Case No: HC11C01194

Neutral Citation Number: [2013] EWHC 2269 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Wednesday, 16 January 2013

BEFORE:

MR MARK CAWSON QC
(sitting as a Deputy Judge of the High Court)

BETWEEN:

VANESSA SCHOMBERG & ORS

Claimants

- and -

DAVID TAYLOR & ORS

Defendants

MR C BARLOW appeared on behalf of the Claimants, Ms V Schomberg and Mr D Randall

MR J BRIGHTWELL appeared on behalf of the First and Second Defendants, Mr D Taylor and Mr P Taylor

MR J ALLCOCK (instructed by Payne Hicks Beach) appeared on behalf of the Fifth, Sixth and Seventh Defendants, Ms C Kaplan, Mr A Peskin and Mr D Peskin

MR HOLDEN (instructed by Finers Stephens Innocent) appeared on behalf of Mr B Peskin

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Approved Judgment

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(Official Shorthand Writers to the Court)

MR MARK CAWSON QC:

1. This is my judgment in the matter of Schomberg and Randall v David Howard Taylor and others.

Introduction.

2. In this claim, the claimants, Vanessa Patrice Schomberg ("Mrs Schomberg") and Derek George Randall ("Mr Randall"), who are named as the executors in what purports to be the last will and testament dated 18 December 2008 ("the 2008 will") of the late Marlene Taylor ("Mrs Taylor"), seek to propound the 2008 will in solemn form. There is no issue that the 2008 will was duly executed as a matter of formality, and due execution is duly proved in respect of the 2008 will by the witness statement of Mrs Schomberg and her evidence to me. However, the first and second defendants, David Howard Taylor ("David") and Paul Harrison Taylor ("Paul") allege that the 2008 will was executed under the undue influence of Bruce Anthony Peskin ("Mr Peskin") who was initially joined as eighth defendant.

3. By their counterclaim, David and Paul ask the court to pronounce against the 2008 will and to pronounce in solemn form in favour of an earlier will dated 8 November 2005 ("the 2005 will"). Whilst there is no real issue as to the due execution of the 2005 will, the original is not presently before the court. The copy of this will in the bundle shows it to have been executed in the presence of Lesley Adamson, a clerk with Mrs Schomberg's firm of solicitors, and also by Caroline Mann, an office clerk with the same firm.

4. Mrs Schomberg informed me in evidence that she prepared the 2005 will and that Mrs Taylor visited her at the office in order to execute itl. She informed me that Lesley Adamson was a highly-experienced clerk, well used to the practice of the formal execution of wills and that she is certainly satisfied that it had been duly executed.

5. Consequently, subject to production of the will itself, I can be reasonably satisfied that the 2005 will was duly executed. However, if necessary in the light of my decision in this case, further inquiry would have to be made as to the whereabouts of the original 2005 will before I would be in a position to formally pronounce in its favour.

6. The real issue before me is as to whether the 2008 will was executed under the undue influence of Mr Peskin.

7. So far as representation is concerned, Mr Craig Barlow of Counsel appeared on behalf of the claimants, Mrs Schomberg and Mr Randall. Mr James Brightwell of Counsel appeared on behalf of David and Paul. On the first day of the hearing the fifth, sixth and seventh defendants were represented by Mr Jonathan Allcock. I shall explain their role in the proceedings in due course. Today, for the purpose of the delivery of this judgment, Mr Andrew Holden of Counsel appears on behalf of Mr Peskin, having submitted a skeleton argument dealing with the question of costs.

The individuals involved.

8. In or about 1966 Mrs Taylor married the late Brian Taylor ("Mr Taylor"). At the time of this marriage Mr Taylor had two sons from an earlier marriage, David and Paul, then aged about 11 and 9. Mr Taylor died on 17 October 2008. Latterly, Mr and Mrs

Taylor lived at 54 High Street, Potterspury, Northamptonshire. At all relevant times, David has lived in Dollis Hill in London and Paul in Israel. David and Paul stand to take the whole of Mrs Taylor's residuary estate under the 2005 will, but are legatees for only £10,000 each under the 2008 will.

9. Mrs Taylor had a brother, Anthony Stansbury, and a sister, Penelope ("Penny") who is married to Mr Peskin. Mr Peskin and Penny have three children, the fifth defendant, Celina Anne Kaplan, known as "Cindy", the sixth defendant, Andrew Jonathan David Peskin ("Andrew") and the seventh defendant, Dominic Samuel Alexander Peskin ("Dominic"). Cindy, Andrew and Dominic stand to take between them the whole of the residue under the 2008 will, but nothing under the 2005 will.

10. David is married to Louise Taylor ("Louise"). Paul's wife, Muriel, sadly died in October 2010. The third defendant, Lucy McKay ("Mrs McKay"), was a neighbour of Mr and Mrs Taylor and worked as a personal assistant to Mr Taylor and, latterly, in the role of carer to both Mr and Mrs Taylor and to Mrs Taylor following Mr Taylor's death. She is left a legacy of £25,000 by the 2008 will, but nothing under the 2005 will. Mrs McKay lived close to Mr and Mrs Taylor in Potterspury.

11. The fourth defendant, Terry Waterhouse ("Mrs Waterhouse"), had known Mr and Mrs Taylor for approximately 15 years and worked for them, and latterly Mrs Taylor, as a cleaner and in helping them out on a more general basis. Again, she lived close to Mr and Mrs Taylor in Potterspury. She is left a legacy of £5,000 under the 2008 will but nothing under the 2005 will.

12. It is to be noted that, in the event of the 2005 will being propounded in solemn form in preference to the 2008 will, then David and Paul have agreed to honour the legacies in favour of Mrs McKay and Mrs Waterhouse provided for by the 2008 will. The effect of this is that the result of the case is entirely neutral to them.

13. In addition to David, Paul, Louise, Mrs McKay and Mrs Waterhouse, I also have heard evidence from the following on behalf of David and Paul: Mr Alan Downer ("Mr Downer") who together with his partner, Jules or Julie, were close family friends of Mr and Mrs Taylor; secondly, David and Paul's cousin, Richard Ladd ("Mr Ladd") who was formerly married to Cindy; thirdly, Mr Taylor's nephew-in-law, Mr Bernard Telshaw ("Mr Telshaw"); and fourthly, Sue Pollard ("Mrs Pollard"), a neighbour of Mr and Mrs Taylor, who, in particular, assisted in caring for Mrs Taylor after Mr Taylor's death.

14. Mrs Schomberg is a solicitor and partner in the firm of J Garrard & Allen of Olney, Buckinghamshire. She first took instructions from Mrs Taylor in respect of a will made in 1988 and took instructions from Mrs Taylor in respect of both the 2005 and the 2008 wills. The other claimant, Mr Randall, is a retired solicitor who, as we shall see, acted for and was a friend of Mr Peskin.

Procedural History.

15. It was necessary to look at some length at the procedural history. The claim was issued, supported by Particulars of Claim, on 13 April 2011 after David and Paul had each lodged caveats against the 2008 will being admitted to probate. Paragraphs 33 to 44 of David and Paul's defence and counterclaim dated 31 May 2011, to which I shall

return, set out the basis of the claim that the 2008 will was executed under the undue influence of Mr Peskin. As I have said, Mr Peskin was originally joined as eighth defendant, however, his then solicitors, Payne Hicks Beach, filed an acknowledgement of service disputing jurisdiction. In the event, a Consent Order was signed by the claimant's solicitors and by Mr Peskin's then solicitors, reciting that the claim against Mr Peskin had been discontinued, with the costs being reserved. A formal order to this effect was made by Master Bowles on 4 October 2011.

16. Whilst Cindy, Andrew and Dominic did acknowledge service indicating an intention to defend the proceedings, they did not serve a Defence and, by the order of Master Bowles dated 1 February 2012, they were then given permission to amend their Acknowledgements of Service to state that they did not intend to defend the claim. This followed on from correspondence sent by their solicitors, Payne Hicks Beach, in response to the Defence and Counterclaim to the effect that they had considered the allegations made by David and Paul and did not wish to participate in any dispute over which will should prevail.

