Neutral Citation Number: [2024] EWHC 213 (Ch)

Case No: PT-2020-000852

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 2 February 2024

Before :

Deputy Master Lampert

- -

Between :

(1) Varsha Gohil (as executor of the will of Babulal Ramji Gohil)	**Claimant**
- and –	
(1) Kamla Gohil	**Defendant**

- -
- -

The Claimant appeared in person
The Defendant was represented by her son Mr Bhadresh Gohil assisted by Mr Richard Charles as McKenzie Friend

Hearing date: 10 February 2023

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JUDGMENT

Deputy Master Lampert:

INTRODUCTION

1. These proceedings concern the will of Mr Babulal Ramji Gohil ("the Deceased") dated 30 March 2009 ("the Will"). The Deceased died on 23 January 2018. The Will appointed the Claimant, Mrs Varsha Gohil, and her brother, Mr Vijay Yadav, to be

the executors and trustees of the Will. Mr Yadav resigned as executor on 31 August 2018 leaving the Claimant as the sole executrix. The Claimant is the Deceased's former daughter-in-law and the ex-wife of Mr Bhadresh Gohil ("Bhadresh") who is the son of the Deceased and the Defendant, Mrs Kamla Gohil.

2. Throughout this judgment, save for the Claimant, the Defendant and the Deceased, I shall refer to members of the Gohil family by their first names to avoid confusion. No disrespect is intended by this.

3. It appears to be common ground that the Defendant's understanding of English is limited. I therefore gave permission for the Defendant to be represented at the hearing by Bhadresh and for him to be assisted by a McKenzie Friend, Mr Richard Charles.

4. The beneficiaries of the Deceased's residuary estate under the Will are the Claimant as to thirty-four percent and the Claimant and Bhadresh's sons, Mr Devan Bhadresh Gohil ("Devan") and Mr Keval Bhadresh Gohil ("Keval") as to thirty-three percent each. By a Deed of Variation dated 6 September 2018 ("the Deed of Variation") the beneficiaries became Devan as to thirty-four percent, and Keval and Shivani Bhadresh Gohil ("Shivani") as to thirty-three percent each.

5. The Will specifically excludes the Defendant and Bhadresh and includes a declaration in the following terms:

> "*I DECLARE that I have separated from my wife KAMLA THE DECEASED GOHIL since 2001 and after much deliberation I have not made any provision for her in this my Will nor for my son BHADRESH THE DECEASED GOHIL as I do not wish them to be beneficiaries or inherit anything from me or my estate. This is due to the bad way in which they have treated me and behaved towards me over the years*".

6. On 8 February 2018 the Defendant entered a caveat to prevent the executors from obtaining a grant of probate of the Will. The caveat was subsequently extended on several occasions and remained in force as at June 2020. On 13 June 2020 Leeds District Registry issued a warning requiring the Defendant within 14 days to enter an appearance stating her interest in the Deceased's estate or to otherwise show cause against the sealing of grant of probate failing which the court might proceed to issue a

grant notwithstanding the caveat. The Defendant subsequently entered an appearance on 25 June 2020 disputing the validity of the Will on the grounds of undue influence, fraudulent calumny, false misrepresentation and fraud or forgery. In pre-action correspondence the Claimant complained that these allegations were vague and unsubstantiated.

7. In the absence of the Defendant issuing proceedings to contest the validity of the Will, on 30 October 2020 the Claimant issued the present claim asking the Court to pronounce for the force and validity of the Will. On 10 November 2020 the Defendant filed an Acknowledgment of Service indicating her intention to defend the claim. On 27 December 2020 the Defendant served a Defence and Counterclaim on the Claimant but failed to file it with the Court. As a result, the claim became automatically stayed pursuant to CPR rule 15.4.

8. On 10 February 2022 the Claimant applied to lift the stay and for directions to trial. The stay was lifted by order of Deputy Master Arkush on 7 March 2022 and directions were subsequently given by (then) Deputy Master McQuail at a case management hearing which took place on 25 March 2022. Limited directions were given for statements of case to be filed and served and for any testamentary documents to be lodged. A further case management hearing took place on 20 June 2020 again before Deputy Master McQuail who gave directions which included requiring the parties to complete Directions Questionnaires and take steps to comply with the requirements of then practice direction PD 51U. Detailed directions were given setting out what the parties needed to take in order to prepare for the next case management hearing. The Deputy Master also gave directions for the Statements of Case and supporting evidence to be served on the beneficiaries of the Estate, Devan, Keval and Shivani. They have all acknowledged service as non-parties. It is my understanding that each of the beneficiaries support the Claimant's position and that they were present remotely during the hearing before me although they played no active role.

9. On 30 August 2022 the Defendant issued an application seeking the removal of the Claimant as executrix under section 116 of the Senior Courts Act 1981 or section 50 of the Administration of Justice Act 1985 and other case management directions.

The Defendant's counterclaim also seeks an order for the removal of the Claimant as executrix.

