Neutral Citation Number: [2025] EWHC 461 (Ch)

Claim No: **PT-2023-BRS-000109**

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

In the estate of Stephen George Packer (deceased)

Bristol Civil Justice Centre, 2 Redcliff Street,
Bristol BS1 6GR

Date: 28 February 2025

Before:

MR HUGH SIMS KC (sitting as a Deputy Judge of the High Court)

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Between:

DEBRA ELLEN PACKER	**Claimant**
- and –	
LYNN ANN PACKER	**Defendant**

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Mr Ollie Murrell (instructed by **Bailhache Law Limited**) for the **Claimant**
Mr Andrei Vasilescu (instructed on a Direct Access basis) for the **Defendant**

Hearing dates: 12, 13 and 14 February 2025

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APPROVED JUDGMENT

This judgment was handed down remotely at 10:30am on 28 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR HUGH SIMS KC:

Introduction

1. Stephen George Packer ("the deceased" or "Stephen") was born on 9 December 1956. He died on 5 July 2022, aged 65, as a result of an endocrine tumour, an incurable cancer. It was a cancer which was kept at bay for many years through radiotherapy and medication. The cancer was initially diagnosed in 2010. It caused Stephen to have to retire from his job as an electrician in 2013. He was assessed as being terminally ill in or about January 2022. Stephen died at his home called Renditt, Bristol Road, Paulton, Bristol, BS39 7NX ("Renditt"), in the presence of his wife, Debra Allen Packer ("Debra"), and his sister, Lynn Ann Packer ("Lynn"). It is a sad feature of this case that Debra and Lynn had together cared for Stephen in 2022, as he was dying, and experienced a good relationship up to Stephen's death, but this relationship rapidly deteriorated very soon after his death. Each of Debra and Lynn blame each other for that deterioration, though, as I set out below, some of the difficulties have arisen

from the uncertain state in which Stephen left his affairs. He told Debra and Lynn different things about what would happen to his estate, which I conclude was a significant contributor to the breakdown in relations between them which followed his death. I shall refer to members of the Packer family by their first names, and certain other family members, for ease of reference, and without intending any disrespect to them in doing so.

2. The essential dispute is whether Stephen died intestate, without making any valid will, as the claimant, Debra contends, or whether he made a will on 21 February 2022 ("the 2022 Will"), in accordance with a draft which Lynn assisted in preparing for Stephen, but which has not been located after death, as Lynn, the defendant, contends. Lynn was also alleging there was an earlier will, in 2017 ("the 2017 Will"), which she was stating had been executed in accordance with a photo of a draft she had assisted in preparing, though it was clarified at trial she was not pursuing such a contention, and it is accepted in closing the 2017 Will was likely never executed. This apparently simple dispute, between intestacy and the 2022 Will, has been rendered more complicated by the fact that the parties are also in dispute in relation to two related matters.

3. The first related dispute is whether Renditt was validly transferred from Stephen's sole name to the names of Stephen and Debra on 7 June 2012, as joint tenants, as Debra contends, or whether this transfer was forged by Debra, without Stephen's consent, as Lynn was contending. Both parties sought to rely on facts in relation to the transfer of Renditt in support of their case in relation to the 2022 Will, or intestacy, both in their statements of case and witness statements. This was because whilst the precise ambit of Stephen's estate is not known, it is likely that Renditt is the main asset (there was also evidence Stephen had a pension, which Debra had discussed with Lynn, as well as a number of bank accounts, though due to the current position of the estate the full extent of it has yet to be verified). How Stephen held Renditt may have some bearing on the competing cases in relation to his testamentary intentions.

4. At an earlier hearing before District Judge Markland on 23 September 2024, Lynn had sought permission to rely on a report from a handwriting expert, in support of her allegation of forgery in relation to the transfer of Renditt in 2012, which application was refused. Lynn did not seek to appeal that order and is bound by it. Accordingly, she was not entitled to rely on any handwriting expert evidence at trial, and it was agreed that any references to that in the evidence should be ignored by me. She did seek at trial, nevertheless, to rely on certain documents in relation to the transfer, which she invited me to conclude should have a bearing on my assessment of Debra's credibility, and which she relied on as supporting her case in relation to the 2022 Will. On the first day of trial I ruled that the documentation in relation to the transfer, which Lynn wished to rely on, should be admitted in evidence. I concluded it was potentially relevant, had been disclosed, and was not expert evidence which was seeking to circumvent the order of 23 September 2024. Lynn had originally also been seeking a declaration in these proceedings in relation to the dispute concerning the ownership of Renditt. However, in closing submissions it was clarified she did not wish the court to do so, the matter already being the subject of separate proceedings before the Property Chamber Land Registration Division First-tier

Tribunal (but subject to a stay pending the determination of these proceedings). I conclude that part of the reason for the decision to not press for a declaration in relation to the ownership in Renditt in these proceedings was not just due to the fact of the First-tier Tribunal proceedings being seized of this dispute, but also due to the ruling of District Judge Markland which I have already referred to above (which prevents Lynn from being able to rely on the handwriting expert evidence). I proceed in this judgment on the basis that I shall make findings in relation to Renditt on the evidence before me and solely for the purposes of resolving the dispute in relation to the 2022 Will, and intestacy. It will then be a matter for the parties and their advisors to reflect on the utility, or otherwise, of lifting the stay in the First-tier Tribunal.

5. The second related dispute concerns the estate of the late Dorothy Joan Packer ("Joan"), Stephen and Lynn's mother, who died on 30 June 2022. It is common ground that she left the residue of her estate in equal shares to Stephen and Lynn. The total estate had a value of £379,606 but after expenses and other gifts the amounts to be divided between them was calculated by Lynn, the executor of Joan's estate, to be £116, 773. If divided equally Stephen would have been paid £58,286.50. However, Lynn claims that he disclaimed his inheritance, by signing a disclaimer on 5 November 2021, such that she was entitled to the full £116,773. Debra sought to contest this, by way of a separate action she brought in 2023, it being inconsistent with what she says she was told by Stephen during his lifetime. At a case management hearing on 23 May 2023 District Judge Wales apparently looked at the disclaimer (it is suggested in one exchange he examined it by "*holding it to the light*"). Ultimately, he made no final findings on the point and directed that any challenge by Debra could not proceed until the issues concerning Stephen's estate was resolved. The disclaimer document relied on by Lynn is not before this Court. Again, in relation to this dispute I only make findings in relation to the alleged disclaimer so far as it is necessary for the purposes of resolving the current proceedings. Again, it will be for the parties and their advisors to reflect, in the light of this judgment, the utility, or otherwise, of further litigation in relation to the disclaimer. It is right to note in addition here, however, that the discovery by Debra of the contended for disclaimer by Stephen has had a substantial impact on the parties' behaviour, and evidence, in these proceedings.

