrate that this will is a total fabrication.

47. Those four matters are: (1) The very existence of any will at all (2) The terms of the 2017 will (3) The circumstances surrounding the alleged execution of the 2017 will and (4) The circumstances surrounding the alleged discovery of the 2017 will. I will develop each of these features in turn.
48. First, the very existence of any will at all. As Rebeca accepted, there is nothing in the journal entries that we have to suggest that Mr Face ever actually made any will.

Although there is a single reference to seeking out local solicitors on 20th October 2016, and a single reference to Mr Face making enquiries of the consumer organisation “Which” - and indeed his relevant bank statement records that he paid a £5 charge to them on 20th February 2017 - there is absolutely nothing in the journals to suggest that Mr Face ever took either of these enquiries any further. I consider that it is inherently unlikely that Mr Face would have made a will without using the services of Mr Pearl. It is just as inherently unlikely, if he had made a will, that he would have kept that fact secret from Mr Pearl, particularly when, at their meeting on 6th July 2017, Mr Pearl once again started “pushing” Mr Face to make a will. If, as Rebeca asserts, Mr Face had made a will on 3rd May 2017, he would surely have told Mr Pearl that on 6th July. There is no reason why he should not have done so. The natural person to whom Mr Face would have gone to make a will would have been Mr Pearl. As Mr Pearl said in evidence, Mr Face had come back to him after an interval of 10 years; and Mr Face was prepared to drive 2½ hours to come to see Mr Pearl. Moreover, if Mr Face had made a will on 7th September, it is frankly incredible that he did not tell Rebeca that fact when he wrote to her only two days later given that she was the sole executrix, and the principal beneficiary, of that will.

49. Secondly, there are the terms of the 2017 will. These are utterly incredible. The language, in my judgment, is clearly not that of Mr Face; rather it is redolent of the language used by Rebeca. I am satisfied that Mr Face would not have described Richard in the terms of the will that he is said to have done. I am satisfied that he would not have left Richard homeless. Everything in the evidence demonstrates that Mr Face’s main concern in life was to secure Richard’s continued occupation of 120 Maryland Road. At the beginning of his oral evidence Mr Pearl said:

“I believe the 7th September 2017 will to be a forgery. One of Mr Face’s overriding concerns was to ensure that Richard had somewhere to live. I cannot imagine he would make him homeless. It is a vindictive document, but Mr Face was not a vindictive man at all. He was a lovely man. I am sure he would not have written such a document. It is a vile will. There is absolutely no way; it is impossible, absolutely impossible, that this will is valid. It would be a travesty to allow such a document to be admitted to probate. He was always reaching out to Richard. He would have come to me to deal with the flat. It does not tally at all. The May letter is also clearly a forgery. He would have told me if he had made a will. Richard did not always see eye-to-eye with his father, but Mr Face clearly loved Richard.”

Mr Pearl had reminded Mr Face of the need to make a will every time they had met; and he had explained the consequences of not making a will. Mr Face had told Mr Pearl that his family was “dysfunctional”. Mr Pearl stated:

“He was desperately sad, desperately lonely. He was a lovely, sweet old man and it is very sad that it has come to this. He said to me, ‘My family is dysfunctional but there’s nothing I could do about that’. Rebeca has tried to impose this forgery upon the family in a very vindictive way.”

