Neutral Citation Number: [2021] EWHC 3566 (Ch)

Case No: PT-2020-000544

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 January 2022

**Before**:

**Deputy Master Lampert**

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**Between:**

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|---|---|
| **Kevin Christopher Morris** | **Claimant** |
| **- and –** | |
| **(1) Juliet Fuirer** | **Defendants** |
| **(2) Jeremy Birkett** | |
| **(3) Susan Christine Glenholme** | |
| **(4) Julie Collins** | |
| **(5) Rachel Hyndman** | |
| **(6) Age UK** | |
| **(7) Hope for Children** | |
| **(8) Become** | |
| **(9) The Salvation Army** | |

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**The Claimant appeared in person**
**Toby Bishop (instructed by Wilsons Solicitors LLP) for the 6th to 9th Defendants**
**The 1st to 5th Defendants did not appear and were unrepresented**

Hearing date: 21 May 2021

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**Deputy Master Lampert:**

***The Parties***

1. The Claimant, Kevin Morris, is the only child of Cynthia Morris (deceased) who died on 7 August 2017 leaving a last Will dated 14 July 2010. Mrs Morris had made two prior Wills on 28 November 2006 and 25 October 2000. The Claimant was the principal beneficiary under the Will dated 25 October 2000 but not under

the later Wills. On 16 July 2020 the Claimant issued this claim disputing the validity of the 2006 and 2010 Wills.

2. By the application before me, the Sixth to Ninth Defendants, namely Age UK, Hope for Children, Become and The Salvation Army ("the Charities") seek reverse summary judgment and/or to strike out the claim.

3. The Claimant represented himself at the hearing. He was assisted by his wife, Elaine Morris.

4. The First Defendant, Juliet Fuirer, was a lifelong friend of Mrs Morris. She is the beneficiary of a pecuniary legacy of £70,000 under the 2010 Will. The Claimant accuses Ms Fuirer of undue influence and fraudulent calumny. Ms Fuirer supported the Charities' application but took no active part in it.

5. The 2010 Will named the Second Defendant, Jeremy Birkett, the Fourth Defendant, Julie Collins, and the partners in the firm of Debenhams Ottaway solicitors, as executors and trustees. The Third Defendant, Susan Glenholme, is a partner of Debenhams Ottaway and she extracted the grant of probate together with the Second Defendant. The Second and Third Defendants take a neutral position in relation to the application. The Fourth Defendant did not join in the grant and she has not taken an active part in the proceedings.

6. The Fifth Defendant is the solicitor who drafted the 2010 Will. She supported the application but took no active part in it.

7. The hearing took place remotely due to the ongoing global pandemic. Mr Bishop appeared on behalf of the Charities. It was clear to me that Mr Bishop was mindful that the Claimant was a litigant in person and he took time to explain the basis of the application in great detail so as to ensure that that it was capable of being understood by a lay person.

8. The Application Notice and supporting evidence was sent to the Claimant by the Charities' solicitor on 19 February 2021. On 28 April 2021 the Charities' solicitor wrote to the Claimant regarding preparations for the hearing which they stated would be on 21 May 2021. That letter enclosed a draft case summary, draft list of relevant persons, a chronology and a draft list of issues for determination. The Claimant was asked to provide comments on these documents but did not do so. On 14 May 2021 the Claimant queried why he had not received notice of the hearing from the Court and this was provided to him the same day by the Charities' solicitor. Despite the formal notice of hearing not having been sent to him prior to 14 May 2021, I am satisfied that the Claimant was on notice of the hearing from 28 April 2021. CPR Part 24.4(3) provides that where a summary judgment hearing is fixed, the respondent must be given at least 14 days' notice of the hearing date and the issues which the Court is to decide at the hearing. I consider that the letter of 28 April 2021 and the enclosures thereto were sufficient to comply with this requirement.

9. The Claimant argued during his submissions that due to the Covid 19 pandemic and recent ill-health he had had insufficient time to go through his copious records

to collate all of the evidence on which he wanted to rely. However, the Claimant first intimated a challenge to the 2010 Will in January 2018, his Claim Form was accompanied by lengthy Details of Claim and Heads of Claim (which were more akin to a witness statements than a statement of case) and he filed additional evidence totalling 290 pages shortly before the hearing. Therefore, in my judgment, the Claimant has had ample opportunity to put his best case forward and I do not consider him to have been prejudiced by the timing of the hearing.