6. At the pre-trial review on 8 January 2025 a statement of issues for trial was approved by His Honour Judge Matthews, in substantially the following terms (subject to minor drafting amendments by me, to reflect the definitions and abbreviations I have set out above, and the narrowed case pursued before me by Lynn):

   Issue 1: Was a draft will created by Lynn on the instruction of Stephen in the form of the 2022 Will which she seeks to propound?
   Issue 2: If so, was the 2022 Will executed in accordance with section 9 of the Wills Act 1837?
   Issue 3: If so, where only a draft of the 2022 Will has been produced following Stephen's death, is the presumption of revocation, in favour of an intention to destroy the 2022 Will, to be rebutted?

7. Issues 1 and 2 were also treated by counsel as including, before me, a further question of how Lynn's Amended Defence should be interpreted. In particular, the issue is whether or not the Amended Defence should be interpreted as (i) solely advancing the case that the 2022 Will was alleged to have been taken for witnessing, attestation and signature by independent witnesses, or (ii) whether it is to be interpreted as advancing case that it was witnessed, attested and signed by family members. I will call this issue below as Issue 1A as it logically falls for consideration after issue 1 and before issue 2.

8. I will now address briefly the scope of the evidence before me and the witnesses, before considering the factual timeline further, and making findings of fact.

The evidence and the witnesses

9. There are three features in relation to the evidence which are worthy of mention before turning to my overall impressions of the witnesses.

10. The first is the obvious one that the person at the centre of the enquiry – the deceased – is not able to give evidence about contested issues. The court must rely on secondary evidence, which is necessarily imperfect, and that is even more so where no executed will can be found. Where a party seeks to rely on parol (oral) evidence in substitution for the physical evidence which underlies the policy of the Wills Act 1837, this requires clear proof and is not to be lightly done. Nevertheless, the burden of proof, which in this case Lynn bears to prove due execution of the 2022 Will, remains the civil standard, based on an assessment on the balance of probabilities: see Mann J in *Ferneley v Napier* [2010] EWHC 3345 (Ch) at [102]. In addition, and related to this point, where a person does leave doubt as to their testamentary intentions, such that a finding is not made in favour of due execution of a will, on the balance of probabilities, all is not lost. The legislature has provided for a fall-back position based on rules which apply in relation to intestacy: see section 46 of the Administration of Estates Act 1925. In the case of intestacy where there is a surviving spouse, and the intestate leaves no issue, as in this case, the surviving spouse inherits. Indeed, whilst it may not be advisable, as it will likely generate some additional difficulties after death, some people prefer to leave the matter to those default rules, rather than make their own will. That is as much their choice as a choice to make a will.

11. The second is that in most disputes, a wealth of contemporaneous written communication aids the court in making findings of fact. However, in this case, the evidence was limited (the trial bundle, including statements of case and witness statements, ran to less than 350 pages). Even in cases with abundant paperwork, the court recognizes that it cannot simply accept what is said in contemporaneous documents, as human memory can affect what is recorded (as noted by Cockerill J in *Jaffe & another v Greybull Capital LLP & others* [2024] EWHC 2534 (Comm) at [55], referencing Popplewell LJ's recent extrajudicial lecture, "Judging Truth from Memory"). Despite fewer documents, there are still useful evidential indicators. The safest course is to start with contemporaneous documents, consider inherent probabilities, and assess any

biases or fallibilities present when the documents were created. I also consider the witnesses' motivations, consistency in their evidence, and corroboration by documents and other witnesses to assist in reaching a conclusion.

12. The third point is to consider further the question of motivations. The main witnesses in this case all have a keen financial interest in the outcome: Debra wishes to secure a finding of intestacy because this will mean she inherits all of Stephen's estate. Lynn, her boyfriend/partner Clive Hacon ("Clive"), and their son Giles Hacon ("Giles"), will stand to benefit either directly or indirectly if the 2022 Will is upheld, since it includes gifts which will benefit them. I will refer to the details of the 2022 Will further below, but I keep this point in my mind when assessing the evidence: all of Debra, Lynn, Clive and Giles are self-interested witnesses (and as explained below I do not discount some self-interest on the part of Lorraine Raw ("Lorraine"), Debra's sister, either). This will naturally encourage some tendency to state a more positive gloss on any facts or evidence to suit their case (or the case they have a potential interest in), or to emphasise features which they consider adverse to the other's case. A witness may come to convince themselves of something being true and accurate when it is not, particularly where they may have a natural bias in favour of that outcome. Accordingly, simply because I reject evidence below it is not to be taken as a finding that I conclude that witness did not believe in it.

13. Turning to my overall impressions of the witnesses, notwithstanding her obvious self- interest, on the whole I found Debra to be a witness who was doing her best to assist the court in telling the truth. Before she retired, in 2018, she worked as a retail assistant in a supermarket. She started a relationship with Stephen in 1991, and they became engaged in 1996. They moved in together, into Stephen's house, then at 34 Stoneable Road, Tyning Hill, Radstock, near Bath, in 2000. In 2003 they separated for about 3 months, as Debra was looking for commitment from Stephen, which he was slow to give. Stephen ultimately decided to commit to marriage. He sold his house and bought Renditt in his sole name in 2004. They did up the house together and married in 2006. Both her and Stephen were quiet and introverted characters, according to the evidence of Lorraine, which characterisation I accept. It cannot have been easy for Debra to give evidence, but she did so in a calm manner, and largely avoided getting drawn into argument. Her evidence has maintained a consistent line – that Stephen had told her he did not wish to make her will. She said he told her he did not see the point as he thought everything would go to her anyway on his death, and this was notwithstanding her urging him to make a will. Despite some testing cross-examination her oral evidence was largely consistent with her written evidence.

14. There were three main areas where Lynn's counsel, Mr Vasilescu, sought to impugn Debra's credibility. The first was in relation to events concerning the transfer of Renditt. I will deal with that issue further below but suffice it to say here whatever may have happened in relation to Renditt this did not cause me to doubt that Debra was doing her best to say what she recalled in relation to Stephen's testamentary intentions as he communicated them to her. Secondly, in one respect her evidence (and that of her sister, Lorraine) was shown to have placed an event later in time than the documents suggested (relating to the

"Mum's money" document, concerning Joan's estate, it being likely this was found on or about 15 July, rather than in August, 2022, also considered further below). However, this is the type of mistaken recollection which is easily made, particularly at a time when someone is in some stress (as I conclude Debra was, in late July and early August 2022). The third was to challenge the extent to which she was really a loving and caring wife, or whether in fact her marriage to Stephen had become cold and distant, interspersed with regular trips away by Debra, which were themselves perhaps indicative of Debra having an affair.

15. In my judgment these latter allegations are borne out of the bitter dispute which has emerged since Stephen's death, affected by self-interest, including in relation to a challenge by Debra to Lynn's dealings with Joan's estate. They do not bear scrutiny against what the contemporaneous documents say about Debra's relationship with Stephen or Lynn's relationship with her, and her assessment of her before death. I have no doubt that Stephen did not share all the details in relation to his ill health with Debra, either immediately or at all. I also have no doubt that Debra spent some time away from Stephen while she was caring for her mother, Florence Vickery (who was born in 1930). This became more frequent – initially she went away every other weekend but in the latter period of time she was away every weekend, sometimes for 3 days. Debra said she felt torn at times between wanting to spend time and care for her mother, in Taunton, and Stephen, in Bristol. I also have no doubt that Stephen would have had some discussions with Lynn about his health, which he did not have with Debra. But the documents show that Debra remained concerned to look after Stephen until his death, and indeed would communicate with Lynn when she was concerned her absence would be detrimental to Stephen's health so that Lynn could step in and assist. Stephen's terminal illness brought its own challenges, but there is no evidence to suggest Debra was not seeking to do her best to care for her husband, together with her other caring responsibilities to her mother. Nor is there any credible evidence of an affair.

