



Neutral Citation Number: [2021] EWHC 229 (Ch)

Case No: PT-2019-000939

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

The Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12/02/2021

Before :

Deputy Master Linwood

Between :

CRAIG CHRISTOPHER CAMERON
(as personal representative of the estate of Yvonne
Cameron)

Claimant

- and -

CAMILLE ANNE-MARIE CAMERON

Defendant

Mr Timothy Deal (instructed by **Hebbar & Co**) for the **Claimant**
Mr Varun Zaiwalla (instructed by **Bird & Lovibond**) for the **Defendant**

Hearing dates: 9th & 10th December 2020 and 20th and 21st January 2021

Written submissions: 22nd and 25th January 2021

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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.

.....

Approved Judgment**Deputy Master Linwood:**

1. This is my judgment following trial of this claim by Craig Cameron, as personal representative of the estate of his late mother, Mrs Yvonne Cameron (“Mrs Cameron” or “mother”), against his sister Camille Cameron. I will refer to the parties by their first names with no disrespect intended. Paragraph numbers are shown as [] and are internal unless the context indicates otherwise.
2. Below I set out the claim in essence and the agreed issues. I then turn to the family background, the DWP investigation, purchase of the property and subsequent events in neutral terms indicating where the parties disagree, the law, my findings of fact and my decisions on the issues. But first I address how this trial went part heard and the Particulars of Claim and Defence came to be amended.

The Trial and the Amendments

3. Craig claims the family home, a three bedroom bungalow at 42, John Perrin Place, Harrow, Middlesex (“the Property”) purchased by his late mother should form part of her estate; Camille says it is hers. Craig’s claim was first pleaded on the basis that there was no intention of a joint tenancy, as Craig and his lawyers were unaware of the declaration of trust on the face of the Land Registry Transfer of Part Form TP1 (“the TP1”) completed by Camille and their mother. Mr Zaiwalla submitted that declaration of trust was determinative of the claim – see for example Lord Mummery’s concurring judgment in *Pankhania v Chandegra* [2012] EWCA Civ at [13].
4. On 9th December 2020, the first morning of trial, Mr Deal said neither Craig nor his wife, Alison, were able to give evidence as they were ill and further Covid-19 had been diagnosed by a GP after a telephone consultation. In opening, Mr Deal submitted that Craig’s claim would rely on first an unpleaded allegation of mistake in relation to the TP1 and secondly an unpleaded claim for rectification of the TP1.
5. Mr Zaiwalla submitted that this was no doubt because Craig and his lawyers had suddenly and belatedly realised how his claim was, as then pleaded and on the face of the documents, unlikely to succeed, and the application by Mr Deal to adjourn the trial was due to an intention to apply to amend the claim, which Mr Deal denied. I directed that evidence should be filed in support of the application to adjourn by 10.00am the next day. I did not want to lose the afternoon both in terms of court time and costs; Mr Zaiwalla said he was ready to start and I therefore took the somewhat unusual course, after hearing submissions from counsel, of hearing Camille’s evidence. There was also the possibility that I would not grant the requested adjournment so the sooner the evidence commenced, the better.
6. The evidence satisfied me that I should adjourn, but I heard the remainder of Camille’s evidence. My Order of 10th December 2020 provided for a further two days for trial, which were listed on 11th December for trial on 20th and 21st January 2021. On 17th December 2021 an application to amend the Particulars of Claim was sent by Craig’s solicitors, Hebbar & Co, in draft to Camille’s solicitors, Bird & Lovibond, who immediately raised certain queries. They were ignored and the application issued on 21st December.

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7. I heard it on 11th January 2021. I was narrowly persuaded to grant permission to amend (save as to one paragraph regarding severance) for the reasons set out in my *extempore* judgment, but in short I was persuaded by Mr Deal’s assurances that the trial date would not be prejudiced, there would be no further disclosure, Camille would not need to be recalled and he would not seek to adduce further witness evidence. Further, consequential amendments to the Defence would be limited. As it happened, Mr Deal did endeavour to have Craig give oral evidence in chief, which in the main I refused to permit. Two emails were disclosed which should have been provided many months ago.

The Claim in Essence

8. Craig in the prayer to his Amended Particulars of Claim asks for:
- i) a declaration that Mrs Cameron was since purchase in 2014 the sole beneficial owner of the Property until she died in 2018 and as may be necessary rectification and/or rescission of the TP1 on the grounds of common or unilateral mistake;
 - ii) Rescission and/or setting aside of the transfer of the Property to Camille made by Mrs Cameron executing, whilst in hospital and seriously ill, Land Registry Form TR1 (“the TR1”) almost two weeks before she died on 26th June 2018 and
 - iii) an order that Camille transfer the Property to the estate of their mother.
9. Camille says she owns the whole of the beneficial interest in the Property as:
- i) It was originally conveyed into her and her mother’s joint names as they executed a declaration of trust on the TP1, confirming the beneficial interest was owned by them and
 - ii) There was no “mistake” or “error” as to the TP1 and so no ground for rectification arises;
 - iii) In June 2018 her mother properly executed the TR1 to transfer her interest in the Property to Camille.

THE ISSUES

10. The agreed issues are:
- i) Should the TP1 dated 17th February 2014 be rectified so as to remove the declaration of trust at box 11 by the Court on the basis: a) of common¹ mistake by Mrs Cameron and Camille? or b) of a unilateral mistake by Mrs Cameron?

If not, the Property was held as joint tenants. If so:

¹ Mutual mistake appeared in the agreed List of Issues but common mistake was pleaded and submissions made for that, not mutual mistake.

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- ii) From the time of purchase did Mrs Cameron and Camille hold the beneficial interest in the Property: a) as joint tenants? or; b) on trust for Mrs Cameron alone?

And:

- iii) If Mrs Cameron and Camille did not hold the beneficial interest in the Property as joint tenants, was the TR1 effective to transfer the entire beneficial interest to Camille?

The Family Background

11. Mrs Cameron was 25 years old when Craig was born in 1982 and then Camille in 1984. They came to the UK from Jamaica in 1984, living at various addresses in North West London. Eventually they were housed by the London Borough of Brent (“Brent”). Camille says her mother was never well enough to work and relied on state benefits and a small pension from Jamaica. Craig says otherwise; she worked as a cleaner initially, until about 1999 when she suffered a brain tumour, and Brent offered a transfer to the Property due to her reduced mobility. The family moved in in 2002.
12. Craig left the Property at some time between 2005 – 2008. In August 2008 he married Alison. Camille remained with her mother in the Property. In 2018, by reason of her failing health, Mrs Cameron moved literally across the road to a care home.
13. On 26th June 2018 Mrs Cameron died in hospital. Craig applied for and obtained on 25th September 2018 a Grant of Letters of Administration to her estate, the net value of which was stated to not exceed £265,000. The Property is currently worth at least £400,000, with a mortgage of about £80,000.

The DWP/Brent Investigation (“the Investigation”)

14. Craig says in 2011 his mother was investigated by the DWP and Brent as she had savings excess of £150,000, but was receiving Disability Living Allowance and Housing Benefit, when the upper savings limit was about £16,000. He instructed a solicitor, Mr Khan, of City solicitors, Wembley, on his mother’s behalf. During the Investigation he saw bank statements of his mother which showed she had at least £150,000 in a variety of banks. Craig says no action was taken by the DWP as his mother said she was holding the funds for Camille. This, in his view, was a fraud committed by his mother assisted by Camille.
15. He understood Camille set up joint accounts with their mother for those savings and believes Camille has not accounted to the estate for the funds as she has failed to provide any account information. The Investigation was not mentioned by Camille in her witness statement. She was cross examined about the Investigation, the instruction of Mr Khan, and interview with the DWP but replied to every question, immediately and without hesitation “I don’t recall that”. Mr Deal then put to her that there was an investigation in 2011 by the DWP and Harrow council. Her reply was “No. I am not aware of that”.
16. One of the two emails produced on 20th January that I refer to in [7] above was sent by Camille on 10th December 2010 to Mr Azhar Khan at City Solicitors, from her

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personal email address, copied to Craig. The subject is “Mrs Yvonne Cameron’s Interview 14th December”. Camille writes “...to confirm that we will be meeting on the 14th as discussed...the venue is...Fraud Investigation Service...Harrow...”. She concludes by thanking Mr Khan again for his assistance and states for further information he can contact her or Craig.

17. I do not accept Camille’s evidence in this respect. I cannot accept that she had forgotten the Investigation as whilst it was about 10 years ago a) she was directly involved in it, b) she assisted her mother in her defence, c) this is a most serious matter; benefit fraud can result in repayment orders of many thousands of pounds, fines and possibly a prison sentence and so not an event which is easily forgotten especially as d) such substantial monies were involved, e) on Camille’s own account, her mother was holding an inheritance for her, f) she was sharing the Property with her mother throughout and g) the Investigation was long lasting, over many months, as appears below.
18. The second email is dated some six months later, on 13th May 2011, and is from Craig to Mr Khan. Camille is not copied in. Craig states he has:

“...gathered the information about my mother’s investments and savings...I and my mother would like the opportunity to see [you] at some point next week...please get in contact with the DWP to let them no we had wait many weeks (sic) on the needed correspondence from the banks...[please] request an extension of time from them also.”