10. On 2 September 2022 the Claimant issued an application to strike out the Defence and Counterclaim pursuant to CPR rule 3.4(2)(a) and the Court's case management powers and/or summary judgment pursuant to CPR rule 24 on the grounds that:

> "*the Defendant has no reasonable cause of action against the Claimant; and the Defendant has no real prospect of succeeding on her Defence or Counterclaim….*"

11. The two applications were listed for hearing together at the same time as a further case management hearing before me on 10 February 2023. I determined that I should hear the summary judgment and strike out application first since the outcome of that application could have a bearing on how I determine the Defendant's application to remove the Claimant as executrix. As it happened, the summary judgment application took most of the court allocated time and I reserved judgment so the Defendant's application was stood over.

12. Following the hearing, I have received a number of letters and submissions from the parties. These include the Defendant filing the witness statement of DC Irons and making submissions on the Claimant's admission in her oral submissions that she had been present when the Will was executed. The Claimant has filed extracts from the judgment of His Honour Judge Tomlinson in connection with the confiscation proceedings against Bhadresh and the Defendant has made further submissions in response. I have had regard to these submissions and other evidence and correspondence in the course of preparing this judgment.

Statements of Case

13. The Particulars of Claim set out the manner in which the Will came to be prepared by Mr George Nosworthy, a solicitor of Cree Godfrey & Wood ("CGW"), and subsequently executed by the Deceased in the presence of Mr Nosworthy and Mr Simon Nosworthy, also a solicitor of CGW, after having been translated by Mr Mohammad Sarwar, a licenced conveyancer employed by that firm.

14. The Defence dated 27 December 2020 and re-signed on 20 April 2022 consists primarily of non-admissions and includes both a non-admission and a denial that the Will is the last will and testament of the Deceased and various non-admissions as to the circumstances in which the Will came to be prepared and executed. It is admitted that the Will bears the Deceased's signature but it is denied that the Will reflects the Deceased's intentions, and the Claimant is put to proof that the Deceased had testamentary capacity at the time of the making of the Will and that he made the Will with full knowledge, understanding and approval. It is averred that the Will was not the product of the Deceased's own volition but was procured by the undue influence, fraud and calumny of the Claimant and Mr Yadav. Allegations of misrepresentation and the forging of documents are also made. In particular it is alleged that the Deceased had become isolated from his family and that the Claimant took advantage of him and induced a state of confusion, deep anxiety, depression, fuelled his anger, caused him to be unable to think and do things for himself, in consequence of which he was highly vulnerable and easy to manipulate.

15. In addition, a counterclaim is made by the Defendant for the removal of a property known as 'Highlander' from the Deceased's estate on the grounds of proprietary estoppel and for an account of the joint funds of the Defendant and the Deceased said to have been under the sole control of the Deceased. The counterclaim also seeks the removal of the Claimant as executrix under the Will due to her alleged conduct in relation to the making of the Will and subsequently, and a conflict of interest said to arise from the Claimant's involvement in litigation with the Gohil family, primarily matrimonial proceedings between her and Bhadresh in which the Defendant and the Deceased were joined in relation to the issue of the ownership of Highlander. At the time of the hearing before me, those proceedings remained ongoing and have been the subject of a Supreme Court decision (*Gohil v Gohil* [2015] UKSC 61) which reinstated an order of Moylan J (as he then was) setting aside a 2004 settlement agreement between the Claimant and Bhadresh on the grounds of fraudulent non-disclosure by Bhadresh.

16. The Defendant also makes a claim under the Inheritance (Provision for Family and Dependants) Act 1975 on the grounds that the Will failed to make provision for the

Defendant and her (and the Deceased's) children although no application under the Act has been made by the children.

17. By her Reply and Defence to Counterclaim dated 30 April 2022 the Claimant makes a series of bare denials. In relation to the allegations of undue influence, malice, calumny and the forging of documents, the Claimant asserts that the Defendant is in no position to make those allegations since she separated from the Deceased in 2001 and the Deceased had refused further communication with her.

The Summary Judgment / Strike Out Application

18. For reasons which are unclear, at the time of issuing her application for summary judgment and strike out, the Claimant also filed a document headed Particulars of Claim dated 2 September 2022. This does not purport to be an amended version of her Particulars of Claim and it appears to respond to the Defence in the form of a Reply as well as containing further witness evidence. No permission has been given to the Claimant to serve amended Particulars of Claim but that does not appear to be what she is seeking to do. It therefore appears to me that I should determine the application on the basis of the Claimant's original Particulars of Claim dated 27 October 2020 and not on the basis of the later document.