17. The position of Cindy, Andrew and Dominic was further explained in a letter from Payne Hicks Beach addressed to me as trial judge, dated 11 December 2012. That letter referred to earlier correspondence and said that, as explained in those letters:

> "Our clients are not taking any active part in these proceedings and, accordingly, they do not intend to attend or be represented at the hearing of the trial itself. We have nevertheless instructed Mr Jonathan Allcock of Maitland Chambers to attend briefly at the start of the hearing on Monday, both as a courtesy to the court and to enable arrangements to be made for our clients to be informed of the outcome of the dispute so that they might have the opportunity to make representations about consequential orders and directions."

18. So far as the other defendants are concerned, neither Mrs McKay nor Mrs Waterhouse served defences or played any active part in the proceedings. The claimants, in response to the Defence and Counterclaim, served a Reply and Defence to Counterclaim.

19. In view of the approach taken by the defendants, apart from David and Paul, the Order for Directions made by Master Bowles on 1 February 2012 only provided for disclosure and exchange of witness statements as between the claimants and David and Paul. Although perhaps not initially clear from their Particulars of Claim, the claimants have adopted, in particular for the purposes of the trial before me, a neutral stand. To that end, at the start of the trial, they indicated that they did not intend to cross-examine David or Paul or any of their witnesses. No witness statement has been filed from Mr Randall. So far as cross-examination of Mrs Schomberg is concerned, there was some very limited cross-examination of her by Mr Brightwell on behalf of David and Paul.

20. Matters have potentially been complicated by the fact that Mr Peskin has instructed new solicitors, Messrs Finers Stephens Innocent and, as well as instructing new solicitors, those new solicitors sent to the claimants two witness statements suggesting

that they be put before the court. So far as this is concerned, there was a further letter from Finers Stephens Innocent of 11 January 2013, again addressed for my attention as trial judge, in which Finers Stephens Innocent said this:

> "We act for Bruce Peskin in relation to the above claim and have assisted him in the provision of his witness statements which are being included in the claimant's disclosure. We write to confirm that Mr Peskin will be in London for the duration of the trial. He remains available and willing to give evidence of the same and assist the court in its deliberations. For ease of reference copies of Mr Peskin's witness statements are enclosed."

21. The letter goes on to explain that Mr Peskin was originally a party to the proceedings and then reference is made to Master Bowles' order of 4 October 2011 and a request is made by the letter that Finers Stephens Innocent be informed as to the appropriate time to make submissions in relation to costs. The witness statements, I should note, are dated 6 November 2012 and 3 January 2013. Reference is made to these witness statements in the skeleton arguments of both the claimants and David and Paul. I was invited on behalf of David and Paul not to read the witness statements and did not do so.

22. At the commencement of the trial, I invited submissions as to the approach that I should adopt so far as Mr Peskin's witness statements were concerned. Mr Barlow, on behalf of the claimants, informed me that the claimants did not intend to rely upon these witness statements and he did not seek to persuade me that I should read them. Mr Brightwell, on behalf of David and Paul, invited me not to read the witness statements. He made the point that Mr Peskin was not a party and, indeed, had sought to distance himself from the proceedings by taking the jurisdictional point that was taken, with the result that the proceedings were discontinued against him. Mr Brightwell made a further point that it was for parties interested in the litigation to either advance a case or not to advance a case and to either put evidence before the court or not to do so, as part of the normal adversarial process of litigation.

23. As I have indicated, Mr Allcock appeared before me at the commencement of the trial on behalf of Cindy, Andrew and Dominic, on limited instructions referred to in Payne Hicks Beach's letter of 11 January. He repeated to me that his clients did not seek to play a part in the trial and specifically did not seek to rely upon the witness statements that had been produced by Mr Peskin.

24. I remind myself that, although the proceedings are concerned with the formal validity of a will and are, in a sense, proceedings *in rem*, the proceedings are still essentially adversarial in nature. Apart from the possible taint that might attach to Mr Peskin should an allegation of undue influence be made out, the only parties with a real financial interest in the result of the present case are David and Paul on the one hand as proponents of the 2005 will, and Cindy, Andrew and Dominic as proponents of the 2008 will on the other hand. However, the latter have chosen to take no part in the proceedings and no party before me has sought to rely upon Mr Peskin's witness statements. For all these reasons, I indicated at the start of the trial that I was satisfied

that it would not be appropriate for me to read Mr Peskin's witness statements or to invite Mr Peskin to attend in any form in order to give evidence.

25. So far as Mr Peskin is concerned, he had the opportunity to engage in the process when joined as a defendant, but chose not to do so. Had he remained as a defendant in these proceedings then he would have been subjected to the normal processes of litigation, including the obligation to give disclosure and inspection. To the extent that he did seek (and it is not entirely clear that he did seek) to be invited to informally intervene in the proceedings at this stage, it seemed to me that it would not be appropriate for him to have done so. As I have said, the matter was essentially one for the fifth, sixth and seventh defendants, Cindy, Andrew and Dominic and, given that they did not seek to put the evidence in the form of Mr Peskin's witness statements before the court or ask me to pace reliance upon them in any way, I did not consider it appropriate for me to do so.

26. I make the further point in relation to Mr Peskin's witness statements that, had I read them, it would, it seems to me, have placed me in a very difficult position so far as dealing with the case in proper, and reasoned way is concerned in that I would have been faced with two sets of witness statements with no cross-examination on them and asked to make findings of fact in relation to them. It seems to me that the proper course is for the case to be conducted in accordance with the directions that have been given in the case, the proper exchange of witness statements in accordance with the directions were given and for evidence to be adduced at trial in the ordinary way.

27. Consequently, bearing in mind that the burden of proof rested with David and Paul when it came to the giving of evidence, David and Paul and their witnesses gave evidence first, followed by Mrs Schomberg although, with the limited exception so far as Mrs Schomberg is concerned, no witness was cross-examined. I did take the opportunity during the course of their evidence to put a number of questions to them that I considered pertinent to the issues that arose in the case.

<u>David and Paul's case as to undue influence.</u>

28. David and Paul's case as to undue influence is set out in paragraphs 33 to 43 of their defence. I will read out the relevant paragraphs:

> "33. The first and second defendants contend that the execution of the 2008 will was obtained by the undue influence of the eighth defendant [that is Mr Peskin].
> 34. The deceased is the stepmother of the first and second defendant. She married the late Brian Taylor on 5 July 1966 when the first defendant was 11 years old and the second defendant was 9 years old. During the remainder of the childhood of the first and second defendants they spent every other weekend and shared holidays with the deceased, who was a second mother to them for the rest of her life.
> 35. After about 2005, there was very little contact between the deceased and her sister's family, including the fifth to eighth defendants when, during the period between about 2005 and the death of Brian Taylor on 18 October 2008, some 38 days before the deceased gave the first claimant instructions to prepare the 2008

will, the first defendant inquired after the fifth to seventh defendants. The deceased almost invariably indicated that they had not been in contact.

36. In her will dated 29 July 1999 the deceased altered her previous will dated 29 September 1988 in which she bequeathed 50 per cent of her residuary estate to her sister and her brother in order to leave her entire residuary estate to the first and second defendants.

37. The first and second defendants remained close to the deceased at all times until her death, the first defendant seeing her often and providing practical and emotional support to both her and to Brian Taylor. The first defendant continued to telephone the deceased regularly and to support her after the death of the deceased's husband. The claimants and the fifth to eighth defendants have no reason to be aware of the relationship between the first and second defendants and the deceased.

38. The deceased and her husband visited Penny Peskin, sister of the deceased, and the husband of the eighth defendant, until a few years before they died. They ceased to do so after the eighth defendant sought repeatedly, by the exertion of pressure because of his bad financial situation, to obtain financial assistance from Brian Taylor in relation to a property development and sale. As a result of this pressure, the deceased made the 2005 will in which she removed the eighth defendant as executor. The deceased's physical and mental health deteriorated significantly during 2008 when she became increasingly frail.

39.1. In May to June 2008 before the death of Brian Taylor, she spent some time in a nursing home following the fracture of both hips and a subsequent hip replacement operation.

39.2. At around the time of Brian Taylor's death she was suffering from cirrhosis and jaundice.

39.3. For some time before the death of Brian Taylor, she was largely dependent upon him for her care needs.

39.4. She was becoming increasingly unhappy with her physical condition and increasingly unable to cope with it.

39.5. In the week leading up to the giving of instructions for the 2008 will on 25 November 2008, the deceased suffered acute muscular-skeletal chest pain and nausea and ongoing pain in her right thigh.