19. That also conflicts with Camille’s oral evidence that her mother had no savings, she was on benefits and had only one bank account with the Halifax; Craig recalled numerous ones. In any event, the Investigation apparently came to nothing.

The Purchase of the Property

20. Mrs Cameron was the tenant of the Property; Camille was noted as an occupier, as she says on moving to the Property she could not have been a tenant as she was just under 18 when the tenancy commenced. By letter dated 12th August 2013 Brent made a Right to Buy (“RTB”) Offer Notice addressed to both Mrs Cameron and Camille. It stated a valuation of £280,000 as of 24th April 2013 less the maximum discount of £100,000, so a purchase price of £180,000.
21. The RTB offer was accepted by Mrs Cameron and Camille both signing the provided form on 18th August 2013 and sending it to Brent. A mortgage was necessary so on the recommendation of the McCollins family (Camille’s former partner). Camille approached one Paul Fenwick, a financial advisor, of a company known as Interfinancial. He in turn recommended Grindeys Solicitors LLP to act on their behalf.
22. Mr Fenwick completed the usual fact find document, which shows Mrs Cameron had gross income of just over £14,000 per annum from her disability benefits and a small pension. It is dated 24th July 2013. Camille was then earning as a broadcast engineer just under £30,000 per annum and she had income from self-employment of about £12,000 per annum.

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23. Mr Fenwick calculated that after all outgoings Mrs Cameron had net disposable income of £408.42 per month and Camille £767.00, jointly £1,175.42, which facilitated a mortgage of £80,000 over 18 years from the Halifax. On the fact find form the balance of £100,000 to complete the purchase is stated to be available from savings. Camille also in her initial email to Mr Fenwick referred to putting down £100,000 as a deposit. The source of the £100,000 is not mentioned in either document, but on Mr Fenwick's file copy of his email to Camille raising various questions he has noted "Deposit from Applicant 2 Savings". Applicant 2 was Camille.
24. I note from Camille's List of Documents that files maintained by the solicitors involved have been disclosed; Grindeys' for the purchase of the Property over 2013-14, and Mills Curry (for Mrs Cameron) and Optima (for Camille) on the transfer to Camille and re-mortgage in 2018. The full files of Grindeys and Optima are not in the bundle as the parties' solicitors have sensibly limited the documents to what is exhibited. I mention this to explain why in my narrative of the conveyancing processes I only refer to a few documents.
25. A Ms Rachel Silvester was the solicitor at Grindeys who acted for Camille and her mother. She sent to them a form entitled "Joint Ownership of Your Property". It starts by stating the two options are Joint Tenants or Tenants in Common which the readers are asked to consider and then indicate in a box "...your choice of joint ownership". The first column states:
- "1. Joint Tenants**
- If a property is purchased as joint tenants buyers each have an equal share. Upon the death of either party the property will automatically pass to the surviving owner. This happens whether a Will is made or not and there is no need for any other formality. Neither owner can leave his or her share in the property by Will to someone else. The survivor can deal with the property in any way he chooses. People buying a property by this method should make Wills in order to determine what would happen to the property in the event of the death of both of them."
26. There is a similarly detailed and accurate explanation of tenants in common. The form then in bold in a separate paragraph urges the readers to take independent advice and states that "...this firm is...acting on an execution only basis...". This is followed by the readers being asked to complete their choice of joint ownership – there are 3 boxes, for Joint Tenants, Tenants in common in equal shares and Tenants in common in unequal shares. The box "Joint Tenants" is ticked on the copy in evidence.
27. The form continues with examples of circumstances where further thought should be given to the choice, including inheritance, tax and unequal shares, and then a statement as to the severing a joint tenancy and what a court can do on divorce including provision for children. Finally, there are two signature boxes. The top one has been signed by Mrs Cameron (this is unchallenged, and Camille confirms it) and the one beneath by Camille, who in evidence said she inserted the date opposite each signature box, being "12/1/14". Overall, this document sets out the two ways property

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can be held in a detailed, clear and most helpful guide which I doubt could be improved.

28. Camille says that after receipt of this form but prior to signing it she called Mr Fenwick and he explained the different types of ownership. Camille said that when speaking to him her mother would be listening on speakerphone. Then, Camille says, they both discussed how the Property should be held which they agreed as joint tenants, in the knowledge that when one died the other would inherit the Property.
29. The next day, 13th January 2014, Camille emailed Ms Silvester and said:

“I recently received in the post some documents to sign and return. On both TP1 forms my name is spelt incorrectly. However the declaration on the back is spelt correctly. Will these forms have to be returned for your amendment?”
30. Ms Silvester responded the same day and confirmed that the TP1 could be manually amended and initialled. Camille did exactly that and the executed TP1 has manuscript amendments to both Camille’s name and that of her mother, initialled by Camille.
31. Box 11 on the TP1 states:

“Declaration of Trust. The transferee is more than one person and [X] they are to hold the property on trust for themselves as joint tenants”
32. The [X] indicates a manual mark in that box. The next box, for tenants in common, is blank, as is the final one, to hold the property on trust. Mrs Cameron and Camille both signed the filed plan and the execution block as well, with each of their signatures attested by a Mr Tim Dee, who has confirmed in his witness statement that he signed this signature page having seen Mrs Cameron and Camille sign it. The purchase completed on 17th February 2014, Camille having transferred from a Halifax account in her name £102,742.15p to Grindeys on 14th February 2014.
33. None of the facts I have set out in [20-32] above are challenged by Craig. Nor does he dispute the veracity or provenance of the documents I have referred to. He does however in his evidence add some substantial detail as to how he says he assisted his mother with the purchase of the Property and he disputes that the balance of funds to complete the transfer came from Camille, as he says those funds originally belonged to his mother.

SUBSEQUENT EVENTS

The Lasting Power of Attorney

34. Some five months after completion of the purchase of the Property on 14th August 2014 Mrs Cameron executed a Lasting Power of Attorney (“LPA”) for Property and Financial Affairs. This was registered with the Office of the Public Guardian on 17th October 2014. The person to be told on the exercise of the power was Ms Mernell Aldred, who knew Mrs Cameron from when she came to the UK in 1991, as she was her father’s wife’s niece. Craig was unaware of the LPA until he saw the Defence, in

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January 2020. The first time he saw a physical copy was after it had been produced in the course of disclosure. Camille was appointed as attorney.

Mrs Cameron's health

35. Mrs Cameron suffered from poor health for the last 20 or so years of her life, until she died aged just 60. She was disabled as a result of a brain tumour in about 1999 and had two or so strokes in 2000. She relied heavily on especially Camille, who after Craig left was her main carer until she had another stroke in 2016. That year Camille also gave birth to her son, and was consequently struggling to cope, especially as she was also working full time. Four carers would then assist. She was admitted to hospital in December 2017, for a long term stay, until about March 2018 when she was discharged to Birchwood Grange Care Home ("Birchwood"), almost opposite the Property. She was then transferred back to hospital on 5th June where she died on 26th June 2018.
36. Notwithstanding her illnesses, both Craig and Camille agree that their mother retained her powers of understanding matters until her passing – according to Camille – or much earlier – according to Craig. No medical evidence of any nature was produced in evidence but Craig said that his mother "...was very meticulous and careful as to money and trained Camille and me to be the same and "...involved us in all her financial matters". Further, he said she was "...very astute and well aware of her financial position...was confident and would challenge...was very strong willed and determined."
37. However, by 2017 or by the time she was in Birchwood, Craig said she felt threatened and unsettled not being at home and was suffering from delusions; she told him and Camille that she had been sexually assaulted (investigated by the police but came to nothing), that she was being bullied, watched – so she could not sleep – and frequently suffered from serious confusion and distress, resulting in her becoming angry and abusive – as he put it, she went through "...polar extremes."
38. Camille said her mother, when holding Camille's inheritance from when she was about 15 years old, kept the substantial sum in multiple bank accounts so as to benefit from the best rates of interest. Camille in cross examination explained that her mother had owned and then sold property in Jamaica and was aware of the different ways property was sold. In particular, Camille said her mother always "...would have been fully aware before signing something" which meant she would read out documents to her and that she "...had to be very patient with mum so she could understand."
39. In summary, Mrs Cameron was astute, used to dealing with property and large sums of money, expected to have documents explained to her and was strong willed and confident, until, it appears, 2017, according to Craig or always according to Camille. There was general agreement by the witnesses that Mrs Cameron put all she could in to giving Craig and Camille the best start in life possible.

The preparation and execution of the TR1

40. Camille says by early 2018 her mother's health was worsening so she wanted to transfer her interest in the Property to Camille before she died, so Camille contacted Mr David Knox, a solicitor and principal of Mills Curry solicitors to act on her

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mother's behalf. Camille was re-mortgaging and was represented by Optima Legal. I assume they informed her that her mother had to have separate representation.

