

Neutral Citation Number: **[2023] EWHC 2814 (Ch)**

Case No: PT-2022-LDS-000045

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY TRUSTS AND PROBATE LIST (CHD)

IN THE MATTER OF NIKI IEROPOULLOS

Leeds Combined Court Centre
1 Oxford Row, Leeds

Date: 9 November 2023

Before :

HER HONOUR JUDGE CLAIRE JACKSON
Sitting as a Judge of the High Court

Between :

ANDREAS IEROPOULLOS
- and -
STELLA WILSON

Claimant

Defendant

The Claimant appeared in person
Mr Chris Dunk (instructed by **Bridge McFarland LLP**) for the **Defendant**

Hearing dates: 24 to 26 October 2023

APPROVED JUDGMENT

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as remotely handed down may be treated as authentic.

Her Honour Judge Claire Jackson :

1. Niki Ieropoulos (“Niki”), the mother of both parties to this claim, died on 26 January 2021. Her two children are in a dispute as to Niki’s 2003 Will, for which probate was granted around 19 October 2023, according to information received by the Defendant. Andreas Ieropoulos, her son and the Claimant, asserts that the 2003 Will, and an earlier Will from 1995, should be pronounced against. Stella Wilson, her daughter and the Defendant, relies on the 2003 Will, alternate the 1995 Will. In this judgment I will refer to the members of the family and friends by their first names. No disrespect is intended in this regard.

2. I note at the outset of this judgment that Andreas informed the Court before trial that he had a number of disabilities and vulnerabilities. As a result reasonable adjustments were made at trial to accommodate the needs and vulnerabilities of Andreas. As this is a public judgment I do not list these but they are set out in the Court file. In order to further assist Andreas, and at his request, judgment has been handed down in writing and the four short sub-paragraphs below set out a summary of my findings in the case which are explained and expanded in the remainder of this judgment:

a. The 2003 Will made by Niki is valid. The Will was made at a time when Niki had capacity. Niki gave instructions for the Will in English, absent Stella, to Richard Lord (the solicitor who drafted the Will). The executed Will accorded with the instructions. Niki therefore knew and approved of the contents of the Will. The Will was not a result of coercion or fraudulent calumny by Stella – a point highlighted by the Will reducing not increasing Stella’s inheritance;

b. The 2011 Trust Deed executed by Niki was valid as it was certain in the three required ways. She had capacity at the time it was created and executed. It was her decision to do so communicated and discussed by her in English with Ms Storey, her solicitor, in Stella’s absence. There is no evidence that she was controlled or coerced by Stella given Ms Storey’s

evidence. The Trust Deed was explained to Niki before she executed it. Niki therefore knew what she was signing and its effect;

- c. The 1995 Will is not effective due to the 2003 Will being valid. It is not therefore necessary for the Court to make any findings in this regard. If it had been then I would have found the Will to be valid despite the lack of the solicitor's file, which has been destroyed due to the passage of time;
- d. The claim is therefore dismissed. This judgment having been handed down as close to 10am as possible, I will deal with costs, etc, at 2pm to allow Andreas time to read the judgment and to consider it.

Background

3. There has been little by way of agreement in this case and little co-operation between the parties.

Despite a pre-trial review being conducted by His Honour Judge Klein there remained a number of issues which the Court was required to resolve at the start of the trial. It is not therefore a surprise to note that the introductory documents to the case, namely the case summary, chronology and timetable were not agreed between the parties.

4. The following background is the Claimant's case summary, which was based on the Defendant's case summary, but with the Claimant's additions shown here in red ink:

“The Claimant and the Defendant are siblings and the only two children of Niki Ieropoulos (“the Deceased”). The Deceased, who was divorced, lived with the Defendant and the Defendant's spouse for some years prior to her death.

The Defendant says that:-

- i. *On 5 September 2011, the Deceased transferred her property at 9 Harewood Crescent, North*

Hykeham, LN6 8JB into trust by way of deed (“the Trust Deed”), appointing the Defendant and her husband as trustees.

- ii. *The Deceased’s last known Will is dated 10 January 2003 (“the 2003 Will”) which leaves one quarter of the estate to the Deceased’s sister Skevoulla Christofides, and the remaining three quarters of the estate to the Defendant.*
- iii. *The last Will prior to the 2003 Will is dated 1 June 1995 (“the 1995 Will”), which does not make provision for the Claimant. Under the terms of the 1995 Will, the Deceased left her estate solely to the Defendant.*
- iv. *As at the date of death, the Deceased’s estate amounted to £8,560.03 following the deduction of funeral expenses. The Deceased also jointly held an account in Cyprus worth approximately €26,000 with the Defendant (and so which falls outside the estate).*

*By his Amended Particulars of Claim, it appeared that the Claimant seeks provision from the Deceased’s estate under the Inheritance (Provision for Family and Dependents) Act 1975 (“the 1975 Act”), and contends that the Trust Deed and 2003 and 1995 Wills were procured by undue influence and/or that the Deceased did not have capacity to execute them and/or did not know and approve of the contents of those documents. However, at the CCMC on 24.02.23 District Judge Pema confirmed to the Claimant that a separate claim form (which claim could be heard with the present claim) would be required for any claim under the 1975 Act. **A separate claim form and an amended claim form were recently issued as the Claimant seeks provision from the Deceased’s estate under the Inheritance (Provision for Family and Dependents) Act 1975 (“the 1975 Act”) by reason of want of knowledge and approval and undue influence.***

The Defendant opposes the Claimant’s claims on the basis set out in the Amended Defence, but in brief that the Trust Deed and Wills were and are valid, and that no provision should be made for the Claimant from the Deceased’s estate.

A joint medical expert, Dr Hugh Series, has prepared a medical report detailing their opinion on the capacity of

*the Deceased in relation to the 1995 Will, the 2003 Will and the Trust Deed. In brief, the report says that “the medical records do not provide any reason to doubt” the Deceased’s capacity at the time of the 2003 Will or the Trust Deed. The Deceased’s treatment at the time of the 1995 Will “raises a question” about the deceased’s capacity at that time, and the medical expert marked with a double asterisk (**) numerous items which in his view could provide evidence of lack of capacity via the paginated medical records bundle. He also marked with a single asterisk (*) numerous items which in his view could point towards vulnerability to undue influence via the paginated medical records bundle.”*

5. It should be noted that the separate claim form and amended claim form referred to in the first red type section above were not in fact issued in the case. Rather in the days leading up to the trial Andreas sought permission to issue a Part 8 claim form and to amend his Part 7 claim form within the proceedings. Both of those applications were dealt with in the housekeeping phase of the trial and both applications were dismissed with a short reasoned judgment. The application relating to a Part 8 claim form was dismissed as totally without merit.

6. The only Defendant to this action is Stella. Her husband, Alan, who is joint executor under the grant of probate of the 2003 Will, was not joined as a party, nor was the other beneficiary of the 2003 Will, Skevoulla. At the outset of the trial I raised with the parties whether this impacted on the ability of the Court to proceed. I was persuaded following submissions by Mr Dunk, for the Defendant, that the trial should proceed without their joinder given:

- a. Alan supports his wife in these proceedings and any order against Stella will be an order in rem which will also bind Alan;
- b. Skevoulla lives in Cyprus and is aware of these proceedings but has chosen not to intervene and has not yet received her share of the estate, and;
- c. on paper the small size of the estate

7. Finally in terms of background I must note that submissions in the trial having concluded after 4:30pm

on the final day on which the trial was listed (26 October) I reserved my judgment. For the rest of that working day (so until 6:30pm) and on 27 October I worked on the reserved judgment: Reviewing the evidence and authorities, recording in notes my decisions on the facts and the law and drafting paragraphs 1 to 6 above and 8 to 51 below. By the end of 27 October I had therefore reached a decision on the outcome of the case, formulated the reasons why and I simply needed to complete the judgment. On 30 October the Court received an email from Andreas requesting that I immediately recuse myself from this case on the grounds of apparent bias. I have in a separate reasoned judgment today refused that application. I do not intend to set those reasons out herein. However, I note that I am satisfied that given the position I reached in the drafting of my judgment the request by Andreas has not affected the outcome of this case in anyway.

