



Neutral Citation Number: [2018] EWHC 2853 (Ch)

Case No: D30CF117

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
CHANCERY DIVISION

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff CF10 1ET

Date: 26/10/2018

Before :

HIS HONOUR JUDGE JARMAN QC

Between :

JEANETTE SOLLIS
- and -
REBECCA NAOMI LEYSHON
STEPHEN IAN LEYSHON

Claimant

Defendants

Mr Gwydion Hughes(instructed by **Richards Thomas Solicitors**) for the **claimant**
Ms Natasha Dzameh (instructed by **Hutton's Solicitors and Advocates**) for the **defendants**

Hearing dates: 22 to 24 October 2018

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
HIS HONOUR JUDGE JARMAN QC

HH JUDGE JARMAN QC :

1. The claimant, Mrs Sollis, seeks against the defendants, her daughter and son in law Mrs and Mr Leyshon, damages in respect of some £47,000 which she says they misappropriated from her bank accounts during a period of some 20 months in 2010 and 2011, and to set aside a transfer by way of gift by her to them of her dwelling house at 24 Tyle House Close Llantwit Major (No 24). In respect of the latter, she accepts she knew that she was making the transfer, but to use her own words, she says that her daughter and son in law “brow beat” her into doing so. No 24 was sold in 2013 and the net proceeds after the payment of debts used to purchase another property in Llantwit Major in which it was intended the three should live, 7 Clos y Wiwer (No 7). However, Mrs Sollis says that it was while she was staying with relatives in the run up to the move that she discovered the missing monies and accordingly did not move there. She seeks tracing remedies in respect of that property, in which Mr Leyshon still lives. He and Mrs Leyshon have parted, they say in large part because of the stress of these proceedings.
2. Mr and Mrs Leyshon say that all these monies were spent with the knowledge and consent of Mrs Sollis, and that it was her request that she should transfer No 24 to them. They counterclaim in respect of debts of Mrs Sollis which they say were paid off and for the increase in value in No 27 due to works which they carried out, and for damages for the wrongful entry of a restriction on No 7.
3. I heard oral evidence from each of the parties. Mrs Sollis’ son Nathan Sollis also gave evidence on his mother’s behalf, as did a number of friends and neighbours. A current neighbour of Mr and Mrs Leyshon, Kevin Arnold, gave oral evidence on their behalf.
4. There are a number of issues between the parties, but at the heart of this case is a stark conflict of evidence between them as to whether Mrs Sollis authorised the expenditure in question and whether she made the transfer of her own free will. The demeanour of witnesses can be important in such cases, but given the seriousness of the allegations in the present case, and having heard from each of the parties, this factor did not provide a strong indication one way or the other as to where the truth lies. In these circumstances, contemporaneous documentation will be particularly important. Apart from bank accounts there is little documentary assistance in respect of whether Mrs Sollis authorised the expenditure. There is more documentation regarding the transfer. Inconsistencies and inherent likelihoods will also be important features, especially where the documentation is scant.
5. I will set out the background to this sad case in a way which is relatively uncontroversial. Mrs Sollis purchased No 24 jointly with her later husband Michael Sollis in 1972 shortly after their marriage. They raised their son and daughter there. Both worked, Mrs Sollis as a bank clerk. Their son left home when he was 17 to find work and live independently. Their daughter remained at home for a while longer.
6. By the time Mr and Mrs Sollis retired, their son was living in France and renovating a property there for his wife and children to live in. His father loaned him money so that this could be completed. Their daughter was also working and living not far from her mother. She and her brother did not get on, and there were difficulties in the

relationship between her and her father. The latter was not invited when she married Mr Leyshon.