41. Mr Knox arranged to see Mrs Cameron on 8th May 2018. The draft TR1 had not arrived by then from Optima, but he attended anyway. Mrs Cameron was moved in her wheelchair from Birchwood to the Property. Mr Knox did not see Mrs Cameron alone; Camille was in attendance, but, as she put it, not participating. Mr Knox explained what the TR1 meant and the consequences of the transfer. It is Camille's case that Mrs Cameron instructed him she wished to go ahead. The TR1 was received by Mr Knox on 31st May 2018 and sent to the Property. Camille says she took it to her mother in hospital on 13th June 2018 where due to her frailty she helped her sign it, by guiding her hand which had the pen in it. This was witnessed by a Ms Carol-Ann George. The transfer was sent by Mr Knox to Optima on 19th June. Eight days thereafter, Mrs Cameron died. The transfer was registered on 13th July 2018.
42. Craig disputes that his mother had capacity to understand any of this, and that in particular she could not and did not understand the effect of the TR1 or what she had agreed to. He therefore in his Reply at [14] pleaded that a) the TR1 was not validly executed, b) and/or Mrs Cameron lacked capacity or in the alternative it should be set aside on the ground of undue influence.

THE WITNESSES OF FACT

43. Below I set out my view of the evidence given by each witness, in the order in which I heard them. I heard Camille in person in Court, and the remainder of the witnesses remotely.

Camille Cameron

44. Camille gave her evidence in a quiet, calm manner, initially answering questions fully. She clearly is intelligent and determined, and has had to work extremely hard first professionally, as a broadcast engineer, secondly as sole carer for her mother and then thirdly to bring up her son alone. She explained how she combined working full time with providing for her mother fresh food, drink, water, tablets, usage of the toilet, changing her incontinence pads, doing a weekly shop, paying bills, cleaning and washing – alone until eventually the carers were brought in. Camille also took her mother out shopping, to the bank and post office, and to neurological therapy. She had her son, Elijah, when she was 32 years old, who also lived at the Property with them.
45. Her evidence did however vary, and there were several areas which gave me some cause for concern. First, the Investigation that I set out at [15-17] above. Mr Zaiwalla submits that Camille initially said she just did not recall the Investigation and only on the second day of her evidence did she deny it. Further, he submits the email dated 10th December 2010 I refer to at [16] should have no weight put on it as first it was not put to Camille and secondly given the passage of a decade to fail to recall it was unsurprising.
46. I disagree. First, I had already concluded that Camille must have been aware of the Investigation prior to the late and unexplained production of her email, as I could not accept her oral evidence in that respect for these reasons. Given her total and selfless devotion to caring for her mother it is inherently improbable that the Investigation

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was not discussed between them and with I would assume substantial concern and worry by Camille as on her case the monies were hers.

47. Mr Zaiwalla also submits that Craig gave no reason why his sister would have recalled the Investigation but denied it. I do not think he has to. The point here is the origin of funds and what must have been a seismic family event, which Camille for some reason denied. So production of the email confirmed my initial conclusion. It did not determine the point and so did not need to be put to Camille. Nor was it conclusive of a major issue in this trial.
48. Secondly Camille said that her "...mother never worked, due to sickness, lupus and brain issues, she didn't work since she came...to the UK from Jamaica." That was countermanded by the evidence of Craig, Alison and Oral Cameron, and in that respect I prefer their accounts, that she had worked initially as a cleaner, for an agency called Helping Hands.
49. Thirdly, her evidence as to the TR1 and Mr Knox's involvement was contradictory – in that she said her mother had instructed him but then (as appears in her statement) that she called on her mother's behalf, and then that "...they [her mother and Mr Knox]...just initiated the meeting. She expressed what she wanted when he came to the Property." Further, Camille said she only joined in when her mother dribbled and could not be understood.
50. Fourthly, at one point Camille refused to answer a perfectly reasonable question by Mr Deal concerning her savings. I found her to be evasive in an area which was of importance, especially as Camille then, when asked about the balance of funds after she had transferred the sum of £102,000 to complete the purchase, said "I do not know of any further amounts" in the context of monies totalling at least £160,000 being established as being held by her mother (from whatever sources).
51. That reticence also appeared in her stonewalling Craig's requests for financial disclosure, albeit that he did not pursue same when he could have done. The disclosure Camille did make of certain bank statements was incomplete and the origin of the funds was not apparent, which could have been established by production of all relevant statements – whether required by Model B disclosure under PD51U or not.
52. Those examples however are balanced by Camille's detailed accounts of other events which I do accept, such as how her mother held monies received for Camille from her father in 1999 in different accounts to obtain the best rates of interest, and how her mother's tenancy was not secure as Brent wanted to move her to a smaller property, as the bedroom tax had reduced her benefits, but she did not want to move. When questioned about whether she read out important documents to her mother she replied affirmatively and when it was put to her that was unlikely she replied "I had to be very patient with mum so she could understand." All those and various other answers had a simple ring of truth to them.
53. When asked about where the important form from Grindeys regarding the choices as to how to hold property came from she said "I don't recall to be honest – was it part of the conveyancing documents?". That was certainly not self-serving but contradicted her witness statement where she explained how she received it from

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Grindeys and she and her mother signed it. That contradiction was an honest answer to the question which illustrates how simple errors can be made.

54. Overall, Camille was not a wholly satisfactory witness in that I cannot accept all she said without reservation. I have therefore taken a cautious approach where her evidence differs to that of others and in particular looked for support from contemporaneous documents.

Craig Cameron

55. Craig's evidence likewise was not all satisfactory. Some was self-serving – for example when asked if Camille had personally paid the £100,000 deposit for the purchase and all of the mortgage payments would his mother have insisted that she owned the whole property he replied “Knowing my mother, yes, she would believe she owned the property, yes.” When asked about who in the family knew of the details of the purchase he said only him, Camille and their mother – but there he failed to recognise that he was not aware of the basis on which the property was held.
56. There were other matters which caused me concern in his evidence. For example, first Craig asserted that his mother involved him (and Camille) in all her financial matters and that she treated him as a “pseudo-husband” in that respect. But importantly, in my view, in addition to being unaware as to how the Property was held, that not being clear to him until the copy TP1 was produced upon disclosure, in these proceedings, the like applied to the LPA. Craig confirmed to my question that he was first aware of it when it was disclosed – some 6 years after it was created. I cannot accept that he was so involved and consulted as he alleged due to his lack of knowledge of such important documents.
57. Secondly, he was rather vague and contradictory as to his involvement in, as he put it, “executor” of the estate of a Mr Benjamin, for whom his mother used to clean. Mr Benjamin left his estate of about £60,000 to Mrs Cameron. After some detailed questioning it emerged that Craig was not actually the executor (contrary to what he stated in his witness statement at [19]) but received the legacy from Hillingdon Social Services, in whose care Mr Benjamin was when he died, and passed it to his mother.
58. Craig's evidence in the main consisted of assertions of facts which were not corroborated elsewhere. For example his Amended Particulars of Claim at [6] allege “It was known to all family members that the Defendant held the title on a bare trust for [Mrs Cameron] and had no beneficial interest in the Property.” The identity of those family members was queried in the Defence and in the Reply at [8] Craig claimed that his grandmother, his wife and Camille's former partner, James McCollin, all knew it to be true. But neither his grandmother nor James McCollin gave evidence. Alison, his wife did not say that.
59. Further, in cross examination Craig said that Oral Cameron and Ms Mernell Aldred were aware of his mother's and Camille's intentions when they purchased the Property. It was then put to him their witness statement evidence contradicted his assertion; he then changed tack and said they would not have known his mother's intentions. I accept Mr Zaiwalla's submission in that respect Craig would make such allegations of fact which he thought would assist him without regard for the reality.

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60. Craig was questioned at length about the lack of documentary support for his claims. He accepted more could have been done by him and his lawyers to obtain documents such as his mother's bank statements, her medical records and the joint statements held by Camille and their mother. Further, there is no evidence of such attempts being made which would have been straightforward as he was and is her Personal Representative, and Camille could not have refused. Likewise, evidence as to the inheritance from Mr Benjamin could have been obtained to assist in piecing together the pre-purchase finances, and the sale of the property his mother had owned, Craig said, in Jamaica.
61. In summary, I found Craig was a direct but valuable witness who tended at times to exaggerate his case and to argue when his evidence was challenged. I cannot accept some of his claims in the absence of documentary support. He also had said that he was bringing the claim not for his financial benefit but to honour and respect his mother's wishes. At the end of cross examination he said "I understand my evidence is a bit tardy and a little bit sketchy but it is fair that we both get half". I think that summed up his approach to his claim namely it was driven by a need for fairness that was not necessarily based on evidence.