19. The formulation of the Claimant's application is somewhat confused. The application notice states:

> "*I intend to apply for an order that:*
> *The Defendant's Defence and Counterclaim be struck out as against the Claimant pursuant to the court's wide case management powers and CPR Part 3.4(2)(a).*
> *And the Claimant do have summary judgment against the Defendant pursuant to CPR Part 24, because the Defendant has no reasonable cause of action against the Claimant; and the Defendant has no real prospect of succeeding on her Defence or Counterclaim for the reasons set out in the Particulars of Claim and Witness statement of the Claimant dated 2 September 2022 and there is no other reason for the case to be disposed of at trial.*"

20. I take this to mean:

a. that the Claimant seeks summary judgment on her claim because the Defence has no real prospect of success;

b. that the Claimant seeks to strike out the Defence and Counterclaim as disclosing no proper cause of action; and/or

c. that the Claimant seeks reverse summary judgment on the Counterclaim because it has no real prospect of success

and in each case there is no other reason for the case to be disposed of at trial.

21. The single issue in the Particulars of Claim is the validity of the Deceased's Will dated 30 March 2009. The Particulars of Claim recount the circumstances in which the Will came to be prepared which I have described in paragraph3 above. CGW have provided a *Larke v Nugus* stated dated 14 May 2018 following a request from the Defendant's then solicitors, TWM Solicitors LLP.

22. As I have noted above, the Defence consists of a series of non-admissions as to the validity of the Will. It puts the Claimant to proof that the Will is the last will and testament of the Deceased but there is no positive case put forward as to the existence of a subsequent will. It is also not admitted that the Will was drafted by Mr Nosworthy or that it was executed in accordance with the Wills Act but it is admitted that it bears the Deceased's signature.

23. The Defendant denies the Will reflects the Deceased's intentions and puts the Claimant to proof as to whether the Deceased had testamentary capacity and that the Will was made with his full knowledge, understanding and approval. Again, no particulars are given as to the Deceased's alleged capacity as at the date of making the Will. It is averred, without particulars, that the Will was not made of the Deceased's own volition and was procured by the undue influence, fraud and calumny of the Claimant and Mr Yadav. There is also a non-admission that the Deceased gave instructions to Mr Nosworthy and that he expressed no sign to Mr Nosworthy that he was confused or did not understand the instructions he was given. It is also not admitted that the Deceased gave instructions that the Will should include the declaration which I have referred to at paragraph 5 above. There is a second admission that the Deceased's signature appears on the Will but the Claimant is put to

proof that the Will was signed on 30 March 2009 in the presence of both witnesses at the same time and to confirm whether she was also present, and her involvement in the alleged execution process. The Claimant is also put to proof that the Will was correctly translated into Hindi by Mr Sarwar and as to Mr Sarwar's competency to act as an interpreter. I note here that CWG's *Larke v Nugus* statement states that the Will was translated into Hindi whereas the Deceased spoke Gujarati. I understand that Gujarati is a dialect of Hindi and the Deceased was able to speak and understand Hindi.

24. The summary judgment application is supported by a witness statement from the Claimant dated 2 September 2022 which explains that the case is brought against the backdrop of "epic financial proceedings" in the Family Division and also the First Tier Tribunal (Property Chamber) ("FTT") proceedings. She refers to unwarranted attempts to frustrate probate of the Will and alleges that she has been subject to harassment, intimidation and threats from the Defendant and Bhadresh as well as attempts to discredit her and harm her reputation. In addition, the Claimant alleges fraud in relation to an attempt to transfer Highlander which led to the Tribunal proceedings. These allegations are unproven and I am not required to determine them for the purposes of the application nor do I consider it be appropriate for me to do so.

25. The Claimant also asserts that false statements were made by the Defendant and Bhadresh in the matrimonial proceedings. Dishonesty on the part of Bhadresh has of course been established in those proceedings, but there has been no such finding against the Defendant.

26. In respect of the Defence and Counterclaim, the Claimant asserts that the Defendant has failed to take account of the fact that the Deceased was living alone in India, separated from the Defendant, and was not in contact with his family from around 2001 until around 2015 when there was some limited contact with certain family members. The Defence contains a non-admission that the Deceased and the Defendant were "legally separated" and not in contact except through solicitors. The Claimant points out that such evidence is inconsistent with a statement the Defendant made to the Land Registry in around 2007. Additionally, the Claimant relies upon a statement that the Deceased made to the police conducting the investigation into Bhadresh's criminal activities in March 2009.

27. In relation to the criticism made by the Defendant of Mr Nosworthy, whose firm has been subject to an intervention by the Law Society, and Mr Nosworthy himself has been struck off due to the misuse of client monies, the Claimant asserts that such conduct should have no bearing on the making of the Deceased's Will several years earlier.

28. The Defendant's response to the summary judgment application is contained in her fourth witness statement dated 13 September 2022. It contains little in the way of fact and largely consists of submissions. The Defendant asserts that the case is not suitable for summary judgment or strike out and states that the Claimant has "serious questions to answer" about the validity of the Will.

29. The Defendant correctly asserts that the burden lies with the Claimant to show that the Defence has no real prospect of success at trial. In support of that assertion the Defendant identifies a number of issues she says that the Claimant has failed to explain such as her role in the making of the Will, an alleged failure to disclose to CGW that she had joined the Deceased into the matrimonial proceedings, alleged tampering with CGW's files, the alleged creation of journals and other documentation, the alleged creation of materials supporting her in litigation in the name of the Deceased, missing funds, and an alleged conflict of interest that the Defendant also refers to in her application to remove the Claimant as executor.