40. On the evening of the death of Brian Taylor on 18 October 2008, the first defendant took the deceased home. In the course of conversation that evening she represented to the first defendant and his wife that she had inherited her husband's estate and that her estate would be left in equal shares to the first and second defendants. She repeated this representation to the first defendant at the funeral of Brian Taylor.

41. Further, following the death of Brian Taylor the deceased was, in the period between the death of her husband and the execution of the 2008 will, physically and emotionally very frail, indicating on occasion that she no longer saw any purpose in continuing to live. She was accordingly particularly susceptible to pressure in

this period and unable to cope with the pressure applied to her by the eighth defendant, as set out below. Between the date of death of Brian Taylor on 18 October 2008 and the date of the execution of the 2008 will, the eighth defendant unduly influenced the deceased to make a will in which his children were the principal beneficiaries. He did so by:

42.1. Repeatedly telephoning the deceased in order to persuade her to make substantial provision for his children in her will and thus disinherit her stepsons.

42.2. Persisting in the said course of conduct, notwithstanding her fragile mental state and her evident vulnerability.

42.3. Procuring that the second claimant, who was his former family solicitor and who acted for the fifth defendant in her divorce from her first husband, was present on 25 November 2008 when the first claimant attended the deceased's house in order to take instructions for the 2008 will, such that the deceased felt compelled to comply with the eighth defendant's requests.

43. The deceased complained to the first defendant and to the third defendant during the period between the death of Brian Taylor and the execution of the 2008 will that:

43.1. she did not know what to do about her will;

43.2. that the eighth defendant had been telephoning her and pressurising her to make provision for his children in her will and that she believed that he was in financial difficulty."

The law relating to undue influence.

29. The law in relation to undue influence when alleged in respect of the execution of a will is helpfully summarised in the judgment of Lewison J, as he then was, in Edwards v Edwards [2007] WTLR 1387, at paragraph 47, as follows:

> "There is no serious dispute about the law. The approach 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 at 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) 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 voiding a testamentary disposition on the ground of fraud.
> [I then jump to ix]
> (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 disposition, the testator has acted as a free agent.

30. In Cowderoy v Cranfield [2011] WTLR 1699 Morgan J added the following rider to what Lewison J had said in Edwards v Edwards, and I quote from paragraph 141:

> "141. Lewison J did not refer to the authorities which supported his summary of the legal principles. I was specifically referred to Craig v Lamoureux [1920] AC 349 and Hall v Hall [1868] LR 1 P&D 481 which plainly provide the source, for some parts at least, of that summary. In particular, the former of these two cases is the source of the statement circumstances must be 'inconsistent with a contrary hypothesis', that is, a hypothesis other than the exercise of undue influence, see [1920] AC 349 at 357.
> In the present case, where I have considerable evidence as to the circumstances in which the disputed will was prepared and executed, I think that it is more appropriate for me to simply ask whether the party asserting undue influence has satisfied me to the requisite standard that the will was executed as a result of undue influence. The requisite standard is proof on the balance of probabilities but, as the allegation of undue influence is a serious one, the evidence required must be sufficiently cogent to persuade the court that the explanation for what has occurred is that the testator's will has been overborne by coercion rather than there being some other explanation: see how the matter was put by Rimer J in Carapeto v Good [2002] EWHC 640 (Ch) at [124] – [125]. This last case also makes clear that a finding of undue influence can be made by a court drawing inferences from all the circumstances, even in the absence of direct evidence of undue influence: see at [126]."

31. I note, in particular, from the extract from the judgment of Morgan J in Cowderoy v Cranfield that I have referred to, the emphasis on the point that allegations of undue influence are serious allegations, and that, therefore, there is an inherent improbability about them having happened or occurred, and hence the need for cogent evidence in support of the allegation before the court can be satisfied that the allegation is made out.

32. I refer briefly to two authorities identified in the skeleton arguments on behalf of David and Paul at paragraph 26, where the cases of Hampson v Guy [1891] 64 LT 778 and Wharton v Bancroft & Ors [2011] EWHC 3250 (Ch) paragraphs 110 and 111 are relied upon in support of the proposition that undue influence may be proved as a result of a lesser degree of coercion where the testator was in a feeble condition at the time or where he or she was in a weak condition.

The evidence.

33. I deal firstly with Mrs Taylor's previous testamentary dispositions, or wills, as helpfully summarised in David and Paul's skeleton argument. Mrs Taylor made a will dated 31 December 1981 under which she appointed Mr Taylor, Mr Peskin and Mr Stansbury as her executors. There were no substantial legacies or bequests apart from residue, of which 50 per cent was to go to, "her sons", David and Paul, and the other 50 per cent to Penny and Mr Stansbury.

34. Mrs Taylor then made a will dated 29 September 1988 which appointed Paul Cohen, Mr Stansbury and Mr Peskin as executors. Apart from a small legacy of £1,000 to the Jewish Home and Hospital, residue went again as to 50 per cent to David and Paul and as to 50 per cent to Penny and Mr Stansbury. She then made a will dated 29 July 1999 appointing Mr Paul Cohen and Mr Peskin as executors and, under that will, the residue went entirely to David and Paul.

35. Under the 2005 will she appointed Mr Taylor and Mrs Schomberg as executors and residue went to David and Paul, as I have indicated, without there being any substantial legacies. Under the 2008 will she appointed Mr Randall and Mrs Schomberg as executors. I have already indicated the dispositions under this will, namely: legacies of £10,000 each to David and Paul, £25,000 to Mrs McKay, £5,000 to Mrs Waterhouse, and the residue going to Cindy, Andrew and Dominic.

36. I was also referred to medical evidence in the form of doctors' and other records as to Mrs Taylor's medical condition. One begins with a letter of 8 October 2009, obviously following Mrs Taylor's death, from her GP which commented as follows:

> "I can confirm that Mrs Taylor has endured a difficult year 2008. She had in the space of four months fractured both hips on separate occasions. Her rehabilitation following the fractures was slow. Her husband passed away in October 2008 and her general health was deteriorating due to the inevitable progress of primary biliary cirrhosis."

37. Indeed, that was confirmed by contemporaneous medical records, and the manifestation of her condition was also evident to a number of the witnesses. I will revert to this evidence in due course.

38. In summary, so far as those medical records are concerned, what they show is that Mrs Taylor broke her hips twice in 2008; in May and again in June. She discharged herself from the nursing home whilst Mr Taylor was still alive but her general mobility was not good and, having returned to the matrimonial home prior to Mr Taylor's death, she slept and lived downstairs. On 22 September 2008 her consultant surgeon commented that she had made an extremely poor recovery and was becoming increasingly frail. The records indicate that she was suffering from groin and thigh pain in the weeks following Mr Taylor's death. Immediately after Mr Taylor's death, on 20 October 2008, the records show that Social Services were concerned as to whether she could cope. Indeed, the note of that day records Mrs Taylor as being somewhat matter of fact as to the matter of Mr Taylor's death, which was perhaps an odd reaction in the circumstances, and contrasts with other subsequent records.

39. In the week before 25 November 2008, when instructions were taken for the 2008 will, Mrs Taylor suffered with chest pain and infection and, on 21 November, Dr Amadine Sanghera commented that Mrs Taylor was finding her husband's death difficult and, somewhat in contrast to earlier comments, that she felt guilty about the fact that she had not noticed how unwell he was.

40. The records further indicate that on 17 December 2008, the day before the 2008 will was executed, Mrs Taylor was suffering from 'flu, was shivery and could not stop shaking. On the day of signing the will itself she expressed concern that she was shaking on two occasions over the last few days and did not feel right. Shortly before her death when admitted to Accident and Emergency following a fall, she was described as a "vulnerable patient". One sees from her records that she was suffering from chronic liver and gastric conditions that became more acute as time progressed.

41. So far as documentary evidence is concerned, before I turn to look at the witness evidence, I also refer to some disclosure produced by the claimants concerning correspondence between Mr Peskin and Mr Randall in August 2009. What one sees from this correspondence is reference to some financial difficulties that Mr Peskin was suffering at that time, linked in some way to the collapse into administration the previous October of the Icelandic bank, Landsbanki, with whom, as understood, Mr Peskin had entered into an equity release scheme. I was referred to a newspaper article from November 2008 which referred to concerns on the part of those who entered into this equity release scheme following the collapse into administration of the Icelandic bank, Landsbanki.