50. The evidence is also overwhelming that, up until his death, Mr Face had no knowledge that Richard had any child. That may seem surprising to anyone who has not heard the evidence, and encountered the individuals, within this dysfunctional family; but I am satisfied that that was indeed the case. In her evidence to the court, even Rebeca expressed the view that if Mr Face had learned that he might have had a grandchild by Richard, he would probably have wanted to go straight away to 120 Maryland Road to see the child for himself, and to attempt to talk to Richard. The evidence is that the baby and his mother only arrived at Heathrow at 4.50 on the morning of 7th September 2017, to be met by Richard, who had stayed at the airport overnight to meet them. They then had to journey to Wood Green. Richard's evidence was that they stayed within his flat all of that day. There is simply no time for the arrival of the baby to have been communicated to Mr Face who, from his journal entries, was certainly not an early riser, and then for him to have travelled up to London to attempt to see Richard, to have returned to North-West Norfolk, to have drafted a will, and then to have made the trip to Cambridge for it to be executed that afternoon. It has to be borne in mind that the date - 7th September 2017 - was typed into the will on two separate occasions, although on the first it was misspelt. It also has to be remembered that Mr Humphreys had written the date on the 2017 will in manuscript. It was therefore clearly intended to be executed on that day; and it purports to have been executed on that day.
51. The evidence is also overwhelming that Mr Face always identified his daughter Rowena as "Rowena Face" and not as "Rowena Cunningham". That was how she was referred to in his 2017 pocket diary. In order to meet this point, Rebeca suggested that Mr Face had been fearful about disclosing Rowena's true surname for fear that he might thereby be in breach of a court order. Rebeca produced a court order made by Peter Jackson J in chambers on 12th May 2012. That order included various undertakings by Rowena's former husband, Mr Karl Wolfgang Christopher Pautsch, including an undertaking not to disclose the mother's home address to Mr Donald Face. The undertaking related to the disclosure of her home address, not of Rowena's surname (although at that time it would appear she had not remarried). Rebeca's ingenious suggestion was that Rowena was identified as "Cunningham" in the 2017 will because Mr Face would have had no concerns about disclosing her true surname in a will which was only to operate after his own death. However, it is clear from Mr Pearl's attendance note that Mr Face did not know Rowena's surname at the time Mr Pearl prepared his draft will, and she was identified as Rebeca Face in that document. In her letter to her father of 28th September 2016, Rowena disclosed her address, but not her surname "Cunningham". Most significantly of all, in the list of contacts, which was expressly prepared for use after Mr Face's death, Rowena is again described as "Rowena Face". Therefore, the ingenious, but feeble, suggestion that Mr Face was prepared to disclose Rowena's true, present surname in a document intended to operate after his death will simply not withstand scrutiny.
52. Third, there are the circumstances surrounding the alleged execution of the 2017 will. I am entirely satisfied that Mr Face would not have undertaken the 40 mile drive each way to go to Cambridge to have a will executed. If he had been going to Cambridge, he would have told the Langleys in advance. If he had been to Cambridge, he would have told them that he had gone there. He would have told them that he had executed a will. If he had wanted, for some odd reason, to visit the Inheritance Shop in connection with his will, he would have gone to the King's Lynn office, or at the very

least the Ely office, which was on the way to Cambridge. I find the evidence of the attesting witnesses entirely ludicrous. There was no real reason for them to have gone to the Inheritance Shop at all. They could have obtained all the information they were seeking from its site on the internet. Even if they had gone to the shop, there was no reason for them to go inside because the leaflets they were seeking to obtain were contained within a waterproof leaflet dispenser outside the shop. Neither of the attesting witnesses ever read the leaflets that they say they took such trouble to obtain. They never spoke to anyone at the Inheritance Shop other (they say) than Mr Face, who was a complete stranger to them. The explanation for the conduct of both Mr Humphreys and Mr Face is that they were both impatient men who were not prepared to wait to speak to someone working for the Inheritance Shop. They were, however, prepared to travel varying distances to the Inheritance Shop; but they were then too impatient to wait to speak to anyone working there. Mr Pearl said that Mr Face was, in any event, not an impatient individual; he was a patient man. Not only did the two attesting witnesses not read the leaflets, Mr Humphreys said that he did not make any will until 2018, and Miss McKenna said she had not made a will at all. They had very few assets to leave; they rented their accommodation. Neither attesting witness was able to add much to the description of Mr Face contained within their respective witness statements; but they both described his head and, in oral evidence, they both said that he was not wearing a hat. Mrs Deborah Langley's evidence was that he never went anywhere without wearing his baseball cap (even inside). Everything about the evidence of the circumstances surrounding the alleged execution of the 2017 will defies belief.