7. In July 2008 there is an attendance note of a solicitor in the firm Vale Solicitors to the effect that he attended upon Mrs Sollis who gave instructions to prepare a will so that her daughter would inherit her interest in No 24. The note says that Mrs Sollis explained that her daughter no longer spoke to her brother and father, and anticipating that the latter might make a will leaving his interest to his son, she wanted to do the same for her daughter. The note says that a will would be prepared in those terms and that she would return to sign it. There is only a draft available from the solicitor's file. Mrs Sollis says she remembers going to this solicitor but only went once. She accepts the attendance note may be accurate but has no recollection of giving the details in it. She does not think she executed this draft. The draft gives her share in No 24 and proceeds of life assurance to her daughter, and her savings to her son.
8. In their seventies Mr and Mrs Sollis suffered ill health. From 2006 onwards, Mrs Sollis developed a number of chronic conditions such as thyroid problems and diabetes. In 2008, Mr Sollis was diagnosed with cancer which turned out to be aggressive and terminal. He decided not to tell the family for the first year. He died in January 2010.
9. The effect upon Mrs Sollis of her husband's death and her own illnesses was profound. Within a few weeks of the funeral she underwent an operation for a slipped disc in her lumbar spine caused by a fall in 2009, which resulted in much pain. That operation led to the discovery of a malignant melanoma on her leg which was surgically removed in March 2010. However, further excision had to be carried out in June 2011. At this time, she was taking six different types of medication including strong painkillers and an opiate, and that continued for the next three or four years.
10. No will of Mr Sollis has been found, although he gave the impression to close friends that he had made one. Accordingly, Mrs Sollis became the sole owner of No 24 upon her husband's death and entitled to his savings and pensions which amounted to some £60,000. The bank accounts were closed and transferred to new accounts in the name of Mrs Sollis. She already had an account of her own, on which her daughter had been mandated for some time. She also had debit cards on the accounts which her daughter used.
11. It was in about April 2010 that Mr and Mrs Leyshon moved in with her. They had their own home which was mortgaged. At this time, they were making the repayments by debit card and did not always do so promptly. They had overdrafts and credit card debts. They lived with Mrs Sollis rent free and rented out their own home. They contributed to the phone and television bills. However, Mrs Sollis paid for other outgoings and did her own shopping. She preferred ready meals and because of her diabetes could not eat some of the food which her daughter and son in law prepared for themselves. She had no car and was reliant upon her daughter to drive her to the shops and to medical appointments. For those purposes her daughter acquired a new car.
12. From the file of Vale Solicitors two more draft wills dated 2010 have been disclosed, one giving £45,000 to her son and the remainder of her estate to her daughter and the other giving everything to her daughter. There are no attendance notes, but there is a

draft note explaining the reasons for an unequal provision for her children, namely that allowance had been made for the loan made by her husband to her son (which the note quantifies as £39,000) and the value of a motor caravan which she had given to her son (the stated value being £13,000). Mrs Sollis says she definitely did not give instructions for these drafts or this note, and her daughter says she has no knowledge relating to them. The figure of £39,000 comes from documents which her daughter says she found hidden in her father's papers after his death, which detailed sums advanced to his son.

13. In 2011 her back pain improved but then got worse again and she underwent another operation on her spine. Since then her back has remained stable. She visited her son and his family in France and stayed for about one month. In 2012 another aggressive tumour was discovered on her leg and removed. She has had biopsies since then and was discharged earlier this year.
14. During this time No 24 was redecorated and refurbished. The most expensive project was a new kitchen, which was financed by a loan to Mr and Mrs Leyshon which they serviced. There was also a new bathroom and some landscaping. Mrs Sollis made some contribution to these.
15. By the autumn of 2011, the monies which Mrs Sollis had inherited from her husband had been spent. By this time Mrs Leyshon was pregnant and in December that year gave birth to their son, who lived with his parents and grandmother in No 24 following which she gave up work.
16. In 2012 Mrs Sollis again visited her son and his family for about one month. In October that year there were discussions between the parties about Mrs Sollis transferring No 24 to her daughter and son in law. Mrs Leyshon looked up local solicitors and chose Hopkins Law in Cowbridge. She spoke on the telephone to a solicitor there, Lisa Lake, on 30 October. There is an attendance note of that conversation which includes the following passages:

“Mrs Leyshon explained that her and her husband had been living with her mother Mrs Jeanette Sollis at 24 Tyle House Close Llanmaes Llanwit Major for the past 3 years. She estimated that the property was now worth approximately £285,000 and during the time that her and her husband had lived at the property with Mrs Sollis the value had increased by £100,000 due to them undertaking modernisation works and generally updating the property.

She explained that her father had passed away and her mother previously had cancer which has now returned although she was being treated. Mrs Leyshon went on to advise that they intended to move nearer Llantwit with her mother then residing with her to allow her to continue taking care of her mother as her carer.

I asked the question why the transfer was required and why they just simply didn't proceed with a sale in mum's sole name. Mrs Leyshon advised that she had a brother and whilst he had

invited their mother to go and live with him, his girlfriend/wife doesn't speak English, her mother doesn't want to live in France and they also had to consider the cost of treatment which she is currently receiving in this country."