42. What this correspondence shows is an email of 9 August 2009 in which Mr Peskin, talking about Randall, refers to relying entirely on Mr Randall as his legal advisor and friend. There is reference in other emails, an email of 10 August 2009, to Mr Peskin "facing a bit of a crisis" and in an email of 11 August to a lack of cash flow. What one sees from a further email of 16 August 2009 is reference to that email dated 11 August and also some draft loan agreements that has been disclosed, reference to the fact that it was proposed against this background that each of Cindy, Andrew and Dominic would lend the sum of £40,000 to Penny, and reference to an anticipation that the monies to be loaned would come from the latter's entitlement under the 2008 will.

43. I turn then to consider the witness evidence of Mrs Schomberg. Mrs Schomberg made two witness statements, dated 1 December 2009 and 17 December 2012. In her first witness statement, Mrs Schomberg described how, having first prepared a will for Mrs Taylor in September 1988, in November 2008 she received instructions to prepare the 2008 will. This evidence was developed orally in chief.

44. The appointment for Mrs Schomberg to attend upon Mrs Taylor for the purposes of taking instructions had been made through Mrs Schomberg's secretary and it was Mrs McKay's evidence that Mrs Taylor had asked her to make arrangements for this appointment. It was Mrs Schomberg's evidence that when she arrived for the appointment at Mrs Taylor's house, Mrs McKay was present with Mrs Taylor. They were joined shortly afterwards by Mr Randall. Mrs Schomberg did not know in advance that Mr Randall was going to be present. Mrs Taylor introduced Mr Randall as a friend of the family who had acted for many years for the family. Mrs Schomberg produced an attendance note recording the circumstances in which instructions were taken. Initially she produced a manuscript attendance note at the meeting itself but subsequently a more lengthy attendance note was typed up. That typed attendance note records what happened during the course of taking instructions, and I quote from the first three paragraphs thereof:

> "Attending Mrs Taylor. When I called to see her at home, she was somewhat frail and it transpired that, while she does have a liver problem, she had had two hip replacements and was not feeling very good. She wanted me to check exactly what her existing will said and I went through it with her. Present at this time was her friend/secretary/PA, Lucy. As we were going through the will, a Derek Randall arrived. It turned out that Derek Randall was a retired solicitor who had acted for Marlene Taylor's family for many years and she had asked him to call in to help with the terms of the new will."

45. There is something of an issue as to whether Mrs McKay was present whilst Mrs Taylor gave her instructions; in particular, as to what the actual dispositions under the new will were to be. Mrs Schomberg recalls that Mrs McKay remained present until the later discussion as to whether provision should be made for Mrs McKay herself, and Mrs Schomberg's file note tends to support this. However, Mrs McKay's evidence was that, once the discussion turned to what Mrs Taylor was going to do so far as the dispositions in her will was concerned, she left the room and retreated to an office upstairs at the house. I have no reason to doubt Mrs McKay's evidence as to this. She came across as an honest witness and I am sure that she would have recalled had she been present throughout the course of the discussion in which the instructions for the will were given. The file note that I have referred to recalls Mrs McKay as having left the house when discussion turned on to her and it does seem to me that Mrs McKay's account is, on this basis, capable of reconciliation with the file note.

46. Mrs Schomberg took with her a copy of the 2005 will and it was Mrs Schomberg's evidence that it is clear that Mrs Taylor had already decided prior to the meeting that she wanted to change her will so that neither David nor Paul received anything. As

Mrs Schomberg put it in chief: she wanted to cut out the boys and put in her three nieces and nephews to be beneficiaries. In paragraph 6 of her first witness statement Mrs Schomberg says this:

> "The deceased made it clear to me that a decision to remove David and Paul Taylor from her will was based on a number of factors: firstly, neither David nor Paul regularly visited her or her husband and, secondly, neither David nor Paul did much in the way of helping the deceased or her husband. Finally, the deceased did not consider that David or Paul should receive anything from her estate on the basis that the money contained therein had come from her side of the family."

47. So far as the file note is concerned, the typed file note recorded this:

> "The background is that Brian has two sons, David and Paul, from a previous marriage, who were not very close to them. They saw very little of them and, indeed, Paul lives in Israel and they have not seen him for about five years."

48. During the course of her evidence, Mrs Schomberg was asked about this and confirmed that the comment Mrs Taylor had made about not being very close was a reference not only to herself but also Mr Taylor; in other words, confirming the file notes that Mrs Taylor had said that David and Paul were not very close to them, plural.

49. Mrs Schomberg says that, on hearing these instructions, alarm bells rang and she asked why Mrs Taylor was making these changes. I have already described by reference to paragraph 6 of Mrs Schomberg's witness statement the explanation that was given. In paragraphs 7 and 8 of her witness statement Mrs Schomberg went on to say this:

> "7. I anticipated this might cause some unrest amongst David and Paul Taylor who were destined under the deceased's previous will to receive everything. I advised the deceased to give some sort of monetary gift to each of her husband's sons as a gesture of goodwill. At first, the figure of £5,000 was discussed and that was later upped to £10,000 each for David and Paul Taylor.
> 8. At no time did the deceased exhibit any signs of memory loss or confusion. Indeed, the deceased understood exactly the nature of her instructions and the effect this would have on her will."

50. Mrs Schomberg's evidence was that Mr Randall, whilst present during the course of this meeting, said very little indeed. So far as what happened after the meeting is concerned, paragraph 9 of Ms Schomberg's statement describes that it is standard practice of the firm to send a draft copy of the will to the client together with a letter explaining the nature and effect of the clauses contained in the will and that, in accordance with that practice, a letter was sent to Mrs Taylor on 11 December 2008 with a full explanation of the clauses contained in the draft will, and that was also

enclosed with the letter. Paragraph 9 also goes on to refer to the fact that when Lesley Adamson and Mrs Schomberg visited Mrs Taylor's house in order to enable her to execute the will, a full explanation of the clauses contained in the will was given to her. That meeting was recorded in Lesley Adamson's attendance note of 18 December 2008.

51. It is of note that a copy of the will, as well as being sent out on 11 December 2008 to Mrs Taylor, was also sent to Mr Randall. In addition, there is amongst the documents disclosed by the claimants an attendance note of 25 November 2008, recording Mr Randall having rung in, and I quote:

> "Following your meeting, you recommended that VPS check the investment fund which Mrs Taylor has in the sum of £510,000 to ensure that it has not been written in trust following her death, and that it falls into her estate."

52. That is a matter that Mrs Schomberg subsequently took up with Mrs Taylor, particularly by reference to whether the bond might have been written, for example, in favour of David or Paul. There is also a further attendance note of 15 December 2008 recording that Mr Randall had telephoned. A message had been taken: "Please ring after 3.00pm Tuesday re draft will for Mrs Taylor". There has then been added a manuscript note below that:

> "Went through draft will with him. Altered £5,000 to £10,000 for Taylors, per instructions."

53. So, that was Mrs Schomberg's evidence as to the circumstances in which the will was executed. Mrs Schomberg's second witness statement deals with the contents of a letter of 29 June 2010 that her firm had received from Mrs McKay. I refer to that letter because, in the course of that letter, Mrs McKay had said this, referring to Mrs Taylor:

> "I am aware that she'd been receiving telephone calls from Bruce Peskin, her brother-in-law, and she told me that he was wanting to look after his children in her will as his investments had not been very successful, and he had spent a lot of money on his property and she thought he was in financial difficulty. I am also not aware of Marlene ever saying that she saw very little of David or Paul. She accepted that Paul living in Israel made visiting difficult, however, David was constantly phoning and updating Marlene on the medical situation of both his in-laws and Paul's wife, as they both had health problems. During the many years of close relationship with Marlene, I never heard her say a bad word against David or Paul; 'the boys' as she always affectionately referred to them.
> I am well aware that both David and Paul were in constant regular contact with both Brian and Marlene and that after Brian's passing away, David in particular was a pillar of strength to Marlene and helped sort out his father's affairs and, in particular, Brian's

> funeral, for which I know Marlene subsequently was very grateful and appreciative.
> [the letter went on to say]
> In all the years of my association, I pride myself in the knowledge that I have never broken confidence regarding their affairs. I am aware that her brother-in-law, Bruce, had been making contact with her, and I genuinely believe that he was influencing, putting pressure on her when she was obviously in a very low state of health and morale."