53. Finally, there are the circumstances surrounding the alleged discovery of the 2017 will on 10th August 2018. Rebeca accepted that the red folder was not below the sleeping bag on the bed when she had previously visited True Blue; so someone must have deliberately put it there. The only real candidate is Richard; but why should he put it there and, more importantly, why should he leave it there? In evidence, Rebeca said that before she entered True Blue, Richard had just walked past her carrying two trolley bags "totally stuffed" and with two bags across his shoulders. Apparently, however, having put the red folder under the sleeping bag, Richard had simply left it there, without looking to see what it contained. Rebeca had been able, on a quick perusal in the dark, by torchlight, to identify the red folder as containing the "Evidence against Richard"; and she had also identified it as containing a copy of the will that everyone had been looking for over the previous 10 months. There is no conceivable way that Rebeca should have been able to extract the folder when Richard was unable to do so. Having found the red folder, Rebeca says that she secreted it in the top of her trousers and concealed it by pulling her jacket closed around her. At the court's suggestion, Rebeca identified how she says she did that. I accept, on the basis of that demonstration, that Rebeca could have carried the red folder out of True Blue in the way that she described but for Philip Langley's evidence that she was not wearing a jacket below which to conceal it. But even if he was wrong in that recollection, I find it utterly staggering that Rebeca should not have mentioned the discovery of the will to Richard, or to any of the three police officers who were standing outside the property. For the last 10 months everyone had been looking for a will and had not been able to find it. Rebeca says that she had found it, and then she did not mention it to anyone standing outside True Blue.

54. In the course of her evidence to the court, Rebeca twice described the journey home from Norfolk to St Helens as either “long” or “extraordinarily long” and yet, instead of returning home straight away, Rebeca says that she embarked upon about a 40-mile detour to visit the attesting witnesses without even knowing whether they would still be living, and present, at the address recorded in the 2007 will. The journey to Cambridge takes almost an hour. Rebeca says she was there with them for about 15 minutes and she then set about the 195-mile (or thereabouts) journey home, taking a further 3½ hours. Having got home and attended to the cats and the collie dog, she then drafted and sent an email to her solicitor at 2.33 that morning. The email reads:

“Hi Veronica!

I found the WILL!!!!!!!!!!!!!!

Well, a photocopy anyway, but it’s still the will!

It’s totally different it’s from September and has Richards kid in it so he must have found out. Rowena and Richard excluded but all grandkids included. I’ve attached a copy for you.

It’s been such a weird day! I went down to sort fish and locks cos I’m just sick of Rowena’s messing about, but when we get down there Richard’s in the house mid-burglary!!! I called the police cos he’s getting a bit aggressive (long story short) 2 Langleys and 3 coppers later I get into the house to get pics of the water damage and what’s left of dad’s stuff and I find dad’s file of ‘Evidence against Richard’ that Richard had hidden and the copy will was in it!

I’ll call you Monday to sort the details

Sorry to ping you so late at night, but too excited not to share the news!”

What is staggering about that email, if Rebeca’s account of visiting the attesting witnesses is correct, is that she does not go on to say: “And, by the way, I went down to Cambridge and I found the attesting witnesses at the address in the will.” The omission to refer to that vitally important fact is absolutely staggering and equally inexplicable. I cannot accept the account of the circumstances in which the 2017 will was found.

55. I am satisfied, so as to be sure, that Rebeca has forged the 2017 will in collaboration (through Stuart Neal) with Lee Humphreys and (through him) with Sally McKenna. Once the court is convinced, as it is, that the 2017 will is a forgery, it becomes clear that Rebeca has also forged the first page of the letter of 4th May 2017. It is also clear that Rebeca is the one who took the original 2017 journal, and who has produced selected extracts which she considers suits her case; and that she has suppressed those entries – such as the entries for the 3rd and 4th May and 11th August to 21st September – which would not have supported her case. I am entirely satisfied that neither Rowena, nor Richard, would have edited the 2017 journal in the way in which the version put before the court has been edited. If either of them had done so, I am

satisfied that different diary extracts would have been put before the court, and some of the others that are before the court would have been suppressed. In the case of Rowena, we would not have the entry for 26th September because that contradicts her account of the date when she spoke to her father. In the case of Richard, there are some entries which do not reflect entirely favourably upon his relationship with his father. In the case of either Richard or Rowena, entries demonstrating any tenderness shown towards Rebeca by her father would have been suppressed. Above all, if Rebeca's letter of 4th May 2017 is genuine, we would have had the entries for 3rd and 4th May.