30. The thrust of the Defendant's statement is that there is a substantial factual dispute, as demonstrated in the parties' respective witness statements and position papers and the Court is not therefore in a position to determine the claim without hearing oral evidence and cross examination of witnesses. It is also asserted that disclosure is required. Beyond that, the Defendant's witness statement does little more than disagree with what the Claimant says in her statement.

31. I have found the witness statements of both the Claimant and the Defendant to be of little assistance in determining the application. They contain large amounts of material which I consider to be irrelevant to the applications concerning events which took place in the aftermath of the making of the Will up until the Deceased's death, and subsequently. Whilst I don't exclude the possibility that events after the making

of a will might inform the circumstances in which a will comes to be made, that does not appear to be the case here.

32. Of far greater assistance has been the contemporaneous documents to which I shall refer below. They show, beyond doubt, that the Deceased was estranged from the Defendant and the children, having moved to India in 2001 when he cut all ties with them. That is the context against which the making of the Will must be considered.

The Defendant's Evidence

33. The Defendant has made a number of witness statements including her third witness statement dated 27 August 2022 in support of her application to remove the Claimant as executrix of the Deceased's estate, her fourth witness statement opposing the Claimant's summary judgment application dated 13 September 2022 and her fifth witness statement dated 16 September 2022 which responds to the Claimant's witness statement opposing the removal application. These witness statements include extensive legal submissions and opinions and I have gained the clear impression that they contain material that goes well beyond the Defendant's personal knowledge and understanding. The Defendant is said to have a limited understanding of English so as to be unable to speak for herself at hearings, but her statements include detailed accounts of the previous hearings in these proceedings and in the Family Division and FTT.

34. The Defendant's witness statements are at odds with the oral evidence she gave in proceedings that the Claimant brought in the FTT to reinstate a Form A restriction against the title to Highlander which had been wrongly cancelled on the application of the Defendant. The Form A restriction had been entered by the Deceased in 2009 to protect his interest in Highlander following service of a notice of severance, severing the beneficial joint tenancy held by him and the Defendant. The judgment of Tribunal Judge Owen Rhys [2019] UKFTT 381 (PC) summarised the Defendant's evidence as follows:

> "*The Respondent's own evidence does not take the matter very much further. In her statement she was adamant that she did not receive the Notice. When she came to be cross-examined on the statement, however, she was unable to recall much of anything. Her stock reply was that she could not remember a document or an event, that she did*

not understand any documents, and that she would have given any "legal" letters to her children to tell her what is contained.....".

35. If the Defendant was unable to understand "any documents" and would give "legal" letters to her children, it is difficult to see how the content of her witness statements could possibly be her own evidence dealing, as they do, extensively with the complex history of the matrimonial proceedings between the Claimant and Bhadresh, the FTT proceedings and the previous hearings before this Court. The fact that the witness statements have been translated into Gujarati to enable the Defendant to read them does not of itself mean that the contents of the statements reflect facts within the Defendant's knowledge and understanding.

36. In paragraph 1 of the Defendant's third witness statement the Defendant says that she has been assisted by her children and Mr Charles throughout the proceedings. It is of course entirely understandable that the Defendant would require assistance, but such assistance should have been limited to assisting her with identifying the issues to be addressed in her evidence and setting out facts within her own knowledge and nothing more.

37. I also note that the Defendant's evidence seeks to portray the Claimant as an obsessive and vexatious litigant seeking revenge against the Gohil family. This is at odds with various Court decisions which vindicate the Claimant, including the Supreme Court and FTT decisions to which I have referred above. The litigation that the Claimant has pursued arises mainly from her application for financial remedies that was made to the Family Division more than 20 years ago and which had not yet reached a final conclusion as at the date of the hearing before me. The matrimonial proceedings have been extraordinarily delayed for reasons including the fraudulent non-disclosure by Bhadresh, his conviction for dishonesty offences and subsequent incarceration and, most recently, confiscation proceedings brought against Bhadresh by the National Crime Agency.

38. The ownership of Highlander has played a central role in both the matrimonial proceedings and also in the criminal prosecution of Bhadresh. It appears that the Claimant originally claimed to have a beneficial interest in Highlander by virtue of the fact that it was her matrimonial home with Bhadresh and they had paid the mortgage and other expenses out of marital assets. That issue was resolved many

years ago in the Family Division with the Deceased and the Defendant having been joined to the proceedings. The Crown Prosecution Service (which was also joined into the matrimonial proceedings and ordered to provide disclosure of documents it had obtained for the purpose of the criminal proceedings in relation to Bhadresh's assets) also made a claim to Highlander in confiscation proceedings resulting in the Deceased making an application to the Southwark Crown Court to have Highlander excluded from a restraint order.

The relationship between the Deceased and the Claimant and Defendant respectively

39. There is clear and contemporaneous evidence as to the relationship between the Deceased and the Defendant, his estranged wife, and their immediate family in the period from 2001 until the Deceased's death in January 2018 which I have found of the greatest assistance in determining the application.