54. In her second witness statement, Mrs Schomberg comments on this letter and comments that in the letter Mrs McKay had asserted, firstly, that she was not aware of the deceased ever saying that she saw very little of the first and second defendants, and secondly, that the deceased had been receiving numerous telephone calls from Bruce Peskin, but had ceased taking those calls. She makes the comment in paragraph 12 that at no stage did Mrs McKay flag up with her any issue or concern regarding influence being exerted upon the deceased to make the 2008 will, notwithstanding that Mrs McKay had been present on 25 November 2008 when instructions for the will were taken. When this was put to Mrs McKay in evidence she said that she was not aware at the time as to what the dispositions under the will were and it was only subsequently, when she found out what dispositions had been made under the terms of the 2008 will, that the concerns arose that she set out in her letter.

55. I turn then to consider the defendants' witnesses. By way of preliminary observation, I would say that it is, in many ways, unfortunate that David and Paul and their witnesses were not subjected to cross-examination as part of an ordinary adversarial process. I sought, by putting such questions as I considered pertinent, to test the witnesses as best I was able to do but, as I say, they were not subjected to the normal processes of trial and cross-examination. Having said that, I was keen and anxious that they should go into the witness box and confirm their witness statements on oath and, to an extent, develop in their evidence, certainly of the key parts of their evidence, in response to the questions that I put. Having heard that evidence, and considered their witness statements I can say that I have no reason to doubt the honesty of their evidence, or that either David or Paul or any of the witnesses who gave evidence in support of their case were doing anything other than doing their best to assist the court as best as they could.

David Taylor

56. So turning then to the defendants' evidence; firstly, David Taylor. David Taylor's witness statement begins by describing some of the history of his relationship with Mrs Taylor. In paragraph 3 of his witness statement he refers to Mrs Taylor having been an integral part of his and his brother's relationship with his father, how they used to spend much time with them during the course of school holidays, how Mr Taylor had a cottage in Sussex where they used to spend the majority of their summer holidays when they were away from boarding school, and how they enjoyed many happy times as a family. He says that the familial relationships continued after they left boarding school. They used to go and stay very often at Mr and Mrs Taylor's house, The Old Vicarage, in Potterspury. They also met in London and had numerous meals together, and reference is made to Mr Taylor and Mrs Taylor particularly enjoying meeting

David and his wife, Louise, at the Carlton Club, the RAC and a variety of restaurants for dinner.

57. David Taylor then goes on to comment on the fact that although Paul married Muriel, who was French, and went to live in Israel, both Mr and Mrs Taylor took a very close interest in their family, in Muriel's unfortunate illness, and in the grandchildren; reference being made to birthdays and so forth being marked, and to gifts and cards being marked, "Grandpa Brian and Grandma Marlene". Mr Taylor referred to special celebrations such as Mr and Mrs Taylor's 40th wedding anniversary and to Mr Taylor's 70th birthday, when they were invited as members of the close family to participate in those events.

58. In paragraph 16 of his witness statement, David makes reference to circumstances following the death of Mrs Taylor's parents when Mrs Taylor fell out with her brother, Anthony Stansbury, with Mrs Taylor then saying that, as far as she was concerned, Anthony was no longer her brother. In paragraph 17, David refers to having occasionally asked Mr and Mrs Taylor about Cindy, Andrew and Dominic, and I quote:

> "Marlene always used to reply that they see very little of them and they'd not seen very much of them since Marlene's parents, Phil and Freda Stansbury, had died. I asked her why not and she replied there was no real reason why they should get together. She said they were from a different generation and they had their own lives and families. I believe that, apart from Marlene's last few weeks, they never visited Dad and Marlene at the home they moved into in 2004."

59. At paragraph 18, David goes on to say this:

> "Marlene and Dad used to tell us how sick Penny was and how Bruce and Penny were coping living in Spain. Marlene explained to Louise and I about Bruce's financial situation and that things were very difficult financially."

At paragraph 19 of his witness statement, David says this:

> "One subject that was raised on a number of occasions by Dad and Marlene was their wills and their wishes. While they were both together, they explained that I was to be the executor of Brian's will, that on the first death everything would pass to the survivor and, on the second death, everything was to be split evenly between Paul and myself. This is as stated in Brian and Marlene's 2005 wills. It was quite straightforward, and there really was nothing to be added to these conversations apart from obviously appreciating the family for what they had arranged."

60. The witness statement goes on in paragraph 23 to describe the circumstances of Mr Taylor's death on Friday, 17 October 2008, when David received a telephone call from

Mr Downer. In short terms, what had happened was that Mr Taylor had a fall upstairs in the house. Mr Downer had telephoned Mr Taylor because he was due to play golf with him that day. Mrs Taylor answered the telephone and, in a somewhat matter of fact way, informed Mr Downer that Mr Taylor was unconscious upstairs. It appeared that Mrs Taylor was in some form of shock and had some form of mental lapse and certainly didn't seem to be doing anything about it. Mr Downer it was who went around to the house and dealt with the situation. Mrs Taylor's attitude and approach on that day is of some relevance.

61. Paragraph 24 of David's witness statement goes on to say this:

> "Immediately following Dad's passing, I had a meeting with the hospital bereavement officer. We were very concerned about Marlene's welfare; not only had she just lost her husband of 40 years, but she was also extremely physically weak and vulnerable herself. She had complicated medical problems over many years. Dad had told me that basically he had been her carer for months, doing much of the cooking, shopping, etc, to look after her. For a long time Marlene had been unable to go upstairs, and was sleeping downstairs in the kitchen dining area, so I was very concerned about ongoing care for Marlene. The welfare officer explained what care they could arrange for her and I took details of contact numbers of social workers and hospital emergency duty team social workers. We did our very best to assure her that we would care and look after her. We told her that whatever she needed, she only had to ask. We also suggested that she have a carer live in, but she was not interested."

62. David goes on to describe the events of the day and, as they were leaving, he makes these comments about the circumstances of them leaving:

> "We left it that we would keep in regular contact and that we would keep in touch with them and would arrange things if and when she wanted this. The three of us had a snack together and we made her as comfortable as possible. Before we left, she mentioned to Louisa and I about the will, just repeating exactly what we had discussed on previous occasions, namely that we would not be getting anything now from Dad's will, and that everything would be going to her and that it would come to Paul and I when she passes. Obviously this was a very delicate matter and there was no necessity for her to mention this. I did not want her focusing on any of this or even think about these matters. I thanked her and said, 'All will be okay' and quickly changed the subject."

63. David goes on to say that, following Mr Taylor's death, he kept in regular contact with Mrs Taylor, speaking to her 3 or 4 times a week. This is developed in paragraphs 31 and 32. In paragraph 31, he says:

> "Following the funeral, I maintained my constant contact with Marlene, always trying to be positive and cheering her up. I telephoned her between three and four times every week. On every occasion I asked her what she wanted and whether she was receiving all she needed and, if not, what I could fetch for her. She assured me that she had great neighbours and Lucy who were really looking after very well. She was always very proud and independent. I know that on many occasions she preferred her own company. She really did not like people around her, especially if it was unnecessary, and was over-sensitive about her condition and appearance. I was also in regular contact with Lucy to check on Marlene's wellbeing and her state of mind.
> [Then paragraph 32]
> As Dad's executor, I was of course in regular contact with Marlene sorting out Dad's affairs, his will, death certificates, etc. Obviously, Marlene and I had to deal with the executor's duties and practical matters. On one occasion when we were going through her finances and arrangements, she told me that most of their money was in a joint bond with Prudential number 562406Q. I scribbled this number in my notes when I was speaking to Marlene, so there is a slight possibility that the number is inaccurate.
> Marlene was very open with me about their financial situation. Marlene and Dad both had previously told me that at their stage of life they both wanted to put most of their money in a joint bond and that it suited them to rent 54 High Street rather than buying another house. We had talked about this much earlier when they sold the Old Vicarage."