16. Any defensiveness on Debra's part in the witness box on the topic of Stephen's health, or denial that Stephen did not share everything with her, were natural in the context of the questions put to her. I do not conclude her perception was always entirely accurate – I conclude Stephen did not always tell her everything in relation to his health or in relation to Joan's estate - but I do not doubt Debra was doing her best to give her best evidence of what he told her and what she understood. Save where her evidence is contradicted by reliable contemporaneous documents, or save as indicated below, I accept Debra's evidence.

17. Debra's sister, Lorraine, also gave evidence. Before she retired she worked at Taunton hospital as a phlebotomist. She has two children and has remarried to Stephen Raw following the sudden death of her former husband in 2016. Her evidence broadly covered three topics: the first was her experience of the relationship between Debra and Stephen and her assessment of Stephen's character, secondly, relating to the transfer of Renditt in 2012, and thirdly relating to the work done by her and Debra after Stephen's death to tidy up his affairs, including searches conducted after they became aware Lynn was alleging there was a will. Lorraine is close to Debra and I do not discount the

possibility of some self-interest in the evidence she gave, including potentially in relation to the future testamentary intentions of Debra (either for her or for her children), though such allegations were not put to her directly. However, she gave her evidence in a clear and straightforward manner. The oral evidence she gave was consistent with her written evidence, save for the timing issue in relation to when the "Mum's money" document was found, which I have already addressed above, and will consider further below. Again, save where her evidence is contradicted by reliable contemporaneous documents, I accept it.

18. Debra also called two other witnesses: Stephen Raw and Reginald Clapp. The former is Lorraine Raw's husband. The latter was hired help. They were both involved in assisting with the clear up of Renditt on 24 October 2022 and were cross-examined about it. I accept their evidence that there was no sign of any will in the parts of Renditt which they visited or cleared up and nor do I think their efforts are likely to have caused the 2022 Will to be lost, if it was still in existence at Renditt at the date of death.

19. Turning now to evidence of Lynn, and Clive and Giles, I will start to consider Lynn's evidence first, as she is the most important witness, though my assessment of her evidence also needs to be considered in the context of her relationship with others, most notably Stephen, Clive and Giles. I conclude from her evidence that she is a careful person. Before she retired she worked as a personnel and administrative assistant. She has been in a relationship with Clive for most of her adult life, and they have had two children: Giles and Tiegan Hacon. Whilst Lynn and Clive are not married they were and are clearly a close family unit, together with Giles and Tiegan. Lynn and Clive have spent most of their working lives abroad, in Australia, Spain and Malaysia. They returned to the UK in January 2021, with Giles, after the death of Joan, in June 2020, and lived at 38 Glebe Road, Southdown, Bath BA2 1JB, where Joan used to live. Giles took on a lease of Unit 4B, New Rock Estate, Chilcompton, near Bath, BA3 4JE, as a place to run his automotive business from. Stephen assisted him with the electrical and other works at that unit. Stephen had a good relationship with Lynn, Clive and Giles. He visited them with Debra whilst they were abroad. I conclude he enjoyed spending time with them, particularly after their return to the UK in 2021. Stephen was a quiet and introverted man and his friends, or closest friends, were his family. After Stephen's death, and after Lynn had finished administering Joan's estate, including the sale of 38 Glebe Road in 2023, she has moved back to live in Western Australia, with Clive and Giles. Their daughter, Tiegan, was already based there, and they are now living together though she, together with Clive and Giles attended the trial in person.

20. Caution is required in relation to Lynn's evidence based on four main points. The first is that I conclude a large part of the breakdown in relations between her and Debra was due to some defensiveness on her part when Debra started to raise questions relating to Joan's estate following death. I conclude she viewed the dispute in relation to Stephen's estate as potentially threatening her inheritance of 100% of the residuary of Joan's estate (as opposed to 50% of it). The second is that the defence which she has advanced in these proceedings has shifted over time. She recognised to some degree what had been said by her in

earlier statements or documents was not consistent with her trial evidence, but this was frequently interspersed with her seeking to point out matters from the evidence in her favour, and argue her case. The third is that I find it difficult to reconcile what I judge to be her careful nature with the evidence she gave in relation to the signing of the 2022 Will. I will return to this topic below. The fourth is that her careful nature overspilled into unwarranted suspicion, which led her to make what are, in my judgment, improbable conclusions. Overall, I am cautious about accepting all her evidence, though I do not doubt the strength of her relationship with Stephen.

21. In relation to Giles, he was a combative witness. He worked in the automotive business when he was in the UK and since his return, with Lynn and Clive, to Australia in 2023, he was worked as an agricultural truck driver. At times I consider he was giving frank and honest evidence. However, he had a tendency to argue points with Debra's counsel, Mr Murrell. He was closely involved in assisting his mother in this case and preparing evidence with his mother, and Clive. I do not think I can assess his evidence in isolation and therefore concerns I have about Lynn's evidence also need to be taken into account in relation to his evidence. I also have regard to the fact that he appears to have been quick to make very strong comments to Debra in early August 2022 which I conclude are likely to be influenced by his then perception, as shared with his mother, that Debra was not respecting what he perceived to be Stephen's wishes. As I explain further below I consider the uncertainty left by Stephen may partly to be blame for this.

22. Finally, in relation to Clive's evidence, he generally gave me the impression he was seeking to do his best to give honest evidence. He worked as a financial advisor before retirement. However, I am less confident all the evidence he gave was reliable in relation to the events and sequencing of events in relation to the signing and witnessing of the 2022 Will. I am not satisfied he could accurately recall all of the details. In addition the description he gave in oral evidence as to what he would say to his clients before they signed important documents does not match with the evidence he gave in relation to what he can recall he said to Stephen. I also need to assess his evidence in the context of my assessment of Lynn's evidence.

The facts

23. I have already introduced some of the relevant historical facts in my assessment of the witnesses above. In this section of my judgment I will pick up the narrative in 2012, and make additional relevant findings of fact.

24. By 2012 Debra and Stephen had been married for 6 years, were living together in the marital home at Renditt, and Stephen, after a 2-year delay, had told Debra about his cancer diagnosis. Debra was keen on financial security and having affairs in order and had decided to make her own will. She encouraged Stephen to make a will but he refused to do so, his typical refrain being he did not see the point or expense of going to solicitors, and she would inherit everything anyway. Debra proceeded to organise a will to be made. She chose to use

Bailhache Law, a firm of solicitors in Taunton, rather than the solicitors who had assisted with the purchase of Renditt. These were solicitors known to her family in Taunton. Her will was prepared and executed in 2012.

