

Neutral Citation: [2020] EWHC 3486 (Ch)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
PROPERTY TRUST AND PROBATE LIST (Ch)

Case No: PT-2020-000078

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Friday, 14 August 2020

BEFORE:

MASTER SHUMAN

BETWEEN:

DENISE MARY AUSTIN

Claimant

- and -

(1) GEMMA MITCHELL
(2) MAXWELL HORVATH

Defendants

MR NATHAN WELLS appeared on behalf of the Claimant
The Defendants did not attend and were not represented

JUDGMENT

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MASTER SHUMAN:

1. This is a claim issued by a Part 8 claim form on 24 January 2020 seeking a declaration under section 2 of the Presumption of Death Act 2013 (“the 2013 Act”) that Karoly John Horvath, known as Charles and who was last known to be alive on 26 May 1989 is presumed to have died. I shall refer to him as Charles.
2. The claim is brought by Denise Mary Austin (married name Allan) who is Charles' mother ("Mrs Allan"). Mrs Allan also seeks a declaration under section 4 (2) of the 2013 Act that she is the sole legal and beneficial owner of the property at 71 The Arches, Clarendon Road, Halifax, West Yorkshire HX3 6LD (“the Property”), a property that she jointly owns with Charles.
3. The claim is supported by a detailed witness statement from Mrs Allan dated 23 January 2020 with extensive exhibits. I have also had the benefit of oral submissions from Mr Wells, counsel on behalf of Mrs Allan, supplementing his skeleton argument and chronology of events.
4. As to the defendants, the first defendant, Gemma Mitchell, is Charles' daughter. She lives in Halifax, West Yorkshire and enjoys a good relationship with her grandmother, Mrs Allan. The second defendant, Maxwell Horvath, is Charles' half-brother and lives in Canada. Neither Gemma nor Maxwell have filed an acknowledgement of service. However, certificates of service have been filed at court. I am satisfied that Gemma was served by first class post to her residential address on 26 February 2020 and Maxwell was served by international signed-for post on or about 2 March 2020. Moreover, Gemma confirmed in an email to Mrs Allan's solicitors yesterday that she does not oppose the claim, she is fully aware of the proceedings and that the hearing is taking place today. Similarly, Maxwell has confirmed that he received the relevant court proceedings on 4 March 2020 and he does not oppose the claim.
5. Charles had no other children or siblings and his father died in 2005. So I am satisfied for the purposes of section 9(1) of the 2013 Act and CPR rule 57.21 that the relevant people have been given notice of the claim.

THE LAW

6. Section 1 of the 2013 Act provides,

"1 Applying for a declaration

(1) This section applies where a person who is missing -

(a) is thought to have died, or

(b) has not been known to be alive for a period of at least 7 years."

7. The category of people who may apply to the High Court for a declaration that the missing person is presumed to be dead is set out in section 1(5)(a), but that is not exhaustive. A parent of the missing person has standing to bring a claim.

8. Section 1(3)(a), and this is material to this case provides that:

"The court has jurisdiction to hear and determine an application under this section only if -

(a) the missing person was domiciled in England and Wales on the day on which he or she was last known to be alive..."

9. Section 2 of the Act provides that:

"On an application under section 1, the court must make the declaration if it is satisfied that the missing person -

(a) has died, or

(b) has not been known to be alive for a period of at least 7 years.

(2) It must include in the declaration a finding as to the date and time of the missing person's death."

10. I will come back to that in due course in my judgment because the manner in which the 2013 Act is drafted requires some temporal gymnastics in certain cases, and this is one of those cases. In relation to section 2, section 2(3) provides:

"(3) Where the court -

(a) is satisfied that the missing person has died, but

(b) is uncertain at which moment during a period the missing person died,

The finding must be that the missing person is presumed to have died at the end of that period."

11. There is no guidance as to how the court determines that period. In *In the Matter of an Application for a Declaration of the Presumed Death of 'AB'* [2019] EWHC 2785 (Ch) (*Re AB*) Chief Master Marsh declared that the date of the death was the date of the hearing: the court was satisfied the missing person had died but no date emerged from the evidence as to when they had died.
12. Because of the nature of this claim and the finality of the declaration that is sought and the consequences that flow from the court declaring that someone has died, there are prescribed procedural safeguards in place as set out in section 9 of the 2013 Act and in CPR 57.19, 20, 21 and the practice direction.