VI: 120 Maryland Road

56. I have not to date read the terms of the manuscript contract entered into between Mr Face and Mr Kaethner on 15th February 2016. It is on three handwritten pages and is signed by both Mr Face and Mr Kaethner on 15th February 2016. It reads:

“Contract between Mr D Face and Mr R Kaethner, 15th February 2006.

On Wednesday 15th February 2006, agreement was reached between Mr R Kaethner and Mr D Face that Mr R Kaethner will vacate 18 Wray Crescent, London N4 3LP by the day of completion of the said premises.

Mr D Face will give to Mr R Kaethner £100,000 from the sale of 18 Wray Crescent subject to the conditions that Mr D Face will buy a property that is satisfactory to Mr R Kaethner with the £100,000 (Mr R Kaethner may contribute more), and subject to any matters that may arise from the conveyance of this property from the vendor to Mr D Face, Mr D Face will transfer the full legal title and all equitable interest in that property to Mr R Kaethner within six months of the conveyance of that property to Mr D Face.

Should Mr R Kaethner fail to leave the property as agreed, he will be responsible for any expenses (including for breach of contract) incurred by Mr D Face due to Mr R Kaethner not leaving as agreed by the day of completion.

Mr D Face accepts that by way of consideration for this contract Mr R Kaethner will pay Mr D Face the sum of five pounds, and also accepts by way of consideration the agreement Mr R Kaethner has made to vacate the property by the date of completion.”

Not only was the document signed, but it was also witnessed by a clerk. 15th February 2006 was the day that the existing proceedings between Mr Face and Richard in the Edmonton County Court were disposed of by way of a consent order approved by District Judge Cohen.

57. I am entirely satisfied that by this document, Mr Face and Richard reached a binding compromise of the possession claim that Mr Face had brought against his son. Mr Face was to pay Richard £100,000, to be applied in the purchase of a property for Richard, in consideration of Richard vacating the property to enable the sale to proceed. What in fact happened was that the parties discovered that £100,000 would not purchase a property that was considered suitable for Richard. What was therefore done was that Mr Face spent £206,000 on the purchase of 120 Maryland Road for occupation by his son. Mr Lakin submits that the terms of this agreement required Mr Face to purchase a property for £100,000, or more if additional funds were provided by Richard. The only obligation (if any) created by the document was that there would be a gift of £100,000 to Richard that would be used to purchase a property for him. Mr Lakin submits that the 2006 document does not give Richard an interest in any property that the deceased might have purchased for any other amount. Furthermore, the property had to be identified and agreed between the parties, the inference being that if no such property was in fact identified, then no obligation to either gift the sum to Richard or to purchase a property for that amount arose. No purchase of a property was ever made for £100,000, or for any greater amount, with Richard contributing the extra. What in fact occurred was that Mr Face purchased 120 Maryland Road for £206,000, which purchase completed on 6th September 2006. Mr Lakin submits that it is clear that whatever the 2006 document does, it does not create any equitable interest in that property. The 2006 document is not referable to 120 Maryland Road, and it could not be specifically enforceable as against the purchase of that property had it not completed. Richard does not contend that he asked for the property to be transferred to him absolutely pursuant to the 2006 agreement. There is said to be no enforceable agreement between Richard and Mr Face that Richard would have any interest in 120 Maryland Road. Even if there were such an oral agreement, then it would be unenforceable for want of compliance with either section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 or section 53(1)(b) of the Law of Property Act 1925. In any event, the limitation period applicable to a claim in contract (of 6 years from the date of breach) has long since expired. Alternatively, insofar as equitable relief is sought, then reliance would be placed upon the doctrine of laches. For those reasons, Mr Lakin submits that the 2006 document cannot give rise to any equitable interest in the property.
58. I disagree. It is clear that what happened was that there was a binding compromise of the dispute between Mr Face and his son over his son's occupation of 18 Wray Crescent whereby Mr Face was to provide £100,000 for the purchase of a property for Richard. In the event, a property was purchased for £206,000 for Richard's occupation. In my judgment, the effect of the agreement, in the events that happened, was to create a resulting or constructive trust affecting 120 Maryland Road under which Richard acquired an interest in that property equivalent to £100,000 over £206,000, namely 48.03%, with Mr Face acquiring the remaining 51.97%.
59. However, the difficulty that Mr Kaethner faces is that on 21st April 2011 he was adjudged bankrupt, on his own debtor's petition, in the Central London County Court. The combined effect of sections 283 (relating to the bankrupt's estate) and 306 (relating to the vesting of the bankrupt's estate in his trustee in bankruptcy) of the Insolvency Act 1986 is that on the making of the bankruptcy order, Mr Kaethner's beneficial interest in the property vested in the Official Receiver as his trustee in bankruptcy. It would still appear to remain vested in that trustee. Mr Kaethner