25. Later in 2012, however, Stephen agreed to add her name to the title register of Renditt. Debra's evidence, which I accept, was that Stephen felt this was a good solution for Debra as it would make her feel secure after he passed away. The extent to which he understood all the legal niceties associated with joint tenants and survivorship is not clear on the documents. Debra arranged for Debra and Stephen to visit Bailhache Marsden Shaw in June 2012: Debra states on 6 June though the documents tend to suggest the visit would have been on 7 June 2012. She travelled to Taunton with Stephen and met with her mother and Lorrane in the Perkin Warbeck public house, in Taunton, for lunch, before visiting the solicitor's offices. Lorraine's evidence, which I accept, was that after the lunch Stephen and Debra went into the solicitors' offices together, and she left with her mother.

26. I find Debra visited the offices with Stephen and they had their ID and the transfer documents, including in particular the "TR1", witnessed. Anne Shaw, then of Bailhache Marsden Shaw, assisted them with the process, though most of the TR1 had already been completed by Debra in capital letters. By the TR1 both Debra and Stephen confirmed they would hold Renditt on trust for themselves as joint tenants. This meant that on Stephen's death Renditt would become wholly owned by her, though there is no indication that this was explained to Stephen by Anne Shaw or anyone else from Bailhache. Some of the handwriting on the TR1 is Debra's and some of it is Anne Shaw's. The execution page on the TR1 states it is "*Signed as a Deed by Stephen George Packer in the presence of*" and below this Anne Shaw has set out her name and address as "*a.c. Shaw, 2 Church Square, Taunton, Somerset*" which was the address of Bailhache Solicitors. The same wording applied to Debra's signature.

27. Ms Shaw was not called to give evidence by either party, and neither party invited me to draw adverse inferences from the failure to call her. I have no reason to doubt however on the information before me that she put her name in her handwriting on this document as a witness to the signatures of Stephen and Debra.

28. The application to change the register, using an AP1 form, was received by HM Land Registry, according to the date stamp on the document, on 11 June 2012 at 13:07. This refers to and encloses the TR1 and the ID documents. There is a warning at the end of this document that it is a criminal offence for anyone to include dishonest or misleading information in the document.

29. Also on 11 June 2022, the Land Registry sent out a B2-1 Notice of an application for registration, which was addressed to Stephen at Renditt. This gives the recipient an opportunity to object to the application, in this case by 2 July 2012, failing which it would be completed. It did not need a signed response, but a signed response was sent back in Stephen's name. Debra's evidence was that she signed Stephen's name with his permission on this form because he could not be bothered to do so, and she also mentioned he was

struggling with his handwriting at the time due to his cancer. I accept her evidence that Stephen asked her to sign it as he could not be bothered (though I conclude Stephen could have signed it, and his illness did not prevent him from being able to do so; I conclude it is more likely that Debra gave this evidence about his handwriting because she was defensive about the allegation of her forging Stephen's signature).

30. Mr Vasilescu is right to identify this as a point to consider carefully in relation to Debra's credibility: on the face of the B2-1 Notice document no one would know whether Stephen had consented to Debra putting his name and signature on this document, as if it were his, and he is longer present to give evidence about it. If she signed the B2-1 form in his name without his permission this increases the likelihood she also signed the TR1 not only for her signature but also for his, and, it is alleged, also without his permission. That said the context of these documents needs to be understood: the TR1 and the AP1 were for registration of a transfer of the marital home from husband into the joint names of husband and wife in circumstances where the outcome will be entered onto the public register. Even if Debra is to stand charged with calculating that Stephen would never bother to look at the register, when he would discover her alleged fraud, a fraud she need not commit if he were never to create a will, she was leaving herself open to the possibility someone else would discover this during their lifetime and her fraud would be easily uncovered. This conclusion seems much less probable than the conclusion that Stephen agreed to the transfer at the time: it was no skin off his nose, he would remain living in Renditt, and he did not have to make a will which he did not want to make. This applies even if the B2-1 Notice was signed by Debra without Stephen's consent, this latter document not being a necessary document. The transfer into joint names did not cost him or Debra any money – they had done most of the work themselves and Bailhache did not charge them for the 30 minutes or so Debra and Stephen spent at their offices in the afternoon of 7 June 2012. I also have in mind that on top of this earlier alleged fraud I am, in effect, being invited to conclude that Lorraine is now said to be a party to a further fraud on the court, with Debra. They are both to stand charged with committing perjury in order to cover up Debra's earlier fraud. Lorraine would have to be giving evidence she knew not to be true, and in a rather extreme way, which could not be explained on the basis of a failure of recollection. In my judgment his further increases the improbability of the suggestion that Stephen did not agree to the transfer in 2012.

31. It is said against this by Lynn and Clive that Stephen referred to Renditt as his house, and did not refer to it as jointly owned by him and Debra. In addition, it is said if Renditt was held as joint tenants by Stephen and Debra this is inconsistent with the terms of the 2022 Will, which was drafted in terms which accord with Stephen's testamentary wishes, and which contemplated that Stephen still had rights of disposal over the whole of Renditt. I will come back to this point – it is a little doubled edged for both sides – but I conclude that nothing which occurred in relation to the 2017 Will, or 2022 Will, is such as to support the conclusion that Stephen did not agree to the transfer in 2012, some 5 or 10 years earlier. As I explain further below, I conclude it is more likely that the 2017 and 2022 Wills did not accurately reflect Stephen's testamentary

wishes, because they were drawn up by Lynn in such a way he did not fully understand, and because he did not fully understand joint tenancies. I also conclude it is more likely, even if I am wrong about that, that Stephen had forgotten some of what he had been told or may have understood in 2012. Whilst Stephen was continuing to work in 2012, by 2013 he retired/was suspended from his work at Bailbrook House Hotel due to his health. The cancer was still under control through medication though it began to cause him more difficulties as time went on.

32. By 2016/2017 Debra was again concerned to ensure that Stephen prepare a will. Her brother-in-law, Lorraine's husband, had suddenly passed away in 2016. On 12 June 2016 Debra sent an email to Lynn seeking advice about Stephen and asked Lynn to speak to him about a will. She stated she had bought a will from the Post Office and encouraged Lynn to help Stephen with a will, stating she knew Lynn had helped Joan, Lynn and Stephen's mother, with her will. She stated it was difficult because she did not want to upset him but bearing in mind his illness and what happened to her brother-in-law, she wanted him to get something in place. The medical records for Stephen indicate that by 28-29 December 2016 Stephen was not eating well, and his medical condition was worsening.

33. On 27 June 2017 Debra revisited the topic with Lynn in an email sent by her to Lynn in an email trail which also discussed Stephen's pension provisions, and what might happen to it on his death, with Lynn encouraging her to look into it to ensure the benefits were not lost. On the subject of Stephen's will Debra stated, in an email sent later in the day to Lynn "*I have a post office will in the drawer. I suppose I could ask him if he wants to use it. Also ask him if he wants to leave the money where it is & sign the form & send it back. It would be nice if he made a will & left some money for Giles & Tiegan as he hasn't any children. I would like to think he would like them to have something*". Debra's evidence was that she did indeed leave the "DIY Will" for Stephen to look through whilst she was away caring for her mother and on her return the will was still there where she left it. In a conversation she had with Stephen about it his response was to the effect that he had looked briefly at it but did not see the point in making a will as she was his wife, and she would get everything anyway when he died. Debra's evidence was that Stephen was careful about money and did not want to spend any money on solicitors. She states she remained unaware that Stephen had progressed matters in relation to any will.