Alison Cameron

62. Alison gave clear, honest evidence in a straightforward manner. I accept that she saw Mrs Cameron regularly when she was working, as she explained as they lived in Luton she when working 3 days a week in Central London would take the train to Harrow, visit her mother in law at the Property and then drive home with Craig, which saved money on train fares. Alison said "... Camille has a defensive and contentious character.", which I found to be correct at times.
63. Her evidence however as to the Issues I must determine did not go beyond stating that she had "...absolutely no reason to believe that [Mrs Cameron] would not want the house and subsequent assets to be shared equally and fairly." Importantly, first there was no outward expression of that beyond Mrs Cameron telling her that she had two children and Alison seeing that Mrs Cameron had put everything into giving her children the best start in life that she could, and secondly she did not say Mrs Cameron owned the Property in its entirety.

Oral Cameron

64. Oral Cameron was Mrs Cameron's stepson so Craig and Camille are his half brother and sister. He was the first son and Camille the first daughter of their father's 12 children, and he came to the UK in 2001. He had previously known Mrs Cameron in Jamaica, since he was 12 years old, in 1977. He described his close relationship with Mrs Cameron and would call her "mum". He would visit her in London and she him, accompanied by Camille, in Bristol, until 2015, where he has lived for about 20 years.
65. He gave detailed evidence with clarity, certainty and force. For example, when it was put to him he had asked Mrs Cameron for money he replied that was "...a lie from the pit of hell." Other such suggestions during cross examination were also met by him bluntly stating the matters concerned were all lies. However, when a misunderstanding arose between him and Mr Deal, he was quick to apologise and

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acknowledge an error on his part. His enmity for Craig was clear; he said several times that Craig lied and deceived, but then denied hostility towards him.

66. What was also clear was “mum” had directly told him first that she was about to buy the Property with Camille and secondly that her share of the property would go to Camille when she died. At [7] in his statement he said “I know that Yvonne was very grateful to Camille and she said that she wouldn’t have been able to survive without Camille’s care. Camille was effectively Yvonne’s carer as well as working.” That went unchallenged. Oral said that Mrs Cameron stopped working due to ill health before 2001, in about 1999 or 2000.
67. Oral also confirmed how Mrs Cameron could not have afforded to buy without Camille as “...she just didn’t have the income, it was just not feasible.” He was also questioned about Camille receiving money from their father after he had sold land he had himself inherited. He explained that it was way back, when he was 24, in 1999. He and Camille both received money. I asked how much and he said he did not know but it was “...a handsome amount to his first daughter...Camille was his prize child.”
68. Whilst I found his immediate and forceful response to numerous allegations in cross examination that it was all lies by Craig very much at odds with him repeating that he was not and never had been in dispute with Craig somewhat odd, I do accept his evidence. Mr Deal submitted it was tainted by association with Camille and designed to bolster her so was neither impartial nor neutral. I disagree – his evidence did differ from that of Camille as to Mrs Cameron working (and I prefer his evidence in that respect).

Ms Mernell Aldred

69. Ms Aldred met Mrs Cameron, who she said was her father’s wife’s niece, after she came to the UK in 1991, and they became close friends, Ms Aldred treating her as a little sister. Ms Aldred gave, as Mr Deal put it, reliable and truthful testimony. I accept all she said in oral evidence, as I found her to be an honest, careful and straightforward witness who did her best to assist the court.
70. I do have some concerns as to the way in which her witness statement was compiled, as Ms Aldred explained how her statement went back and forth between her and the solicitor but certain errors remained. Notwithstanding them, in the end, she signed it. Ms Aldred explained how Mrs Cameron “...did not tell me her business and I did not ask...my parents told me don’t get into anyone’s business.” Accordingly, she did not know who paid the mortgage (contrary to her statement at [5]) as again “it was not my business.”
71. She was however told of the purchase by Mrs Cameron, that she got a good discount from the council, but she did not ask how much, and that she had to buy with Camille as she was not working. Overall, whilst I accept her oral evidence, it did not advance the matters I must determine.

Mr David Knox

72. Mr Knox is an experienced solicitor in general practice. He gave, as is to be expected of a professional solicitor and an independent witness, careful and truthful evidence

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which I wholly accept. He explained he was contacted by Camille who told him she intended to remortgage the Property, and that her mother wished, and Halifax required, that she should become sole owner. Optima Legal had been instructed for the Halifax but Mrs Cameron needed independent advice from a solicitor; hence his instruction.

73. His task was to see Mrs Cameron, in person, to explain the transaction and have her confirm that she understood the effect of the transfer of her share of the Property to Camille, wished it to proceed, and then as he put it "...run through the transfer deed and witness her signature but Optima Legal had not managed to get the transfer document to the property in time for the appointment", which had been arranged for 8th May 2018.
74. He said in cross examination that he was to ensure Mrs Cameron "...received independent legal advice on the nature of the document...I was satisfied she was in agreement to that and would sign the transfer when received." Mr Knox was asked if the presence of Camille as the intended recipient during the meeting caused a complication? He said "No. Given her state of health there wasn't the possibility of interviewing her separately."
75. As to her state of mind he said "She'd suffered a stroke...in a wheelchair...I could see she was having difficulty with mobility and yes she looked as I expected of someone who'd had a stroke...it was much as expected." Mr Knox rightly accepted there was a conflict of interest but "...you must look at what is possible and practical and it would make very little difference anyway as the Property was in their joint names."
76. Mr Knox said he was satisfied Mrs Cameron did understand as "...she smiled and acknowledged what I was saying." When asked if there was any other form of agreement he said "No. I don't see what else she could have done. If it she was not happy with the proposal she would have become agitated...I've had similar matters where the person has become agitated. Not the case here. She appeared to perfectly understand what I was saying and was in agreement I should proceed, which was no surprise as the Property was in joint names."
77. I have set out the above in some detail due to its possible importance regarding prior mistake (as to the TP1) as well as Mrs Cameron's intentions for what appeared to Mr Knox to be her share, as a joint tenant, of the Property. I say that particularly because all other evidence as to Mrs Cameron's intentions as to whom she wished to leave her share to fell on party lines; Craig and Alison saying it was her intention for her children to share equally and Camille and Oral saying it was her intention that Camille would take her share and in the case of Camille both before and after her death.
78. There were some matters which did cause me some concern:
 - i) Camille had not informed Mr Knox that her mother was not living in the Property at the time of the meeting but in Birchwood, opposite, and had been moved it appears for the purpose of the meeting;

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- ii) There was a conflict of interest in circumstances of no privacy and Mrs Cameron's inability to do other than smile (Mr Knox saying "I don't see what else she could do") or become agitated.
 - iii) Likewise Mr Knox had to rely on Camille as the sole provider of information as to her mother's cognitive abilities.
 - iv) No attendance note of the meeting was made by Mr Knox.
79. Having said that, I accept what Mr Knox said and recognise that he took a proportionate and pragmatic view of his instructions, Mrs Cameron's interests and how to achieve them, in circumstances where, as he put it, he was concerned to ensure there was no tax trap and inevitably, Camille would take the whole interest whether by survivorship or by transfer.

Ms Carol-Ann George

80. Ms George had known Camille as a friend since they worked together from about 2003. Her evidence concerned one event; she witnessed Mrs Cameron sign the TR1 when in her hospital bed on 13th June 2018, just 13 days before she died. She said that when she left the hospital, it was still light and she saw Craig arriving, so greeted him. That was not in her witness statement and so could not be put to Craig. Mr Deal was especially critical of her evidence; he submitted her evidence was false as she had not attended at the hospital then.
81. That logically meant Camille was at best mistaken or at worst had to be lying as to Ms George's attendance and the signature at the hospital. Camille in her statement at [23] said "Her signature was witnessed by Carol-Ann George. Carol-Ann and her family were close friends of Mother and me. They were visiting her in hospital. Although Mother was very ill she knew what she was signing." (my emphasis).
82. Ms George was asked if anyone had asked her to visit on the 13th June. She said no. She explained Camille read out the TR1, Mrs Cameron signed it and then so did she. She was there for about an hour and a half. Whilst she spoke to Mrs Cameron, she was not well, could not speak but would nod and squeeze her hand. She maintained she was conscious whilst she was there.
83. As to the actual acting of signing Ms George said after Camille had read the TR1 to her a pen was placed in her hand and Camille placed her hand on top of hers and guided her signature. She then signed her name in the space below on the form.
84. In her statement at [4] she said she was at the hospital with Camille visiting Mrs Cameron on 13th June. Then at [5] Ms George said "Camille's mother was unable to speak. However she was able to point items out to you and make signs to you. She would write things on a board that was provided to her."
85. There are various discrepancies in her evidence:
- i) Camille as I have set out at [79] above said Ms George and her family were close friends and they were visiting her mother. Ms George only referred to her visit in the singular. She did not mention anyone else was there, whether

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her family or otherwise, and it would be a substantial failure of memory if they were all there but she forgot. One of Camille or Ms George is wrong as to this.

- ii) Mrs Cameron was not deaf. There was a) no need for her to write on a board and b) in any event she could not physically do so and c) if she could have read what was on a board she would not have had the TR1 read to her. When this was put to her Ms George said she would write on the board, not Mrs Cameron. But the discrepancy as to Mrs Cameron being able to read remained, and it is a substantial and unexplained one.
- iii) She was unable to explain how she had just decided to pop in that day at that time. No other evidence was tendered as to how the convenient visit came about. Nor, if Camille was correct, was there any supporting evidence from Ms George's family.