40. In a letter dated September 2006 which the Defendant (I presume with the assistance of her family members who continue to assist her) wrote to HM Land Registry. The letter was sent in anticipation of the Defendant making an application to the Registrar under section 36 of the Trustee Act 1925 to appoint a new trustee to enable the Defendant to deal with Highlander in the absence of the Deceased. That statement is clear and contemporaneous evidence, in the Defendant's own words, of the state of the Deceased's relationship with the Defendant and his children. It states that the Deceased had permanently left the UK and had been living in India since 2001 where he was discovered to have what is described as a long-term "mistress". His whereabouts in September 2006 was said to be unknown to the Defendant. The statement includes:

> "*[The Deceased] has effectively severed all ties with the UK and his family…*"
>
> *"since it appears [the Deceased] wants nothing further to do with his immediate family any further attempts seem futile, more particularly having tried in vain for nearly 5 years to have some form of dialogue [the Defendant] and the children believe [the Deceased] has effectively severed all ties with his immediate family and the UK."*
>
> "*Since 2001 [the Deceased] has made no attempt to contact any of his four children. Each of the children has tried via the mobile and*

through relatives. [the Deceased] has simply severed all ties."

41. On 30 March 2007 the Deceased swore an affidavit for use in the matrimonial proceedings and subsequently gave oral evidence via video-link on behalf of the Claimant before Moylan J. The affidavit which was made in India and notarised, recounts the history of a family breakdown including:

> "*23.In India I had hoped to lead a more peaceful and happier existence way from my wife, son and daughters who had all joined forces. However, even then [Bhadresh] was not satisfied, so he hired a detective to find me and follow my movements. He then personally delivered to me a seriously threatening letter dated 3 December 2001 which was handed to me at 12 noon on 11 January 2002 and which was witnessed by my watchman. (please see exhibits 2 and 3)*
>
> *24.This was the final insult so I cut all contact with the family after that, but continued to live at the 'Ashoka' flat, even though I had by now bought my own flat' 'Angeli'. This, because I was anticipating that eventually [Bhadresh] would want to drive me away from the 'Ashoka' home too*". [sic]

42. The Supreme Court determined that the Deceased's evidence was not only admissible but also highly significant and that, if true, it "*manifestly established large-scale material non-disclosure on the part of the husband on 30 April 2004*",

43. The Defendant asserts that the affidavit was "*created in its entirety by the claimant. It is a self-and reflective of the claimant's highly pejorative claims. The highly controversial contents of this document have yet to be tested in the Family court*". I find this a staggering assertion when the Deceased gave oral evidence on oath before Moylan J and was available to be cross examined.

44. On 27 March 2007 the Deceased wrote to HM Land Registry objecting to the transfer of Highlander. The letter was formally notarised in Goa, India (and I consider it reasonable to assume that the notary was able to communicate with the Deceased in Gujarati) and states:

> "*9.My son being a spoiled child, he also had an eye on my property and my money and as such he has been always threatening me of dire consequences and forcing me to transfer the money and the*

said house property in his name and I had therefore to leave Londin and came to India.

10.Even after coming to India he has not stopped giving me threatening. I am enclosing with this the copies of the then two threatening letters address to me by my son said Shri. Bhadresh Babulal Gohil.

In the circumstances I have to request you not to transfer the said house property in the name of my son said Shri. Bhadresh Babulal Gohil or in the name of any third party / parties unless I subscribe to any such document of transfer". [sic]

45. On 26 March 2009 the Deceased attended an interview with DC Ben Irons at Finchley Police Station in London and made a witness statement in connection with the investigation of Bhadresh. The witness statement was made in Gujarati and subsequently translated into English. The statement accuses Bhadresh of having forged the Deceased's signature on certain documents. It also alleges that Bhadresh made threats against the Deceased and had "colluded" with the Deceased's solicitors, Siddique and Associates.

46. On 1 April 2015 the Deceased made a witness statement verified by a Statement of Truth in support of an application for a variation of a restraint order to exclude Highlander from consideration in confiscation proceedings brought against Bhadresh. That statement includes:

> "*Unfortunately retirement in UK didn't go as planned and due to ongoing family wrangles I have been separated from my wife since August 2001. I moved from the UK to live in India and have cut ties with all of my children, including Bhadresh. Whilst I have left the UK, my wife continues to occupy 'Highlander' as is her right but I continue to retain my share of ownership of this property with only her",*

47. There is no evidence that the Deceased reconciled with his family at any time prior to his death and certainly not in the period between the Defendant making her statement to HM Land Registry in September 2006 and the Deceased making the Will in March 2009.