The Heads of Claim

8. From Andreas's skeleton argument it was not obvious what his claims before the court were said to be.

Andreas throughout his documentation refers to the Inheritance (Provision for Family and Dependents) Act 1975 and has asserted, for example, in the case summary above and at paragraph 12 of his skeleton argument that he has a claim for genuine financial need. As noted from the background section in this judgment Andreas had been told that there is no such claim before the court. That is correct. District Judge Pema gave directions as to what was to occur if Andreas wished to pursue such claim. Andreas has not followed those directions. There is therefore no such claim before this Court.

9. In paragraph 12 of his skeleton argument Andreas also asserted he had a claim for sham, that the Wills and Trust Deed were void due to reliance on fraudulent documents, and that his claim was for negligence by solicitors. None of this was pleaded.

10. At the outset of the trial I therefore explained the position to Andreas and sought to confirm the claims before me. Andreas confirmed to me that he challenged each of the 1995 Will, the 2003 Will and the 2011 Trust. His grounds of challenge were lack of capacity, lack of knowledge and approval (due to language barriers), undue influence, and, in relation to the wills, fraudulent calumny. So far as the first three grounds of challenge are concerned the basis of the claim was clear from the pleadings even

accepting that lack of knowledge and approval is strictly a claim relating to wills and not lifetime trusts.

11. In relation to the fourth challenge Mr. Dunk not unreasonably sought clarification of the claim as asserted by Andreas. Andreas confirmed that his claim in this regard was that Stella had made false representations to Niki since 1995 in relation to all three documents in terms that:

- a.** Andreas had supposedly taken sides with his father in a divorce;
- b.** Andreas didn't visit Niki or was not around;
- c.** Stella and Alan were the only people looking after Niki;
- d.** Andreas was disconnected;
- e.** Andreas had no contact with Stella, Alan or their daughters.

12. In housekeeping I also addressed with Andreas the limits of the court's jurisdiction in the claim he had brought. Andreas stated in his skeleton argument that, if successful, he would at the conclusion of the proceedings receive a lump sum payment of half of the gross value of Niki's assets at the date of her death (including those held jointly or in trust) and may get an order for sale of Stella's property.

13. I ensured at the outset of the trial that Andreas understood that the Court would not make such an order in any event in this case. He had brought proceedings seeking to challenge legal documents. The jurisdiction of the Court was to pronounce for or against those documents as relevant. It was not to deal with payments from Niki's estate, as if he was correct, the estate would still need to be administered under letters of administration and the net value (not the gross value) calculated before distributions were made. There was also no basis of which an order for sale could be made of a property at this time.

The Law

14. The parties produced skeleton arguments and a combined authority bundle for the Court. The updated authority bundle included 29 authorities for the Court. In his closing submissions Andreas referred the Court to another authority. Unfortunately all Andreas had in this regard was the name of the case: Whipple v Whipple. He did not have a citation or a copy. Using a search engine I was able to locate the judgment and inform Mr Dunk of its citation ([2022] EWHC 925 (Ch)). I allowed Mr Dunk time to read the authority and address me on it at the end of Andreas's submissions.

15. During his closing submissions I asked Andreas why he relied on the authorities he did. Was he relying on them as setting legal principle or was he relying on them as factual comparators? I considered it necessary to do this as from Andreas's skeleton argument it appeared that he was relying on them as factual comparators but his submissions at trial appeared to suggest that I was bound to make the same decisions as the Judges in those cases. Andreas was not able to answer that question. I therefore agreed that I would in preparing this judgment re-read any authorities that Andreas wanted me to read so as to see if any of the authorities provide a precedent in terms of legal principles that disagreed with Mr Dunk's legal submissions and/or whether I was bound to follow the decision. Having done so I am satisfied that save for the authority of Knight v Knight [1840] 49 ER 58 the cases relied upon by Andreas are relied on as factual comparators and not as setting legal precedent. Each case makes it clear that they are applying the principles Mr Dunk had summarised in his skeleton argument and as set out in the extracts from the learned textbooks he had provided to the Court. In his closing submissions Mr Dunk accepted that Knight v Knight set a legal precedent which the Court must follow in relation to the certainties needed for a valid trust to be established.

16. As a result, it is therefore clear that the parties are agreed on the legal principles that apply in this case. What they disagree on is the facts of the case and how the principles apply to the facts. As a result, I do not refer to all the authorities herein.

17. Having considered the submissions of the parties and the authorities placed before me the following principles are applicable to this case (I note this section draws heavily on the skeleton argument of Mr

Dunk with the addition of general principles and challenges akin to lack of knowledge and approval in relation to lifetime dispositions by way of trust).

General Principle

18. The proceedings before the Court are civil proceedings. The standard of proof is therefore the balance of probabilities. The burden of proof changes dependent on the head of claim the Court is considering. However, the overall burden of proving a will lies on those who propound it, but such burden is, in general, discharged by showing that the will was duly executed and that the testator had testamentary capacity: Barry v Butlin 12 ER 1089; (1838) 2 Moo. PC 480.

19. Claims relating to the execution and validity of wills and trusts are claims which must be determined on the relevant legal principles as applied to the facts before the Court. Each case is fact specific.

Lack of Capacity – Wills

20. In order to have testamentary capacity, the testator must be able to understand the nature of the act of making a will and its effect; the extent of the property to be disposed of; the claims of those who might be beneficiaries; and that no disorder of the mind or insane delusion shall so poison the testator's affections, pervert the testator's sense of right or prevent the exercise of the natural faculties as to bring about a disposition which would not otherwise have been made: Banks v Goodfellow (1870) LR 5 QB 549 at 565. This remains the relevant test for testamentary capacity despite the introduction of the Mental Capacity Act 2005 ("MCA 2005"): Simon v Byford [2014] EWCA Civ 280 at [39].

21. The court will usually address the question of capacity as an evaluation of all of the evidence available to the court at trial (Theobald on Wills, para 4-019). If evidence is incomplete or unreliable, presumptions set out in the older authorities may assist:

- a.** If the will is rational on the face of it and shown to be duly executed and no other evidence offered, the court will pronounce for it, presuming that the testator was mentally competent.

- b.** Where real suspicion of incapacity arises, those propounding the will must dispel that suspicion by proving testamentary capacity.

- 22.** The evidence of a competent private client lawyer that their testator client had testamentary capacity will carry considerable weight.

- 23.** However, in contrast to the above, some cases refer to the “Golden, if tactless Rule” that best practice for elderly clients, or those who have been seriously ill, is for a medical practitioner to first satisfy themselves as to the capacity and understanding of the testator. Breach of this rule does not however mean a Will is invalid, nor does compliance with the rule automatically mean a Will is valid.

Lack of Capacity – Lifetime Settlements

- 24.** In relation to capacity in relation to lifetime settlements, the editors of *Lewin on Trusts* state the following propositions (at 2-008):
 - a.** A voluntary lifetime settlement made by a person who at the time that it was made was not a patient with a receiver appointed, or subject to a subsisting order, under the provisions of the Mental Health Act 1983 or the MCA 2005, but who is of unsound mind, is void or voidable unless made during a lucid interval.

 - b.** For these purposes a person is of unsound mind in relation to a particular transaction if he does not have capacity to understand the transaction when explained to him, and the extent of understanding required is relative to the particular transaction which it is to effect and varies with the circumstances of the transaction: *Re Beaney decd* [1978] 1 WLR 770 at 773A-B, 774D-F.

 - c.** These principles apply for the purposes of determining unsoundness of mind in this context, rather than the principles in ss.1-3 of the MCA 2005 about ascertaining mental capacity for the purposes of that Act, even in relation to settlements made after the MCA 2005 came into

force: Re Smith [2014] EWHC 3926 (Ch) at [37]-[66].

25. However, the principles set out in the MCA 2005 might nonetheless be considered relevant to assessing capacity. Those principles are:

- a. an individual is rebuttably presumed to have capacity: s.1(2) MCA 2005.
- b. The question of capacity is particular to the decision being made: s.2(1) MCA 2005.
- c. Determining whether an individual has capacity to make a decision requires an assessment in two parts:
 - i. Determining the decision for which capacity is required and whether the person has capacity to make that decision (the ‘functional test’; see s.3 MCA 2005); and
 - ii. Determining whether the lack of capacity is due to an impairment of or disturbance in the functioning of the mind or brain (the ‘diagnostic test’; s.2(1) MCA 2005).