86. In summary, I cannot accept all she said. The differences especially as to precisely what happened are not as Mr Zaiwalla submits mere inconsistencies at a level of forensic syntactical scrutiny but real and substantial ones.

THE LAW

87. There is no dispute between counsel as to the legal principles so I set out the principles briefly. In one area (the guided signature) there is no direct authority and Mr Zaiwalla submits I can apply one by analogy. Before I do so I reiterate what I said to counsel as to my approach as to the oral and documentary evidence on the first day of trial namely the difficulties of evidence based on recollection set out by Mr Justice Leggatt (as he then was) at [15-22] in *Gestmin SGPS S.A. v Credit Suisse (UK) Ltd and another* [2013] EWHC 3560 (Comm), which I described in very basic terms as the supremacy of documents over the fallibility of memory. I also have in mind the current draft of Practice Direction 57A-C, and in particular the Statement of Best Practice at [1.3].

Mistake

88. The law is summarised in *Snell's Equity* 34th Edition, in Section 3 at [16-013 – 017] - Common Mistake and [16-018-021] - Unilateral Mistake. The Standard of Proof at [16-022] states that the standard is the balance of probabilities but:

“...a person seeking rectification must be able to rely upon “strong irrefragable evidence”. The burden of proof is upon the party seeking rectification, and this burden is particularly “formidable” if the formal instrument is detailed and recorded with the benefit of expert legal advice.”

Common Mistake

89. Mr Zaiwalla has helpfully in his Updated Skeleton set out what Craig must establish to succeed on each of the four points at [16-013], to which Mr Deal did not object:

“He must prove that prior to signing the TP1 Form Yvonne and Camille agreed that the Property's beneficial interest would be

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held solely by Yvonne. It is essential that Craig proves that there was an “*outward expression of accord*” between Yvonne and Camille to that effect (Snell 16-014).”

He must prove that at the moment of signing the TP1 Form, both Yvonne and Camille still intended that the Property was to be held beneficially for Yvonne only, and that they signed a form stating that it was to be held jointly without realising it contained that statement or what that statement meant (Snell 16-015).

He must prove that Yvonne and Camille both intended at all times that Camille would have no beneficial interest in the Property whatsoever (Snell 16-016).

To justify rectification he must prove without any doubt the precise words which Yvonne and Camille did intend to use in the declaration of trust (Snell 16-017).”

Unilateral Mistake

90. Again I accept the summary set out by Mr Zaiwalla of *Snell* at [16-019] as to what Craig must prove:

“a) Yvonne and Camille intended the TP1 Form to contain a declaration that Yvonne held the entire beneficial interest of the Property; b) that by mistake, the TP1 Form came to contain a declaration that the beneficial interest was to be held jointly; c) that at some later stage Camille recognised the presence of the mistake; and d) Camille then suppressed the fact of the mistake from Yvonne in a way that affected her conscience.”

91. Mr Deal did not dissent from the above summary and referred me to Buckley LJ’s formulation in *Thomas Bates & Son Ltd v Wyndham’s (Lingerie) Ltd* [1981] 1 WLR at 505, cited in *Snell* at [16-019].

Common Intention Constructive Trust

92. Mr Deal’s case is that the TP1 contained no express declaration of trust as to the beneficial interest held by each of Camille and her mother. He submits on the basis Camille and her mother did not have the shared intention to hold the Property jointly the intention was that the beneficial interest would be held by them on trust for Mrs Cameron alone, by analysis of the principles in *Stack v Dowden* [2007] UKHL 17 and *Jones v Kernott* [2011] UKSC 53.
93. Those decisions were in respect of co-habiting couples, but they apply equally where parent(s) own with children – *Laskar v Laskar* [2008] 1 WLR 2695 at [16]. Mr Deal lists in his first skeleton at [20] 8 factors I should have regard to being part of the non-exhaustive list set out by Baroness Hale in *Stack* at [69]. Also at [68] Baroness Hale said:

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“The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon... They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of the facts is likely to involve disproportionate costs. In joint names cases it is also unlikely to lead to a different result unless the facts are very unusual. Nor may disputes be confined to the parties themselves. People with an interest in the deceased’s estate may well wish to assert he had a beneficial interest in common. It cannot be the case that all the hundreds of thousands, if not millions, of transfers into joint names using the old forms are vulnerable to challenge in the courts simply because it is likely that the owners contributed unequally to their purchase”.

94. Here, there is the express declaration of trust in the TP1, which must be the starting point. Mr Deal appeared to submit in his first skeleton, pre-trial and pre-amendment, that any challenge on any evidence must mean I must proceed to conduct an investigation of the factual issues identified in *Stack* at [69]. I disagree. That is clearly what Baroness Hale warned against as I have set out above.

95. Further, Lord Justice Mummery in his concurring judgment in *Pankhania v Chandegra* [2012] EWCA Civ 1438 said:

“27. In the absence of a vitiating factor, such as fraud or mistake, as a ground for setting aside the express trust or as a ground for rectification of it, the court must give legal effect to the express trust declared in the transfer. In the absence of such claims the court cannot go behind that trust. The understanding that the property was to be the defendant’s matrimonial home, the fact that the claimant never actually lived there, and the fact that he had no involvement in the property other than lending his name to the purchase of the property for the purpose of obtaining a loan on mortgage from the Market Harborough Building Society in 1987 have never been coupled with any counterclaim by the defendant to set aside or to rectify the express trust.

28. Finally, reliance on *Stack v. Dowden* and *Jones v. Kernott* for inferring or imputing a different trust in this and other similar cases which have recently been before this court is misplaced where there is an express declaration of trust of the beneficial title and no valid legal grounds for going behind it.”

96. Hence the amendment to the Particulars of Claim to plead mistake.

Undue Influence

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97. Mr Deal also at [14] of the Reply pleads that the TR1 was not validly executed, and/or that Mrs Cameron lacked capacity to enter to it or in the alternative that it should be set aside on the ground of undue influence. Mr Deal cited Lord Bingham at [13-14] in *Royal Bank of Scotland v Etridge* [2001] UKHL 44. Mr Zaiwalla submits that Mrs Cameron signed the TR1 “...only after full, free and informed thought about it.” (per Lord Evershed in *Zamet v Hyman* [1961] 1 WLR at 1446.)

Valid execution of the TR1

98. To transfer the legal interest a deed is necessary; Law of Property Act 1925 (“LPA”) s52(1). To take effect as a disposition of an equitable interest only, it “...must be in writing signed by the person disposing of the same...” – s53(1)(c). The Law of Property (Miscellaneous Provisions) Act 1989 at s1(2) states an instrument not a deed unless it is validly executed which by subsection (3) requires it to be signed. The section continues:

“(4) In subsections (2) and (3) above “sign”, in relation to an instrument, includes:

(a) an individual signing the name of the person or party on whose behalf he executes the instrument; and

(b) making one's mark on the instrument, and “signature” is to be construed accordingly.”

99. Mr Zaiwalla submits that for the purpose of s53(1)(c) it would suffice for Mrs Cameron to make her mark on the TR1, no matter whether that was her regular signature or not. He further submitted that the authorities relating to persons unable to physically sign documents appear unsurprisingly in respect of wills, not disposals of land under the LPA. He referred me to the decision of Lord Chief Justice MacDermott in *Fulton v Kee* [1961] NI 1 at pages 11-15.
100. *Fulton* was considered by Mr Justice Vos (as he then was) in *Barrett v Bem and Ors* [2011] EWHC 1247 (Ch) where a testator, Martin, made a will in hospital some three hours before he died, leaving all he had to his sister, Anne, who signed the will for Martin as permitted by s9(a) of the Wills Act 1837 being “...in his presence and by his direction”. At [71] Vos J summarised the law:

“i) A testator may either sign the will himself or direct another person to sign it on his behalf.”

ii) If the testator directs another person to sign the will on his behalf and that person does sign the will on his behalf, in the presence of the two witnesses, the will is 'signed' by the testator within section 9(a), and no subsequent acknowledgement of his signature is necessary.

iii) If the testator chooses, instead of directing another to sign, to sign the will himself in the presence of the two witnesses,

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assisted by another person, the will is only validly signed in accordance with section 9(a) if the testator makes some positive and discernible physical contribution to the signing process, as opposed simply to abstaining from preventing the signing.”