10. In addition to the hearing bundle prepared by the applicants' solicitors, the Claimant filed his own bundle which contained a large amount of memorabilia collected across his lifetime including family photographs, correspondence between the Claimant and his mother (letters, birthday cards etc.) and various records of his personal and professional achievements (references, certificates etc.) which were intended to go to the Claimant's character. I will note at this point that rather than making legal submissions the Claimant mostly gave evidence and I allowed him considerable leeway to do so. He paid painstaking attention to detail and I find that he gave a truthful account of events dating back across the course of his life, recounting the closeness of his relationship with his mother. However, he largely focussed on the period pre-dating 2006 when Mrs Morris first amended her Will to exclude the Claimant as residuary beneficiary. I suggested to the Claimant on several occasions that he should focus on later years and address the deterioration in his relationship with his mother that was evident on the Claimant's statement of case from around 2003. He struggled to focus on the relevant time frame despite my prompting. Therefore, in order to ensure fairness to the Claimant, I have had regard to the entirety of his written statements, correspondence (particularly a letter from the Claimant to Fiona Campbell-White of Wilsons LLP dated 15 April 2015) and the documents in his supplemental bundle (all of which I have read in full) as well as his oral submissions.

***The Wills***

11. The 2010 Will gifted all of Mrs Morris's personal chattels to the Second and Fourth Defendants. It provided pecuniary legacies of £35,000 to the Claimant, £70,000 to the First Defendant, £10,000 to the Fourth Defendant and a gift of residue to the Charities.

12. The 2006 Will was in similar terms save that the legacy to the First Defendant was £55,000.

13. The 2000 Will provided a pecuniary legacy of £15,000 to the First Defendant. The residue of Mrs Morris's estate was gifted to the Claimant.

***The Claim***

14. The claim was issued on 16 July 2020 after the Second and Third Defendants (in their capacity as Executors) had sought directions from the Court in relation to the administration of Mrs Morris's estate in circumstances where the Claimant had intimated various claims in correspondence but failed to pursue them. On 4 March 2020 Deputy Master Collaco Moraes made an order that unless the Claimant issued proceedings advancing his claim in relation to the estate of Mrs

Morris by 4pm on 22 July 2020 the Executors would be authorised to distribute the Estate in accordance with the terms of the 2010 Will.

15. The Claimant has set out his case in great detail. The Claim Form was accompanied by documents headed Brief Details of Claim comprising 51 paragraphs and Heads of Claim comprising 172 paragraphs.

16. The Claimant is a litigant in person and parts of his statement of case are difficult to follow. My understanding is that the Claimant challenges the 2006 and 2010 Wills on the grounds that Mrs Morris lacked testamentary capacity, Mrs Morris did not know of and approve the contents of the Wills and the Wills were procured by the undue influence and fraudulent calumny of the First Defendant.

17. The starting point appears to be an alleged promise made by Mrs Morris to the Claimant in 1993 as set out in paragraph 47 of the Heads of Claim:

> "*47. CMM [Mrs Morris] promises she will not treat KCM [the Claimant] the way her mother treated her and he will get everything*".

18. In paragraphs 7 and 8 of the Brief Details of Claim the Claimant summarises his claim as follows:

> "7. *I contend that my mother's fears were magnified and she was taken advantage of, by her long standing friend whose only intention was monetary and did nothing since 1998 to ensure my mother lived a comfortable old age, but installed fear, doubt, mistrust and confusion where there should have been none, without any care for the truth or damage her assertions were causing.*
>
> *8. My claim concerns a lifelong family friend, defendant (1) JF who knew with certainty my late mother's testamentary wishes, but chose to attack first myself and then my father's memory (PHM) through the drip, drip, drip of poison in weekday 5pm phone calls with my monther the testatrix, who had already suffered bouts of depression for which she was prescribed 8 different antidepressants*"[sic].

19. The Claimant continues in paragraphs 47 and 48:

> "47. *Through evidence gathered post CMM's passing, KCM has substantiated that JF his 'aunt' from 1961 has without any regard for the truth or her lifelong friend, poisoned CMM's regard for KCM having failed to gain sufficient leverage by purely claiming to be poor and has found CMM's Achilles heel is destroying her regard for her husband and her only child and JF through the drip, drip, drip of poison and through isolating KCM's mother has contrived a plot with legal guidance from within her family.*

…..

> *48. From my own knowledge of my mother, her lack of rationale and confusion, verified by other long term family friends, plus her GP notes, it is my contention that my mother did not understand (want of knowledge and approval) what she was actually doing, failing to carry out the plot as directed by her supposed friend and through poor eyesight and a mind incapable of noticing the absence of things that she should have given regard to. These circumstances formed from Suspicion are with the Fraud by Calumny the basis of my claim, although clearly there is a breach of promise, which has only occurred because of the Fraud*."[sic]

20. Paragraph 2 of the Heads of Claim makes the following claim:

> "*2 What started as **Suspicion**, has progressed to my submission of this claim of **Want of Knowledge** and **Approval and/or Undue Influence and Fraud by Calumny***." (emphasis is the Claimant's)

21. Paragraph 142 of the Heads of Claim refers to the preparation of the 2006 Will in the following terms:

> "*Clearly the preparation of this Will is wholly under the influence of JF to such an extent that CMM has lost all sense of memory, mind and understanding and to even contemplate it shows how poisoned her mind is against her only son and how vindictive JF is towards KCM who has done so much for her and her family down the years*".