Lack of knowledge and approval - Wills

26. The person executing a Will must also have the capacity to know and approve of the document.

27. The test for knowledge and approval was stated in Gill v Woodall [2010] EWCA Civ 1430; [2011] Ch 380 as whether the testator understood (a) what was in the will when she signed it; and (b) what its effect would be. An alternative formulation in the same case (that has been treated as meaning the same thing) is to ask whether the will represented the testator’s testamentary intentions.

28. Where a will had been professionally prepared by a solicitor, duly executed and read over to a testator before signing, a strong presumption arose that the will represented the testator’s intentions at the relevant time, namely at the point of its execution

Lack of Knowledge and Approval – Lifetime dispositions

29. As noted lack of knowledge and approval, which is an applicable ground of challenge for a will, is not a recognised ground of challenge for a lifetime disposition by way of trust. There are however principles which when taken together are akin to a challenge reliant on lack of knowledge and approval where this is said to arise, as is the case here, from language barriers.

30. First as noted by Andreas any trust must comply with the three certainties rule in accordance with *Knight v Knight*:

“As a general rule, it has been laid down, that when property is given absolutely to any person, and the same person is, by the giver who has power to command, recommend, or entreated or wished, to dispose of that property in favour of another, the recommendation, entreaty or wish shall be held to create a trust. First if the words were so used, that upon the whole, they ought to be construed as an imperative; secondly, if the subject of the recommendation or wish is certain; and thirdly, if the objects or persons intended to have benefit of the recommendation or wish also be certain.”

31. Second (from chapters 4 and 5 of *Chitty on Contracts*) when considering contracts or deeds a Court must consider whether when a person entered into a document they did so with an intention to create legal relations and/or whether the person executed a Deed due to a misapprehension, such that the principle of *non est factum* applies. (*Chitty*, para 5-004).

32. The burden of proof in this regard is on Andreas to show that from an objective stand point Niki did not intend to create legal relations when she executed the Deed. Alternate Andreas must show that the language barrier which affected Niki was so significant that she executed the Deed under a misapprehension. As it is an exception to the estoppel principles usually applying to a deed this later point is narrowly construed (see *Chitty*, paragraphs 5-049 and 5-055). The Court must consider Niki’s age, Niki’s language ability, both written and spoken, and what Niki intended to do when she executed the Deed and compare this with what the Deed achieved.

Undue Influence – Wills

33. A summary of the modern law of undue influence was provided in Re Edwards [2007] EWHC 1119 (Ch) at [47]:

“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...”

Undue Influence – Lifetime Settlements

34. The leading authority is *Royal Bank of Scotland Plc v Etridge (No.2)* [2002] 2 AC 773 HL. Undue influence can be proved as either actual or presumed undue influence (*Snell's Equity*, 34th ed at 8-014).
35. Actual undue influence is where A influences B by overt acts of improper pressure or coercion.
36. Presumed undue influence arises out of a relationship between two persons where one has acquired over the other a measure of influence or ascendancy, of which the ascendant person then takes advantage. A relationship of influence can be established by proof that one party “*placed trust and confidence in the other party in relation to [their] financial affairs*”. Such a relationship in addition to a transaction calling for an explanation (one which “*cannot be readily accounted for by the ordinary motives of ordinary persons in that relationship*”) may give the benefit of an evidential presumption of undue influence.
37. However, that presumption can be rebutted, for example by evidence that the allegedly influenced party was sufficiently independent in relation to the transaction.

Fraudulent Calumny

38. Per Lewison J in *Re Edwards* (above) at [47]:

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.

39. Fraudulent calumny therefore requires:

- a. A false representation;
- b. To the testator;
- c. About the character of the existing or potential beneficiary;
- d. For the purpose of inducing the testator to alter her testamentary dispositions;
- e. Made knowing that it is untrue, or recklessness as to its truth; and
- f. That the will is made only because of the fraudulent calumny.

The Issues

40. There are therefore up to four challenges raised before me in relation to three separate documents. The challenges are each distinct legally though the facts overlap. It is however vital that the challenges are not confused or conflated (*Theobald on Wills*, para 6-002). Nor must the documents and timings of each document be confused or conflated. In his submissions Andreas made a number of submissions regarding one document but drawing on facts which either related to another document or which post-dated the document. Whilst there was in his submissions a confusion of dates, facts and documents I have in considering this case taken into account all Andreas's submissions but ensuring I respect the distinctions between the documents and heads of claim.

41. Andreas accepted in the housekeeping stage of the trial that if the 2003 Will is pronounced for then the challenge to the 2011 Trust and the earlier 1995 Will, will not be relevant as he will have no interest in the estate. I have further considered this concession in the light of his closing submissions. Andreas has continually throughout the proceedings stated he has a claim under the 1975 Act and at the end of his submissions I was left with the strong impression that no matter the decision I make in this case Andreas will seek to bring a claim under the 1975 Act for reasonable financial provision. It is not for me to prejudge such claim.

42. However, if such a claim is brought it will be necessary for the Court to consider the value of Niki's estate. The validity of the 2011 Trust will be a vital component for such consideration. On the facts before me section 10 of the 1975 Act will not apply to the 2011 Trust as it was made more than 6 years before Niki's death. It is therefore only right that irrespective of my decision on the 2003 Will that I rule on the validity of the 2011 Trust given it is an issue in this claim.

43. Taking the above into account the issues which I must therefore decide are:

2003 Will

- Whether the 2003 Will is valid taking into account Niki's capacity at the time
- Whether Niki knew of and approved of the 2003 Will and its contents
- Whether Niki executed the Will due to undue influence exerted on her by Stella
- Whether the Will is void as a result of fraudulent calumny by Stella

2011 Trust

- Whether the 2011 Trust is valid taking into account Niki's capacity at the time

- Whether the Trust is certain and if Niki understood when she signed the Deed what she was signing and intended to enter into legal relations
- Whether Niki executed the Deed due to undue influence exerted on her by Stella

If the 2003 Will is pronounced against and the Grant of Probate therefore set aside:

1995 Will

- Whether the 1995 Will is valid taking into account Niki's capacity at the time
- Whether Niki knew of and approved of the 1995 Will and its contents
- Whether Niki executed the 1995 Will due to undue influence exerted on her by Stella
- Whether the 1995 Will is void as a result of fraudulent calumny by Stella

Witnesses

44. Aside from Andreas and Stella the Court received written statements and heard oral evidence from eight witnesses. Having heard the evidence of all the witnesses I was left with a forceful impression of Niki:

- a. She was a kind, loving person committed to those she saw as friends and family. She wanted to be the matriarch of the family as is traditional in Cypriot-Greek culture. When she loved she loved deeply, and this led to her being hurt by those she saw as unfaithful or untrue against whom she would hold grudges. She tried to lead an uncomplicated life but had been let down by people in the past. When this happened, she felt humiliated and struggled to cope. This led

to her risking her own health in what appear to have been cries for help. When she began to recover from her trauma, she was able to return to her true, honest and kind self and to take on her loved mantle as Yaya, both to her granddaughters and her local community. She had a role, and mixed, in both the Cypriot-Greek community and her local community. She was trusted by both communities including providing childcare beyond her own family. She loved and she was loved. She is sadly missed by those who loved her.

45. I now turn to the witnesses:

- a.** Mark Worrall: Mr Worrall was a straightforward witness who answered questions clearly. However, he accepted that he had only met Niki once in a social setting in 2008 where she was also in the presence of Gavriella Kennedy and Andreas. Unsurprisingly Niki therefore spent most of her time speaking to her friends and Andreas in Cypriot-Greek. It was clear from Mark's evidence that his interactions with Niki were extremely limited and were in an entirely different context to meetings with solicitors and the execution of legal documents. I was therefore unable to derive any assistance from his evidence as to Niki's ability with the English language (spoken or written);
- b.** Reverend Philip Hall: Reverend Hall was an impressive witness who wished to ensure his evidence to the Court was his evidence. To that end he had made amendments to the statement prepared for him by Andreas before he was willing to sign it and at Court he was very clear in what he knew and what he did not. Reverend Hall was not able to give evidence as to the relationship between Andreas and Niki, nor was he able to give evidence from his own experience of her reading ability. He did tell the court what he had been told by Father George but there was as Reverend Hall accepted a lack of clarity in this regard. As to Niki's ability to speak English Reverend Hall was clear Niki could speak English and was able to hold conversations on matters such as her health and her family if the language used was kept simple. During conversations he would respond in English and Niki could understand this, if she did not understand she would ask for clarification.