64. There is then reference to a memorial event held at Woburn Golf Club in respect of which further evidence is given by Mr Downer. This was held perhaps in late November or early December 2008. It is apparent that for that occasion, Mrs Taylor did somewhat rally, but it is of some significance what David and Paul did on that day. David refers in paragraph 33 of his witness statement to the fact that:

> "Paul and I came to meet Marlene early at the house and go through a lot of Dad's belongings. We then took Marlene to her hairdressing appointment. After this we took her shopping to the supermarket and had fun going around doing shopping with her."

65. It goes on to refer to them taking her to the golf club where there were over 200 friends and acquaintances present. In paragraph 35 of his witness statement, David says this:

> "After Dad's funeral, Marlene told me that her brother-in-law, Bruce Peskin, had spoken to her on several occasions and said he wanted to make changes to her will. She told me that Bruce

> wanted someone called Derek Randall to become an executor. I said that I did not know him, and had never heard either Dad or Marlene mention Derek Randall. I asked her who he was. She said that he'd been Bruce's family solicitor for many years. Marlene said that Bruce had spoken to her a number of times on this and is insisting that Derek Randall become executor. She said, 'I am being pressured into things'.
> Marlene said the only change she was going to make was to make Derek Randall joint executor. I thought this was fine, and I believe this gave me confidence that there would not be any other major changes to what had already been discussed and, out of common humanity and decency, did not want to have any deeper discussion or ask any questions concerning this as she was clearly at a very low ebb, grieving, having only just lost her carer and husband of 40 years. I believed I was the other executor, although I subsequently discovered that was not the case."

66. In giving evidence-in-chief, David described Mrs Taylor in relation to this as "not happy", and as being definitely under pressure; in other words that that was the impression he got from his conversation with Mrs Taylor that I have just referred to. His witness statement goes on to say that, after Mrs Taylor's death, he discovered the extent of Mr Randall's dealings with Mr Peskin, and that Mr Randall also acted for Cindy, one of the main beneficiaries of the changed will. It was not until Mrs Taylor's funeral, which he refers to in paragraph 45 of his witness statement, that he found out about the dispositions under the 2008 will. He says this:

> "At one point immediately after the cremation ceremony a man approach me and introduced himself as Derek Randall. I had not met him previously. He asked straight away if he could talk to me about Marlene's will. I was shocked at his approach immediately after the cremation and at the burial ground where the guests were still present. He informed me that Marlene had left £10,000 each to my brother, Paul and me. I was shell shocked by this. The service at the crematorium had only just finished and, at the moment he introduced himself, I was talking to one of Marlene's very close friends."

67. At paragraph 58, of his witness statement, David says this:

> "I do not believe that following my father's death Marlene was in a position, either physically or emotionally, to assist the demands of Bruce to make major fundamental changes to her will. On a number of occasions when we spoke she said that she completely lost interest in everything and there was nothing left to live for."

68. At paragraph 59 he says:

> "Cindy, Dominic and Andrew had very little contact with Marlene and Brian since Marlene's parents died in about 2004, 2005. This was confirmed on several occasions by Brian and Marlene."

69. David's wife, Louise Taylor, in her witness statement confirms much of what David has said insofar as the relationship between David and Mr and Mrs Taylor is concerned. Paragraph 3 of her witness statement she comments that:

> "Both David and I have enjoyed a typically warm and constant family relationship with Brian and Marlene."

70. Following Mr Taylor's death, she comments:

> "I know that David in particular kept in regular contact with Marlene and Lucy, who's been fantastic. David was always telling me how Marlene was, what her spirits were like, and we both agreed that it would be best to try and get her to focus on the future."

71. In paragraph 16 of her witness statement she says this:

> "Occasionally, we used to ask how Bruce Peskin and his wife, Penny, were, as Penny had been ill for many years, but the reaction we always got was that Bruce spent all his money on a ridiculous property investment in Spain."

72. And she goes on to comment:

> "They did not enjoy their time with Bruce as he was attempting to get some kind of funding from them for his property investments and they always said it was doomed to failure from the outset and, even if he did manage to sell, he'd make a loss. They said he was in severe financial difficulty and this was making it unpleasant to be with him."

73. In paragraph 17:

> "When Marlene's mother and father were alive, Brian and Marlene used to spend Christmas and other festivities with Phil and Freda and their family, including Cindy, Dominic and Andrew. So, from time to time, we asked how they were. Marlene was always very dismissive, saying that they had shown no interest in either of them since the death of her parents and they were a different generation with their own families and had little or no contact."

74. In paragraph 19 she says this:

> "I can also confirm that Brian and Marlene had on several occasions when we met them made clear what their intentions were with regards to their estate. It was very clear that everything would go from one to the other on the first death, and then divided equally between Paul and David on the second death. There was nothing to doubt this as their earlier wills substantiate this.
> Marlene also repeated this when we returned home and had dinner with her immediately after Brian died. She asked me to check her bank statements for them, and said this was fine as it was all going to David and Paul. She said words to the effect that, for the time being, she needed all the money that was in the kitty for her care and welfare while she was alive but on her death everything would be divided equally between David and Paul, 'As your father wanted, and we discussed many times.'"

Paul Taylor.

75. Paul made a somewhat shorter witness statement than David. In paragraph 3 of it he says that:

> "Whilst it's true I'm in Jerusalem, Israel, and travel to the UK is not a regular occurrence, I remained in constant telephone contact with my father before his tragic passing, and with Marlene following the death. I would speak to my father at least every two weeks and, since his passing, would phone Marlene at least as often, although her failing health was clearly and sadly in great evidence. She continued to inquire as to Muriel's health, and the health and wellbeing of Vanessa and Eden [his own children]. I particularly enjoyed her outspoken humour, independence, and straight-talking honesty. In this regard, I had a brief conversation with Cindy after my father's death as my concern over Marlene's welfare was paramount. She in no uncertain terms made it clear to me that she had more urgent priorities and that such things as seeing or visiting Marlene was secondary, 'I have a business to run', was her response."

76. In paragraph 4 he goes on to say:

> "However, my brother, David, was and has always been very much involved with both our father and Marlene. He was constantly available to them, visiting often with both kindness and love, he assisted in whichever way he could, finding time, energy and the will to remain close and supportive to both our father and Marlene."

77. He then goes on to comment about the interest that both Mr and Mrs Taylor showed in his late wife, Muriel, and her illness and in his own children, Mr Taylor's, grandchildren.

78. I return to the evidence of Mrs McKay. In her witness statement, she describes how she knew both Mr and Mrs Taylor as neighbours when they moved into Crouch End, Potterspury in 1980, to then working as a personal assistant to Mr Taylor between 1995 and 2002 when Mr Taylor's business was sold, and then continuing to provide assistance with things after that, commenting:

> "During the final four years of their lives, I and my husband also undertook more carer duties, assisting in their move to the High Street, shopping, and doing odd jobs for them."

79. In paragraphs 3 and 10 of her witness statement, she deals with the circumstances behind the execution of the will. In paragraph 3 she said this:

> "Following the unexpected death of Brian in October 2008, Marlene, whose health had deteriorated during the preceding months, asked me to make arrangements for her solicitor to call. She was concerned that she needed to update her will to replace Brian, who had been listed as one of the executors. Marlene appointed Derek Randall as Brian's replacement executor because Bruce Peskin, her brother-in-law, was advising her to do so. I'm aware of this because Marlene told me that she wanted to get it over with as Bruce was being persistent. I telephoned Vanessa Schomberg to make the appointment and I recall that both she and Derek Randall came to the house to discuss the will with Marlene. However, as soon as they began discussing the will, I left the room and went upstairs. I could not hear what was said. It was only after Marlene's death I learned Marlene had left me a bequest and that it was more than had been left to David and Paul.
> Vanessa Schomberg came to the house to pick up a box containing Marlene's will, personal papers and jewellery. It was then that Vanessa Schomberg told me the bequests. I was totally shocked and in tears. I could not believe that I'd been left more money than the boys."

80. In paragraph 10, she said this:

> "In all the years of my association, I can pride myself in the knowledge that I have never broken confidence regarding their affairs. However, I am aware that her brother-in-law, Bruce, had been making contact with her, and I genuinely believe that he was influencing and putting pressure on her when she was obviously in a very low state of health and morale. Marlene told me that Bruce wanted her to look after his children in her will as his investments had not been very successful and he had spent a lot of money on

> his property in Spain, and she thought he was in financial difficulty. He called on many occasions, to the extent that I was told by Marlene if he phoned I was to tell him she could not come to the phone. As a result, he started calling when he knew I would not be there. Marlene told me this and I can confirm that, as she did not answer the phone, I would have to listen to the answer phone during my next visit and tell her what he had said, which was normally just that he had called."