***The Charities' Application***

22. On 17 February 2021 the Charities issued an application for summary judgment to be entered against the Claimant pursuant to CPR 24 or, in the alternative, that the Claim Form and Particulars of Claim be struck out pursuant to CPR Part 3.4 (the Court's power to strike out a statement of case) and for judgment to be entered against the Claimant pursuant to CPR Part 3.5 (judgment without trial after striking out).

23. The application for summary judgment is made on the grounds that the Claimant has no real prospect of success in respect of any of the relief he claims. The Charities contend that the Wills were read to Mrs Morris by her solicitors, duly executed having been witnessed by her solicitors, that there are no circumstances giving rise to any doubt about her testamentary capacity and that the Claimant has been unable to particularise the exertion of any influence over Mrs Morris. It is also said that the Claimant's hypothesis as to the motive for undue influence is fanciful.

24. In the alternative the Charities seek to strike out the Claimant's statement of case on the basis it fails to comply with CPR 16.2, 16.4 and 57.7 which are the rules

which prescribe the content of statements of case. The Charities assert that the statements of case do not consist of concise statements of the nature of the claims or the facts relied upon and the Claimant has failed to plead the grounds on which he alleges that the Wills are invalid. Further, it is asserted that due to incoherent and ill-founded content, the Details of Claim and Particulars of Claim are an abuse of the Court's process.

25. The Charities' application is supported by statements of testamentary documents made by the Second and Third Defendants, the Defence and witness statements of the First Defendant dated 13 November 2020, the witness statement of the Fifth Defendant dated 10 February 2021 and witness statements made by Nicola Thorpe dated 29 November 2020, Jennifer Rose dated 2 February 2021 and Stephanie Jackson dated 9 February 2021. Ms Thorpe is a solicitor and a partner in the firm Charles Russell Speechlys LLP. She was formerly a solicitor employed by Ottaways (as the firm was then called) and she drafted the 2006 Will and witnessed its execution. Ms Rose is a legal assistant employed by Debenhams Ottaway LLP. She was the second witness to the 2006 Will. Ms Jackson is also a legal assistant employed by Debenhams Ottaway LLP. She was a witness to the execution of the 2010 Will along with the Fifth Defendant.

***CPR Part 24***

26. The principles that apply to applications under CPR Rule 24.2 which relate to summary judgment are well established. The burden is on the Charities to show that the Claimant has no real prospect of succeeding on the claim and that there is no other compelling reason why the claim should be disposed of at trial.

27. The principles that the Court must apply are set out in the judgment of Mr Justice Lewison (as he then was) in *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch). The summary of the Easyair principles was approved by the Court of Appeal in *AC Ward & Sons Limited v Catlin (Five) Limited* [2009] EWHC 3122 (Comm).

28. The relevant principles are set out in paragraph 15 of Lewison J's judgment :

> *"i. The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success.*
> *ii. A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.*
> *iii. In reaching its conclusion the court must not conduct a "mini-trial".*
> *iv. This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.*
> *v. However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the*

*application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.*

*vi. Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.*

*v. On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. ...".*

***CPR Part 3.4***

29. CPR Part 3.4 forms part of the Court's general case management powers. It provides:

> "*3.4—*
> *(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.*
> *(2) The court may strike out a statement of case if it appears to the court—*
> *(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;*
> *(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or*
> *(c) that there has been a failure to comply with a rule, practice direction or court order*".

30. The threshold for strike out under CPR 3.2(a) is higher than that for summary judgment. A strike out application is concerned only with statements of case whereas the Court will have regard to all available evidence, and that likely to become available, in determining a summary judgment application.

***Due Execution***

31. The Claimant does not appear to dispute that the 2010 and 2006 Wills were duly executed.

32. The Charities have obtained witness statements from the attesting witnesses, namely Ms Hyndman and Ms Jackson in relation to the 2010 Will and Ms Thorpe and Ms Rose in relation to the 2006 Will.