34. As it happens however in December 2017 Lynn was involved in assisting Stephen to prepare a draft will. This used a standard template – it is unclear whether it was the same template from the Post Office or another template – but Lynn helped Stephen by writing out the contents in her own writing and she took a photograph of it after she had done so but before Stephen took it away for signature and witnessing. The material provisions in it were to appoint Lynn as an executor, to provide that Debra could remain living in Renditt, but that if she did not wish to remain living there then the house should go to his mother, Joan. It also refers to gifts of £2,000 to each of Teigan and Giles, the children of Lynn and Clive. The remainder of the estate was to be left equally to Debra and Joan and Lynn in equal shares, or all surviving beneficiaries in equal shares.

There is no evidence however that Stephen ever signed this will, or had it witnessed, or that the witnesses signed or subscribed it. In closing submissions both sides invited me to conclude that the likelihood was that the 2017 Will was never executed, and Lynn did not seek to propound it in alternative to the 2022 Will. This diminishes its evidential effect, so far as it being an accurate guide to Stephen's testamentary wishes.

35. Joan subsequently died on 30 June 2020. Lynn was her executor and administered her estate. As noted already above the residue of Joan's estate was left to Stephen and Lynn equally. Lynn drew up a handwritten document at some time which was not in evidence before the court, but came to be referred to at trial as "Mum's money", which set out what was due to each of Stephen and Lynn. Lynn's evidence was that even though Stephen was due to receive £58,286.50, he signed a disclaimer in relation to this on 5 November 2021. In January 2021 Lynn, Clive and Giles had moved back to the UK and were living at 38 Glebe Road, in Bath. Giles had also taken up the unit at Unit 4B, New Rock Estate. Stephen would visit the unit to help Giles at it and he enjoyed spending time with Giles and Clive at the unit. Debra did not attend the unit on these occasions: she says she was discouraged from visiting by Lynn on the basis she would not find it interesting. The suggestion seemed to be that Lynn was beginning to seek to separate Debra from Stephen. However, I think this evidence as to her perception is likely to be coloured the animosity which these proceedings have generated.

36. During 2021 and into 2022 Debra was concerned that Stephen was not fully confiding in her in relation to his health. She often sought to obtain more information from Lynn about this – this supports the conclusion that Stephen was not fully open with her in relation to his health, and also that she perceived he may have told Lynn more than he was telling Debra. In the Autumn of 2021 Debra exchanged text messages with Lynn which acknowledged that Debra was aware Stephen was not eating well when she was away at her mother's and asked Lynn to help look after Stephen whilst she was away. Lynn did so.

37. In January 2022 Stephen's diagnosis became terminal. Stephen's medical notes record, on 25 January 2022, as follows: "*Stephen discussing treatment options and that they are very limited. Stephen has not made any will yet and would like to do this at some point – signposted*." This supports the conclusion that the 2017 Will was never signed or executed by Stephen. It also supports the conclusion that the question of a will was discussed with him and that he indicated to the medical staff that he would like to do so at some point. In the context of a person who could be seen to have been keen to make a will in the past, but had just not got round to it, this note could be read in one way. For a person who had been reluctant to make a will, even to the extent of not bothering to get a will signed even though it had been prepared for him by his sister, it looks less enthusiastic. This is especially when it is noted that, even though by this time he knew he had a terminal illness, he was only stating he would like to do it "*at some point*".

38. Lynn's evidence was that in February 2022 she did indeed assist Stephen to prepare a new will. It was considered by her that the 2017 Will was no longer

of any use because it included Joan, who had died by this time. Debra initially suggested that Lynn had fabricated the draft 2022 Will which she produced, somewhat belatedly, in August 2023. Lynn subsequently provided the original of the typed document from her computer which shows it was drafted by her, on her computer, on 21 February 2022. The allegations of fabrication were therefore not pursued by Debra, in the light of this disclosure, but she maintained that the 2022 Will was never validly executed.

39. The will document which Lynn drafted, she says on the instructions of Stephen, I set out in full here, in view of the importance of this document to the dispute in this case.

"THIS IS THE LAST WILL AND TESTAMENT
of me ..... Stephen George Packer .....
..... .
of ..... Renditt, Bristol Road, Paulton, Bristol, BS39 7NX
..... .
made this ..... day of ..... .in the year of
..... .
I hereby revoke all former Wills, Codicils and other Testamentary Instruments made by me and declare this to be my last Will.
I appoint as executor(s) of my Will ..... Lynn Ann Packer
..... ••
of ..... 38 Glebe Road, Southdown, Bath BA2 1 JB

Specific Gifts

I give the sum of £2,000 to my niece Tiegan Hacon.
I give the sum of £1,000 to my nephew Giles Hacon and I leave my tools to him and my car, I hope he finds a good home for it.
I give the sum of £1,000 to my auntie Julie Kershaw of 14 Pine Walk, Uttoxeter, Staffs. I'm sorry that I couldn't do what she wanted with Graham's ashes.
I leave my house at Renditt, Bristol Road, Paulton BS39 7NX in trust so my wife can live in my house for as long as she wants. If she doesn't want to live in the house, the house should be sold and the proceeds divided in equal shares to my wife Debra Packer of Renditt, Bristol Road, Paulton, Bristol BS39 7NX and my sister Lynn Packer of 38 Glebe Road, Southdown, Bath BA2 1JB. In the event of the death of my wife, my house is to be given to my sister, or in the event of the death of my sister, the proceeds should go to my sister's beneficiaries.
l leave the remainder of my estate after payment of my debts, taxes and testamentary
expenses in equal shares to my wife Debra Packer of Renditt, Bristol Road, Paulton BS39 7NX and my sister, Lynn Packer of 38 Glebe Road, Southdown, Bath BA2 1JB.
In the event of the death of my wife, the proceeds from the remainder of my estate should be given to my sister, Lynn Packer, or in the event of her death, to my sister's beneficiaries.

Funeral Wishes
I wish my body to be cremated and my ashes buried at Haycombe Cemetry.
Signed by the Testator
.....
..... .
Full name of Testator ..... Stephen George Packer
..... .
in the presence of:
Signed ..... (Witness) Signed
..... (Witness)
Full name ..... . Full name
..... .
Address ..... . Address
..... .
Occupation .... Occupation
..... .