17. In cross examination Mrs Leyshon did not maintain the claim that the modernisation works had increased the value of No 24, but said rather that the works had been undertaken for her mother's comfort and to make it easier to sell the property. However, the works also included a hot tub in the garden.
18. Ms Lake wrote a letter to Mrs Sollis dated 30 October 2012 setting out what Mrs Leyshon had said and enclosing a questionnaire and confirmation of instructions. Mrs Leyshon completed these and they bear the signature of Mrs Sollis. She accepts she may have signed these documents but says she did not read them. The confirmation consented to Ms Lake communicating via the email address of Mrs Leyshon.
19. Mrs Sollis attended Ms Lake with her daughter on 6 November 2012. There are two attendance notes from that visit. Each identifies Mrs Sollis as the client. One refers to attending on Mrs Sollis and her daughter and the other refers to attending on Mrs Sollis alone. Each commenced with references to the fact that No 24 was unregistered and as to whether it had been held on a joint tenancy. Each then contains the following paragraph:

"Also discussed with Mrs Jeanette Sollis her instructions to transfer the property into the joint names of her daughter and son-in-law without any form of trust or restriction on the property which would effectively mean she would be giving up any claim on the property at any time."

20. The former then continues:

"Mrs Sollis confirmed she fully understood this and still wish to proceed on this basis bearing in mind that she was currently undergoing cancer treatment and would be reliant upon her daughter in the future to care for her.

Mrs Sollis also turned to her daughter and said she would probably have problems with her brother at some point in the future but Mrs Sollis confirmed that she didn't want to live in France coupled with the fact of her ongoing treatment and it was her wishes to transfer the property over to her daughter and son-in-law. In view of the above, the Transfer Deed was signed and witnessed by myself before being passed to Mrs Rebecca Leyshon, her daughter, to take away for signature by herself and her husband. Once again, I reiterated my recommendation that she seek legal advice before doing so."

21. The latter continues differently, thus:

"Mrs Sollis also said that whilst she also had a Son she didn't want to live in France coupled with her ongoing treatment and

it was her wishes to transfer the property over to her daughter and son in law...

Mrs Sollis had brought with her the signed confirmation of instructions and form of ID, which had been forwarded and requested in my initial correspondence of the 30th of October 2014. I also arranged for Mrs Sollis to sign to confirm the advice I had given to her regarding the proposed transfer by way of gift, free of any trust or restriction and confirming that she wished to proceed on this basis in view of the special relationship they had, that her daughter had looked after her and she felt it was right to give them security.”

22. The transfer signed by the parties contained an express declaration of trust that Mr and Mrs Leyshon would hold the property on trust for themselves as joint tenants. The form which Ms Lake required Mrs Sollis to sign (which she did on 6 November) is a very short one which after giving her name and address confirmed

“that I have received advice as to the implications of transferring my property to my Daughter and Son-in Law by way of gift free of any trust or restriction and wish to proceed on this basis.”
23. Mrs Sollis accepts she did not tell her son about this transfer. He was informed about it by a neighbour Christopher David who heard Mr and Mrs Leyshon talking about it in a local public house towards the end of 2012. Nathan Sollis then asked his mother about it, but she denied doing so.
24. There is another will from the file of Vale Solicitors dated 2013 in which she gave No 24 and her pension monies to her daughter, the proceeds of a life assurance monies to her son, and the remainder to them equally. She cannot now remember executing this, but it is accepted on her behalf that she did so and that she tore up this will when she made a new will with the solicitors whom she has instructed in these proceedings. She executed the 2013 will notwithstanding the fact that she had transferred the property to her daughter and son in law the year before.
25. In the summer of that year there was discussion about selling No 24 and moving to another property. Mr and Mrs Leyshon found No 7 and took Mrs Sollis to see it on one occasion before it was purchased. During the move Mrs Sollis went to stay with her sister Veronica Sollis and her civil partner Linda Sollis for a few days. They came to pick her up and found her waiting with all her personal possessions in bags.
26. There were some difficulties of communication between Mr and Mrs Leyshon on the one hand and Veronica and Linda Sollis on the other during the next couple of weeks and some confusion as to what was happening about Mrs Sollis moving into No 7. It was during this time that Mrs Sollis says that she discovered that there was no money left in her bank accounts and decided she did not want to go and live with her daughter and her family in No 7. She reported her daughter to the police. They interviewed Mrs Leyshon but no criminal proceedings have been brought.