33. The attestation clauses in the 2006 and 2010 Wills are in the conventional or "perfect" form and give rise to the presumption of due execution as explained by the Court of Appeal in *Sherrington v Sherrington* [2005] EWCA Civ 326:

> "*The Court ought to have in all cases the strongest evidence before it believes that a will, with a perfect attestation clause, and signed by the testator, was not duly executed, otherwise the greatest uncertainty would prevail on the proving of wills. The presumption of law is largely in favour of the due execution of a will, and in that light a perfect attestation clause is a most important element of proof.*"

***Testamentary capacity***

34. The Claimant's statement of case makes various references to Mrs Morris's testamentary capacity to make the 2006 and 2010 Wills. These include the Details of Claim:

> "*6. My claim contends that even pre 2000 delusions were a part of my late mother's life for many years, that she only departed from her known testamentary promise and natural wish once her health took a further significant decline after signs of impact to her head and the subsequent macular deterioration.*"
>
> …..
>
> *41. The careful design of the Will having asked for no advice from her own solicitors is way beyond the capacity of a lady of such years with poor eyesight and no access to modern technology and also seeks to disguise the source of the change, revealed only by the subsequent written changes made by CMM.*
>
> *….*
>
> *48. From my own knowledge of my mother, her lack of rationale and confusion, verified by other long term family friends, plus her GP notes, it is my contention that my mother did not understand (want of knowledge and approval) what she was actually doing, failing to carry out the plot as directed by her supposed friend and through poor eyesight and a mind incapable of noticing the absence of things she should have given regard to…."*.

35. The Heads of Claim include:

> "*1. What is in dispute is my late mother's capacity to make a Will that would be valid under English Law given the facts of the case*.
> *2. What started as Suspicion, has progressed to my submission of this claim of Want of Knowledge and Approval and/or Undue Influence and Fraud by Calumny.*

36. Mr Bishop on behalf of the Charities addressed the issue of capacity in full both in his skeleton argument and in oral submissions. During the course of the hearing the Claimant appeared to concede that Mrs Morris had intended to change her Will and accepted that she knew and understood what she was doing. The thrust of the Claimant's case appeared to be that her mind had been poisoned by the First Defendant which led to her doing something she would not otherwise have done. Despite this concession I will nonetheless set out my findings on testamentary capacity in full.

37. The test of testamentary capacity is that set out in *Banks v Goodfellow* (1870) LR 5 QB 549 (numbering added by the Court of Appeal in *Sharpe v Adams* [2006] EWCA Civ 449):

> "*It is essential …that a testator [a] shall understand the nature of the Act and its effects; [b] shall understand the extent of the property of which he is disposing; [c] shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, [d] that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties — that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made*."

38. There is a transient burden of proof in relation to testamentary capacity. In ***Re: Key*** [2010] 1 W.L.R. 2020 Briggs J (as he then was) summarised the position as follows:

> "*97. The burden of proof in relation to testamentary capacity is subject to the following rules.*
>
> *i. While the burden starts with the propounder of a will to establish capacity, where the will is duly executed and appears rational on its face, then the court will presume capacity.*
>
> *ii. In such a case the evidential burden then shifts to the objector to raise a real doubt about capacity.*
>
> *iii. If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity none the less*."

39. In this case there is a presumption of capacity on the basis of due execution. The burden of proof in relation to capacity therefore shifts to the Claimant.

40. Mr Bishop on behalf of the Charities submits that despite the references to capacity in the Claimant's statement of case, the Claimant does not particularise any matter which may rebut the presumption.

41. The Claimant's case is that Mrs Morris lost capacity after a fall in March or April 2003. Her eyesight deteriorated after that due to macular degeneration. There was then a series of arguments between the Claimant and his mother from September 2003 onwards resulting in their estrangement. It appears from the Claimant's account of the arguments and the events that followed that the

Claimant considers his mother's behaviour towards him to have been odd or irrational and therefore evidence of lack of testamentary capacity.

42. Whilst I consider that the Claimant has given a careful and truthful account of events from 2003 onwards, he recounts the arguments and other events from his own perspective and in my judgment there is a lack of objectivity in the conclusions he has drawn from such matters.

43. The Claimant included his mother's medical records in his supplement bundle. I found these notes to be of considerable assistance in forming a conclusion about Mrs Morris's state of mind and her capacity around November 2006 when she first changed her Will to remove the Claimant as residuary beneficiary.

44. I have reviewed the medical notes as a whole and they show that in November 2006 Mrs Morris informed her GP that she felt depressed. The notes record that Mrs Morris "*has had no contact with her only son for 3 yrs a.. a row and feels that this has finally caught up with her. Feels v alone with no-one to look out for her…*" [sic]. I note that Mrs Morris said something similar to her solicitor, Ms Thorpe, which was recorded in an attendance note dated 31 October 2006.

45. There are a number of further entries between 2007 and 2011 which refer to Mrs Morris's "low mood" and the ongoing estrangement with the Claimant. An entry dated 11 May 2007 states:

> "*Low mood really ISQ, says a little better and more positive but recently contacted her son and went round to see him. Howeve..was not successful and he became angry etc. Has reinforced feelings of aloneness, no one who really cares for her or looks after her, has thoug… of self harm but not active she says*" [sic].