48. As regards the Claimant, it appears from the contemporaneous evidence referred to above that she had a positive relationship with the Deceased in 2007 when he gave

evidence on her behalf which incriminated his own son in the matrimonial proceedings. That relationship seems to have been maintained up to the Deceased death in on 23 January 2018. I have seen a series of emails between the Claimant and doctors involved in providing medical care to the Deceased which speak to the affection that the Claimant had for the Deceased. This includes seeking to "*give him the best chance chance of recovery*"[sic] and making arrangements for the Deceased to stay at a yoga retreat which she thought would lift his spirits. It is therefore tragic that within a few days of the Deceased's death, his daughter Sima Sud, saw fit to make a criminal complaint against the Claimant accusing her of trespass and theft when, on the face of the Will, she is an executor and beneficiary of the Deceased's estate.

49. The evidence suggests that the Deceased must have had assistance in preparing his April 2015 witness statement, since he was not fluent in English. On a balance of probabilities I consider that it was the Claimant who assisted him. That is not of itself objectionable in much the same way as the Defendant has been assisted in preparing her witness statements in these proceedings insofar as they go to facts within her knowledge. The Deceased's statement was made for the purposes of proceedings in the Southwark Crown Court and, irrespective of the Deceased's level of English, I have seen no evidence to suggest that the Deceased would not have understood the importance of making a statement to the Court in the confiscation proceedings. He had previously given evidence before Moylan J and also to DC Irons without the Claimant's involvement.

50. The Defendant relies on a series of letters from Siddique and Associates as evidence that undermines the relationship between the Claimant and the Deceased. This includes two letters dated April 2004 written on behalf of the Deceased which are highly critical of the Claimant and accuse her of dishonesty. It is difficult to know what to make of these letters as they conflict so starkly with subsequent events particularly the Deceased giving evidence against Bhadresh in the matrimonial proceedings. Some light is shed by the statement which the Deceased gave to DC Irons in which he alleges that Bhadresh colluded with Siddique and Associates. There is also before me correspondence from January 2018 at which point Siddique and Associates appear to be acting on behalf of the Defendant.

51. On balance, I give the greatest weight to the statement that the Deceased gave independently to DC Irons and that contained in his March 2007 affidavit made on oath and tested on cross examination.

52. The Claimant's evidence includes a number of pages which purport to be the Deceased's diary entries in a language which I assume is Gujarati. The Defendant asserts these documents to be forgeries. However, I have not placed any weight on these pages because their authenticity has yet to be tested and it was not necessary for the purpose of determining the application.

CPR rules 3.4 and 24

53. The principles that apply to a summary judgment application under CPR rule 24 are well established. The burden is on the Claimant to show that the Defendant has no real prospect of successfully defending the claim and/or succeeding on the counterclaim, and there is no other reason why the claim should be disposed of at trial.

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

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

> *"i. The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success.*
>
> *ii. A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.*
>
> *iii. In reaching its conclusion the court must not conduct a "mini-trial".*
>
> *iv. This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real*

substance in factual assertions made, particularly if contradicted by contemporaneous documents.

v. *However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.*

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

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

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

"*3.4-*

(1) In this rule and rule 3.4, reference to a statement of case includes reference to part of a statement of case.

(2) The court may strike out a statement of case if it appears to the court-

(a) that the statement of case discloses no reasonable grounds for bring or defending the claim;

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order".

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

Testamentary Capacity

58. As I have already mentioned, the preparation and execution of the Will was the subject of a *Larke v Nugus* statement made by CGW in a letter dated 14 May 2018. That letter states the following by way of introduction:

> "*First there are a number of peripheral facts:*
>
> - *That Mr Babulal Gohil and Mrs Kamla Gohil have been separated since 2001*
> - *Mr Babulal Gohil had also cut ties with all of his children*
> - *There was particular enmity between Mr Babulal Gohil and his son, Bhadresh, as well as his wife.*
> - *Mr Babulal Gohil had lived in India since 2001 and the only people he considered as his family, whom he visited and stayed with in London, were Varsha Gohil and her children.*
> - *The family history is well documented*"

59. The statement goes on to confirm that CGW had prepared the Will after having been introduced to the Deceased by the Claimant. The Deceased gave instructions for the Will at a face to face meeting at CGW's offices at which the Deceased communicated in English. Mr Nosworthy used his 40 years' experience as a solicitor to form a view that the Deceased understood what he was doing and he did not exhibit any sign of confusion or memory loss. It is said that the Will was translated into Hindi by a Mr Sawar and was witnessed by Mr Nosworthy and Mr Simon Nosworthy both of whom considered that the Deceased knew what he was signing and fully understood the situation. A one page handwritten attendance note was provided with the statement. What is not mentioned in the statement is the fact that the Claimant was present at the time the Will was made. She told me during the course of her submissions that she was present and that she acted as an interpreter for the Deceased. She also said that the Will was later translated by an independent third party, who I assume to be Mr Sawar, and that she was there when the Deceased executed the Will. It is surprising that the Claimant's presence was not referred to in CGW's statement especially since TWM Solicitors, on behalf of the Defendant, specifically asked who, apart from the witnesses, were present at the execution of the Will.

60. Mr Nosworthy gives similar evidence in an affidavit sworn on 7 August 2018 in support of the Claimant's petition for probate in India.