- c. Gavriella Kennedy: Gavriella was a close family friend of Niki and Andreas. I accept that she had frequent contact with Niki until 2018 when Niki moved in with Stella. Gavriella was a calm, composed witness. She clearly has affection for Andreas but her evidence was generally balanced. I accept that her evidence was representative of her dealings with Niki, but given she spoke to Niki in Cypriot-Greek and not English I do not accept that her analysis of Niki's language skill is as accurate as other witnesses or the contemporaneous documents, including the medical notes. I fully accept that Niki spoke about both Stella and Andreas to Gavriella. There is no evidence from Gavriella that shows that Stella applied improper pressure to her mother regarding her Wills or her property or that she coerced her mother into executing documents despite Andreas's assertion that she would so testify in his pleadings and skeleton argument. Gavriella's evidence undermines the fraudulent calumny claim by Andreas as it shows that Niki knew her son visited her and was involved in her life. I therefore accept Gavriella's evidence but subject to the limits noted herein.
- d. Andreas: I have taken into account in my assessment of Andreas as a witness his disabilities and vulnerabilities. Despite this, and allowing as much leeway as the Court can, Andreas was not an impressive witness. He was a significantly inaccurate historian who, for example, told me that he corresponded with his sister and her family by Facebook from 1995 onward when Facebook did not exist at that time. He was not frank with the Court even giving the Court an inaccurate address in his second question in evidence. He made few concessions and instead took his time in the witness box as an opportunity to expand his evidence considerably beyond the contents of his witness statement. He did not answer questions directly and gave every impression of being evasive and untruthful. He constantly presented his opinion or belief as facts putting words into others mouths. Having watched Andreas give evidence I am not satisfied that he gave evidence as a witness. Rather he used his time in the witness box to push his case to the fullest extent possible ignoring the truth, consistency, accuracy and probability in the process. In this regard I note Andreas said his mother could not make phone calls in or around May to June 1995 despite the medical records showing to the contrary and Andreas' continued insistence that his mother could not speak English when he produced three videos in the claim in which she speaks English or is spoken to in English by him and she

responds. Finally his tone of voice in the witness box was notably more hostile and aggressive than when he was otherwise speaking.

- e. Given Andreas was acting in person and had demonstrated by his comments in housekeeping and his questioning of Stella and other witnesses that he did not understand the difference between giving evidence and other roles in a court I asked Andreas to make his closing submissions on oath. Although I warned him that if his evidence went beyond that already before me I reserved the right to disregard it. During his submissions it became clear to me that Andreas had a win at all costs attitude that meant he did not care for court rules or procedure and that he was therefore willing to say whatever he wanted to win including in the final minutes of his submissions seeking to tell me that he had provided evidence and was running a claim based on forgery – something he must have known to be untrue given he has never pleaded a forgery claim and given I had not referred to a forgery claim when establishing the boundaries of the case during the housekeeping phase. I must therefore treat the evidence of Andreas with care and will only accept it where it is supported by credible witnesses or contemporaneous documents or where it undermines his own case;

- f. Stella: Stella was a frank and dispassionate witness. She only became emotional when I asked her to provide a pen portrait of her mother. Stella’s evidence was clear and straightforward. She was well organised in her answers. She gave open and detailed evidence even when her evidence would not assist her case. She freely admitted what she knew and what she didn’t know. She answered all questions directly whether they were difficult or not. Her evidence has been broadly consistent during the proceedings with any challenges favouring Andreas’s case rather than her own e.g. her acceptance of the level of contact between Niki and Andreas. Her evidence was coherent and corresponds to contemporaneous documents. She was an impressive and credible witness.

- g. Emma Sleight and Julia Burnley: Both of these witnesses were measured and tried to give balanced evidence. They were patently honest witnesses who were recalling their everyday dealings with Niki including their conversations with her in English;

- h.** Richard Lord and Joanne Storey: Both of these individuals were professional witnesses who gave clear and considered evidence to the court consistent with contemporaneous documents, where they existed. They were patient in listening to and answering Andreas's questions. They were impressive witnesses who only sought to assist the Court. Mr Lord for example had written his own witness statement to ensure it was accurate. Ms Storey produced her contemporaneous file notes. They had no axe to grind. They simply attended to answer the questions. I accept their evidence. I wholeheartedly reject Andreas's contention that Ms Storey was a liar. Rather Ms Storey was a patient, calm witness who did not succumb to the repeated line of questioning of her which I had to stop as it was tending toward badgering of the witness.
- i.** I therefore accept Mr Lord's evidence that Niki was his sole client in relation to the Will, that he considered Niki's capacity and ability to understand the 2003 Will and that he took instructions from Niki as to the Will in the absence of Stella. The Will he drafted accorded with those instructions and the Will before the Court is as he drafted it. I accept Ms Storey's evidence that Niki was her client in relation to the Trust, that she considered Niki's ability to understand and that she took instructions in the absence of Stella. The Trust was explained to Niki before she executed it.
- j.** Michael Vallance: Michael was a neighbour of, and then handyman, for Niki. He was quick witted in the witness box even causing some laughter in the court. His evidence was very clear in relation to his interactions with Niki and her ability to speak and understand English. He explained how as a native German speaker he understood the process she went through in speaking to English speakers. His evidence had the ring of truth to it with his evidence regarding Niki's satellite receiver and views on politicians compelling. He was balanced in his assessment of Niki accepting that she was a rounded human being with flaws. I accept his evidence even though he could not recall some work Andreas asserted that he had undertaken at properties other than Niki's home. The fact that Michael stated he did not recall this does not make him a liar, and I reject Andreas's contention in this regard.

Single Joint Expert Report

46. The Court also received a single joint expert report from Dr Hugh Series, and his written responses to questions from the Claimant. No permission was given for oral evidence from Dr Series to be heard at trial as the parties agreed the report and answers.

47. The report and answers are extremely impressive. They provide very clear evidence to the Court based on the documents, yet stay within the bounds of the Expert's expertise and accepts that factual decisions are for the trial judge.

48. I therefore accept the evidence of Dr Series (both his report and his answers to questions) that:

i. The medical records disclosed show that the deceased experienced a period stress/anxiety/depression in 1994 to 1996 around the time she was separating and then divorced from her husband

ii. She appears to have signed her 1995 Will when she was being treated as an inpatient in a psychiatric hospital. In my opinion that in itself raises a question about her mental capacity at that time, although the records disclosed do not clearly suggest that she lacked capacity at that time.

iii. In relation to the 2003 will and the 2011 trust deed, in my opinion the medical records do not provide any reason to doubt her mental capacity at the time she executed those documents.

iv. From about 2014 or 2015 the deceased started to develop memory problems which were diagnosed in 2018 as being due to Alzheimer's disease, from which she died in 2021. I do not think that this is likely to have been relevant to her mental capacity to sign documents in 1995, 2003 or 2011.

Findings on the Facts

49. Having considered all the evidence I make the following factual findings.

50. Niki was born in Cyprus on 16 March 1942. She was raised in Cyprus and whilst there she was introduced to Louis Ieropoulos.
51. Louis moved to England where he worked in a barbers shop. After the couple had started dating Niki moved to England. A marriage shortly ensued. Andreas and Stella are the children of the marriage.
52. Niki was happy at that time. She had her family. She remained in contact with her extended family in Cyprus. She also went out to work as a seamstress. The parties agree that it is likely that Niki executed a Will after her marriage: They have however been unable to find this and they do not agree what the provisions of that will were.
53. In or around 1993 however the relationship between Louis and Niki started to deteriorate due to Louis embarking on a series of affairs. Louis was from the facts before me a manipulative man: He got local neighbours to withhold information from Niki so that she did not discover the truth. Andreas who worked alongside his father, told Stella and Niki of the affairs. Both of them initially refused to accept this as they both loved Louis. However after a short period they both came to accept Louis was having at least one affair. To get Niki to accept the truth Andreas took her to properties at which his father was conducting the affairs.
54. Once Niki and Stella accepted the truth Stella decided she wanted nothing to do with her father – in her words he was dead to her. Andreas was happy to continue working alongside his father and did so, in part, as a misguided plan to provide information Niki. Niki did not want to lose her husband. This allowed Louis to continue his manipulation of Niki by lies and half-truths.
55. His manipulation began to take a toll on Niki's mental health especially after Louis left the matrimonial home at 54 Helsby Road. Niki was diagnosed as having an acute reaction to stress in November 1994 and was treated as an in-patient at a psychiatric hospital
56. Niki was again admitted to hospital due to mental health concerns on 29 April 1995 following a drug overdose.. No major mental health condition was diagnosed. Niki was discharged on 30 April 1995.