THE CLAIM

Domicile

13. Turning then to the substantive claim before me, the first point that needs consideration is whether Charles was domiciled in England and Wales at the day that he was last known to be alive. There is no specific regime under the 2013 Act and so the usual rules to determine domicile apply. Mr Wells in his submissions and skeleton argument set out a detailed analysis on the law and how it applies to this case. The material date for these purposes is 26 or 27 May 1989, I will explain later why those dates are relevant.
14. Domicile was potentially in issue in this case because Charles was born in Ontario, Canada on 21 August 1968. Charles' parents are Mrs Allan and Max. They were married at the time of Charles' birth and lived in Canada. Max was born in Hungary but his family had settled in Canada. Mrs Allan's evidence is that they intended to live

in England and moved there after Charles was born. However Max was only granted a 6 month visa and so had to return to Canada. Mrs Allan returned to Canada with Charles in December 1971 but the couple separated in January 1972.

15. I am not sure from the evidence before me, and it does not matter, whether Max retained his domicile of origin, Hungary, or had acquired a domicile of choice, Canada. As a matter of English law at the date of Charles' birth his domicile of origin was that of his father, *Udny v Udny* (1869) L.R. 1 Sc. 441 at 457. As I have indicated that could be Canadian but could also be Hungarian. However, in 1972 Mrs Allan and Max separated and Mrs Allan returned to England with Charles. Whilst Charles certainly saw his father, he had periods when he stayed with his father, he lived and made his permanent home with his mother, Mrs Allan, in England.

16. On 1 January 1974 the Domicile and Matrimonial Proceedings Act 1973 ("the DMPA 1973") came into force. Prior to that the domicile of a married woman was dictated by her spouse's domicile. Section 1(1) of the DMPA 1973 abolished the wife's dependent domicile. Section 1(2) provides that,

"(2) Where immediately before this section came into force a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the coming into force of this section."

17. So looking at the factual matrix in this case, when the DMPA 1973 came into force, Mrs Allan had left her husband and had returned to live permanently in her country of origin. In *Inland Revenue Commissioners v Duchess of Portland* [1982] Ch 314 P's domicile of origin was Canada but she married the Duke of Portland and acquired an English domicile of dependency. She maintained her Canadian citizenship and returned every year to Canada for some 10 to 12 weeks. The effect of section 1(2) of the DMPA 1973 was to reimpose on a married woman the domicile of dependency as her domicile of choice until that was changed by acquisition or revival of another domicile. P had not changed her English domicile. At page 319 Nourse J gave the example of a woman with a foreign domicile of origin married to a domiciled Englishman who had

left her husband and returned to live in her country of origin, either permanently or indefinitely, before 1 January 1974; *“The wife’s domicile of dependency would have changed by revival of her domicile of origin on January 1, 1974, without the need for any further act on her part.”* Accordingly, Mrs Allen had revived her domicile of origin when the 1973 Act came into force.

18. Under section 4 of the DMPA 1973 a child whose parents are alive but living apart will have the domicile of his mother if “(a) he then has his home with her and has no home with his father”. Mrs Allen’s evidence, which I accept, is that after she separated from Max she raised Charles alone. He visited Max twice and his paternal grandparents once but his home was with Mrs Allen. Charles was living with his mother in England, his mother having had a domicile through her marriage of Canada, then reverted to her domicile of origin, which was England. In any event, given that in 1972 Mrs Allan returned to live in England with Charles and the evidence is that that move was permanent she would have acquired a domicile of choice in England. That is all significant because, by virtue of section 4(1) and (2) of the DMPA 1973, Charles will have Mrs Allan's domicile as a domicile of dependency.
19. When Charles reached 16, under section 3(1) of the DMPA 1973, he was capable of acquiring his own independent domicile. At that point his domicile was England. Although Charles joined the French Foreign Legion at about the age of 17 or 18 for 6 months his home remained with his mother in West Yorkshire. There is nothing in the evidence before me to suggest that he abandoned his domicile or acquired a different domicile. I am satisfied that he had a domicile through his mother that was retained after the age of 16 in England. In September 1988, Charles went to Canada as a backpacker to travel to see family, to understand more about the country that he was born in, but he did not go there with the intention to permanently reside in Canada. Charles’ domicile remained to the date of his presumed death that of England.