[Note: the formatting above does not precisely replicate the original]

40. The most material parts of the draft 2022 Will document for present purposes are they show similar small gifts for Giles and Tiegan (and one other family member (Julie Kershaw)). These are similar to the gifts which Debra had suggested Stephen might wish to make, but they also show a rather different position in relation to Renditt, and also the residue. In particular in relation to Renditt the document stated as follows:

"I leave my house at Renditt, Bristol Road, Paulton BS39 7NX in trust so my wife can live in my house for as long as she wants. If she doesn't want to live in the house, the house should be sold and the proceeds divided in equal shares to my wife Debra Packer of Renditt, Bristol Road, Paulton, Bristol BS39 7NX and my sister Lynn Packer of 38 Glebe Road, Southdown, Bath BA2 1JB. In the event of the death of my wife, my house is to be given to my sister, or in the event of the death of my sister, the proceeds should go to my sister's beneficiaries."

41. On being questioned about this Lynn confirmed that Stephen would not have understood what was meant by a trust, but she says this drafting reflected Stephen's intention that he wanted Debra to live in the house. In my judgment this does not provide a clear answer to what Stephen understood the legal position to be in relation to joint tenants, and what would happen to his share on his death. Whilst this evidence is in potential tension with the fact that Stephen had already transferred Renditt into joint names, as referred to above, I do not find it conclusive. Mr Vasilescu relies on this tension to suggest that the Renditt transfer was a fraud. That submission is not without force, when coupled with the evidence in relation to the B2-1 form, but I reject it.

42. In my judgment it is more likely that what was drafted in relation to Renditt was Lynn's interpretation of what Stephen was saying about a desire to ensure Lynn would remain at Renditt, but without knowing that Renditt had been transferred into joint names, and coloured by her own self-interest. Neither Debra nor

Stephen had told her about how Renditt was owned. This is understandable as they were quiet and introverted people, and Debra viewed this as something between husband and wife. It was common ground that Lynn had not asked her about it or checked the position at the Land Registry at this time. I also do not consider it remarkable that Renditt was referred to as "my house" by Stephen – he probably considered it his house whilst he was alive, irrespective of his knowledge that he had put Debra "onto the deeds" to give her reassurance.

43. In relation to the remainder provisions of the will, this refers to the remainder of Stephen's estate being left, after payment of my debts, taxes and testamentary expenses, in equal shares to Debra and Lynn, with further alternatives set out in the event of the death of either of them.

44. What is most controversial in relation to the 2017 Will is not that Lynn drafted it, and provided a copy of it to Stephen, but whether it was ever properly executed, signed by Stephen, and attested and signed by witnesses, in accordance with the formal requirements of section 9(1) of the 1837 Act. There are no documents which show that it was so signed and witnessed before death. Lynn is therefore forced to rely on parol (oral evidence) to seek to prove it. I shall refer to the documents and the evidence which sheds further light on this topic further below, when applying the law to the facts and analysing the facts.

45. By 8 March 2022 Stephen's condition had deteriorated further. In his medical notes of this date it is stated "*Discussed palliative care options and has no real thoughts on this at the moment, Stephen hasn't discussed findings with his wife. Does have a good relationship with his sister and brother in law*". This is a reference to Lynn and Clive, albeit their evidence was that they were not married (which has legal consequences for the validity of the Will, if it had been duly executed, as discussed further below). Lynn relies on this to show that Stephen had a good relationship with her, and in this respect the note provides support for that conclusion. I do not think however it can be concluded that because it referred to the fact that Stephen had not discussed the medical findings with Debra it followed their relationship had become cold and distant by this time, as was at times suggested by Lynn, or her counsel on her behalf. I conclude it does show Stephen remained reluctant to share all the medical details with her, and this continued to the date of his death, and he was more willing to discuss this with Lynn. That is not the same as concluding that Stephen no longer wished to be married to Debra, as Lynn and Giles sought to suggest in their evidence.

46. In Debra's texts and messages to Lynn during June 2022 Debra continued to express concern that Stephen was not opening up to her about his illness, and was putting his visits to see family over his health. She was feeling excluded by Stephen's behaviour. This was Stephen's way of dealing with his ill health. But it is not powerful evidence that Stephen had concluded he wished to move from a situation where he was content to leave his estate to the rules of intestacy, which would mean that everything would be left to Debra, to a position where he wished to leave half of the most valuable asset/s in his estate to Lynn, including Renditt, if Debra did not wish to live there.

47. Debra and Lynn both assisted in caring for Stephen as his health further deteriorated in June 2022, and into the first week of July. They were both present when he died on 5 July 2022 at his home in Renditt, and Giles was also present. Lynn and Giles both rely on the fact that they say Debra did not cry when Stephen died. Giles refers to Debra asking if it would be okay to remove his watch soon after he died, which he states he thought was disrespectful to Stephen. In my judgment, as the witnesses acknowledged, different people react to grief and mourn in different ways. Debra states she did cry and denies the accusations of a cold and emotionless response by her. Debra and Lorraine also gave evidence about odd behaviour by Lynn and Giles on 6 July 2022, the next day, when it was said they shut themselves in the room with Stephen for 20 minutes before his body was removed. I make no particular judgment on these points, and counter-points, either way. In my view the evidence given about this was coloured by the parties quick descent into bitter acrimony after Stephen died.

48. Whatsapp messages sent between Debra and Lynn on 6 July 2022 tend to suggest both recognised the other was in genuine grief and was sympathetic to the other. It is possible they were just being kind and polite to each other, but the expressions read as if they were genuine. Debra informed Lynn at about 10:41am that she had arranged for Rody Major, a funeral director, to attend to collect Stephen's body at 12 to go to the Chapel of Rest in Chilcompton. Lynn indicated in response that would be a rush, but she would try. Debra explained there was no rush as Lynn could still see him in the Chapel of Rest. Lynn and Giles came to Renditt before the body was removed. Lorraine, Debra's sister, had arrived before they did. Her evidence was that there was a wait for them, and she was questioned on the timings which she accepted might have been wrong, but nothing really turns on that. Giles describes a change in attitude of Debra towards him and his mother, and describes a strange atmosphere, and that the attitude of Debra and Lorraine was now one of pure contempt. The suggestion from Giles was that Debra had by this time found the 2022 Will, and this was what motivated the change in behaviour. He also gave evidence that on their return to the house in the afternoon that Debra and Lorraine had already begun to move items around in the house.

49. For her part Debra explained that she started to feel cast aside by the actions of Lynn and Giles from 6 July 2022. She refers to Lynn appearing to want to take over arrangements. She refers to a difference of opinion in relation to the plans for Stephen: she favoured a simple cremation and a celebration of Stephen's life, whereas, she says, Lynn wanted a family funeral. The funeral director suggested to delay making any decisions. Lorraine also described the atmosphere on 6 July 2022 as strained.

50. Debra and Lynn left the house on 7 July 2022 and Debra went to stay with her family in South Somerset. Lynn assisted with the registration of Stephen's death. Lorraine emailed her certain documents of Stephen to assist with this. Lynn left a message with Debra complaining that Stephen would not have wanted his personal documents to be viewed by Lorraine or sent by email (this is referred to in a later email from Lynn to Debra on 31 July 2022). Debra says

she began to notice a change in attitude from Lynn. Again, these perceptions are likely to be coloured by subsequent events.