acknowledged that he had never disclosed the existence of his interest in 120 Maryland Road to his trustee. He says that this was because he had received legal advice, which he subsequently was told was inaccurate, that the 2006 document gave rise to no interest in that property. I am satisfied that it did. However, that beneficial interest is now vested in Mr Kaethner's trustee in bankruptcy. By the time of his death, Mr Face had only the remaining 51.97% beneficial interest in the property of which he was able to dispose. Therefore, insofar as reliance is placed by Richard on the 2006 contract, it does not avail him because the beneficial interest to which it gave rise is now vested in his trustee in bankruptcy.

60. I turn then to the 2016 agreement. This is a typed document headed "Contract between Donald Charles Face and Richard Kaethner". The date is 3rd August 2016. It reads:

"Donald Charles Face agrees to create and put into a trust all of his legal interest and equitable interest in the freehold and leasehold of the property '120 Maryland Road, London N22 5AP' (hereinafter 'the property') and the consideration to [be] paid by Richard Kaethner is agreed to be one British pound (£1).

The form of the trust shall be as follows.

The trustee of the property shall be Ruby Sibayan.

The beneficiary of the trust shall be Richard Kaethner for his lifetime where the property will [be] held on trust for him to use as a home or for generating income as he chooses from time to time.

The trust document shall also include in it all that is required to ensure that it is also effective as a protective trust.

Upon the death of Richard Kaethner the property shall vest in Ruby Sibayan alone if there are no children from the relationship between Richard Kaethner and Ruby Sibayan, and if there are children it shall vest equally between Ruby Sibayan and all the children from the relationship between Richard Kaethner and Ruby Sibayan, and if Ruby Sibayan predeceases Richard Kaethner then the property shall vest in the children equally.

Donald Charles Face agrees to employ a professional in this area to fully constitute the trust for these purposes and intentions within six years of the date of this document."

Both parties are then said to agree to this contract, and it was signed by each of Mr Face and Richard, who printed their names as well as signing them, and inserted the date of 3rd August 2016.