Advertisement of the claim

20. Under section 9(2) of the 2013 Act and CPR 57.21, a claimant is required within seven days of the issue of the claim to ensure that notices are published in at least one newspaper circulating in the vicinity of the last known address of the missing person.

Mr Wells reminded me of the purpose of this obligation by reference to the decision of the Chief Master in *Re AB* at [15] and [16]:

"15. Section 9(2) of the Act requires that an application must be advertised in accordance with rules of court and CPR 57.21 specifies that the advertisement must in a newspaper circulating "in the vicinity of the last known address of the missing person". The provision may serve no purpose in the case of a person taken hostage abroad and the comparable provision in the Guardianship (Missing Persons) Act 2017 and CPR 57.29 may even put the life of the missing person at risk. However, whether the requirement of the Act and the rules is one that can be waived by the court is not an issue that arises in this case. The provision has caused difficulty because AB's last known address was taken to be his address in the Yemen, albeit that he had only been resident at that address for just over a month and the period of time he was due to reside there was only 5 months. With some difficulty, an advertisement has been placed in a newspaper called Al-Ayyam that is based in Aden. I am satisfied that this fulfilled the requirements of the Act.

16. However, it seems to me that it would have been sufficient to have advertised the claim in a newspaper circulating in the vicinity of AB's address in England. This was his permanent address and one to which he had intended to return within a matter of months. The purpose that lies behind the requirement to advertise is to ensure both that persons who may have knowledge of the missing person's whereabouts, or when they may have died, and those who may be interested in the making of an order under the Act have notice of the proceedings. There will be cases in which a person goes missing in a war zone or in a very isolated part of the world where an advertisement locally is not a practical proposition. It is unlikely that an inability to advertise in such an area was intended to thwart the claimant's ability to make an application. If, however, the missing person has moved to reside abroad on a permanent basis, local advertising may be essential."

21. The purpose of the advertisement is to see if there is any more information that comes to light in relation to the missing person. It is also to enable anyone that is interested in the claim that may wish to intervene in the claim to have notice of it and have the opportunity to do so.
22. In the present claim, the claim was issued on 24 January 2020 and on 25 January 2020, there was a notice in the prescribed form in the Kelowna Daily Courier and Penticton Herald. The reason it was advertised in those particular publications is that Charles'

last known address was in Tiny Town Campsite in Kelowna, British Columbia.

Mr Wells pointed out to me that the notice provides Charles' last known address as Tiny Tent Town Campsite in the RV Park, 3316 Lakeshore Road, Kelowna, British Columbia.

23. This case has been prepared very thoroughly on behalf of Mrs Allan by her solicitors. There was also an advertisement placed in the Halifax Courier on 30 January 2020. That is set out in the prescribed form and gives his address as 71 The Arches, Halifax, Yorkshire, England, which is his last known residential address. So I am satisfied that the relevant advertisements have been made in accordance with the Act in this case.

The declaration of presumed death

24. The test is to be determined on the balance of probabilities and I was again referred to the case of *Re AB*, specifically paragraph 9. The court may make findings on circumstantial evidence. Mrs Allan's witness statement sets out a tireless campaign by her to find out what happened to her son, a son that she unquestionably had a close and loving relationship with. Mr Wells has taken me through the evidence at some length and I will set out the relevant factual matrix and the evidence before me, because in this case I am satisfied that Charles has died and I will go on to deal with the date and time of that later.
25. In terms of the relevant factual matrix and the evidence before me there are a number of significant factors. The evidence that has emerged is as a result of the tireless campaign by Mrs Allan to find answers to Charles' disappearance.
26. Charles arrived in Canada on 22 September 1988. He travelled there on an open ticket, but that is quite common for backpackers and travellers to do. It was his intention to travel across Canada to explore and discover more about the country in which he was born, to visit his father, his godfather and other family members.
27. Charles remained in regular contact with his mother, Mrs Allan, after his arrival in Canada. I bear in mind that this was back in 1989 when the days of smartphones, tablets and the connections we have now were not available. Despite communication

difficulties, Charles remained in regular contact with his mother. He telephoned her, he posted cards, he faxed letters between September 1989 and May 1989. He would call home on average two or three times a month, sometimes more often and, in December 1988 Mrs Allan flew out to Montreal. They met up so they could enjoy an early Christmas together. Some of the communications have been exhibited to Mrs Allan's witness statement. I consider the regular contact Charles had with Mrs Allan to be an important part of the factual matrix.