46. The entry on 4 April 2011 says: "*Has accepted will have no contact with her son*".

47. The medical records show that Mrs Morris saw the same GP, Dr Philippa Mainwaring, on numerous occasions and that the GP was considering Mrs Morris's mental wellbeing as much as her physical health. There is no suggestion whatsoever within the medical records that Dr Mainwaring had any concern about Mrs Morris's capacity. The medical records also refer to a power of attorney being given to IBB solicitors and to Mrs Morris having signed an advanced directive, both matters which might have caused a GP to consider the issue of capacity.

48. It is notable that the Claimant's own account as set out in the Heads of Claim is broadly consistent with Mrs Morris's medical records. In paragraphs 128 – 138 the Claimant describes Mrs Morris visiting him at home in July 2006 and apologising to his wife for some of the things she had said in 2003. It appears that rather than accepting the apology of his 83 year old mother the Claimant "*asks his mother to consider some issues and that they could get together in a week to discuss the best way forward*". Mrs Morris telephoned the Claimant two day later asking him to visit and is said to have had a "*meltdown*" when the Claimant refused due to ill health. The Claimant said he "*reminded his mother that they agreed to take a week to reflect on the issues*". The Claimant then appears

surprised that his mother did not visit "*nor does she phone to get together for a discussion or answer her own phone*".

49. The Charities have adduced evidence from the two lawyers who prepared the 2006 and 2010 Wills and the two legal assistants who were additional witnesses to their execution. None of them had any concern about Mrs Morris's testamentary capacity.

50. Ms Thorpe, who drafted the 2006 Will, confirmed in her witness statement that she would not have prepared a will for Mrs Morris if she had any doubt over her capacity. Her file note dated 31 October 2006 recounts what Mrs Morris has told her about her estrangement with the Claimant and states:

> "*Mrs Morris told me that she is 83 years old. Having spoken to her about the size of her Estate and her current family situation I had absolutely no concerns about her mental capacity.*".

51. Ms Thorpe made a further note on 28 November 2006 stating:

> "*Again I found her to be very sensible and wanted everything in order. She said she regretted the situation she found herself in, but as her son was estranged from her she wanted to make sure her estate went in accordance with her new will. I had no concerns about her capacity*".

52. Rachel Hyndman is the solicitor who drafted the 2010 Will. Her witness statement contains a Larke v Nugus statement. Ms Hyndman had previously acted as Mrs Morris's certificate provider for her property and financial affairs lasting power of attorney and her health and welfare lasting power of attorney. Ms Hyndman would have had to assess Mrs Morris's mental capacity specifically in that context. Mrs Morris later instructed Ms Hyndman to make amendments to her will. Ms Hyndman states that:

> "*As far as I recall, Mrs Morris was very capable of expressing herself and came to the meeting ready with the amendments she wished to make*".

53. She confirms that she had no concerns about Mrs Morris's capacity and that she had attended numerous training courses on will drafting and dealing with elderly and vulnerable witnesses. She confirms that at the time of her dealings with Mrs Morris she was very familiar with the requirements for testamentary capacity under the Mental Capacity Act 2005 and the test set out in *Banks v Goodfellow*.

54. Ms Hyndman's attendance note of her meeting with Mrs Morris on 27 May 2010 records:

> "*Mrs Morris then explained to me that she is estranged from her son. After her husband died he became very strange and very distant and they have not spoken since. This is the reason why he is not really included in her Will because he has not been there for her over the*

*years and her very good friend Juliet Fuirer has been and she regards her as her next of kin etc*.".

55. Ms Hyndman made a further attendance note on 14 July 2010:

> "*Mrs Morris executed her Will with RAW and SLB acting as witnesses. There was no question of mental capacity or undue influence which arose*".

56. In my judgment Mrs Morris' contemporaneous medical records when taken with the Claimant's own account of events from 2003 onwards show that Mrs Morris's decision to change her will in November 2006 was a rational decision made in circumstances where arguments with the Claimant and their ongoing estrangement had greatly upset her and led to feelings of abandonment. This is affirmed by the recollections and contemporaneous attendance notes of the two independent solicitors who prepared the 2006 and 2010 Wills. There appears from the documentary evidence alone to be absolute consistency in what Mrs Morris told her GP and both of her solicitors, and there is no evidence whatsoever to support the Claimant's assertion that Mrs Morris lacked testamentary capacity.

57. Having regard to the principles established in *Easyair* I consider that the Claimant's case on capacity is fanciful and has no realistic prospect of success. The Claimant has made a bare assertion as to capacity which is unsupported by evidence, which is contradicted by his own factual account and by contemporaneous notes of Mrs Morris's GP and two solicitors to which I have referred above. I have considered whether the Claimant might be able to adduce further evidence in relation to capacity if the claim proceeds to trial but have concluded that the best evidence available is that which was before me on the summary judgment application.