61. I digress for a moment to add a short paragraph to the preceding part of this judgment relating to the 2006 contract. At trial, the point was taken that there was no evidence that the £5 consideration referred to in the 2006 contract had ever been paid. Certainly there is no record of any receipt of this sum at about that time in Mr Face's bank statements. Richard told the court that he had paid £5 into Mr Face's bank account and that he retained the counterfoil for this. Richard was given the opportunity, over the long adjournment to today, to come up with this counterfoil. He says that in the time available to him he has not found it, although he has produced documents that show that he had taken down the appropriate bank details for him to make the payment. I am not surprised that after this lapse of some 14 or more years, Mr Kaethner has been unable to come up with evidence of the payment. It is possible that he is mistaken and that it was paid in cash; but it seems to me that there is no reason not to believe Mr Kaethner's evidence that the £5 was paid. Given the amount in question, and its purely nominal nature, even if it were not paid I am sure that neither party placed any significance on that fact. In my judgment, it does not affect the creation of the beneficial interest in favour of Mr Kaethner.
62. I return then to this subsection of this judgment relating to the 2016 agreement.
63. In his skeleton argument, and as he developed the argument orally, Mr Lakin submits that the 2016 document appears to be an agreement between Richard and Mr Face that a trust would be set out at some point in the six years after the agreement whereby Richard would be granted a protected life interest in the property. The 2016 document does not itself attempt to be a fully constituted trust. At best, it is simply an agreement that a trust will be set up at some point in the future, and within six years of the agreement. On that point, the date of the creation of the trust has not yet passed and so, even on Richard's own case, there can be no claim for damages as there has, as yet, been no breach. Mr Lakin submits that what the 2016 agreement clearly envisages is that there will be a further document, professionally drafted, as instructed by Mr Face, that will contain all that is required to ensure that it is also effective as a protected trust. It is therefore said to be clear that Mr Face has not constituted any trust by the 2016 agreement. He has to do so by 2nd August 2022. Mr Lakin submits that it is clear that the 2016 document does not contain any present irrevocable declaration of trust at all. At best, it is an agreement to enter into a trust at some point in the future, on terms yet to be agreed. Mr Lakin points out that this is but one of many agreements that appear to have been reached between Richard and his father. He points to the fact that Richard and his father did attend Mr Pearl's offices so that the title to the property could be transferred to Richard, but that he left without any transfer taking place. This is said to constitute a refusal of any offer. He submits that since what was being contemplated was a transfer of the property to Richard, the 2016 agreement was superseded by a further agreement that in turn was never acted upon.
64. Mr Lakin submits that the court should not find any intention to create legal relations on the basis of the 2016 agreement. It was simply part of an ongoing process by Mr Face when considering options for 120 Maryland Road. The 2016 document should be viewed as heads of terms, rather than as a binding agreement in and of itself. The trust was to be constituted at a later date, and its terms would have to be agreed at the time of its drafting. The terms were completely open as to what the terms of the protective trust were going to be. Mr Lakin says that there is simply, in reality, an agreement to agree, which is entirely unenforceable because its terms are so vague

and uncertain that no definite meaning can be given to them without the addition of further terms. The facts are said to be analogous to the House of Lords case of *Scammell & Nephew Limited v Ouston* [1941] AC 251, where the House of Lords held that an agreement to acquire goods on hire purchase was too vague to be enforced since there were many kinds of hire purchase agreements in widely different terms so that it was impossible to specify the terms on which the parties had actually agreed. Mr Lakin submits, by analogy, that there are many kinds of protective trusts and trust powers. It is not possible, from the use of the term “protective trusts”, for the court to establish what type of trusts, or what terms, were actually intended. Since there has been no breach of the agreement as yet, there can be no remedy in damages. He therefore submits that the 2016 document gives rise to no equitable interest in 120 Maryland Road, and that the counterclaim by Richard should therefore be dismissed.

65. In the course of his oral submissions, Richard referred me to a passage at paragraph 10-051 of *Megarry and Wade: The Law of Real Property* (9th edn) citing the decision of the Court of Appeal in *Neville v Wilson* [1997] Ch 144 at 155-158. The learned editors there state that:

“It has been held that a specifically enforceable contract to transfer an equitable interest in circumstances where the transferee has furnished the consideration creates a constructive trust in favour of the transferee. This vests the equitable interest in the transferee without the need for writing.”

This is under the exception relating to resulting, implied or constructive trusts contained in section 53(2) of the Law of Property Act 1925.

66. I am satisfied that the position here is as follows: There was a binding agreement between Mr Face and Richard to create protective trusts of the property in favour of Richard for his lifetime, and thereafter, in the events that have happened, equally between Richard’s son and his wife Ruby Sibayan. That trust was to be fully constituted within six years of the date of the document by Mr Face employing a professional in the area to fully constitute the trust. At paragraph 22-043 of *Snell’s Equity* (34th edn) it is recognised that there are two main ways that a settlor may constitute an express trust. He may either convey the property to a trustee to hold for the beneficiaries, or he may declare himself to be a trustee of it. If the conveyance upon trust to the intended trustee has been completed, then the beneficiary can enforce the trust. The outcome is the same if the settlor simply declares himself a trustee of the property in the beneficiary’s favour. Once the declaration has been made over property already vested in the settlor, the beneficiaries can immediately enforce the trust. Here, however, it is clear that there is no present declaration of trust in favour of Richard.
67. Paragraph 22-037 of *Snell’s Equity* makes it clear that to create a trust the declaration must amount to a present irrevocable declaration of trust, and the writing must contain all its terms. That is clear from the decision of Neville J in the case of *Re Cozens* [1913] 2 Ch 478; see, in particular, the passage at page 486 of the judgment. Paragraph 22-042 of *Snell* makes it clear that once a trust is completely constituted, the beneficiaries can enforce it whether they have given value or are mere volunteers. If the trust is incompletely constituted, however, the outcome depends on whether the beneficiaries have given value. Beneficiaries who have given value can enforce the