28. In a faxed letter dated 11 May 1989 Charles wrote to Mrs Allan thanking her for the money she has sent him in Banff. This was the last communication Mrs Allan received from Charles. He referred to a recent trip she had had to Singapore. He then set out how much it would cost to travel from Vancouver to Hong Kong. The significance of this is that, in August 1989, it was to be Charles' 21 birthday and Mrs Allan's 40th birthday. They discussed and planned to meet in Hong Kong, somewhere that Mrs Allan knew and wanted to show Charles. This is corroborated in a letter that Joanne Zebroff sent to Mrs Allan. She was a young woman from Kelowna who had befriended Charles and had herself been a traveller for a little while. She confirmed that he had spoken to her about flying to Hong Kong to meet up with his mother. Her impression was that it was an important event for Charles. So in the context of this case, that factor is significant because, for the reasons that I will go on to, Charles vanished in May 1989. There is no reason why he would have decided not to meet his mother in Hong Kong unless something had happened to him.
29. Charles enjoyed a loving and close relationship with his family, particularly his mother. There was absolutely no reason for him to have deliberately decided to cease all communication with not only his mother, but also through her his maternal grandmother. He had, when he had been travelling, stayed in constant contact with his mother for over eight months. His communications were written in affectionate terms that one would hope to see between a son and his mother. Joanne Zebroff's letter refers to Charles always talking fondly of his mother.
30. Another significant factor is that Charles accidentally left his passport at his godfather's house in Canada and there is no evidence that he ever applied for a replacement one. Charles went to see his Godfather in March 1989 and it only came to

light much later, after he had gone missing, that his British passport had accidentally fallen down the side of a chair. Enquiries were made of the British Consulate General in Vancouver and, in a letter dated 25 November 1991, the Consulate says this:

"Dear Mrs Allan

Thank you for your letter of 1 November regarding passport records. We are not a passport issuing office, however the passport section of the British High Commission Ottawa have checked their files back to 1986 and show no record of a Charles Karoly John Horvath applying for any type of passport facility. I trust this will prove of some help to you."

31. Charles' last known address was at a campsite in Kelowna, British Columbia, known as Tiny Town or Tiny Tent Town. It was a tent and trailer park. Mrs Allan who visited there describes it as a rough campsite and not a pleasant place to stay. "It was very dark, neglected, overgrown and accommodated unsavoury residents." That is reinforced in slightly more colourful terms by Constable Blaney of the Royal Canadian Mounted Police who describes the residents of Tiny Town Campsite as "evil". From the evidence Charles took a bus from Banff to Kelowna on 3 May 1989. There are some limited records but Charles was at the campsite on 11 May and 17 May, and I am also satisfied that he was at that campsite on 26 May.
32. The last confirmed sighting of Charles was on 26 May 1989. On that day he cashed in his pay cheque from the Flintstones Theme Park where he had been working. In May 1989 Charles called into the Kelowna Job Mart on a daily basis looking for work. That is confirmed in a letter from the Job Mart employment centre and that he stopped going there near the end of May 1989.
33. Another important factor concerns Charles' belongings. In July 1990 when Mrs Allan visited the campsite, she had to struggle to get information from the campsite about Charles and Charles' belongings. Perhaps the easiest way of setting this out is to use Mrs Allan's own words as set out in paragraph 46 onwards of her witness statement:

"When I first entered the campsite I encountered Tiny Town resident Kevin Trent Egan ('Trent Egan'), at that point he did not admit to having any of Charles' possessions and kept reiterating that I would have to wait until the campsite manager, Phil Flett

(‘Flett’), came back and speak to him. Trent Egan and I sat in the scorching heat and awaited the return of Flett. When he returned to the campsite, Flett said he recalled Charles. He went directly to an orange shed and returned with three small items belonging to Charles, a rosary, a tiny bible and a leather strap off Charles' boot."