101. On allowing an appeal as to the finding that Anne had signed the will at Martin’s direction Lord Justice Lewison at [37] said

“In my judgment the mere facts that Martin wanted to make a will and had tried and failed to sign it personally are insufficient to amount to a direction to Anne to sign the will on his behalf. Moreover, it must be borne in mind that Martin was fully alert and aware of what was going on; and therefore well able to communicate his wishes. Mr Buttimore submitted that the lack of protest or objection by Martin in circumstances in which he might have been expected to object could amount to an implicit direction to Anne to sign the will. I do not agree. Nor do I consider that it is enough to find, as the judge did, “a wish to direct Anne to sign”. The question is not whether Martin *wished* to direct Anne to sign but whether he in fact did so. In my judgment some positive communication is required in order to amount to a valid direction. Indeed, the fact that Martin could have asked Anne to sign the will but did not; or could have assented by word or nod to a suggestion that Anne should sign the will but did not, points against rather than towards the conclusion that Anne signed at Martin’s direction. In addition, it cannot be assumed that Martin would have directed *Anne* to sign the will, bearing in mind that she was the sole beneficiary under it. The highest that it can be put, is, as the judge said, that Martin wordlessly “allowed Anne to take the pen from him and apply his name to the paper”. But even that way of putting it is a further remove from the finding of primary fact that “Anne stepped in [and] took the pen”. In my judgment the evidence fell short of establishing any positive communication (whether verbal or non-verbal) by Martin expressing a direction or instruction to Anne to sign the will.”

102. I accept the analogy Mr Zaiwalla submits should apply albeit that I consider I should apply the position in *Barrett* and not *Fulton* as Lewison LJ did not consider that Lord MacDermott LCJ’s statement that “it may be that such a direction can, on occasion, be implied from what is a negative rather than a positive attitude on the part of the testator” was supported by authority nor was correct in principle (see [35]).
103. What I must therefore ascertain to apply the analogy in Camille’s favour is whether Mrs Cameron made “...some positive communication [which is] required in order to amount to a valid direction.” (*Barrett* at [37]).

DISCUSSION, FINDINGS AND DECISIONS

104. I set out my findings and decisions for each issue below. Before I do so I wish to address one overarching concern, namely Craig’s failure to produce documentary

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evidence in support of his claims. He has made wide ranging allegations against Camille and the conduct of their mother's affairs, but there is little in documentary evidence to support those allegations. It seems to me he could have obtained documents which he said were just not available to him; he did say banks had refused to produce statements of his mother's accounts but as administrator he made no substantive efforts to obtain them as they were not set out to me; under cross examination he said his telephone calls were rebuffed due to banks claiming they could not produce due to "GDPR" – but again he was the properly appointed administrator.

105. Likewise he produced no documents regarding what he did in respect of the funds received from the estate of the late Mr Benjamin. Most importantly, there are no medical records from Mrs Cameron's GP, hospital nor nursing home. In particular, I can take judicial notice of the common use of Mini Mental State Examinations ("MMSE") used in hospitals to assess cognitive function in the elderly. They may have been carried out; or else as participation by the patient is necessary it may not have been possible; but either may have been of probative value. Medical records generally can also be used for desk-top expert opinion evidence.
106. Craig also could have obtained further documents as to the DWP Investigation. The late and unexplained production of the email proving his evidence of Camille's knowledge and involvement cannot have been the only document; there must have been a solicitor's file as well which may have answered questions as to origin of the funds and how the investigation came to nothing.
107. Currently, on the evidence before me, I cannot contrary to Mr Zaiwalla's submission determine that Mrs Cameron satisfied the DWP and/or Brent during the Investigation that certain monies were Camille's as there is no evidence of same both as to exactly the make-up of the funds concerned and also the reason why the Investigation appears to have ceased. It may have been that it was not pursued due to a change of policy or personnel or a reluctance to prosecute a very ill woman.
108. Craig, directly and honestly, summed up his evidence as "...a bit tardy and a little bit sketchy..." as I mention at [59] above. But he expects findings in contested factual matters to be made without documentary evidence to support them, and where no inference can arise from, for example, a refusal to produce or answer requests for document production, and further where there is no evidence of such attempts.

Issue 1 – Was there Common or Unilateral Mistake?

109. In the Amended Defence Craig claims Camille and their mother mistakenly signed the TP1 indicating they were joint tenants and that "...error was either a common mistake...[they]...both did not understand or intend the effect of the TP1 and or was a unilateral mistake of [Mrs Cameron]."
110. Craig has to prove first that Camille failed to understand the meaning of the joint tenancy. But as Mr Zaiwalla submits, that was never put to Camille nor was it alleged in the pleadings nor other written evidence. In any event, I find that Camille was well aware at all times of what a joint tenancy meant, as she maintained in her oral evidence. She also paid considerable attention to detail demonstrated by the way she

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queried by email with her solicitor the typographical mistake as to her name and how to correct it as I have set out at [29-30] above.

111. Further, I accept Camille's evidence as to how she herself understood and also explained the meaning and consequences of a joint tenancy as opposed to a tenancy in common to her mother and they both intended the Property to be held in that manner. That is supported by the manual completion of box 11 on the TP1 I describe above. In addition, Camille read out not only the TP1 to her mother but also the form "Joint ownership of Your Property" which puts the matter beyond doubt – here is another document signed by both Camille and Mrs Cameron which states the basis on which the Property is to be held but one that is commendable for its detailed, clear and easily understandable explanation.
112. The parties agreed that Mrs Cameron expected to have documents explained to her and was strong willed and confident. Craig said that lasted until 2017, three years after these documents were signed. I also accept Camille's evidence that Rachel Silvester, her solicitor, explained the difference in the way property could be held, as did Mr Fenwick. Further, there is no challenge to both Camille and her mother signing both forms.
113. But Craig has to prove that there was an "outward expression of accord" that the beneficial interest would be held solely by his mother. No evidence of that intention arose in any respect in any of the evidence. Craig said his mother was a fair person and wished for equality between her children; Alison that she thought Mrs Cameron would want her assets divided equally. Ms Aldred's evidence and that of Oral Cameron was that Mrs Cameron had purchased the Property with Camille as she was not working, which I accept. In summary, there was no evidence at all that Mrs Cameron thought she was the sole beneficial owner of the Property.
114. It is also inherently improbable that Camille would have entered into the joint purchase for her mother to hold the beneficial interest for herself only in circumstances where:
 - i) The purchase could not have proceeded without Camille as she was young, was working and only she could obtain the necessary mortgage;
 - ii) I accept her evidence that she provided from her own bank accounts some £102,000 towards the purchase price, those monies having been in one of her bank accounts from about the end of 2010;
 - iii) Those monies appear to have included the proceeds of land in Jamaica sold by her father and divided between her and her half-brother Oral Cameron, which was held by her mother until she was of age to take control of those funds. It is inherently improbable that especially in view of her personal position she would give away her inheritance;
 - iv) Camille had to provide for her own life in the future; it would beggar belief that she would fund her mother by some £102,000 and take on the legal responsibility for the mortgage so as to provide in part for her brother and his wife when they both worked and Craig's evidence was his company has a current annual turnover of £3,000,000;

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- v) Camille also paid the mortgage and outgoings; Craig accepted this albeit he argued she paid it from their mother's accounts but, as ever, provided no documentary proof;
 - vi) Mrs Cameron's financial participation in the purchase was her right to buy discount of £100,000; Camille provided a like sum and paid the mortgage and outgoings.
115. I also do not accept that Craig was in his mother's confidence as to her financial affairs at the material time from 2013 or so onwards, contrary to his evidence that she would always consult him for these reasons; first, Craig was unaware of the completion of the LPA by his mother in August 2014 until it was disclosed in these proceedings and secondly he was not named in it in any respect. Thirdly, I do not accept that he was as involved in the purchase as he alleged in his witness statement.
116. For example he says at [21] following the confirmation of the RTB (which was by Brent's letter of 12th August 2013, accepted by Camille and their mother on 18th August 2013) that he discussed the offer with her and he "...attended the banks with my mother who transferred approximately £100,000 for the purchase from her account. I cannot recall whether this money was transferred to Camille's account at the time or the solicitors...". But Camille's bank statements shows some £156,789.14 in her account as at July 2013 before the RTB was confirmed.
117. I therefore find, following the matters set out in *Snell* at 16-014 to 017:
- i) there was no outward expression of accord between Camille and her mother prior to signing the TP1 that Mrs Cameron would hold the beneficial interest solely;
 - ii) likewise there is no evidence at all that when the TP1 was signed Mrs Cameron and Camille intended Mrs Cameron to be the beneficial owner;
 - iii) again, there is no evidence of a failure to represent their common agreement namely both of them intended Camille would have no beneficial interest in the Property and
 - iv) there is no evidence to justify rectification in that nothing suggested that the beneficial ownership was intended to be that of Mrs Cameron when the TP1 was signed.
118. As to Unilateral Mistake, Craig has to prove that Camille took unconscionable advantage of her mother in that not only did Mrs Cameron not intend to be a joint owner in equity with Camille but also that Camille realised the TP1 did not reflect what her mother intended, but did nothing to correct that and took advantage of her mother's mistake and let her sign the TP1.
119. There simply is in my judgment no evidence of such knowledge and intention on the part of Camille to amount to her wilfully and recklessly shutting her eyes to the obvious.

Issue 1: Decision

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120. I have no hesitation in concluding that there was neither common nor unilateral mistake and so the claim for rectification fails; accordingly the declaration of trust in the TP1 remains and Camille and her mother held the Property as joint tenants in equity from purchase onwards.