57. In May 1995 Niki instructed solicitors to commence judicial separation proceedings against Louis. Her solicitor advised her to consider executing a power of attorney and a will. A different solicitor was instructed in this regard.
58. On 22 May 1995 Niki was again admitted to the Peter Hodgkinson psychiatric hospital in Lincoln following a further suicide attempt. Niki was diagnosed with anxious personality disorder and adjustment disorder concerning her marital problems. During her time in hospital Stella, Allan and Niki's friends were regular visitors. This is clearly noted in the medical records. Stella and Allan were understandably upset by what Niki had done but they attended regularly.
59. I find that neither Louis nor Andreas attended the hospital during this admission. I expressly reject Andreas's contention that he attended the hospital but his attendance is not recorded as it was out of hours as it is so improbable as to be in my judgment untrue. Niki was not in a general ward in a hospital. She was in a psychiatric hospital. Visiting hours and safety and security in such places are of key importance to the treatment of patients. The suggestion that Andreas could arrive out of hours, walk on to the ward and see Niki without this being recorded flies in the face of probability and the Court's experience of dealing with cases of other individuals both in the Business and Property Court and the Court of Protection.
60. Whilst Niki was in the hospital, and on 30 May 1995, Andreas changed the locks at 54 Heslby Road (see the Claimant's chronology for confirmation of this). This caused further distress to Niki which is recorded in the medical records: "*Son has been to Nicky's house and changed the locks. Daughter contacting a solicitor; Nicky wailing and wringing her hands. Refused to be appeased ...*". I find in relation to Andreas's actions on that date that Andreas acted without Niki's permission in an attempt to control her home upon her discharge. Andreas had no right to do this. He had moved out of the Property prior to this event. It was not his home or property. Simply because the home had been the family home when he was growing up and it remained Niki's home did not entitle him to attend in Niki's absence to act as he pleased and exclude her from her own home. In my judgment Andreas's actions at this time shows that he had no sympathy or empathy for his mother and he placed his own needs and desires before hers.

- 61.** On 1 June and 6 June Niki was allowed to leave the hospital to visit her solicitors. Her doctors knew where she was going and why. No objection appears to have been made to this. Indeed Niki was given advice by the hospital in this regard *“I have explained to her that she should take such decisions only if she is feeling stable as at the end of day she herself will be responsible for.”* On one of these visits Niki executed the 1995 Will and a power of attorney in favour of Stella. The signature on the Will is that of Niki. The Will left her estate entirely to Stella. On each occasion that she left the hospital to sign documents Niki then returned to hospital.
- 62.** On 8 June 1995 Heads of Agreement were drawn up between Niki and Louis regarding their separation. The heads include a term that neither Louis nor Andreas was to attend at Niki’s property without invitation. I find that this shows that in June 1995 Niki was so unhappy with Andreas that she wished to be estranged from him. This was due to his actions and his failure to respect her and her property.
- 63.** Niki was released from hospital on 14 June 1995 and she went to Cyprus to stay with her sister. She returned to the UK and to her home around September 1995.
- 64.** Following her return home Stella gave birth to her first child on 10 October 1995. This was Niki’s first grandchild.
- 65.** Niki appears to have had another mental health crisis in March 1996 when her medical notes show another drug overdose and mixed anxiety and depressive disorder diagnosis. At this time Niki was recorded as having a short concentration span because she was agitated.
- 66.** Niki required little medical assistance with her mental health in the period April 1996- 2012. The only relevant notes relate to entries in her diabetic clinic notes which commence in October 2009 and refer to ongoing depression. Niki did however have physical health problems which persisted. Her medical records show that in terms of active or chronic problems in 1995 Niki was diagnosed with hearing loss. She wore hearing aids to correct this.

67. Niki was registered with a GP throughout the relevant periods and she communicated with them in English. For example:

- a. In April 2003 Niki had an appointment with Dr Akbrass, a consultant orthopaedic surgeon. They are noted to have discussed Niki's knee difficulties and treatments. No reference is made to language difficulties or to Niki attending with anyone.
- b. Her medical records show that in September 2009 her main spoken language is recorded as English;
- c. This continued in 2010 with her medical records from Swallowbeck also recording that her main spoken language is English.
- d. In September 2011 Niki attended her GP, Dr Keith Croft. She is not noted as attending with anybody but her records show that Dr Croft was able to obtain a history from her.
- e. Niki also attended an appointment with Mr Bhatnagar on 7 September 2011 again no language issues are noted and Niki is not noted as having attended with anyone.

68. There is no evidence of any weight before this Court that Niki suffered any problems above those recorded in her medical records or that she suffered any side-effects of medication prescribed to her which affected her ability to understand and comprehend. I reject the suggestion by Andreas in his pleadings and written submissions that during this time Niki suffered from brain fog as a) there is no evidence of that in her medical records, b) there is no evidence of that before the Court (even Andreas did not mention this in his witness statement) and c) this point was not put to any of the Defendant's witnesses.

69. Niki was also blessed with another grandchild. It is clear from the evidence before me that her grandchildren were the light of her life albeit they were occasionally the cause of grumbling by her. She loved them and cared for them. She was happy to provide childcare for them and for their friends.

She was able to do so despite her grandchildren and their friends speaking only English. She had friendships and working relationships with members of the local English-speaking community. She was very generous to that community sharing food with visitors. Stella and Alan were daily visitors to Niki's home first at 54 Hellesby Avenue and then at 9 Harewood Crescent, North Hykeham following its purchase in early 2001. 54 Hellesby Avenue was sold as part of the divorce proceedings between Niki and Louis: Decree absolute was issued on 29 December 2000.

70. During this time Niki's relationship with Andreas thawed and by 2003 she allowed him to visit her in her home. These visits were timed to accommodate Andreas's work and to avoid a confrontation between Stella and Andreas. Andreas therefore visited Niki. The visits were not however daily nor were they regular. They were when Andreas chose to attend and no matter the hour of the visit Niki was welcoming to him. They would go out of her property including to get fast food and on one occasion to visit Leeds and Bradford. Niki knew that her relationship with Andreas would annoy and upset Stella but this did not stop her and she accompanied Andreas on their trips out knowing that they would likely to be discovered by Stella.

71. Niki also communicated with her sister, Skevoulla, in Cyprus, almost continuously. They would call each other a number of times a day when they wanted a chat, to inform each other of developments and/or to set the world to rights. Niki would also visit Skevoulla and Skevoulla would visit Niki. They were very close.

72. In 2001 Niki was diagnosed with osteoarthritis of the knee.

73. By 2003 I find Niki knowing the contents of her 1995 Will began to reconsider planning for her estate. She wanted to make a new Will. She raised this with Alan and Stella. Alan through various contacts knew a solicitor who would deal with the drafting of Wills, Richard Lord, and an introduction was made to him.

74. In January 2003 Richard Lord attended a property and met Niki. Due to the passage of time and Mr Lord retiring his files have been destroyed. I accept Mr Lord's evidence and find there is nothing

suspicious in that regard. However, Mr Lord provided evidence of his visceral memory of his meeting with Niki which I accept as true. I therefore find as a fact that Niki was Mr Lord's client, Stella was not present when Mr Lord took instructions from Niki, Niki did hand to Mr Lord a handwritten piece of paper with the names and addresses of the Cypriot beneficiaries written on it but it is not known if that had been handwritten by Niki or by another, Niki informed Mr Lord of what she wanted to happen on her death and that in doing so she made an extremely strong criticism of Andreas and demonstrated a committed belief that he should not inherit from her estate.