61. The Defendant makes much of the errors and inconsistencies in CGW's statement and says that it justifies the case going to trial to allow for Mr Nosworthy to be cross-examined.

62. In oral submissions made by Bhadresh on behalf of the Defendant, he told me that in March 2009, three days prior to the making of the Will, the Deceased had spoken with a police officer, DC Ben Irons, who had subsequently confirmed in a witness statement that the Deceased had difficultly giving evidence in English. It was said that this conflicts with Mr Nosworthy's evidence and that only one of them could be telling the truth.

63. The Claimant had not seen DC Iron's statement and I directed that it be filed following the hearing. The statement filed was in fact made on 29 January 2009 some weeks (rather than three days) prior to the making of the Will. It recounts a telephone call between DC Irons and the Deceased who was in India at the time and that the Deceased had some difficulty understanding DC Irons' questions and that DC Irons had difficulty understanding the Deceased's replies. Arrangements were then made for a further to call with a Gujarati interpreter present. The Deceased did give a further statement to DC Irons three days prior to the making of the Will but that statement was obtained via an interpreter and does not refer to any language barrier.

64. The Defendant admits that the Will bears the Deceased's signature but does not admit that the Will was properly executed and she puts the Claimant to proof that the Will was signed on 30 March 2009. In my judgment there is no reason to doubt CGW's statement that the Will was signed by the Deceased in the presence of two solicitors neither of whom had any concern about the Deceased's capacity. That is clear on the face of the Will. It is unfortunate that CGW has been the subject of an intervention by the Law Society and that Mr Nosworthy has been struck off for dishonesty offences, but that does not impugn the honesty of Mr Simon Nosworthy or Mr Sawar who both also attested the Will.

65. The Defendant accuses the Claimant of having tampered with CGW's file. The Claimant's evidence is that following the intervention of CGW, the intervention

agents, Lester Aldridge solicitors, sent her a package containing the Will file. She says the package remained unopened and that, when Deputy Master McQuail indicated that the file should be disclosed as soon as possible, she realised there was a practical difficulty in that the file contained documents relating to other matters that CGW had handled for her. She therefore sent the unopened file back to Lester Aldridge and asked them to separate the Will file from other documents. Lester Aldridge duly did this and confirmed by email on 15 June 2022:

> "*You requested our confirmation that this file, M0009158872, originally sent to you on 15 June 2021 had remained unopened. The file was returned to us in June 2022 in its original packaging and did not appear to have been opened.*"

66. I can entirely accept that the Claimant left CGW's 9 year old file unopened until she was prompted to disclose it and the email from Lester Aldridge puts this beyond doubt.

67. It is difficult to see what the Defendant's concerns are about tampering beyond the general level of suspicion in relation to the Claimant. The Will is so simple that it is unsurprising (although not ideal) that the Defendant's instructions were recorded in a single handwritten note.

68. The attestation clause in the Will is in "perfect" form in compliance with section 9 of the Wills Act 1837. This gives rise to the presumption of due execution as explained by the Court of Appeal in *Sherrington v Sherrington* [2005] EWCA Civ 26:

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

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

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

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

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

71. In the case before me there is a presumption of capacity on the basis of due execution for the reasons I have given above. The burden of proof in relation to capacity therefore shifts to the Defendant who needs to establish a real doubt about the Deceased's capacity. Thus it does not suffice for the Defendant to put the Claimant to proof that the Deceased had testamentary capacity. The Defendant must first adduce evidence that raises a real doubt about the Deceased's capacity.

72. The Defendant asserts that the Deceased had become isolated from his family and that the Claimant took advantage of him and induced a state of confusion, deep anxiety, depression, fuelled his anger, caused him to be unable to think and do things for himself, in consequence of which he was highly vulnerable and easy to manipulate. However, there is no evidence before me to support such an assertion and the Defendant does not particularise any matter which may rebut the presumption. This is unsurprising since it is clear from the evidence that the Deceased had been estranged from the Defendant and had cut off all contact with his family from around 2001.

73. In circumstances where the Defendant and her family were not in contact with the Deceased for many years both before and after the making of the Will, I find the Defendant's case on capacity to be mere speculation. This is insufficient to rebut the presumption of capacity.

74. Lest evidence of capacity is needed, the *Lark v Nugus* statement from CGW states that Mr Nosworthy had no concerns. Whilst the statement is not as full as it could have been it is nonetheless evidence of capacity. Further, more compelling evidence exists in the form of a statement given by the Deceased to DC Irons on 26 March 2009, just a few days before the Will was made. Whilst that statement is in broken English and is said to have been translated from Gujarati, it clearly shows that the Deceased was able to communicate with the translator present at the interview and provide detailed evidence in connection with the criminal investigation of Bhadresh. That evidence was given without the Claimant being present.