**Knowledge & Approval**

58. The Claimant's pleaded case is that Mrs Morris "*did not understand (want of knowledge and approval) what she was actually doing, failing to carry out the plot as directed by her supposed friend and through poor eyesight and a mind incapable of noticing the absence of things that she should have given regard to….*". No particulars are given of any facts on which the Claimant relies to support his assertion.

59. The Charities have produced contemporaneous evidence which directly contradicts the Claimant's assertion in relation to this Head of Claim. It seems to me that the solicitors who prepared the 2006 and 2010 Wills both kept a careful record of their dealings with Mrs Morris.

60. Ms Thorpe's attendance note of 31 October 2006 records Mrs Morris's instructions for her new Will. The note records that "[Mrs Morris] *told me she had already thought about what she would like to do, and asked whether I would take her instructions now*". The note goes on to record Mrs Morris's specific instructions for the terms of the 2006 Will. When Ms Thorpe sent Mrs Morris the draft of her Will the covering letter included a clear explanation of the contents of the Will.

Far from not understanding the content of the draft Will, on 14 November 2006 Mrs Morris wrote to Ms Thorpe saying: "*Enclosed please find revised draft. As you see there are some changes but I expect that is not unusual!*". Mrs Morris enclosed with her letter a note containing detailed instructions on her wishes. The draft Will was amended in accordance with those instructions and Mrs Morris then attended in person at Ottaways to execute the 2006 Will.

61. In relation to the 2010 Will Ms Hyndman's attendance note of her meeting with Mrs Morris on 27 May 2010 records that Mrs Morris had a few questions she wanted to ask in relation to her Will. Those questions related to the effect of the merger of Ottaways to become Debenhams Ottaway and how that would impact on the firm's appointment as her executors. She also asked whether the change of name of Age Concern Hertfordshire to Age UK would affect her Will. These enquiries appear to me to be clear evidence that Mrs Morris had full knowledge and appreciation of the content of her 2006 Will. The note further records Mrs Morris's instruction to increase her gift to the First Defendant from £55,000 to £70,000.

62. A further attendance note dated 4 June 2010 records Mrs Morris saying that she does not want to sign the revised Will 'just yet' as she wants to discuss her next of kin.

63. Mrs Morris attended a meeting with Ms Hyndman on 17 June 2010. The attendance note of that meeting notes: "*Mrs Morris said that she had written down what she wanted to say and read it out me…..*". Mrs Morris then asked various questions about substituting the First Defendant as her next of kin in place of the Claimant.

64. After Ms Hyndman produced a draft of the 2010 Will, Mrs Morris wrote to her on 29 June 2010 saying "*I am writing because it is difficult to explain on the 'phone why some alterations is called for….*" [sic]. Mrs Morris then recounted her estrangement from the Claimant and requested that amendments be to the expression of her wishes with regard to her funeral arrangements. The original draft stated that the Claimant should not be contacted with regard to Mrs Morris's funeral arrangements "*as I have not had contact with him since the death of my husband….*"[sic]. Mrs Morris requested that this be amended to more accurately record "*we have been estranged for some years….*". Mrs Morris subsequently decided not to include that wording in her will.

65. Ms Hyndman's attendance note of 14 July 2010 records that when Mrs Morris attended her office for the purpose of executing the 2010 Will they went through it clause by clause. Far from Mrs Morris being incapable of noticing detail through poor eyesight or otherwise, this process identified that the Claimant had wrongly been called 'Keith' in the draft Will and this needed to be changed to Kevin.

66. In *Gill v Woodall* [2011] Ch 380 Lord Neuberger held that:

> "*As a matter of common sense and authority, the fact that a will has been properly executed, after being prepared by a solicitor and read over to the testatrix, raises a very strong presumption that it*

*represents the testatrix's intentions at the relevant time, namely the moment she executes the will*".

67. That presumption is also reinforced by policy considerations that support the fundamental principle of testamentary freedom and the obvious evidential difficulties presented by the fact that a testator cannot be directly examined.

68. In my judgment the 2006 and 2010 Wills were properly executed after being prepared by solicitors and were read to Mrs Morris prior to execution giving rise to the presumption that the Wills represented Mrs Morris's intentions at the relevant times. The contemporaneous attendance notes and letters from Mrs Morris to her solicitors establish this to be the case.

69. For the reasons given above I consider that the Claimant's case in relation to knowledge and approval has no realistic prospect of success. Whatever Mrs Morris's intentions may have been in happier times, in my judgment her intentions clearly changed following her estrangement from the Claimant in 2003 and she executed the 2006 and 2010 Wills with full knowledge and approval of their content.