34. When Mrs Allan asked, "Is this all that is left of my son?" Flett stated that all of Charles' other belongings, his tent, his sleeping bag, his backpack, his personal papers, his photographs, his clothing and his ID had been stored in a shed that had been thrown away in the spring of 1990. He gave no reason as to why that was done in spring 1990 or at all. Mrs Allan passed that information on to the Kelowna Royal Canadian Mounted Police and on 12 July 1990, Constable Blaney, who at that stage was looking into the case, went into Tiny Town with police sirens blaring. Mrs Allan says that they were blaring so loudly she could hear them from her motel room, and he retrieved two of Charles' shirts and a shaving bag from Trent Egan. Charles had kept his personal papers, photographs and ID in his shaving bag. Constable Blaney also established that Flett's ex-girlfriend, Sheila Neihaus, had taken two of Charles' expensive jumpers to Vancouver. So from the evidence it appears that Charles' belongings had not been thrown away simply because he had left the site but rather they were either divided up or taken by other residents of Tiny Town.

35. During a further visit to Kelowna by Mrs Allan in March 1992, she received an anonymous note and that says:

"Dear Mrs Allan,

I seen your ad in the paper looking for your son. I seen him in Tiny Tent Town May 26. We were partying and two people knocked him out but he died. His body is in the lake by the bridge."

36. A search was carried out at the lake during which another anonymous note was received, recording, "Your diving on the wrong side of the bridge."
37. The notes were delivered by a cab driver who said that he had been handed the notes by a young man who was very nervous. A body was found in the lake but it was not that of Charles and nothing further was heard from this nervous young man. In

November 1992 a young woman called at the hotel that Mrs Allan was saying at, unfortunately at a time she was out. She spoke to the manageress and she told her that Mrs Allan was wasting her time searching for Charles as she knew what had happened to him. She was questioned as to why she had not come forward earlier and she said she was too afraid. She did not leave her name. She was again nervous and she left and she has never made contact with Mrs Allan.

38. Mr Wells submits that in some of these cases, which is sadly very true, you have vexatious interventions by people, but I am satisfied in this case given the background factual matrix, that these were interventions by individuals who were not vexatious but were endeavouring to be helpful. They were described as "nervous" or "frightened". They had very limited contact and have not had contact since. They undoubtedly indicated that Charles, as Mr Wells describes it, "met with foul play".
39. Mr Wells has taken me through the evidence from the Royal Canadian Mounted Police in relation to this case. It would be fair to say that initially Mrs Allan, who was becoming increasingly and justifiably distraught, had great difficulty in getting the Royal Canadian Mounted Police to engage and to pursue this matter with the seriousness that with hindsight shows that it needed. Constable Blaney has told Mrs Allan in very blunt terms in July 1990 that it was the belief of the Kelowna detachment that Charles was dead and that they may never find his body or find out what happened to him. In a letter of 4 October 2005 to solicitors, Constable Lisa Cullen of the Kelowna Royal Canadian Mounted Police wrote:

"Because the circumstances surrounding Mr Horvath's disappearance are suspicious, investigators believe that Mr Horvath may have met with foul play and died in August of 1989."

40. For reasons that I will go on to in terms of timing, it is not clear to me at all why August 1989 was determined as the relevant date by the Royal Canadian Mounted Police. After much insistence from Mrs Allan, they agreed that a missing person file should be opened in relation to Charles, and that was in August 1989. I wonder if that is why the date of August 1989 appears in the letter.

41. In an email dated 21 February 2018 to the claimant's solicitors, Constable Bertrand of the Kelowna Serious Crime Unit, who had conduct of this investigation since 2014, confirmed there is no evidence to suggest that Charles Horvath is still alive.
42. Mrs Allan in her witness statement has set out, over the course of so many years, her tireless efforts to obtain the maximum possible publicity for the investigation into Charles' disappearance, both in Canada and in the United Kingdom. She has placed numerous advertisements in the local press. She has raised the case in books, in newspapers, in magazine articles, a billboard poster was erected in Kelowna in 2010. She has arranged vigils and helped to form the Missing People Choir, all keeping Charles' disappearance in the public eye so that, for the last 30 years there has been continuous publicity so that Mrs Allan can try and find out what happened to Charles in May 1989. From the evidence before me, the last confirmed sighting of Charles remains that of 26 May 1989.
43. I am entirely satisfied on the evidence before me that Charles has died. That leads me to section 2(2) of the 2013 Act and I must make a finding as to the date and time of Charles' death. I am inexorably drawn on the evidence to a finding that something happened to Charles on the night of 26 May 1989 and that he died on that night. These are matters that I have already referred to, but I do consider in the context of where he was staying, his relationship with his mother and his constant communication, that these are significant. First, the last confirmed sighting of Charles was on 26 May 1989 when he cashed his pay cheque. So on that date he had cash on him. Second, Charles called into the Job Mart in Kelowna on a daily basis in May but he stopped going in near the end of May 1989. Third, the anonymous note from the extremely nervous young man specifically says 26 May. Fourthly, given the tireless enquiries that Mrs Allan has made, she has been unable to trace any record of Charles after late May.
44. I have considered the only inconsistent evidence with this which is threefold. Joanne Zebroff in her letter says Charles visited her family's apartment on one occasion between 26 May 1989 and August 1989. Her brother was visiting after a five year estrangement and it was not convenient to see him on that occasion. That is an extremely broad time period. Her brother says that he was in the apartment between 19 July and 31 July. He refers to a brief visit by a male with an English accent but notes