27. The net proceeds of sale of No 24 were used to pay off the very small remaining mortgage, some £3000, some debts of Mrs Sollis and some credit card debts of Mr and Mrs Leyshon. The rest was used to purchase No 7. However shortly after purchase a secured loan of some £65,000 was taken on that property to pay off further credit card debts and car loans. In July 2015 a further secured loan of £60,000 was taken out which Mrs Leyshon says was to fund these proceedings, but there is also a charge in favour of her solicitors. She has now moved to Tenby. She accepts that she has a number of credit cards which are all in default and in some cases no payments have been made for some time. Mr Leyshon remains living in No 7 with their son.
28. Mrs Sollis is now living in rented accommodation on a state pension supplemented by a private pension.
29. I shall now deal with those factual issues between the parties which are relevant to the determination of the claim and the counterclaim. I shall start with findings on the health, physical and mental, of Mrs Sollis, during the period in question namely 2010 to 2013, as this may inform some of the other issues. Although Mrs Leyshon accepts the physical health issues summarised above, there remains an issue as to just how mobile she was after her back operation in the early part of 2010.
30. Mrs Sollis says that she could cope with shopping at the local convenience stores, but could not walk around the larger supermarkets, where some of the questioned expenditure took place. Her daughter however, said that her mother preferred to get out and about as she was in pain just sitting in the house, and shopping took her mind off things. Whilst that can readily be accepted as far as it goes, it does not help on the issue of just how mobile she was. The only assistance from the medical notes is that in January and March 2011 she was excepted from diabetes and smoking quality indicators with a note that she was unsuitable as she was housebound and frail. Her daughter says that this is what her mother told her doctor over the phone as she did not want to go to the surgery for these purposes. There may be some truth in that because it is clear she was seen in the clinic for other purposes shortly before and after those entries.
31. Mrs Sollis turned 69 in February 2010. She underwent two operations in 2010, and further operations in 2011 and 2012. Throughout this time and indeed into 2014 she took six different tablets. In my judgment it is likely that her recollection that she could shop at local convenient shops but not walk around the larger supermarkets is likely to be in general terms the more accurate. That part of her evidence had the ring of truth about it and I accept it.
32. More complex is her mental health. She gave her evidence clearly and robustly although she accepted she is still confused at times. She said that after her husband's death she didn't know what she was doing or where she was, which she put down to the medication. So much is not in dispute, but what is in dispute is whether this improved in the latter part of 2010 as her daughter says.
33. Linda Sollis says that she already noticed some confusion in Mrs Sollis prior to her husband's death, which she put down to her illnesses, but when her husband died she "fell apart." She and her partner visited in the weeks that followed, and they could see a difference in her confusion. On one occasion her daughter was sorting out her father's papers and shredding some of them with her, but she did not appear to

understand what was going on. Linda Sollis was an impressive witness and I accept her evidence.

34. In my judgment it is clear that there were further episodes of confusion. The most striking is the 2013 will which deals with her interest in No 24 when she had already divested herself of that. In cross-examination her daughter suggested the date may be a typing error, but that is not likely given that it is written in letters rather than figures. In closing submissions, Ms Dzameh on her behalf suggested that this may have been a deliberate attempt to bolster her case on confusion, but this was not put to her, and in my judgment that is a highly unlikely explanation.
35. Mrs Sollis maintained in evidence that she definitely did not give instructions for the 2010 wills either and went so far as to say the note explaining the unequal provision was a falsified document. There was no witness statement from the solicitor who drafted these wills but included in the bundle was an email from him saying that the wills were all drafted on the instructions of Mrs Sollis. It is appropriate to be cautious about attaching too much weight to such a short email which has been untested by questioning.
36. However, on the evidence such as it is about the draft wills, in my judgment on the balance of probabilities Mrs Sollis did give instructions for each of them. The fact that she cannot now remember is further evidence of her episodes of confusion between 2010 and 2013.
37. Her son said that when she came to stay with him his mother was confused and muddled but then relaxed somewhat. He is not disinterested in these proceedings and does not get on with his sister. Moreover, there were inconsistencies in his evidence about whether his mother contributed to food when she came to stay and whether his father told him about his will or he heard it from his father's friends. Nevertheless, his evidence as to confusion chimes with other evidence in this regard and I accept it.
38. There is evidence too from her son, from Linda Sollis, and from neighbours Keith Evans, Glyn David and his son Christopher David as to her lack of confidence and lack of social engagement during this period. There was some acceptance that this may have initially been due to her grief and her own illness. But the preponderance of this evidence was that this continued until she stopped living with her daughter and son in law, after which her confidence started to return. She certainly gave her oral evidence in a confident way.
39. Her son described her during this period as "fragile-like a scared dog." Keith Evans and Glyn David, who were good friends of Michael Sollis, clearly had a low opinion of his daughter, describing her in their statements amongst other things as controlling and jealous, particularly of her brother, although in the oral evidence they each said they had nothing against her. Keith Evans says that after her daughter moved in, Mrs Sollis became nervous, like a mouse. Glyn David said that after her husband's death if Mrs Sollis saw him walking past the house she would run away. She was not like that before his death and she went downhill rapidly after that. His son Christopher David said that there was a definite change in Mrs Sollis after her husband's death. Her whole demeanour changed. She would not talk to anyone and would keep her head down. He would try to have a conversation with her, but he couldn't get a word out of her.