75. In my judgment, the Defendant's case on capacity is therefore mere speculation on her part and the Defendant has failed to raise any real doubt as to capacity in order to rebut the presumption. Whilst the Claimant's evidence on capacity in the form of the CGW statement is far from perfect, it provides some evidence on capacity, with further weight being added by the Deceased's statement in March 2009 to DC Irons. Accordingly, I consider that the Defendant's case on capacity has no realistic prospect of success. Having regard to the principles established in *Easyair* I have considered whether the Defendant might be able to adduce further evidence in relation to capacity if the claim proceeds to trial. I have concluded that the best evidence is already before me in the form of the contemporaneous documents to which I have referred. I consider that the lack of any meaningful relationship between the Deceased and his family between 2001 and the making of the Will in 2009 (and well beyond) makes it unrealistic that they will be able to produce further relevant evidence to rebut the presumption as to capacity.

Knowledge and Approval

76. The Defendant puts the Claimant to proof as to whether the Deceased made the Will with full knowledge, understanding and approval. No particulars are given of any facts relied upon by the Defendant as to the Deceased's state of knowledge.

77. In *Gill v Wood* [2011] Ch 280 Lord Neuberger heid:

> "*As a matter of commonsense and authority, the fact that a will has been properly executed, after being prepared by a solicitor and read over to the testatrix, raises a very strong presumption that it represents the testatrix's intentions at the relevant time, namely the moment she executes the will*".

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

79. The Will is short and extremely straightforward in appointing two executors and providing for the residuary estate to be held on trust and divided between three beneficiaries. There is very little that the Deceased needed to understand and, as I have stated above, the Deceased's ability to give a statement to DC Irons three days before he made the Will shows that he was more than capable of doing so.

80. I acknowledge that the Claimant's presence when instructions were given for the Will to be prepared and the fact she assisted the Deceased by initially acting as translator, could be signs of undue influence or want of knowledge and approval. However, set against the background of the Deceased's relationships with the Claimant and the Defendant respectively, any concerns I might have had have been overcome by the fact that Mr Sarwar provided a translation of the Will in Hindi which the Deceased would have been able to understand.

81. In circumstances where the Deceased had been estranged from the Defendant and his family for many years, it is unsurprising that he explicitly made no provision for them. It is equally unsurprising that he left his residuary estate to the Claimant and her children, having regard to the evidently close relationship between them from at least March 2007 when the Deceased supported the Claimant in the matrimonial proceedings against Bhadresh.

82. For these reasons I consider that the Defendant's case on knowledge and approval has no realistic prospect of success.

Undue Influence, Fraud and Calumny

83. The Defence avers that the Will was not the product of the Deceased's own volition but was procured by the undue influence, fraud and calumny of the Claimant and Mr Yadav. As I have referred to above, the Defendant asserts that the Deceased had become isolated from his family and that the Claimant took advantage of him and induced a state of confusion, deep anxiety, depression, fuelled his anger, caused him to be unable to think and do things for himself, in consequence of which he was highly vulnerable and easy to manipulate. However, no particulars are given as to how the Claimant is said to have taken advantage of the Deceased or how she was to have induced his state of confusion.

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

> "*There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:*
>
> *i. In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;*
>
> *ii. Whether undue influence has procured the execution of a will is therefore a question of fact;*
>
> *iii. The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;*
>
> *iv. In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud;*
>
> *v. Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;*

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

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

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

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

85. It follows that the burden of proving that the Will was procured by undue influence lies with the Defendant and it is a high burden of proof. The Defendant is required to show that there is no explanation other than undue influence for the Deceased to have acted as he did in 2009 when he executed the Will.

86. The Defendant has failed to particularise any form of pressure or persuasion being exerted over the Deceased.

87. Far from there being no explanation other than undue influence, in my judgment there is ample evidence on which to conclude that the Deceased acted entirely rationally when he made the Will having regard to his then relationship with the Claimant and his lack of relationship with the Defendant and their family.

88. With regard to fraudulent calumny, the evidence before me shows that the Deceased had set his mind against the Defendant and his children in 2001 when he left them and moved to India. There is no evidence that this had anything to do with the Claimant who remained married to Bhadresh and lived with him and the Defendant at Highlander at the time. As time passed, the Claimant had no need to cast dishonest aspersions on Bhadresh's character since his character is seriously compromised by both his criminal conviction and the finding of fraudulent non-disclosure in the matrimonial proceedings. In my judgment, the evidence suggests that the Deceased was seriously troubled by the Defendant's unwavering support for Bhadresh such that she was tainted by his wrongdoing in the eyes of the Deceased.

Conclusions on Summary Judgment

89. For the reasons given above, I consider that the Defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the claim should be disposed of at trial. I therefore pronounce for the force and validity of the Will being the last will and testament of the Deceased. I also grant reverse summary judgment in favour of the Claimant in relation to the counterclaim for revocation of the Will and recission of testamentary dispositions on the grounds of undue influence, fraud and calumny.

90. It is not appropriate for there to be summary judgment on the balance of the Defendant's counterclaims for proprietary estoppel, an equitable account and under the Inheritance (Provision for Family and Dependants) Act 1975. Those claims are entirely fact specific and will need to be tested at trial.

91. I will give directions as to the future conduct of the case following the hand down of this judgment.