trust, since the intended trustee would be in a position to compel the settlor to vest the trust property in him. The relevant maxim is that equity looks on that as done which has been agreed to be done. But if the beneficiaries of the intended trust are volunteers, then they generally cannot enforce the trust or compel the settlor to complete the conveyance to the trustee. That doctrine is well illustrated by the decision of Lord Cottenham LC in *Jeffreys v Jeffreys* (1841) Craig & Phillips 138, also reported at 41 ER 443. There a father, by a voluntary deed, had conveyed certain freeholds, and covenanted to surrender certain copyholds, to trustees in trust for his daughters. Afterwards he devised the same freeholds and copyholds to his widow and then died, without having surrendered the copyholds in pursuance of his covenant. The daughters sought to have the trusts of the deed carried into effect and to compel the widow to surrender the copyholds to which she had been admitted. The court enforced the trusts as to the freeholds as they had been duly conveyed to the trustees; but the Lord Chancellor refused to order the widow to surrender the copyholds. The deed had not operated to vest them in the trustees; and as the father's covenant was voluntary, the daughters had no equity to compel the widow to part with a legal interest which she had properly acquired. Here the expressed consideration for the 2016 agreement is one British pound. That is an entirely nominal consideration. Paragraph 4-022 of *Snell's Equity* makes it clear that although it does not need to be shown that the consideration is adequate, a nominal consideration is not sufficient to render a promisee a purchaser for value. The authority cited for that is the decision of Neuberger J in the case of *Nurdin and Peacock v DB Ramsden* [1999] 1 EGLR 119.

68. I am satisfied that in the present case there is no completely constituted trust of Mr Face's beneficial interest in 120 Maryland Road. There is merely an agreement to create a trust in the future. Since Richard is in the position of a volunteer, he is unable to enforce that trust. The authority relied on by Mr Kaethner of *Neville v Wilson* is of no assistance to him because that presupposes the existence of a specifically enforceable contract; and here the agreement is not specifically enforceable because Richard is in the position of a volunteer. I think that Richard recognised that and he therefore sought to say that he was entitled to damages for breach of contract. In support of that, he relies upon a statement at paragraph 27-052 of *Chitty on Contracts* (33rd edn) where it is said that on the principle that equity will not assist a volunteer, specific performance will not be ordered of a gratuitous promise even though it is binding at law because it is made by deed or supported by a nominal consideration so that an action at law for the agreed sum or for damages can successfully be brought upon it. The authority cited for that is the decision of Romer J in the case of *Cannon v Hartley* [1949] Ch 213. In his judgment in that case, at page 217, Romer J recognised that whilst a volunteer could not come to a court of equity and ask for relief such as specific performance, which was peculiar to the equity jurisdiction, it was reasonably clear that, provided an agreement was supported by consideration, then damages would be recoverable at law.
69. The difficulty, as Mr Lakin has pointed out, is that the time for performance of the agreement has not yet expired and it therefore cannot be said that any claim in damages for breach of contract has yet crystallised. The time for performance has not yet expired; and I am satisfied that so far neither Mr Face, nor his estate, have conducted themselves in such a way as to amount to a repudiatory breach of the agreement. Likewise, I do not consider that Richard's conduct, even at the meeting with Mr Pearl on 5th October 2016, can be said to have amounted to a repudiatory