51. Overall, however, I conclude that the tensions which quickly developed following Stephen's death were in large part due to the fact that neither Debra nor Lynn knew precisely what would follow. Debra had been told by Stephen he had not left a will, and she assumed she was to be in charge of making funeral arrangements. By contrast Lynn considered she had been asked to be an executor, which would explain her wishing to take control of the arrangements. However, she did not immediately tell Debra this, as she was also uncertain as to whether Stephen had made a valid will.

52. On 12 July 2022 Lynn lodged a caveat with the Probate Registry to stop a grant of representation for Stephen's estate. She had not told Debra about this. She stated Lynn was telling her at this time that Stephen had not done a will. It is evident by this date there was no trust between Lynn and Debra.

53. On 13 July 2022 Debra and Lorraine travelled back to Renditt to sort through things and gather together Debra's and Stephen's personal papers. They continued to do so until 15 July 2022. Debra gave evidence that Stephen kept his important papers in the bottom of his wardrobe, and also kept some documents, of lesser importance, in and around the sofa (under or behind the cushion, or under the sofa). He also kept some paperwork in the boot of his car, though not of the same level of importance as that kept in the bottom of the wardrobe. Debra and Lorraine explained they did not find any will during this time, but nor were they searching for one. They stated they did locate an unused copy of the DIY will kit Debra had obtained from the Post Office, which they discarded. Mr Vasilescu sought to jump on this point during cross-examination to suggest this might have been the will, though ultimately did not pursue that point in closing, and I would have rejected it if he had sought to pursue it. Debra and Lorraine stated they ordered the important documents into piles on the kitchen table and did not discard any important documents.

54. Debra and Lynn exchanged some Whatsapp messages on 15 July 2022. Debra indicated she would send an email. At 10:26 Debra sent Lynn the email, referring to her efforts to locate paperwork for probate for Stephen. Her evidence, and that of Lorraine's, was that they located the document entitled "Mum's money" in the boot of Stephen's car (they originally suggested this was found later, though I find it was found on 15 July 2022, as the email shows). In the email Debra refers to using the bank account statements and saving and "*your calculations of the paperwork entitled 'Mum's money*" and she also refers to Joan's will/probate wishes of which she refers to having copies of. She concludes the email by querying where Stephen's share of the money had gone and stating "*All I remember after asking Stephen what happened to Joan's estate. Stephen's reply to me was that "Lynn gave me some money*"". Lynn was on holiday at the time and did not immediately reply by email, but did send a Whatsapp message acknowledging receipt of it, suggesting they meet up to discuss things, asking Debra how long she was going to be away from home, and then stating "*I think it's very disrespectful to Stephen to be going through and discussing his finances before he has even had a funeral, or in this case,*

direct cremation. He's still in the cold room in Chilcompton and you are talking about his money." I infer this tone was adopted by Lynn because Debra was asking questions about Joan's estate.

55. Debra sent a further chaser email on 28 July 2022 asking further questions in relation to Joan's estate and stating "*Please could you respond by email as I'm finding my memory is quite bad at the moment*." Lynn viewed this as suspicious. There is some justification in this in that I conclude Debra wished communications to be by email because she wanted things to be in writing for reasons of clarity rather than due to any great difficulties with her memory. Equally however I conclude Lynn did not wish to commit everything to writing at this time.

56. There were also some further Whatsapp messages exchanged on 27 July 2022. In particular Debra's counsel drew attention to them as showing that Debra was still wanting to hold a celebration of Stephen's life to which family members would be invited. Giles suggested this was simply a way of Debra seeking to save face from her change of stance from what she had said before and was not genuine. It is possible that Debra might have been willing to face the prospect of an event with Lynn and Giles and other family members at the end of July, though it became clear soon after this that it was unlikely they would find it easy to be in the same room as each other such were the accusations each were making against the other.

57. Lynn eventually replied substantively to the email of 15 July by email on 31 July 2022 (having finished their family holiday by then) and made it clear she no longer wished to communicate with Debra by email, text or Whatsapp. In relation to her mother's estate she said that the "*estate was finalised between Stephen and myself so consequently this matter is not relevant or applicable to Stephen's probate application*". She concluded the email by indicating a meeting in person to discuss several items and matters. She does not refer to the fact that she had prepared a will for Stephen which she believed he had executed in the presence of witnesses. Nor does she refer to Stephen signing a disclaimer. Given that Stephen had given the impression to Debra that he had received money from his late mother's estate, but Debra could not locate it, this answer left matters unresolved.

58. On 1 August 2022 Debra sent a further email to Lynn stating "*I need your support with Stephens [sic] Grant of Probate as Stephen didn't make a Will*". She asked for a copy of the estate accounts for Joan and stated "*I'm looking for the right thing in respect to Stephen at a time when he was ill and myself for the future without him*". On 4 August 2022 at 13:08 Lynn replied by email and continued to deflect questions in relation to Joan's estate without spelling out that Stephen had disclaimed any interest. She then went on to state "*I note you state that Stephen did not write a Will, I am surprised you say this given Stephen discussed his Will with me on several occasions. I will look into this so we can make sure Stephen's wishes are upheld*." She also went on in this email to mention that Stephen had asked her to the executor of his estate. Later that evening, at 7:21pm, Debra replied and asked for further information about what Lynn had stated, asking "*So do you know if Stephen made a Do it yourself Will*

and you helped him to fill it in. Or did he go to a Solicitor to make a Will? If so do you have it and what date did Stephen make the Will? If so my Solicitor has requested that you post him a copy or maybe you can email and scan it to him. If Stephen didn't make a Will as you know he has died intestate and my Solicitor will have to apply for Letters of Administration."

59. In the meantime Debra was seeking to dispose of some of Stephen's effects and chattels. She had left a message with Giles about the sale of his car, which Giles stated came with the implication that some money was to be paid for it. He told her by text message on 4 August at 8:25pm it could not be disposed of, stating the DVLA would treat it like a stolen car transaction as "*we don't own the car*". He referred to his Mum having mentioned to him that she was arranging to meet up with Lynn and stated "*I would like to come around and have a look, as Stephen said he would like me to have his and Grandad's tools if he died*". He also went on to ask whether Debra had managed to organise a date for Stephen's ashes to be interred. Debra responded the next day, on Friday 5 August, at 6:12pm stating she had been told by DVLA it was not illegal to sell the car regardless of whether there was a will or if she had to do letters of administration. She went on to state she would gladly give Giles the tools but "*As Iam [sic] Stephens spouse and the owner of Renditt I can only dispose of the tools to you when I have seen a Will stating Stephen wanted you to have his dad's tools*".

60. In my judgment both texts display an element of hostility and positioning, reflected in the uncertainty in relation to the position in relation to the will. Debra went on to mention in the same message that Lynn had stated by email that Stephen had asked her to be an executor and asked "*Do you know if Stephen made a Will recently? Has your mum told you? Please ask your mum to email me urgently if she is aware Stephen made a Will recently and does Lynn have a copy of it?*"

61. Giles responded on the same day at 7:42pm stating, again, that any chattel could not be disposed of – both Giles and Debra seems to have been adopting inconsistent positions on this – Giles suggesting the tools could be given to him but stating the car could not. Giles stated that "*we are still investigating who the executor is*" and "*Without a clearly defined executor, any chattels that are disposed of prior is technically theft and I would not take kindly to finding out such items have been disposed of*". Giles accepted he did not know whether this was accurate, but explained he was angry at the stance taken by Debra. He went on to state "*I understand that you were Stephen's wife however until probate is finalised you are unfortunately not the owner of Renditt or any of his property*". He also stated: "*It is important that we act in the best wishes of Stephen, I would prefer to think of my auntie as a kind person who loved Stephen rather than chasing pennies from Stephen's estate*". He concluded by stating "*My Mum is currently investigating the whereabouts of Stephen's Will and will be in touch with you in due course*."