75. Mr Lord drew a Will in accordance with Niki's wishes. It is not known how or where the Will was executed. It is dated 10 January 2003. However, from its face Mr Lord confirms that the Will, save for one typographical error accords with Niki's instructions. The witnesses to the Will were two friends of Niki. Both of those witnesses have since died and hence could not provide evidence to the Court. They were the parents of Ms Sleight who did give evidence before me. There is no evidence before me that Niki's signature on the Will is a forgery.

76. As a result of the 2003 Will one quarter of Niki's estate was to go to Skevoulla and three quarters to Stella. There was no bequest for Andreas. Given the 1995 Will provisions the Will therefore did not disinherit Andreas. It reduced Stella's entitlement.

77. In January 2004 Niki was diagnosed with type II diabetes. The 2003 Will therefore predates Niki's diagnosis. In 2010 she is noted as having ocular hypertension and in September 2011 as having varicose veins and eczema on her leg.

78. In 2011 Niki was still able to recount the contents of her Will. She was however becoming increasingly concerned about her estate. Niki discussed her concerns with Stella and, I find, she wanted to seek advice from a solicitor.

79. Given her mother's mobility issues and Niki's limited ability to communicate on the phone with non-family, Stella therefore made the physical efforts necessary to find a solicitor. This included Stella going to Ringrose solicitors to ask for preliminary information on 27 January 2011. At that firm Stella

was introduced to Ms Storey who spoke briefly to Stella in reception and provided leaflets as to their services for lifetime dispositions of property. I am satisfied that the discussion on that occasion went no further than that.

80. Stella took the information home to Niki. I am satisfied that in all probability Niki would have sought Stella's assistance in reading and understanding the leaflets provided and that Stella would have provided this for her mother. Niki decided that she wished to enter into a Trust Deed. Stella therefore made an appointment with Ms Storey in July 2011.

81. Given the evidence of Stella, and Andreas, it is of no surprise that Niki required to be driven and accompanied to the appointment. I draw no adverse inferences in that regard. At the meeting on 11 July 2011 with Ms Storey it is clear from the attendance note that Ms Storey initially met with Niki as her client with Stella accompanying Niki. Ms Storey took some background information from Niki. Ms Storey then requested Stella leave the meeting, which Stella did. Only when Stella had left did Ms Storey take instructions from Niki. From the evidence before me I find that as a matter of fact Niki was able to speak English sufficiently to convey her instructions to Ms Storey, this included recalling accurately the contents of her 2003 Will. Niki, in the absence of Stella, made decisions when options were provided to her by Ms Storey and Ms Storey, a professional solicitor and member of STEP, was satisfied that the instructions she had taken were those of Niki and that Niki understood what was to happen.

82. On 5 September 2011 Niki and Stella attended Ms Storey to execute the Will. Prior to the execution Niki, in English, raised a question on which she wanted clarification from Ms Storey. Ms Storey answered this and Niki then proceeded to execute the trust deed. The signature on the Deed is Niki's. As a result of the Deed Niki's residential property was transferred by her into a trust of which Stella and Alan were the trustees. The property was held by them on trust for Niki during her lifetime and then for Stella. The effect of the trust was to remove the Property from Niki's estate. This had been the professed reason given by Niki as to why she wished to enter into the trust when she met with Ms Storey.

83. Following the execution of the Deed Niki's life at her bungalow continued and she seems to have generally been happy and content. She was not happy when sometime in 2012-13 Andrea left an old car on her driveway as this caused difficulties for her with her neighbours. In my judgment this shows that Niki's relationship with Andreas was not as happy on her side as Andreas felt it was on his side: There was a level of tolerance from Niki toward Andreas. Niki was not afraid to share her grumbles and her opinions with others speaking in English.
84. In October 2012 Niki was diagnosed with anxiety and depression with delayed bereavement reaction following the death of her brother. She was given medication and she was to be reviewed in 2 weeks time. At that appointment she was noted as feeling significantly better. She declined psychological intervention. She was markedly improved by the end of November 2012 albeit still taking medication.
85. Unfortunately her physical health began to deteriorate. In December 2015 Niki and Stella sought permission to undertake modifications at Niki's home.
86. In January 2018 Niki attended the Older Adults Division and Memory Assessment And Monitoring Service. Her assessment could not be fully completed due to language difficulties. Niki had attended with Stella and they both spoke to the community psychiatric nurse about concerns they had over Niki's diabetic control.
87. On 12 April 2018 Niki received news that she had Alzheimer's at a moderate level. Stella proposed that Niki come to live with her and her family.
88. By July 2018 Niki agreed and her house and Stella's house were put up for sale. Both properties sold and the proceeds were used to purchase 1 Ridge Close, Welton. From a video which was placed before the Court showing Niki in 2018, Niki was happy. She was able to move around the home with her mobility walker and her eyes in the video show a vibrantly alert and inquisitive individual. She communicates in the video in English with Stella and she is happy and animated.
89. Niki changed doctors in October 2018 and there is reference in her general notes to someone,

presumably Stella, as a person who can translate for Niki.

90. In February 2019 Stella and Alan celebrated a milestone wedding anniversary. They wished to go on a holiday with their children and with Niki to celebrate. Niki did not feel able to attend but I find was happy for the holiday to proceed. She no doubt recognised that carers need respite care – something recognised in Government policies on the provision of care to adults. Stella sought options for her mother to stay at home but was not able to secure any options. Niki therefore for a two-week period stayed in a nursing home. Andreas criticises Stella for this decision. This court does not do so and accepts it was a decision made with the full support of Niki.

91. I have also seen a video of Niki whilst in the home. In the video Niki is attended on by Andreas, Gavriella and two other people I am told are family members. Niki appears to be more quiet in this video and whilst she engages with the people who are there she is not as bright or happy as in the 2018 video. I do not know why this is. It is however of some concern that in the video Andreas physically hurts her. Given however this is a very short snapshot of their relationship I place no weight on that aspect of the video. Rather the video is of assistance to me in showing that Andreas spoke to his mother in the video at all times in English and Niki was able to reply in English. In contrast Niki appears to speak to the others in the room in Cypriot-Greek.

92. Upon Stella and Alan's return from holiday Niki moved back to Ridge Close. On 7 February 2020 Niki and Stella were informed that Louis had died. I do not accept Andreas's suggestion at trial when questioning Stella that Niki had wanted to see Louis when he was ill. Given the harm Louis caused to her this is highly unlikely and I am afraid having watched Andreas's demeanour when asking Stella about this (something which he gave no evidence on and had not raised before in his statement or submissions) I was certain the question was asked by him vindictively, not for its truth but to upset Stella.

93. In October 2020 following a standard diabetic check Stella was contacted by Niki's health care provider and informed that Niki's iron level were low. Despite this occurring in the middle of the Covid pandemic Stella was told to take her mother to hospital. Niki was admitted which shows, in my

judgment, how serious the position was. Niki had transfusions and during this time was visited by Andreas. Again, I have a video of that interaction. In the video Niki is alert but very reserved. She says little but what she does say she says in English and Andreas always communicates with her in English. His words are above “pigeon English”. Niki shows no signs of failing to understand, for example when asked she provides her hand to Andreas to hold up to the camera so that the viewer can see her nails

94. Niki was discharged from hospital in November 2020 but fell ill within 48 hours with the symptoms of sepsis/pneumonia. Niki was readmitted to hospital where she began to rapidly decline. By December 2020 Niki's was placed onto a palliative care pathway. A decision was taken by Niki in January 2021, who was assessed as having capacity to make decision as to her care, that she wished to return home knowing she would die there.
95. Stella, together with professional carers, cared for Niki in her dying days. Stella despite her anger toward Andreas contacted Andreas and allowed him to attend her home to see his mother. Niki died on 26 January 2021.
96. Correspondence then ensued as to Niki's estate. Whilst I note Andreas's submissions in this regard I draw little assistance from this given the clear animosity between the siblings.
97. It is therefore clear to me on the facts before the Court and all the evidence before the Court that:
 - a. Niki did not always accept facts when first placed before her and would demand clear evidence before she accepted a fact she did not like;
 - b. The 1995 Will, the 2003 Will and the 2011 Trust were all professionally drafted by solicitors for Niki. Stella was not the client of the solicitors for those documents. Nor were any of the documents home-made or DIY;
 - c. The Golden Rule was not applied in the drafting or execution of any of the documents;