40. Linda Hollis said that she had known Mrs Sollis for some twenty years beforehand and has seen her cope with the stresses of life. She accepted that part of the change after her husband's death was part of the grieving process, but said that in the years that followed, her demeanour worsened rather than improved. She lost interest in her dress, which was unlike her. She stopped making eye contact and would look at the floor. Her demeanour was like a mouse and quite jumpy. After she came to stay with Linda Sollis and her partner in 2013, and found out that there was little or no money left in her bank accounts, she became very distressed. However, in time she started to regain her confidence.
41. Her daughter accepts that there was some loss of confidence and social engagement after her father's death but says that her mother then improved until the time of the transfer. She then became afraid that her son would find out about the transfer and was afraid of him.
42. Coupled with the evidence as to loss of confidence and social engagement is evidence from Mrs Sollis and her witnesses as to the control which she says her daughter and son in law exercised over her during this period. She says, and her witnesses confirm that this is what she told them at the time, that she would have to smoke outside, would have to go to bed at a certain time and put the lights out, and could not flush the toilet for fear of waking up the baby. Whilst disavowing any control, her daughter and son-in law accept that she was asked to smoke outside because of her son in law's asthma but say in bad weather she could smoke in the garage. They accept she was asked not to flush the toilet at night because they didn't want to wake the baby. They say that she could go to bed at whatever time she wanted and would usually go at the same time as them, but Mr Leyshon did make reference in his evidence to seeing the light in her bedroom being on in the small hours.
43. The evidence of her witnesses goes far further than this. Her son says that during this period when he phoned his mother, who had an old phone, he would hear a clicking noise and thought someone was listening. Keith Evans said that his wife used to visit Mrs Sollis on a weekly basis. However, after her daughter moved in he and his wife were made to feel very uncomfortable by her daughter on these visits and so they stopped going. Glyn David recalls one occasion when he was speaking to Mrs Sollis outside and within a minute or so her daughter shouted at her mother to go into the house. He saw her smoking in the garden in the rain. His son said that during this period she spent much more time in the garden and he also saw her smoking in the garden in all sorts of weathers.
44. Linda Sollis says that after Mrs Leyshon moved in with her mother, she exerted control over her. When they phoned, it was she who always answered, not her mother. Messages would not be passed on. When they visited Mrs Sollis, her daughter would stay in the room, and when they asked how she was, her daughter would answer for her. They stopped phoning and on occasion visited unannounced, which Mrs Leyshon did not like. She had bought a labrador puppy when she moved in and then a boxer. As they grew they became large and boisterous and Linda Sollis became wary of them. Mrs Sollis had cuts and bruises as a result of the dogs jumping on her.
45. Linda Sollis heard about the transfer as a result of the conversation which Christopher David heard in the public house. She phoned Mrs Sollis who said that her daughter had told her to sign the house over as they were going to move to a cheaper house to

reduce the running costs. After that, Mrs Leyshon would not allow her to speak to her mother, so they again visited unannounced on one occasion and she happened to be on her own. She was very tense and said that there had been arguments.

46. In my judgment, the evidence of these witnesses builds up a vivid picture of a significant element of control by Mrs Leyshon over her mother and of isolating her from her friends and family. Christopher David and Linda Sollis in particular gave detailed accounts in a measured and considered way and were impressive witnesses. In my judgment this picture is likely to be an accurate one.
47. Having made those general findings, I now deal with the more detailed factual issues between the parties. Mrs Sollis says that it was her daughter who asked if she could come and live with her to care for her but also because they were having difficulty in making the mortgage payments. Her daughter says it was her mother who asked her to go and care for her. The issue may not be that important given her mother's acceptance that she was pleased that her daughter would be moving in, and it is likely in my judgment that it was a bit of both. It is likely that there was mention by her daughter of difficulty in paying the mortgage as the bank statements show that the March 2010 payment was made late.
48. It is clear that Mrs Leyshon did care for her mother and took her shopping and to doctors and hospital appointments. Mrs Sollis acknowledged in her evidence, as she did to Ms Lake at the time of the transfer, that she was grateful for this care.
49. In my judgment therefore, I must start from the premise that it is unlikely that a daughter who is caring for her mother would misappropriate most of her inheritance from her late husband. Balanced against that however, it is also unlikely that someone in their 70s and recently widowed would knowingly fritter away that inheritance in the space of some 20 months or so and leave herself dependent upon a state pension and a modest private pension for the rest of her life.
50. To determine which of these unlikely scenarios took place on the facts of this case, therefore, further consideration of inherent likelihoods is required, and regard must be had to the nature and pattern of the expenditure. What Mrs Sollis has done is to go through her bank accounts and to compile a schedule of those items which were not bought for her and which she did not authorise. She accepts that she did occasionally buy gifts for her daughter and made contributions to her expenses, for example for petrol when her daughter was driving her around. That became a regular monthly payment of £50 later on. She also accepts that she gave substantial sums by way of gift to her son and daughter from the inheritance, some £8,500 in total to her son and £5000 to her daughter. The trips to France cost some £2,000.
51. Of the £60,853 which her bank accounts show she inherited from her husband, the exercise which she carried out shows that some £28,000 of this was spent by her daughter without her knowledge or consent. Further, there are £18,000 worth of such payments from other accounts of hers which she says are unauthorised. Mr Hughes, on her behalf, realistically accepts that there is likely to be some margin of error in trying to remember what was authorised and what was not going back over a period of years and given my findings as to her confusion during this period, in my judgment such a margin is likely to be more than minimal.