Issue 2: was the beneficial interest held as joint tenants or on trust for Mrs Cameron alone?

121. This appears to arise if Craig succeeds on Issue 1 on either basis so that the declaration of trust is deleted by rectification, and a common intention constructive trust arises. His case then is that the Property is held for Mrs Cameron alone. I do not need to deal with it but do so in case I am wrong as to Issue 1. The Amended Particulars of Claim at [6] state “It was known to all family members that the Defendant held the title on a bare trust for [her mother] and had no interest in the Property” and in the Reply at [9] those family members were “Pearl Fletcher [grandmother of Camille and Craig], Alison Cameron and James McCollin”.
122. But Ms Fletcher was not called by Craig – as he said she was elderly and he did not wish to involve her. As to Mr McCollin, Camille’s former partner, Craig said that he had been warned off by Camille with a threat of obstruction of access to their child, as shown by communications between Mr McCollin and Hebbar & Co. Again, no documentary evidence was produced to substantiate this allegation and I therefore cannot accept it. Alison just did not give the evidence Craig said she would.
123. Also in the Reply at [4] it is bizarrely claimed that there was no express declaration of trust in the TP1 so the beneficial interest was held wholly by Mrs Cameron. That appears to be based on the allegation in the preceding paragraph that the TP1 had not been executed by either Camille or her mother. This is simply wrong. I can only assume it arose due to Craig and his solicitors obtaining from the Land Registry the counterpart TP1 executed by Brent.
124. More audaciously at [5] it is pleaded that Mrs Cameron “...continually asserted her complete ownership of the Property to all others including the Claimant and acted at all times as the 100% owner of the Property in her dealings connected to the Property.” I find there is no evidence whatsoever to support that, for the reasons and matters I have set out above. The only direct evidence was that of Craig which a) was that his mother wanted to divide the Property equally between him and Camille which I do not accept as it is self-serving and b) did not amount to continual assertion of complete ownership, indeed the opposite according to the evidence of Ms Aldred and Oral Cameron, which I accept.
125. The presumption of joint beneficial ownership arises from the facts I have found above that the Property was intended to be held jointly and Mrs Cameron intended her share to devolve to Camille on her death. As Mr Zaiwalla submitted, for the same reasons Craig could not prove his mother and Camille did not intend to be beneficial joint tenants, *a fortiori* he cannot prove his mother should be the sole beneficial owner.

Issue 2: Decision

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126. Craig has therefore failed to show that the beneficial interests were different to the legal interests – *Stack* at [69]. He has not established mistake as a vitiating factor and I must give legal effect to the express trust, which I cannot go behind – *Pankhania* at [27]. I find the Property interest was held by Camille and her mother as joint tenants in equity.

Issue 3: was the TR1 validly completed to transfer the beneficial interest in the Property to Camille?

127. This, as Issue 2, does not strictly arise according to the wording of the Issues, as I have found they held the beneficial interest as joint tenants. If I am wrong as to that, I deal with it as below. A substantial amount of evidence was directed to this but I was not wholly satisfied with the evidence I heard and read, especially in the absence of any medical evidence, whether fact or opinion.
128. There was some contemporaneous documentary evidence in the form of numerous WhatsApp messages exchanged between Camille and Craig and some photographs of their mother during the hospital stay which ended with her passing. Those messages do show Craig and Camille’s love for their mother and the great efforts they both went to care for her and support each other during that very difficult time. They record, at certain points in time, what they each saw to be their mother’s state of health. Whilst there was some confusion as to format there was no challenge to the messages themselves nor the times when they were sent.
129. I am persuaded by the evidence of Mr Knox that Mrs Cameron wished to transfer her interest in the Property to Camille when he saw her on 8th May 2018. I have some minor concerns, limited to the absence of any medical evidence as to her state of mind, combined with the movement of her to the Property from Birchwood (a fact unknown to Mr Knox) and the organisation of the transfer being wholly by Camille, but they do not overturn my primary finding.
130. On the 13th June 2018 Mrs Cameron was in hospital and had been there for some time. The WhatsApp messages show Camille arrived at 09.02. Her heart rate went down but at 10.08 Camille said she had asked for a priest to see their mother. At 11.59 referring to the doctor’s visit Camille said they had to put a tube in the day before and that “they are not too sure if she regains consciousness...she does not seem receptive to pain.” Camille’s last message referred to their mother vomiting into her mask the day before. That was at 13.10, and she must have left after then.
131. Craig then arrived at some point after 13.10 and before 16.19 as then he said “Mum is goarning lightly” (sic) and at 16.28 “Green bile now”. At 17.36 he said she was “super sleepy” and her kidneys were “still trinkling” at 18.05. Camille said she was “making [her] way up shortly” at 18.10 to which Craig replied “OK” at 18.47. That was his last message that day and he must have left at some point thereafter.
132. Ms George said it was still light when she arrived and saw Craig on his way out. As that was not mentioned in her statement it could not be put to Craig. Mr Zaiwalla submits that the WhatsApp exchanges between Craig and Camille show that Mrs Cameron was conscious during the afternoon. On the basis of these exchanges I am not persuaded of that as first there is the statement by Camille that just before noon the doctors said they were “...not too sure if she regains consciousness...”

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133. On any view therefore unless there was a dramatic unrecorded improvement (highly unlikely in view of the detail in the messages) Mrs Cameron was not conscious at the start of the afternoon, and was impervious to pain. Secondly, as I have mentioned the time, the effort and concern shown by both Camille and Craig would have on the balance of probabilities meant any major improvement would have been recorded. When Mrs Cameron was groaning and producing bile at 16.28, Camille was at home as she said she was making salmon and solicitously offered some to Craig, who said their mother was super sleepy. By then it was 17.36 so there is no positive evidence that on the balance of probabilities she was conscious in the afternoon. Ms George said it was light when she visited and on her account she arrived at some point after Craig left – most likely around 19.00. There is no evidence of consciousness or otherwise that evening in any documentary evidence available to me.
134. I now turn to the accounts of Camille and Ms George as to the actual signing. The signature of Mrs Cameron on the TR1 to my untrained eye is wholly unlike any other signature of hers in 5 key documents signed by her which are not disputed from August 2013 to August 2014 namely 1) the acceptance of the RTB offer, 2) the key fact find, 3) the Joint Ownership information document, 4) the TP1 and 5) the LPA; all the signatures on those documents being wayward, somewhat spiky and irregular, whereas that on the TR1 has been clearly formed and keeps to the line, unlike the others. I find the so-called “guiding” of the hand to make the signature was so necessary that without it there would have been no signature.
135. Camille, when asked why the LPA was set up (in August 2018) said she:
- “...was advised by the banks as she became quite shaky and not able to sign properly. It was quite embarrassing for her. The pen would fly out of her hand. So we were advised mum should apply for a lasting power of attorney so I could step in...and her speech was slurred due to the brain tumour. This started in 2013 and things got worse.”

I accept that evidence.

136. I next turn to what happened at Mrs Cameron’s bedside on the 13th June 2018. The Defence dated 13th January 2020 at [14] states Mrs Cameron signed the TR1 “...with the physical assistance of the Defendant [and it]...was witnessed by Ms George”. In the Reply dated 13th February 2020 the reference to physical assistance is queried, it being pleaded that Mrs Cameron “...was terminally ill, hospitalised...in intensive care with days to live”. Hebbar & Co enquired of Bird & Lovibond who on 23rd June 2020 said this:

“In respect of clarification of paragraph 14 of the Defence, we would have anticipated you to make a formal request for further particulars if you required those. However, we are happy to assist. Our client has informed us that she had to hold the paper for her mother and also helped her mother to hold the pen. Our client had her hand over her mother's hand and assisted in holding the pen at the same time.”

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137. As a result of that explanation, Hebbbar & Co understandably did not obtain expert evidence as clearly it was not the freely written signature of Mrs Cameron. In her witness statement Camille said this:

“The transfer...was sent to my Mother, by Mr Knox, on 11th June 2018. Mother was by this point physically frail...I took the transfer to her at the hospital. Mother could not hold the pen without assistance as her hands shook too much. I therefore assisted her by holding the pen as she signed her name.”

138. Ms George said this:

“Camille’s mother was unable to speak...[she] was given the forms and signed them. She was no longer able to write straight as a result of a stroke she had some time back. I witnessed her signing the document.”

139. Camille’s statement therefore substantially and for no apparent reason plays down her mother’s physical condition. Mrs Cameron was not just “physically frail” but was, as I have found, unconscious that morning and impervious to pain. There is no evidence she either did or did not recover consciousness that afternoon. The evidence that she did in the evening, as opposed to the morning or afternoon, arises by elimination of those other parts of the day. Ms George twice said she attended the hospital in the late afternoon, emphasising it was not the evening.