- d. An Interpreter was not utilised in relation to either Will or the Trust Deed;
- e. Niki could communicate in English until 2018. She was able to speak English and understand English when spoken to her. At the relevant times (1995, 2003 and 2011) her medical records show that she spoke with her medical providers successfully in English without Stella or any other interpreter being present. She was also able to communicate her wishes to Mr Lord and Ms Storey in English and to raise queries with them;
- f. Until 2018 she spoke with English speakers in English and with Cypriot-Greek speakers in Cypriot-Greek. When she required clarification or interpretation she did not hesitate to ask for it. She was no wall flower;
- g. In 2018 she began to experience difficulties speaking and understanding English;
- h. Throughout the relevant times her ability to read English was more limited but she could communicate in, and read, basic written English;
- i. Niki was never assessed during her lifetime as lacking capacity to make decisions for herself whether as to her welfare and care or her property and affairs despite direct dealings with psychiatric care and mental health professionals;
- j. Niki was a woman with her own mind. She held strong opinions on issues such as politics and society and she would debate them with English speakers and Cypriot-Greek speakers.
- k. Niki made her own decisions. In 1995 she did not want to see Andreas and put in place an agreement to prevent that. Andreas caused this;
- l. In her dying days Niki was still able to make her own decisions and she did so as to her place of death which she chose to be her family home (although I accept that this does not of itself mean Niki had capacity in relation to the issues before me).

m. From 1995 Stella considered both her father and her brother to be dead to her save until Niki's dying days when Stella was able to relent and allow Andreas to visit his mother. Stella hates Andreas and does not say his name, Andreas did not overtly have the same depth of feeling toward Stella during Niki's lifetime. Andreas now however displays a similar level of hatred toward his sister, Alan and his nieces.

Findings on the Issues

2003 Will: Capacity

98. The burden of proof on this issue rests on Stella as the person seeking to prove the Will. It is to be judged on all the evidence before the Court as to Niki's capacity at the date of the Will. Taking into account the report of Dr Series, the medical records, and the evidence of Mr Lord I am left in no doubt that as a matter of fact in 2003 Niki had capacity to make a Will.

99. The Will is rational on its face, even taking into account a clear typographical error, and properly executed.

100. Niki had previously suffered from difficulties with her mental health. These had led to her begin admitted to a specialist hospital in 1994 and 1995. There had however since April 1996 been no concerns regarding her mental health. From her medical records there is no record of a permanent mental health condition suffered by Niki, or of a short-term or emergency condition being in effect in 2003 and capable of removing Niki's capacity. Dr Hugh Series' conclusion was that the medical records he reviewed "*do not provide any reason to doubt*" Niki's capacity at the time of the 2003 Will, and that Niki's Alzheimer's diagnosis was not likely to be relevant to her capacity to sign a document in 2003.

101. In 2003 Niki was therefore not being treated for any disturbance or impairment of the mind and there is nothing in her medical records suggesting that she was suffering from any delusions or a disorder of the mind, let alone delusions or a disorder of the mind which was capable of affecting Niki

as required in the authorities.

102. I fully accept that the medical records show that Niki was on medication at the time of execution of the Will and that those medications could potentially have produced side-effects which may have been relevant to capacity. However there is no evidence before me that Niki did in fact suffer any side effects from her medication let alone that those side effects deprived her of capacity. I note that Dr Series agrees with this conclusion.

103. Further Richard Lord's evidence is entirely consistent with Niki having capacity to make a will (albeit he makes clear the limits of his recollection in the absence of his file).

104. None of the witness statements on behalf of either party indicate that Niki might have been lacking capacity in 2003.

105. I therefore find on the facts before me that Niki had capacity to make a Will in 2003.

Whether Niki knew and approved of the 2003 Will and its contents

106. The burden of proof again rests on Stella in this regard. I have already made findings as to Niki's ability with the English language: In January 2003 she could speak and understand English and she could read and write basic English. If Niki was uncertain she would seek clarification. She did not therefore require an interpreter to execute the Will.

107. The evidence before me is clear as to the circumstances of the Will: It was Niki's idea as she wanted to include her sister. Richard Lord's evidence is also clear: Niki knew what she wanted and what she didn't want when giving instructions. She was forceful in this regard and did not want Andreas to inherit. A point she made in very strong terms. The Will was drafted in accordance with Niki's instructions although Mr Lord cannot remember whether he met with Niki following it being drafted or whether he read the will over to Niki. The Will is however duly executed on its face.

108. I fully accept, as did Mr Lord in his evidence, that the Will contains an error in that it refers to Niki's nephew incorrectly, describing him as her son not her sister's son, but in my judgment that is an error which could easily be made in a Will. It does not show a lack of knowledge and approval on Niki's part, nor does it invalidate the Will as:

- a. the relevant provision never came into effect, and;
- b. if it had it could easily have been resolved by a court on an appropriate application.

109. In my judgment the evidence before the Court shows that Niki did know and approve of the contents of the Will. She understood what was in the Will as she gave instructions to Mr Lord and confirmed to him the effect of the instruction on Andreas was as she wished, and the Will she executed matched her instructions. Niki therefore knew and approved of the contents of the Will (*Theobald on Wills*, paragraph 4-045).

Whether Niki executed the Will due to undue influence exerted on her by Stella

110. The burden of proof on this issue rests on Andreas. No direct evidence of coercion was produced by Andreas. The Court is therefore required to look at the wider facts before it to see if there is evidence of coercion in 2003.

111. The major difficulty faced by Andreas in his claims relating to the 2003 and 2011 documents in relation to undue influence and fraudulent calumny is that at their heart there is a factual contradiction. On his factual case Niki was a woman who wanted to see him and did see him. She knew that would invoke the anger of Stella but she didn't care and she went ahead with seeing Andreas even when it was obvious they would be caught doing so. Hence she was happy to go for a day trip with him to Leeds and Bradford and to let him, on Andreas's case, park his car on her driveway. She was able to enter into secret pacts with him and allowed her home to be used to circumvent Stella's wishes regarding Stella's children having no contact with Andreas. This factual case suggests a strong-willed woman, who knew her mind and who was not intimidated or scared of Stella. Anything said by Stella would not,

on Andreas's factual case, have overborne Niki's will.

112. Yet Andreas's legal case (leaving to one side the language barrier issue) is that Niki was unable to make or understand decisions, was coerced into making two wills and unduly influenced to enter into a Trust. This contradiction at the heart of the case was never engaged with or explained by Andreas during the trial.

113. The other difficulty with the undue influence claim in relation to the 2003 Will is the inherent improbability of Stella, who appeared to the Court to be a rational and level-headed person, coercing her mother to make the provision to her from her mother's estate worse. Those who coerce do so to benefit themselves not deprive themselves. Stella freely admits that she knew from 1995 onwards the contents of the 1995 Will. It would be an extremely odd abuse of power by a person in a position of trust and confidence to coerce an individual to reduce their inheritance. Again, Andreas did not engage with the inherent improbability of Stella coercing her mother to make her position worse in 2003.

114. Taking into account the evidence and these contradictions in my judgment there is nothing to suggest that Niki was either coerced or defrauded into signing the 2003 Will. Undue influence is not the most likely hypothesis for the Will given that Niki had been offended by Andreas' actions in 1995 and given that Stella provided her day-to-day care and her sister her daily emotional support, whilst Andreas was an irregular visitor. Instead, the facts are consistent with Niki having a clear desire to include her sister in the distribution of her estate to recognise her support, and to prevent Andreas from obtaining any of her estate upon her death.

2003 Will: Whether the Will is void as a result of fraudulent calumny by Stella

115. The burden of proof on this issue rests on Andreas. The contradiction highlighted at paragraphs 111 to 112 above is most obvious in relation to the fraudulent calumny case where Andreas says Niki entered into legal documents as a result of fraudulent representations by his sister to his mother but on his own case Niki knew each of the representations to be untrue as she was actively and secretly circumventing what Stella was saying to her:

- a. Niki on his case knew the reason he continued to work with his father was her request and he did not side with his father in the divorce;
- b. Niki knew he visited her;
- c. Niki knew he took care of her when he visited;
- d. Niki knew he was not disconnected as he visited her and followed her wishes;
- e. Niki knew he was in contact with Stella and her family including through fridge magnets.