52. However, what can be seen from the accounts is the nature and frequency of such payments. Many of them relate to purchases in the larger supermarkets, and I have already accepted the evidence of Mrs Sollis that she usually did her shopping in the local convenience shops. Moreover, the amounts of such payments are very high. For example, in the first four months of 2012, they total between £835 and £914 per month for Mrs Sollis, compared to between £220 to £370 per month from the accounts of Mr and Mrs Leyshon. Mrs Leyshon sought to explain that by saying that her mother preferred ready meals but many of these would be thrown out as her mother had issues with taste. Whilst accepting that this may be true to some extent, in my judgment that is unlikely to explain such a difference. She also added that some of this expenditure would have been on cigarettes (she herself was also a smoker) and that her mother was smoking 30-40 a day during this period. Her medical notes show that whereas she used to smoke this amount before she became ill in 2006, thereafter she cut down to 10-20 a day. It is unlikely that this was a significant underestimate because the figures varied, and she had regularly received smoking advice from medics thereafter. In my judgment this cannot explain such a difference either.
53. Then there are regular payments to DIY stores. Mrs Leyshon says that these were her mother's purchases for the garden and for her son's house in France. There are regular payments to sports clothing shops, which Mrs Leyshon says were presents for her grandchildren. There are regular payments to pet shops, some for £50 or £60 or so. Mrs Leyshon said that these were for food, bedding and a kennel for her mother's two cats. She accepted that these payments continued after one and then the other cat died and accepted that thereafter these payments were in respect of the dogs which she described as family pets.
54. There are regular payments for clothes, handbags, shoes and jewellery which Mrs Leyshon says were for her mother as she had lost weight because of her illnesses and liked buying such items as her father had disapproved of such purchases. This does not sit well with the evidence, for example from Linda Sollis, that Mrs Sollis lost interest in dress, which evidence I have already accepted. Nor does it sit well with the evidence that all of her possessions were collected by car in 2013. Whilst the car was filled with these possessions, it was a small car with three people in it. Mrs Leyshon responded to this by saying that by then her mother had thrown many possessions out.
55. There are also surprising patterns of expenditure from the accounts of Mrs Sollis. In the week commencing 17 June 2010, some 10 days after her operation for excision of skin lesion and skin graft on her left shin, there was expenditure of £1,500 at supermarkets, shoe shops and farms, and a £3,500 debit at the bank in Llantwit Major. Mrs Leyshon says that this was for her mother to visit France. On 29 June 2010, in one day, there were payments at a supermarket and five different clothes shops. On 5 July 2010, in one day, there was expenditure at five different locations, including department stores and a hair stylist. Mrs Leyshon does not recall any particular visits but said that she often visited five or six shops in one day with her mother.
56. The pattern of petrol expenditure from these accounts is also surprising. Sometimes there were two purchases of petrol in one day, and other times three purchases within a week. Mrs Sollis said in her evidence that whilst she may have made a contribution to petrol from time to time she would not have done so twice in one day. That evidence had the ring of truth.