**Undue Influence / Fraudulent Calumney**

70. I have set out the relevant passages from the Claimant's statement of case earlier in this judgment. In summary, the Claimant contends that Mrs Morris changed her will under the influence of the First Defendant who poisoned Mrs Morris's mind against the Claimant through a "*drip, drip, drip of poison*" in regular telephone calls.

71. During the hearing the Claimant conceded, contrary to his case on capacity and knowledge and approval, that he did not doubt that Mrs Morris wanted to change her will and he accepted that she knew and understood what she was doing but did so because her mind was poisoned.

72. *In Re Edwards (deceased)* [2007] EWHC 1119 (Ch) at paragraph 47 Lewison J (as he then was) set out the approach to be taking in relation to an allegation of undue influence, saying:

> *There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:*
> *i. In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;*
> *ii. Whether undue influence has procured the execution of a will is therefore a question of fact;*
> *iii. The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;*

*iv. In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud.*

*v. Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;*

*vi. The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A 'drip drip' approach may be highly effective in sapping the will;*

*vii. There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is 'fraudulent calumny'. The basic idea is that if A poisons the testator's mind against B, who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside;*

*viii. The essence of fraudulent calumny is that the person alleged to have been poisoning the testator's mind must either know that the aspersions are false or not care whether they are true or false. In my judgment if a person believes that he is telling the truth about a potential beneficiary then even if what he tells the testator is objectively untrue, the will is not liable to be set aside on that ground alone;*

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

73. It follows that the burden of proving that that execution of the 2006 and 2010 Wills were procured by undue influence lies firmly with the Claimant and is a high burden of proof. The Claimant is required to show that there is no explanation other than undue influence for Mrs Morris having acted as she did in 2006 when she executed a new Will and substituted the Charities as her residuary beneficiaries in place of the Claimant leaving him a legacy of £35,000 and £50,000 to the First Defendant. Likewise the Claimant has to show that there is no other explanation for Mr Morris having made further changes to her will in 2010 when the legacy to the First Defendant was increased to £70,000 and the Fourth Defendant gifted £10,000.

74. I accept the submission made on behalf of the Charities that the Claimant has failed to particularise any form of pressure or persuasion being exerted over Mrs

Morris by the First Defendant. The bare assertion that the First Defendant dripped poison into Mrs Morris's ear appears to be founded on the basis of the First Defendant having benefited from the changes to Mrs Morris's will but the Claimant has adduced no evidence whatsoever to support such a claim.

75. In my judgment there is no realistic prospect of the Claimant being able to show that there is no explanation for Mrs Morris's actions other than the undue influence of the First Defendant. It is clear beyond doubt from the Claimant's own account of events and the evidence that he has produced that there had been an argument between the Claimant and his mother in 2003, and that they were estranged from that point onwards. The cause of the argument, who was at fault and the reason there was no reconciliation are entirely irrelevant. The argument and estrangement provide the most obvious and rational explanation for Mrs Morris's decision to change her will – a conclusion which is supported by the contemporaneous attendance notes made by solicitors in 2006 and 2010.

76. There is also no evidence to support the Claimant's contention that the First Defendant poisoned Mrs Morris's mind against him by telling lies leading her to change her Will. Mrs Morris explained to her solicitors in 2006 and 2010 that her reason for changing her Will was the estrangement from the Claimant. That explanation is both consistent with the Claimant's factual account and inconsistent with Mrs Morris acting on alleged lies told to her by the First Defendant concerning the Claimant.

77. For the sake of completeness I should mention that the First Defendant has made a witness statement dated 1 August 2019 in which she denies the allegations made against her by the Claimant. Whilst the First Defendant's evidence has not been tested by cross-examination and I have placed no reliance on it in reaching my conclusions, in my judgment the allegations against her are so fanciful that they should never have been made.

***Testamentary Promise***

78. There was limited argument on this issue at the hearing but it was addressed in Mr Bishop's skeleton argument albeit by reference to the Charities' defence.

79. In paragraph 1 of the Claimant's Brief Details of Claim he refers to Mrs Morris having departed from her "*known and promised testamentary wishes*". Precisely what is meant by this is unclear since it is difficult to see how a wish can constitute a promise.

80. The Claimant goes on to state:

> *"49. At no point has my mother told me of her wish to depart from her promise and our mutual underpinning security agreed in 1993 through our Wills. Given the time scale as my mother put it to see her out was 5-7 years from 1993, I had more than met her expectations at the point the 2000 Will was made and other than the small deviation of £15,000 remained true to her promise. Considering the new monies such a deviation is not a problem*.

50. *With no knowledge of these changes until post my mother's demise we have relied on this backstop security which has affected many of our decisions both financially and socially….*".