116. Given my factual findings , Niki knew the truth and was allowing Andreas to visit her home by 2003. Indeed, Andreas says he was on good terms with his mother at that time. Therefore the fraudulent calumny case must fail as Niki was not and cannot have been influenced in 2003 by any of the representations alleged to have been said to her by Stella whether Stella said them and/or believed them or not.

117. In any event as Mr Lord makes clear there was another explanation why the Will was entered into and I accept that explanation was correct. The Will was not therefore made only due to the alleged representations. I therefore reject this challenge to the Will. The 2003 Will is therefore valid.

2011 Trust Deed: Capacity

118. I have considered the issue of capacity in relation to the Trust on all the evidence before the Court. I have taken into account in assessing capacity that by the Deed Niki disposed of her major capital asset and I have therefore considered the requirement of capacity akin to that applicable to a Will.

119. Taking into account Ms Storey’s evidence Niki was able to understand that she was executing a trust, the property it related to and the claims of the beneficiaries to the trust and the moral claims of those excluded from the trust. Niki demonstrated this by giving instructions to Ms Storey and asking

relevant questions. Niki may not have understood technical legal points in relation to the operation of a trust but she could understand the general effect of the trust she was seeking to enter into. In my judgment this ability to understand through active questioning is not countered by the medical records.

120. In 2011 Niki had some health difficulties and these included an ongoing episode of depression but these were not such as would naturally affect her capacity and there is no evidence before me that it did affect her capacity. Dr Series confirms that there is nothing in the medical records to raise a question in that regard.

121. Again, Andreas relies on medication which had been prescribed to Niki. Again, however whilst the prescription could have side effects there is no evidence that it did cause the side effects in Niki or that the side effects she had affected her capacity. Nor is there any evidence that Niki suffered from brain fog at the time of the Deed as stated by Andreas in his pleadings and submissions, but not his evidence.

122. I reject Andreas's submission that in 2010 to 2011 the medical records show that Niki was extremely ill and in and out of hospital. Whilst there are illnesses set out in Niki's medical records which I have set out above she was plainly, from the medical records, not extremely ill. Further her medical records during the relevant period do not show that she was in and out of hospital.

123. I reject Andreas's contention that the Trust should have contained a clause that the Trust would only be effective whilst Niki had capacity. First such a clause is not necessary. Second this was not Niki's instructions at the time she executed the Deed and it is not for this court to rewrite the Trust. Niki wanted to ensure her property did not go to Andreas in her life or death. The clause Andreas seeks to suggest should be in the Trust is entirely inconsistent with Niki's intentions as recorded at the time.

124. I therefore find on all the evidence before me that Niki had capacity to execute the Deed in 2011.

2011 Trust Deed: Knight v Knight and the language barrier

125. The burden of proof rests on Andreas on this issue. Ms Storey gave very clear evidence to the court in writing and in the witness box which I accept as true. As a result, it is clear that Niki when attending Ms Storey's office on the first occasion did so knowing she was going to create a trust of her home, she knew who the beneficiaries of the trust were to be and who they were not to be, and she knew that the Trust was to be drafted by Ms Storey. Her instructions were taken without the assistance of an interpreter and without Stella being present. Niki was able to discuss matters with Ms Storey and give her instructions without a significant language barrier.

126. When Niki attended on the second occasion, she spoke to Ms Storey and raised a question as to how the trust would operate should she need to move to a different property. Ms Storey tells me, and I accept, that she answered Niki's question and explained the Deed to her, albeit not reading or explaining every word. Niki did not therefore require an interpreter when executing the Trust.

127. From this it is clear that when Niki executed the Trust in 2011 she had the three necessary certainties required for a trust: Niki had certainty of intention, certainty of subject and object and certainty of words. Further it is clear from Ms Storey's evidence that Niki knew that the document she was signing had legal implications and that it created legal relations between herself, Stella and Alan.

128. An intention to create legal relations is however judged objectively. Even taking this into account however when the facts are analysed in this case from an objective standpoint when Niki executed the Deed she intended to create legal relations.

129. As set out earlier Niki could speak English and could understand English when spoken to her in 2011 as shown by her medical records. She could also read some English. She was not therefore illiterate nor was she unfamiliar with the English language even if she was unlikely to be familiar with technical legal phrases. Niki was also of full age. I do not therefore accept Andreas's case that Niki was not able to understand the Deed when she signed it as Niki could, and did, ask questions even if she could not fully read the document. If the explanation and any answers she received were true and faithful to the document, as I accept they were, then Niki did not execute the document under a misapprehension.

130. On the evidence before me Niki therefore signed what she set out to sign intending thereby to put her property into a trust. Niki therefore did not sign the Deed under any misapprehension but rather she did so intending to create legal relations by a trust.

2011 Trust Deed: Undue Influence

131. It was accepted by Stella that her relationship with Niki was one of trust and confidence. By the execution of the Deed Niki parted with ownership and control of her major capital asset. In my judgment the transaction therefore calls for an explanation. The burden of proof is on Stella in this regard.

132. Having considered all the evidence I am satisfied that an explanation has been provided and that Stella has rebutted the presumption of undue influence. As already found Niki had a forceful personality and knew her own mind, she wanted to see a solicitor as she was worried about her estate. In particular, she did not want Andreas to have a claim to her home. Niki received independent legal advice in relation to the Deed. In the circumstances, I find that Niki was sufficiently independent from Stella that she was not unduly influenced in entering into the Trust Deed. The 2011 Trust Deed is therefore valid and Niki's property would not have fallen within her estate on her death.

1995 Will

133. Given my conclusions on the 2003 Will it is not therefore necessary for me to consider the challenge made to the 1995 Will. If Niki had wanted to bring Andreas back into her testamentary plans after their falling out during the judicial separation and divorce proceedings then she had ample opportunity to do so including in 2003 but she chose not to do so. It is not for this Court on this claim to interfere with that decision by Niki given my findings above.

134. If, however, it had been necessary for me to make findings on the 1995 Will then my findings would have been as follows (applying the burdens of proof as per the 2003 Will):

- a. The will was prepared by solicitors and it is rational given that Niki wished to separate from Louis and Andreas at that time due to their actions. The Will was validly executed in the solicitors presence as shown on the face of the Will;
- b. Whilst Niki was under the care of a psychiatric team at the time this does not mean that she lacked capacity at the time of execution rather this raises a question as to her capacity;
- c. Looking at all the evidence before the Court the evidence shows that Niki retained capacity at this time. After all her treating physicians knew she was attending solicitors that day to sign legal documents. They did not stop her leaving the hospital or advise her or Stella that the documents should not be executed. Instead they advised her she could sign documents if she felt balanced and able to consider them;
- d. On the evidence before the Court in the medical records Niki was capable at the time of the Will of speaking in English to her advisers. On the evidence Niki would therefore have been able to communicate her wishes to the solicitors and to understand their advice and any explanation of the Will to her;
- e. I do not have the solicitors file for the 1995 Will as it has been destroyed due to passage of time, further the solicitor who dealt with the matter has died. There is therefore no evidence that the Will was read over to Niki before it was signed. However, Niki executed the Will in the presence of solicitors;
- f. There is no evidence of coercion being exercised over Niki by Stella in 1995. There is however clear evidence in the medical records and in the Deed of Separation of Niki being angry with Andreas and wanting to exclude him from her life and property at that time;
- g. Given the timing of the Will most of the representations relied upon by Andreas could not have been made to Niki. To the extent the representations went to the lack of involvement of Andreas in Niki's life the medical records show this was true, not false, and was caused by

Andreas. Finally the 1995 Will was made on the advice of Niki's divorce solicitors and not due to false representations by Stella. There was therefore no fraudulent calumny behind the 1995 Will;

- h.** If representations were made by Stella in 1995 then, if I was to accept Andreas's case despite it being directly contradicted by the contemporaneous documents, Niki was on good terms with him in 1995 so any representations by Stella were not believed by Niki and could not therefore on Andreas's case have been the cause of the 1995 Will.

Conclusion

135. For the reasons set out herein I therefore pronounce in favour of the 2003 Will and dismiss the claim. I also declare that the 2011 Trust Deed was valid. Consideration of the 1995 Will is not therefore strictly required.

136. I will hear from the parties on the costs and consequential orders that arise from this decision at 2pm.

Dated 9 November 2023