57. After Mrs Leyshon had given her explanations for this expenditure, I asked whether she had ever raised concerns with her mother about the very high level of her expenditure. Initially she replied that she did not do so because her mother was an adult and it was a matter for her. She then added that she did not realise how much her mother was spending until she moved out and she saw all the possessions. This latter explanation does not sit easily with the explanations which she had earlier given for the expenditure or with the fact that the possessions amounted to one small car load. These replies were not impressive.
58. Taking all this evidence into account, I have come to the clear conclusion that Mrs Leyshon did use her mother's credit card to make purchases for herself or her family without her mother's knowledge or consent. That is a serious conclusion. However, it is likely that she was tempted to do so by one or more of a number of factors. First, I am satisfied that she and her husband were in some financial difficulty. Second, she was caring for her mother. Third, I am satisfied that she was jealous of her brother and the sums which her father had advanced to him. Fourth, it is likely that she saw these monies as her rightful inheritance.
59. Ms Dzameh submitted that in the event of such a finding, the proper course was to order an account and inquiries into the precise amounts. It is unlikely that any further evidence would be available as to whether items of expenditure were made with the knowledge and consent of Mrs Sollis. Recognising that position, Ms Dzameh justified her submission by saying that despite requests for sight of Mrs Sollis' bank statements prior to 2010, no such accounts have been disclosed and disclosure is likely to enable a comparison of her expenditure before and after her daughter and son in law moved in. However, no application for specific disclosure was made and her solicitors have made enquires with her bank who say that they do not retain copies of such statements after this amount of time.
60. I have regard to the overriding objective and the need to deal with litigation fairly, expeditiously and proportionately, and conclude that I should do the best I can on the evidence which the parties have put before me. Mr Hughes tentatively suggested a 10% deduction from the sums identified by Mrs Sollis to allow for a margin of error. However, given the confusion which I have found, the passage of time, and the acceptance that Mrs Sollis made some contributions to expenses such as petrol, in my judgment the appropriate figure is in the region of 20%. It is not an exact science. Of the £46,000 identified by Mrs Sollis I award £36,500.
61. I turn now to the transfer. The attack on this was put on a number of alternative bases in the statement of case and skeleton argument, including undue influence, duress, resulting trust and estoppel. However, in light of the acceptance by Mrs Sollis when giving her oral evidence, that she knew she was transferring the beneficial interest in No 24 to her daughter and son in law and that she was "brow beaten" into so doing, Mr Hughes in his closing submissions realistically accepted that this is an undue influence case if it is anything, and accordingly it falls to his client to prove that she was coerced into the transfer and did not enter into it of her own free will.
62. The findings I have made above as to her physical and mental health are also relevant to this issue, and I am satisfied that the confusion, the lack of confidence and social engagement, and the control referred to above existed from 2010 up to and including the time of the transfer.

63. There are other factual issues which I must resolve in relation to the transfer. The first is whether Mrs Sollis was told by her daughter that she should make the transfer, as she asserts, or whether she said to her daughter that she wished to do this as her daughter asserts. The factors referred to in the previous paragraph suggest that the former was more likely.
64. Moreover, when Mrs Leyshon was cross-examined about her reaction to her mother's indication, she replied that this came out of the blue and that she simply agreed. She did not express concern to her mother that she was depriving herself of her home and only remaining substantial asset (as Mrs Leyshon I am satisfied knew it to be by then). She said that she and her husband would provide a home for her mother for the rest of her life.
65. The evidence of Mr Leyshon was somewhat different. He said that he initially thought that it was strange that his mother in law wanted to do this, but she explained to them the reasons why and although they did explain to her what she would be giving up, they agreed.
66. In my judgment neither of those inconsistent accounts is plausible given the findings I have made about her state of mind, and it is likely that she was told by her daughter to make the transfer.
67. The next issue is whether Mrs Leyshon remained in the room when Ms Lake gave her mother advice, as her mother recalls, or whether Mrs Leyshon left during this period as she recalls. The fact that there are two attendance notes, one in attendance to the two of them and the other in attendance of just Mrs Sollis seems to support the recollection of her daughter, although strangely much of the wording of the notes is similar to the other, and they do not make clear which part relates to the time when Mrs Sollis was seen alone.
68. The third issue is what was said by Mr Leyshon about the transfer later that year and heard by Christopher David. The latter deals with it in his witness statement as follows:

“Although this was early in the evening, Stephen and Rebecca were already in the pub and three sheets to the wind, so to speak. I heard Stephen bragging that they had got the house off her mother, whilst her brother got nothing, and it was worth so much. He then went on bragging about their lifestyle as usual, whilst Rebecca giggled away the whole time. It was sickening to listen to them.”
69. When he was cross examined about this, he accepted he could not remember the precise words. When Mr Leyshon was cross examined about it, he accepted with some reticence that Mr David could have heard him mention the house to a friend, but that he was “not really” bragging and he doubted that he had mentioned Nathan Sollis or the worth of the property. His answers were not straightforward, whereas those of Christopher David were, and I prefer the recollection of the latter.
70. The legal principles relating to undue influence were not in dispute before me. The leading authority is a decision of the House of Lords in *Royal Bank of Scotland Plc v*

Etridge (No 2) [2002] 2 AC 773. Previously, there had been some confusion as to whether actual and presumed undue influence were different concepts, but it was made clear by the House of Lords that these are merely different evidential routes to proving the existence of undue influence. By its nature, such influence is often exerted clandestinely and over a period of time. Influence by itself is not enough. It must be undue, for example where it is so great that the consent which it produces “ought not fairly to be treated as the expression of a person’s free will” (per Lord Nicholls at paragraph 7 of *Etridge*). In the following paragraphs, Lord Nicholls continued that one of the forms of undue influence “arises out of a relationship between two persons where one has acquired over another a measure of influence, or ascendancy, of which the ascendant person then takes unfair advantage.” Such a relationship if coupled with a transaction which calls for an explanation, may give rise to an evidential presumption of undue influence and assist the person seeking to prove it to discharge the onus of proof.