his mother addressed that person as "James". That is never a name that Charles has used. So I am not satisfied on the basis of that information that Charles did visit Joanne Zebroff between 26 May and August 1989, I think the family are mistaken.

45. This is absolutely no criticism of Ms Zebroff who has tried to help in this case and help Mrs Allan, but recollection of dates can be very difficult, particularly months after the event. My conclusion is supported by Ms Zebroff referring to meeting Charles in late April when he did not arrive in Kelowna until 3 May; she wrote the letter to Mrs Allan on 14 June 1990.
46. The second event that Ms Zebroff refers to is that she says that she saw Charles in a Kelowna nightclub as late as August 1989 but did not speak with him. This is out of kilter with the rest of the evidence in this case and Ms Zebroff may well have seen someone that looked like Charles, but I do not accept that she saw Charles in the nightclub in August 1989.
47. The third inconsistent evidence is that the Royal Canadian Mounted Police have referred to Charles having died in August 1989. As I have already indicated, there is no basis given for that date. Mrs Allan pressed the police to investigate her son's disappearance but it was only on 10 August 1989 that they were persuaded to file a missing persons report. I suspect that it why August 1989 appears in their letter, there is no other explanation.
48. So on the balance of probabilities, I find that Charles died. He died at some stage on the night of 26 May 1989 in British Columbia and he is likely to have died in Tent City in Kelowna. However, what I do not know is at what time he died. Because of the way in which the 2013 Act is drafted, as the judge, I have to perform in some cases temporal gymnastics to work out what that date and time should be. I wondered whether 11.59 pm on 26 May is the appropriate time to choose. I am not entirely satisfied that would be the correct time, not least if Charles was partying, that could easily be into the early hours. So what I am satisfied is that, given that Charles was last seen on 26 May, given that he did not attend the Job Mart and there is no record of him from 27 May, it seems to me that the correct period for the purposes of the 2013

Act is the evening of 26 May to noon on 27 May 1989 and that is British Columbia time.

49. I find in accordance with section 2(3)(b) of the 2013 Act that Charles died at 12.01 pm on 27 May 1989, British Columbia time.
50. Lastly, Mrs Allan seeks a declaration under section 4 of the 2013 Act: “(1)(a) the court may determine any question which relates to an interest in property and arises as a result of the declaration”. Under section 4(2) the court may make such order as it considers reasonable in relation to any interest in property acquired as a result of the declaration that a missing person has died.
51. Mrs Allan is the freehold owner of the Property, registered under title number WYK332981. The official copies of title record that Mrs Allan, using her maiden name Austin, and Charles were registered as the owners of the Property on 6 October 1988. Mrs Allan explains that she transferred the Property into joint names to give Charles long-term financial security. I have also seen evidence that the mortgage on the Property was redeemed in 1995. The starting point is that equity follows the law. As Mrs Allan and Charles were joint tenants in law they are also joint tenants in equity. There is no evidence to counter this. Indeed as the transfer was to provide long term security for Charles that would support a joint tenancy in equity. So Mrs Allan and Charles held the property on trust for themselves as joint tenants. Upon Charles' death, as I have declared, on 27 May 1989, under the doctrine of survivorship, his beneficial interest in the property automatically passed to Mrs Allan so that she holds the entirety of the beneficial interest. It is appropriate to make the declaration sought that Mrs Allan by survivorship holds the entire legal and beneficial interest in the Property.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: civil@epiqglobal.co.uk