breach of the 2016 agreement; and, in any event, there was no acceptance of any such breach by Mr Face. Mr Lakin argues that the agreement is in any event unenforceable on the grounds of uncertainty. I do not accept that submission. It seems to me that the parties have sufficiently identified the trusts upon which the property is to be held. They were to be protective trusts in favour of Richard during his lifetime, and the discretionary trusts were to be in favour of Ruby and any children of the relationship between herself and Richard. Any doubt as to the precise terms was to be determined objectively by a professional in this area by reference to the standards of an appropriate professionally drafted protective trust. I note that at the end of his judgment in *Cannon v Hartley* Romer J noted a submission that, in relation to the claim for damages, the terms of the settlement in that case had contemplated that certain terms of the settlement were to be decided by arbitration (in default of agreement) and that this introduced an element of uncertainty into the clause which meant that the court would not, or should not, entertain a claim for damages for its breach. Romer J dismissed that submission as unsound on the footing that the beneficial interests contemplated to arise in relation to the after-acquired property were perfectly clearly set out and the only thing which had to be agreed, and in default of agreement would have to be arbitrated, was pure machinery for carrying out the beneficial interests so defined. In my judgment, the present case is analogous to that (even though there was no provision for arbitration in default of agreement).

70. So, for those reasons, I find that there was no completely constituted trust in favour of Richard of Mr Face's 51.97% beneficial interest in 120 Maryland Road. There is no specifically enforceable agreement to create such a trust. It may be that in the future, if the estate were to fail to create such a trust, that might give rise to a claim for damages. The quantification of those damages would be a matter of some difficulty because it would involve assessing, in money terms, the value of a protected life interest in 120 Maryland Road. But that is a potential future question. There is no present breach, and therefore no present claim for damages. Therefore, the counterclaim falls to be dismissed.

VII: Conclusions.

71. For the reasons I have given, I dismiss the claim by Rebeca as totally without merit. My order dismissing the claim should include my recording that the claim is totally without merit. It is based on a fabricated document. I will pronounce against the alleged 2017 will. I will declare that Mr Face died intestate. On the counterclaim I will declare that the 2006 contract operated to vest a 48.03% beneficial interest in 120 Maryland Road in Richard, but that this beneficial interest vested in the Official Receiver, as Richard's trustee in bankruptcy, on the making of the bankruptcy order in the Central London County Court, on Richard's own debtor's petition, on 21st April 2011 by virtue of sections 283 and 306 of the Insolvency Act 1986. This beneficial interest would still appear to remain vested in Richard's trustee in bankruptcy. I would also declare that the 2016 contract operated as a voluntary agreement to create protective trusts of Mr Face's remaining 51.97% beneficial interest in 120 Maryland Road, but that such trusts were never completely constituted; and that, as the consideration provided for the agreement by Richard was entirely nominal, the agreement is not capable of specific performance. An action at law might arise for damages for any breach of the agreement, but the time for performance has not yet expired; and I am satisfied that so far neither Mr Face, nor his estate, have conducted

themselves in such a way as to amount to a repudiatory breach of the agreement. The counterclaim therefore falls to be dismissed.

72. I will direct that a transcript of this judgment be obtained at public expense and that it should be sent to the Official Receiver in Croydon and to the Crown Prosecution Service. Having dismissed the claim, and said that it was totally without merit, the costs must fall to be paid by the claimant to the defendants. Having regard to the claimant's conduct, I am entirely satisfied that they should fall to be assessed on the indemnity, rather than the usual standard, basis. No doubt the costs can be retained out of Rebeca Face's one-third interest in the intestate estate of her late father. As for the costs of the counterclaim, my provisional view is that the just way of dealing with them is that there should be no order as to those costs. Neither side has been entirely successful or unsuccessful. Richard has succeeded in asserting a claim under the 2006 contract, but it has done him no good because that interest is vested in the Official Receiver as his trustee in bankruptcy. He has succeeded in establishing, contrary to the contentions of the defendants, that the 2016 contract was a valid agreement; but it is not specifically enforceable. It may give rise to a claim for damages in the future; but there is no present entitlement to damages. As a result, neither side has been entirely successful in their respective arguments; and it therefore seems to me that the just way of dealing with those costs may simply be to say: "No order as to the costs of the counterclaim"; but I will hear submissions on that.

This Judgment has been approved by the Judge.