81. In addition to dealing with those circumstances behind the execution of the 2008 will, Mrs McKay in her witness statement also comments on the relationship between Mrs Taylor and, in particular, David. At paragraphs 4 she says this:

> "Drawing on many years of close association with both Brian and Marlene, I never once heard either of them say a critical word against 'their boys', as they were always affectionately referred to by both of them."

82. And at paragraph 5 she says this:

> "I can confirm that both David and Paul were in constant regular contact with both Brian and Marlene, and then after Brian's passing away, David in particular was a pillar of strength to Marlene and helped sort out his father's affairs and, in particular, Brian's funeral, for which I know Marlene was very grateful and appreciative."

83. Then in paragraphs 7 and 8, at 7:

> "I've no wish to become involved in a family argument over Brian and Marlene's wishes, but would add that, in all the years as their personal assistant and friend to both of them, David and Paul, both of whom I've met in person at the house and spoke to on the phone on many occasions, were in regular contact with Brian and Marlene. However, I never have had any personal contact with Dominic, Andrew or Cindy during my years of association until after Marlene became ill, when Cindy made contact.
> When Marlene became less independent, I contacted Cindy for decisions to be made regarding Marlene's wellbeing. She would generally say, 'I will leave it to you, as I'm too far away'. Hence, I would speak on the telephone and discuss issues with David who offered on many occasions to come to the house to help if I needed him, and always wanted to know what Marlene's situation was, especially when she was relying on myself and my husband, who had to attend to her needs when she fell out of bed during the night. It was also David that I contacted first, before Cindy, as he was

> always more helpful, especially when I made arrangements for Marlene to go into hospital.
> Sue, her close neighbour, and Terry, her cleaner, also made arrangements for Marlene to go into hospital when I was not available and I'm sure that they could substantiate that it was David who was most concerned and helpful regarding these matters."

84. The "Sue" referred to there is Sue Pollard, who also gave evidence. She comments at paragraphs 4 and 5 of her witness statement as to the relationship between Mrs Taylor on the one hand, and David and Paul on the other hand. Paragraph 4:

> "I knew that she had a sister in Spain with Parkinson's, a brother, Anthony, whom she would have nothing to do with, and two step-sons, David and Paul."

85. In paragraph 5:

> "Marlene had never mentioned Cindy and I did not know anything about Cindy or anybody else until approximately the first week of March 2009. Marlene was admitted to hospital with severe stomach pains. After a couple of days, when I realised she was going to be in for a while, I said that she should let her sister know. She told me the telephone number was in her address book under Cindy Kaplan. I looked that evening, but was not sure as the number was a London number, so I took the book with me ..."

86. She then made comments about then contacting Cindy and meeting with Cindy at the hospital.

87. Mrs Pollard had commented that she had been neighbours to both Mr and Mrs Taylor since April 2006 and had known Mrs Taylor as a friend/carer since Mr Taylor's death in October 2008, and refers to taking her shopping and to hair appointments weekly, while she was well enough.

88. Mrs Pollard's witness statement also contains at paragraph 3 evidence that is relevant as to the circumstances in which the 2008 will was executed and Mrs Taylor's mental state. She said this, at paragraph 3:

> "I used to call on her every evening after work and, on weekends, two/three times a day. Sometime shortly after Brian's death, I went to see her and said, 'Hello Marlene, how are you?' She just burst into tears. I went over to comfort her, and asked her what was wrong, and she said, 'I can't cope with everything any more and I don't know what to do about my will'. She was very disturbed and distraught about this. I said I would help in any way, but I did not mention anything further about her will as I did not

think it was any of my business. She was clearly inconsolable, and disturbed about this."

89. Another neighbour who gave evidence was the fourth defendant, Mrs Waterhouse, who I have already referred to. In her witness statement, she refers to having known Mr and Mrs Taylor for approximately 15 years and having worked for them, both cleaning and helping them out, when they were living at the Old Vicarage, and later when they moved to their new house up on the High Street. She comments that during the latter years, when Mr Taylor became slightly frail and Mrs Taylor was ill, she became:

> "Closer to both of them and helped out caring for Marlene, as did Lucy, also a neighbour."

90. At paragraphs 3 to 11 of her witness statement and also paragraph 13, she sets out in some detail what she is able to say about the relationship between Mr and Mrs Taylor and, in particular, David. In paragraph 3, she says:

> "I would like to say that in all the years I worked for Marlene and Brian, I got to know David through phone calls which I sometimes took for them and found him to be a very nice man."

91. She comments in paragraph 5 that she only met Paul once, when he was staying with them whilst he was visiting the UK, but comments that:

> "Marlene told me how fond she was of David and Paul and she was very, very sad about Paul's wife suffering from cancer."

92. She comments in paragraph 6:

> "During the 15 years that I was working for Marlene and Brian, I was always aware of the close relationship between them and David and Paul. This was particularly the case for Marlene, following Brian's passing."

93. She then comments in paragraph 7:

> "... knowing that Paul phoned from Israel, and the fact that David was in very regular contact with Mrs Taylor, following Mr Taylor's death."

94. At paragraph 10, she says this:

> "I was really shocked to hear, following her death, how Marlene had changed her will so soon after Brian's death. At this time she

> was really very poorly, and quite grief-stricken, following Brian's sudden unexpected death. This major change goes completely against all the positive feelings that she had often expressed to me about how she felt towards David and his wife, Louise, as well as to Paul, Muriel, and their daughters. She often said that she was so appreciative towards David for all his support. This came as a complete surprise and contrary to her true sentiments towards them."

95. She goes on in paragraph 11 to say:

> "I can honestly say that throughout the time that I was with Marlene I never once heard her speak or even mention Cindy, Andrew or Dominic."

96. Another witness who gave evidence on behalf of David and Paul was Bernard Telshaw, whose relationship I have already described. At paragraph 2 of his witness statement he describes shortly after Mr Taylor's death having telephoned Mrs Taylor to convey his condolences. He then goes on in paragraph 3 to say this:

> "She asked me who I was as she did not recognise my name. I explained to her that I'd been married to Jill, who was her husband's niece. I asked her how she was, and she was not inclined to talk about that. I expressed my condolences, and then asked her what had happened. She responded, 'You want me to go into all this', and was quite unwilling to continue the conversation. She said that she did not want to talk, and that she was in a difficult situation and being pressured on all fronts on Brian's wishes. She said that she was finding it difficult to cope, and kept repeating this. She was clearly distressed and didn't want to go into any details. My impression is that she was troubled and under considerable stress."

During the course of his evidence to the court, Mr Telshaw commented that the general impression that he got was that Mrs Taylor was, as he put it, "Under pressure over Brian", and he believes that the telephone conversation he had with Mrs Taylor was a week or two weeks following Mr Taylor's death.

97. Mr Richard Lennard, who had been married to Cindy, gave evidence. The nub of his evidence was set out in paragraph 2 of his witness statement, where he comments that throughout the time of his marriage to Celina, or Cindy, Derek Randall was a close family friend of Bruce Peskin. Furthermore, that Mr Randall acted as the family lawyer for Mr Peskin during the whole of the period of his marriage to Cindy. He also refers to Derek Randall having also undertaken legal work on behalf of Dominic. In giving his evidence-in-chief, Mr Lennard did slightly qualify the reference to "close family friend", referring to Mr Randall as perhaps more a friend rather than a close family friend, but not a great deal turns on that.

98. Finally, so far as Paul and David are concerned, there is the evidence of Mr Downer, who, as I have already said, was together, with his partner, Jules, a close friend of both Mr and Mrs Taylor when they were alive. He was, therefore, someone who knew Mr and Mrs Taylor well. In paragraph 3 of his witness statement, Mr Downer comments on the relationship between David and Paul and Mr and Mrs Taylor, and says this:

> "I can confirm that David and his wife, Louise, as well as Paul and Muriel, his wife (now passed away) mutually enjoyed a close, warm and loving relationship with both Brian and Marlene. When Paul and his wife visited, with and without their children,... they spent time together as a family, and I know that David and Louise maintained regular contact with both Brian and Marlene."