81. Further references to a promise are made in the Head of Claim:

"*47. CMM promises, she will not treat KCM the way her mother treated her and he will get everything. Expresses that 5-7 years will see her out…..*

*48. Offer made, negotiation include my partner as my mother wanted security through both our Wills in a worst case scenario, time and performance criteria also agreed*" [sic].

….

*156 Like so many things, in expectation of her whole estate within 7 years, we have paid for numerous goods, services, donations, travel plus of course helped CMM out when she had miscalculated and was short of money with £15,000. She in turn was often ridiculous in counting to the penny repayment for shopping or other items, if she didn't have the exact change a cheque would be written and often this would be in excess of the amount.*

82. My understanding of the Claimant's statement of case is that in 1993 Mrs Morris promised the Claimant that she would leave him everything, that she expected to live for 5 – 7 years from then and therefore the Claimant had an expectation of receiving the entirety of Mrs Morris's estate within that timeframe. The Claimant seems to suggest that this arrangement came about as a result of an offer being made and subsequent negotiation.

83. The Claimant claims to have relied on this promise in paying for various things and helping his mother out when she was short of money.

84. In their Defence, the Charities contend that the Claimant's statement of case is inconsistent with the account which the Claimant gave in an email dated 22 September 2017. That email is addressed to Ms Hyndman. It states that in around July 1993 Mrs Morris informed the Claimant that she had purchased a property at Prae Close, St Albans. She offered to give the Claimant the former family home, Deacons Croft, and in return she wanted a 'bolt hole' in the Claimant's home (wherever that may have been), storage of furniture, for the Claimant to stay close and not move abroad for the 5-7 years she expected to live, work to remodel her new home and "*That we live independently, but mutually support each other with cover in our wills for the worst case scenario, ie that one or other of us died. She promised me that I was her sole beneficiary, that I would get everything, unlike what her mother had done to her*". The Claimant then goes on to recount an apparent negotiation with his mother in relation to her proposal.

85. I pause at this point to note that Deacons Croft is a substantial property that was marketed in 2019 for £1.45 million. It is perhaps surprising that the Claimant apparently saw fit to negotiate with his mother rather than simply accept her generous gift even with certain strings attached.

86. Whilst the meaning of mutual support "*with cover in our wills*" is unclear, the Claimant's email goes on to explain that the Claimant intended to leave his estate to his wife and that his mother would only benefit if his wife pre-deceased her in which case their joint estate would be split equally between Mrs Morris and the Claimant's in-laws. This was said to be "*reciprocating her promised testamentary intentions to myself*" although the arrangement was clearly not reciprocal when the likelihood was that the Claimant's estate would go to his wife if he pre-deceased his mother.

87. It seems to me that the two accounts given by the Claimant are not substantively inconsistent. In both accounts the Claimant contends that Mrs Morris promised to leave him everything and the email simply explains how the alleged promise came about.

88. In my judgment, based on the Claimant's account, Mrs Morris's promise to leave everything to the Claimant was a mere statement of her intention at that time and not a binding obligation capable of giving rise to an estoppel or other enforceable right or interest. It was a discussion in the context of Mrs Morris's offer to transfer her main asset, Deacons Croft, to the Claimant out of love and affection and without any consideration beyond that which a dutiful son might be expected to provide.

89. Furthermore, the doctrine of mutual wills was not engaged because the Claimant does not assert an agreement between himself and his mother to create irrevocable interests in favour of each other or other ascertainable beneficiaries. Even if there were such an agreement it would not give rise to a cause of action because the Claimant is on notice of his mother's unilateral breach and is at liberty to change his own will accordingly.

90. For these reasons I consider that the Claimant's pleaded case is fanciful and discloses no cause of action in relation to the alleged testamentary promise which has a realistic prospect of success.

***Conclusions on Summary Judgment***

91. For the reasons given above I consider that the Claimant has no real prospect of succeeding on his claims and that there is no other compelling reason why the claims should be disposed of at trial. I therefore dismiss the claim and pronounce for the force and validity of the 2010 Will being the last will and testament of Mrs Morris.

92. I consider the Claim to have been totally without merit and the attack on the First Defendant's character was wholly unjustified.

***Strike Out***

93. In light of my determination that there shall be summary judgment for the Defendants, it is not necessary for me to determine the Charities' alternative application to strike out the Claim Form and Particulars of Claim pursuant to CPR 3.4 due to the Claimant's failure to comply with CPR 16.3, 16.4 and 57.7 on the basis that they are an abuse of process.

***Hand down of judgment***

94. This judgment will be handed down remotely and without attendance of the parties. I anticipate that there will need to be a consequentials hearing and the parties should cooperate and supply the Court with a joint list of dates to avoid and a time estimate (agreed if possible) so that a hearing can be listed as quickly as possible. If the parties are able to agree the form of order (including in relation to costs) then they should lodge an agreed draft order for approval.