71. It will be apparent from the findings already made that in my judgment Mrs Leyshon had acquired a measure of influence over her mother by the time of the transaction, and that divesting herself of any interest in her home and only remaining substantial asset does call for an explanation.
72. It is noteworthy that in her evidence Mrs Leyshon did not seek to explain the transfer by reliance upon the justification she gave to Ms Lake at the time- namely that she and her husband had carried out improvements to No 24 which increased its value by £100,000. Rather she refers to the paying off of the mortgage on the property and some debts of her mother’s which she asserts were in the region of £10,000. There is dispute about that figure, but even if it is right, that together with the very small mortgage goes nowhere near to explain the gift of No 24, sold a few months later for £275,000.
73. Nor does the fact that Nathan Sollis was advanced £39,000 by his father. In the defence this figure was referred to in a way which can only sensibly be read as forming part of £100,000 which was the pleaded figure. In Mrs Leyshon’s evidence, this figure increased to £140,000, she says because this is what her father told her during his last days in hospital. That evidence is not credible in light of the clearly worded defence. Further, in my judgment if that is the sum advanced it is likely that her father would have kept documents showing the total advances, and not just £39,000 of it. None of these figures are sufficient to explain the transfer.
74. Finally, the fact that Mrs Sollis gave instructions for wills in which No 24 was left to her daughter, if anything, serves to render an outright inter vivos transfer even more questionable. The former would mean that Mrs Sollis would continue to own her own home for the rest of her life and in any event would be revocable, whereas the latter was final and gave no protection at all to Mrs Sollis.
75. It is likely in my judgment that Mrs Leyshon advanced one or more of these reasons to her mother for such a transfer, so that in her very vulnerable state what remained of her free will was overcome. It is noteworthy also that the reason which Mrs Sollis gave to Ms Lake for the transfer was that she was reliant upon her daughter for care, but this serves only to underline her vulnerability and her daughter’s ascendancy.

76. One of the ways in which the presumption may be rebutted is by advice from a solicitor as to the consequences of the transfer. There was no duty on Ms Lake to advise Mrs Sollis not to execute the transfer. In *Etridge* at paragraph 20, Lord Nicholls said that:
- “..the mere fact that legal advice is obtained cannot suffice, unless it is proper to infer that it must have led to a decision based upon full, free and informed thought.”
77. In my judgment that is not a proper inference in this case. Mrs Leyshon took her mother to see a solicitor whom she had chosen and was in the room when there was discussion about the transfer. Although she stepped outside whilst advice was being given to her mother alone, she remained just outside. Moreover, it appears from the notes that she was back in the room when her mother signed the transfer. Mrs Sollis had no space to think, and of course was dependent upon her daughter for a lift home and future care. In her vulnerable state it is unlikely that her execution of the transfer was based upon full free and informed thought.
78. Accordingly, whether or not the case of Mrs Sollis is assisted by presumption I am satisfied that the transfer was procured by the undue influence of her daughter. Christopher David’s account of how the transfer was celebrated by Mr and Mrs Leyshon gives support to that conclusion. It is unconscionable for Mr and Mrs Leyshon to insist that they were beneficially entitled to No 24.
79. Ms Dzameh relied upon defences of laches and delay in her skeleton argument but did not pursue those defences with any enthusiasm in her closing submissions. I can see no basis for refusing relief on those grounds.
80. As No 24 has been sold and the proceeds used to purchase No 7, there is no dispute that equitable relief should be traced into the equity of that property, such as it is.
81. As the claim succeeds, the only counterclaim which remains to be considered is the claimed allowance for the payment of the outstanding mortgage and the debts of Mrs Sollis from the proceeds of sale of No 24. The basis of this is said to be the understanding that the beneficial interest would belong to Mr and Mrs Leyshon. They also say that the works which they undertook was on such an understanding. This is likely to be academic in light of the limited equity available now in No 7, but I can see no proper basis for such allowances when any such understanding is the product of their own undue influence or at least that of Mrs Leyshon.
82. I will hand down this judgment in writing. I am grateful to each counsel for his and her focussed approach which was of considerable assistance in this difficult case. If they take the view that any consequential matters can be dealt with on the basis of written submissions, then I invite such submissions within 14 days of handing down. If a further oral hearing is required, then one should be requested in writing within the same time scale.