99. This is developed further in paragraph 11 of his witness statement where he comments that:

> "I know David was particularly supportive towards Marlene after Brian died, and followed this up with regular contact and offers of help and support to her. I was often in contact with David and so I know full well that he also did a great deal arranging Brian's funeral, and that Marlene really appreciated this."

100. Paragraph 14, he comments:

> "I am shocked to hear what Marlene has done with regards to changing of the will and it does not reflect in any way the close appreciation and warmth that she felt towards David and Louise, as well as Paul and Muriel, and their children….all of whom she was very fond of."

101. In paragraph 17, he says:

> "Given the strong relationship that David and Paul had with Marlene and Brian and the support that in particular David showed (Paul lives overseas) towards both especially in the last few years of their lives, I find it hard to believe that Marlene would have disinherited Brian's children in this manner. Her actions are particularly out of character as, following Brian's sudden and unexpected death, she was very low, both psychologically and physically, and I would have thought that changing her will, disinheriting David and Paul in favour of Cindy, Dominic and Andrew Peskin would have been the last thing on her mind at this very difficult time.
>
> Furthermore, immediately following the death of Brian, she was poorly, more or less bed-bound and immobile. She really was at a very low ebb, and emotionally fragile and grieving for her husband who had been her carer over the last few months of his life."

102. During the course of his evidence-in-chief, Mr Downer described Mrs Taylor as having been a very proud lady who was very particular about her appearance, who really did struggle with the illness that she suffered in the last year or so of her life, particularly after Mr Taylor's death. He described her as, during that period of time, "A mess, and deteriorating, and fast".

Decision

103. If the case of undue influence is proved to the requisite standard of proof. David and Paul, in order to succeed, must prove that Mr Peskin so coerced Mrs Taylor following the death of Mr Taylor that, so far as the making of the 2008 will is concerned, he overpowered her volition without convincing her judgment. Guided by what Morgan J had to say in Cowderoy v Cranfield at paragraph 141, and in the light of the considerable evidence that I have heard as to the circumstances in which the 2008 will came to be executed, I do not consider that I need to be satisfied that there is no explanation but for undue influence. However, in view of the seriousness of the allegations and bearing in mind the inherent improbability in any situation of undue influence having been exercised, I do have to be satisfied that the evidence taken as a whole is sufficiently cogent and strong to satisfy me, albeit on the balance of probabilities, that the explanation for what has occurred is that Mrs Taylor's will was overborne by coercion rather than there being some other explanation.

104. David and Paul's case is, as is apparent from the paragraphs of the Defence and Counterclaim that I read out, in essence, that at a time of physical and mental frailty following the death of Mr Taylor Mr Peskin put pressure on Mrs Taylor to make a will that substantially benefitted Cindy, Andrew and Dominic rather than David and Paul, and that that pressure had the effect of coercing her into making the will without convincing her judgment.

105. No one particular conversation between Mr Peskin and Mrs Taylor was relied upon, and it is quite possible that all of the communications were over the telephone, but it is David and Paul's case that there was a persistency to Mr Peskin's conduct that essentially wore Mrs Taylor down so that she did what Mr Peskin wanted rather than what she otherwise judged to be best in order to get him off her back and have a quiet life. This was, said David and Paul, a case that fell within the sort of circumstances described by Lewison J in Edwards v Edwards in subparagraphs 47.4 and 47.5 of his judgment.

106. In my judgment, on the basis of the evidence before me, David and Paul have proved the undue influence alleged. The following key matters lead me to the conclusion that I have reached.

107. Firstly, I am left in no doubt that, certainly after Mr Taylor's death on 17 October 2008, Mrs Taylor was in a very fragile physical and mental state. This is borne out by the medical evidence that I have been referred to, and the evidence of the witnesses, in particular, David and Louise Taylor and Mr Downer, as well as in the specific context of the making of the will, that of Mrs Pollard and Mr Telshaw.

108. Secondly, there is cogent evidence that Mr Peskin subjected Mrs Taylor to unwanted pressure so far as the making of the new will is concerned following Mr Taylor's death, and of him doing so persistently, such that Mrs Taylor was driven to the point of telling Mrs McKay that she didn't want to speak to him and that she, Mrs McKay, was to tell Mr Peskin that she could not come to the phone. This ties in with David's evidence that Mrs Taylor had told him that Mr Peskin had spoken to her a number of times and was insisting on Mr Randall being appointed as executor, and of her complaining: "I am being pressurised into things", albeit Mrs Taylor did not inform David that she was being pressured into radically altering the contents of her will in the way that she did.

109. Thirdly, there is cogent evidence that the effect of Mr Peskin's persistent pressure was to wear Mrs Taylor down, as evidenced by the conversation that Mrs Taylor had with Mrs Pollard when she burst into tears and said she could not cope with everything any more and did not know to do about her will, as well as her conversation with Mr Telshaw. I am satisfied that the effect of Mrs Taylor being so worn down was that she was prepared to do what Mr Peskin was suggesting in order to have a quiet life, rather than because that reflected what, in reality, she wanted to do.

110. Fourthly, as to what Mrs Taylor did in reality want to do, and whether her volition had been overborne without her judgment being convinced, it is, in my judgment, telling firstly, that Mrs Taylor's previous two wills had provided for David and Paul to take the residue. There is no obvious reason why such a fundamental change to virtually exclude them from the 2008 will should have been made at the time unless she had been pressured into making a change. Secondly, the explanation that Mrs Taylor gave to Mrs Schomberg to the effect that David and Paul were not very close to her and Mr Taylor and had been of little assistance to her was, in the light of the evidence I have heard, simply not correct. That does raise the question as to why she gave that explanation, which was obviously false and not correct.

111. On the other hand, the 2008 will made extensive provision for the three nephews and nieces, Cindy, Andrew and Dominic, in circumstances in which there is clear evidence before the court that Mrs Taylor had had little to do with them over the years and felt no particular sense of loyalty towards them.

112. Further (and I attach less weight to this than the other considerations that I mention) it appears doubtful that all of the substantial assets came from her own family, bearing in mind that the most significant asset in her estate was derived from a bond that had been in Mr and Mrs Taylor's joint names, worth over £500,000, and the fact that one might reasonably suppose that a substantial element of the assets had come from the sale of the matrimonial home. In this respect, I refer back to the conversation that was had between David and Mrs Taylor concerning the bond and other assets.

113. These matters do, in my judgment, all provide firm evidence to the effect that the effect of Mr Peskin's coercion was that Mrs Taylor made a will, the 2008 will, being a will that did not reflect her true will, which had been overborne.

114. Furthermore, I cannot ignore the shock and surprise as to what Mrs Taylor had done that had been expressed by those who were particularly close to her. In particular, I refer to the evidence of Mrs McKay, Mrs Waterhouse and Mr Downer, and the shock

and surprise which they expressed in what Mrs Taylor had done. This does, in my judgment, provide further firm evidence that the 2008 will did not reflect her true will.

115. Further, Mr Peskin had a motive for seeking to coerce Mrs Taylor into doing what she did. Not only did his own children stand to benefit under the 2008 will, but there is the evidence to the effect that he had his own financial difficulties, in particular, following the collapse into administration of the Icelandic Bank, Landsbanki, and that he looked to his children's inheritance as a way of achieving some form of financial security in the future for himself and his wife. I have referred to the evidence of the emails in August 2009.

116. A further unsatisfactory feature of the case is the role of Mr Randall. No allegation of misconduct is made against him but it is unfortunate that, despite being a claimant and one of the executors named in the 2008 will, he has chosen not to provide his own version of events. He was a friend and advisor of Mr Peskin and there is no evidence that prior to Mr Taylor's death he was known to Mr or Mrs Taylor. His presence when the instructions for the will were taken and the fact that he was copied into subsequent correspondence does, in my judgment, provide further evidence of the influence that Mr Peskin had gained over Mrs Taylor at the time she came to execute the 2008 will, if nothing more.

117. In all these circumstances, by way of conclusion, I find that the case as to undue influence in respect of the 2008 will is made out and would, therefore, propose to pronounce against the 2008 will.

118. I revert to the question of the 2005 will, on which I have already commented. I propose to hear further submissions as to what further evidence is required in order for me to make the appropriate declaration so far as submitting the 2005 will to probate is concerned.