140. In oral evidence Camille said she read out the TR1 to her mother and said this letter is for the transfer of the property which she requested. Her mother “...acknowledged by a nod...she was still listening and could still hear me...I [read it] word for word”. When asked whether she was assisting her mother by moving her hand Camille said “...by assisting her by steadying the pen, yes.” Camille did not accept that she was moving her mother’s hand and the pen.

141. Mr Deal then pressed Camille that her mother did not understand what she was signing, had no insight as to what the document was and what effect it would have in respect of the Property, and did not intend to sign it. Camille answered that she strongly disagreed with all those propositions.

142. Ms George’s evidence at first was commendably simple and direct. When asked about the circumstances as to her witnessing the TR1 she said:

“I don’t recall the exact time. It was still bright outside. I saw mum. Camille read the document. Mum signed. I signed. When I left I saw Craig coming in as I said hello to him.”

143. Ms George said she was at the bedside for about an hour or an hour and a half, something like that. As to Mrs Cameron and her interaction with her she said:

“I spoke to her. She didn’t speak to me... She wasn’t well. I’d talk and she’d nod...would squeeze my hand. I knew she wasn’t well...She was conscious when I was there...[she] could squeeze my hand and nod and could point.”

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144. Then she was asked about how the pen was held. She explained Camille helped her mother, who had the pen in her hand, but she was not focussing on the number of hands and who held what. Then she was asked how could she know Mrs Cameron fully understood the document? Ms George said she nodded, more than once, and rejected the suggestion that Mrs Cameron was unable to nod.
145. Then when pressed as to the reading of the TR1 to Mrs Cameron and that Ms George did not know what had been read Ms George said she read it herself. Mr Deal said Camille had said she read every word. Ms George replied “she read it so did I.” Ms George was then asked for the last time how she knew Mrs Cameron could understand what they were saying to her. Her reply was “as she would nod or squeeze my hand.”
146. I have concerns as to the evidence of Camille as to what happened at the signing of the TR1 for these reasons:
- i) Notwithstanding the importance of the TR1 no mention of reading it to her mother so she could understand it was set out in the Defence nor Camille’s statement. It only emerged in oral evidence at trial. That was a major omission of a crucial part of her evidence for which there was no good explanation.
 - ii) Likewise the full extent of Camille’s physical involvement in the signing (indeed, the absolute necessity of) emerged in dribs and drabs. First, in the Defence, it was baldly asserted that Mrs Cameron was “assisted”. That was explained in the subsequent solicitor’s correspondence as meaning holding the paper and also helping with holding the pen. In her statement Camille said she held the pen as her mother “...signed her name.” At trial Camille’s explanation was she moved her mother’s hand with the pen in it. That evidence emerged gradually and in an unconvincing way.
 - iii) As to Mrs Cameron being aware of what Camille was asking her to sign, the pleadings and statements were silent. In oral evidence Camille said she knew her mother understood that the document was to transfer the property as she nodded. That late addition to her evidence was late and far from convincing.
 - iv) There was no consistent or corroborated evidence that meets the standard required as to at what time in the day was the TR1 was explained and signed.
 - v) Most importantly of all, I have found above that Mrs Cameron was unconscious in the morning, and that Camille informed Craig of that. If she had regained consciousness in the very short subsequent period in the afternoon or later in the evening, being the times when Craig was not at her bedside, I consider Camille would have told Craig in view of the context of the detail between her and Craig expressed in the hundreds of WhatsApp messages in evidence over the period 27th May – 27th June, but she did not.
147. Ms George’s evidence was unsatisfactory. I have set out at [85] above certain concerns and would add:
- i) She maintained that she saw Craig coming in as she was leaving. But Craig arrived about 13.00. If she was correct, her visit would have been in the morning

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when Mrs Cameron according to the doctor referred to by Camille's in her WhatsApp message was unsure she would regain consciousness. But in oral evidence she said she was there in the afternoon. Further, this reference to Craig was not in her statement.

- ii) Also her statement made no reference to the nodding, smiling and hand holding that Ms George said she saw and felt.
 - iii) Those physical gestures were further not mentioned as showing Mrs Cameron understood what the TR1 meant.
 - iv) Likewise there was no mention until her oral evidence of her reading the TR1.
148. The above nine matters of evidence are serious and substantial, both individually and collectively. I appreciate that evidence frequently does emerge at trial, for a variety of reasons, which may be rational and understandable in all the circumstances, especially as memories fade. Frequently, the absence of a particular piece of evidence may be due to the drafter of the statement not appreciating the crucial nature of it, or subsequent events raising it or memories being jogged. However that is not the position here. The unexplained and/or unjustified absence of substantial matters of evidence until trial casts substantial doubt on them.
149. For the reasons I have set out at [146-148] including [85] I am not persuaded and so cannot find on the balance of probabilities:
- i) first that the TR1 was read out to Mrs Cameron who
 - ii) understood what it meant and
 - iii) indicated her agreement to it by nodding and smiling.
150. I do find that the pen was held and guided by Camille as otherwise there would have been no mark upon the TR1. However, the above cannot amount to due execution as to continue the analogy with the requirements for a testator to make a valid disposition by will there was no knowledge and approval. I therefore find the transfer fails as it was not validly executed.
151. If I am wrong as to that, I turn to Mr Zaiwalla's submission that for the purpose of LPA s.53(1)(c) it was sufficient for Mrs Cameron to "make her mark" on the TR1 regardless as to whether that mark was her regular signature. I have indicated at [99-103] I accept Mr Zaiwalla's submission that I should apply the authorities in respect of the signing of a will, as factually they are at one with the execution of a deed.
152. However the test I set out at [102] is whether Mrs Cameron made "...some positive communication [which is] required in order to amount to a valid direction" (*Barrett* at [37]).
153. Here, on the facts as I find them, there was no "...positive communication (whether verbal or non-verbal) by [Mrs Cameron] expressing a direction or instruction to sign the [TR1]" as all the evidence was directed at Mrs Cameron understanding what the TR1 meant, and did not concern its execution.

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154. Neither Camille nor Ms George were asked not just if Mrs Cameron wished to direct that the TR1 was to be signed but whether she actually did so. The position was different to *Barrett* in that there Martin was fully alert and aware of all that was happening. Further, Anne signed unilaterally and with no physical involvement by Martin.
155. However, those differences do not affect my conclusion on the facts that there was no evidence before me that Mrs Cameron gave a positive communication, verbal or non-verbal, that Camille should sign the TR1 on her behalf. As I have set out at [150] the signature was not that of Mrs Cameron but Camille holding her hand and the pen. That would have been acceptable had the necessary direction been given by Mrs Cameron.

Issue 3: decision

156. Mrs Cameron did not validly sign the TR1 with Camille's assistance following her full, free and informed decision to do so on the 13th June 2018, so the entire beneficial interest was not transferred to Camille as of that date. If I am wrong as to that, then the lack of direction to sign meant the test in *Barrett* at [37] was not met. The TR1 will therefore be set aside.

Other matters

157. First, undue influence. I need not deal with this as I have found on two bases that the TR1 should be set aside. Secondly, lack of capacity – so far as I can, I have dealt with it above. Third, the effect of my findings on the Issues does not alter the fact that Camille holds the whole of the beneficial interest by survivorship. Fourth, Craig alleged at some length Camille had taken control of their mother's accounts and taken her monies for her use. I can express no opinion on that as it was not an Issue before me for determination.
158. Fifth, Mr Deal submitted that in looking at the factual circumstances behind the TP1 I should consider the same relating to the TR1, so invalid execution of the TR1 affects the TP1. I disagree as there are substantial differences. First I accept Camille's evidence as to the TP1. Craig rightly conceded that Mrs Cameron's signature was hers, made by her of her free will, at her home, on the TP1. It was almost two months subsequent to her signing the "Joint Ownership of Property" form. Both required her consent to holding the Property as a joint tenant with Camille. Whilst she had certain physical difficulties, Craig agreed she was in possession of her mental faculties then and, he said, until 2017, although he did not accept his mother intended a joint tenancy. Holding the Property as joint tenants was also inherently probable when the surrounding factual circumstances are considered for both Mrs Cameron and Camille, as I have found above.
159. There is a substantial contrast with the circumstances surrounding the execution of the TR1, in hospital when she was terminally ill, some 4 years and 3 months later. Mrs Cameron's physical and mental health deteriorated certainly by or during the time she was in Birchwood, but I do accept she intended the transfer to take place in view of the evidence of Mr Knox. However, the inconsistencies, contradictions and uncertainties around the execution as to time, manner, presence of Ms George

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with/without her family, Mrs Cameron's consciousness, lack of sensory ability and the alternative case as to her signature all led to my conclusions at [156].

Conclusion

160. Craig has failed in his application for a declaration that Mrs Cameron was the sole beneficial owner of the Property. The TP1 will not be rectified on the ground of mistake. He does succeed in that the TR1 will, subject to what I say below, be set aside.
161. I ask counsel to agree an Order for my approval if possible to reflect the above in the most efficient, pragmatic and cost-effective way to dispose of this claim. Otherwise a hearing will be listed to determine that, costs and any other consequential matters.

Deputy Master Linwood 12th February 2021.