62. Again, in my judgment these text messages are strongly coloured by Lynn and Debra's earlier communications, and the absence of any certainty in relation to the will position. Giles was warning Debra she would be accused of theft if she

took any steps to dispose of any assets, and accusing Debra of chasing pennies, but he was also chasing tools.

63. On 6 August 2022 Lynn responded by email to Debra's email of 4 August stating that "*Stephen asked for my help drafting, compiling and completing his Will. It is my understanding that a copy was retained by the solicitor and stored at his home. I am in the process of making relevant enquiries*." This was the first time Lynn made clear that she considered there was a will, and that it was with a solicitor, but she accepted in evidence she did not know this was so. Neither Lynn nor Giles stated to Debra at this juncture that the 2022 Will was signed by Stephen in their presence.

64. By on or about 6 August 2022 Debra had obtained legal advice from Bailhache Law, solicitors. On this date they sent a letter to Thatcher & Hallam to check whether they had a copy of Stephen's will, stating it occurred to their client that Stephen may have completed a will with the firm at the time of the purchase of Renditt. However, that firm subsequently confirmed they had no record of a will.

65. On 9 August 2022 Bailhache Law wrote to Lynn Packer on behalf of Debra in relation to both Stephen and Joan's estate referring to the belief that Stephen had died intestate and that despite an extensive search Debra had not found a will. They invited Lynn to send to them a copy of any will or provide them with information. This letter also raised the question of whereabouts of Stephen's share of Joan's estate. Lynn responded to this letter on 15 August 2022 stating: "*I am currently investigating the whereabouts of Stephen's Will and pursuing those who may have witnessed such a document*". She also indicates she is requesting a signed affidavit from Debra detailing the steps she has taken to find the will. She also referred to Stephen having "*declined his inheritance on full*" to Joan's estate, stating "*Stephen's disclamation of his inheritance is further evident in that he did not accept any payment or gift from my late mother's estate in the time between her probate being granted and his death, a duration of over one year*." She does not, at this juncture, refer to there being any signed disclaimer, though this was subsequently produced by her in separate proceedings, in 2023.

66. These exchanges appear to have prompted Debra to return to Renditt with her sister to search again for the will on or about 23 August 2022. No will was found.

67. On 26 August 2022 Debra refers to the first of "*many threatening letters from Lynn*" which she viewed as seeking to intimate her. She states she was advised by her solicitor not to meet or speak to her in the light of this correspondence. I am not surprised by this given the contents of the letter. Some of the passages are worth recording here, which may reasonably have been interpreted by Debra as intimidating:

"I am not sure if you have been fully informed regarding the legal pathway, however, the costs of such actions can be incredibly expensive. I am fully prepared to defend Stephen's wishes and pursue this matter through the Courts

should this be the direction that you choose to take. I am unsure if you have had prior dealings with the Court system, however, such hearings are not particularly pleasant for any party and it is quite normal for the Courts to cross examine you and scrutinise all aspects of your financial situation, including any financial gifts and the reasons for such gifting that
you may have received from family members or carers' payments for your mother's care whilst living with Stephen. In addition, the Court can analyse and make judgement on all aspects of your life including situations such as the circumstances surrounding your marriage to Stephen and the care that you provided to him and the frequent and lengthy trips away from him. Criminal proceedings can be brought by the Court against anyone it deems to be lying under oath or withholding evidence.

Should you wish to pursue this matter through the legal pathways, my contentious probate legal team will seek full recovery of any legal fees, where applicable, from you. This can include fees incurred due to solicitors' letters and Court representation. Failure to pay any awarded fees may result in high court enforcement action being launched against you. The recovery of any applicable legal fees that I incur will be charged in addition to your solicitor's fees which are quoted on their website as £250 +VAT per hour (i.e., $300 per hour). As you can imagine, these fees will very quickly
erode your share of inheritance from Stephen's estate."

68. Lynn sought to defend this letter on the basis that she was simply spelling out the truth, but she also stated she had received an hour's free consultation and disavowed that she had received any detailed legal advice. She continued to write letters herself, rather than via or using lawyers. It does not appear to be entirely accurate to state she had a "*contentious probate legal team*" supporting her. This was at best an exaggeration intended to put off Debra from taking legal action, and at worst simply not true.

69. There is little to be gained by a blow-by-blow recitation of all further correspondence between the parties before proceedings were issued. But some of it is useful to note here, together with other relevant steps taken by the parties.

70. Lynn continued to make enquiries of solicitors (including Crossmans of Radstock, FDC Law of Midsomer Norton, Gould and Swayne of Glastonbury and Thatcher & Hallam in Bath) in relation to the potential whereabouts of Stephen's will, all of which drew a blank.

71. She also started to question the signatures on letters from Bailhache Law on letters to her. In a letter from Lynn dated 15 September 2022 she cited the inconsistencies in signatures from Laura Bailhache in order to justify communicating with Debra direct. She did not leave the matter there however, and lodged a complaint with the SRA on 22 September 2022 questioning the integrity and honesty of Bailhache Law. Bailhache Law, written by Edmund Bailhache (Laura's father) confirmed in a letter of 10 November 2022 that they were not willing to engage in a debate about signatures, but confirmed that all

the correspondence had been signed by an authorised person on behalf of the firm. I conclude this evidence shows, if I take a benevolent approach to a reading of this correspondence, a suspicious nature on Lynn's part – irrespective of whether or not different persons were signing off the letters from Bailhache Law it was hardly likely they were not being sent with the authority of that firm or Debra. I also conclude it is likely Lynn was also using this as an opportunity to try to drive a wedge between Debra and Bailhache Law, and try to encourage Debra to speak to her directly.

72. On 12 January 2023 Bailhache Law sent to Lynn a copy of the claim form they had issued in which Debra seeks to challenge the position in relation to Joan's estate. On 23 May 2023 there was a case management hearing before District Judge Wales (which I have already referred to above) at which it was concluded Debra could not proceed with that claim whilst the position in relation to Stephen's estate remained unresolved, after all the claim related to a claim by Stephen's estate.

73. Also in 2023 Lynn had been issued a warning in relation to the caveat (which she had extended), and entered an appearance to the warning (on 20 July 2023). This meant that Debra would need to issue proceedings, short of a consensual resolution. In the statement made by Lynn in support of her appearance to the warning, dated 18 July 2023, she stated as follows at paragraphs 6 and 7:

6. Stephen later discussed with me that he needed to update his will and in 2022 he
told his GP that he intended to do his will. (Attached and marked LAP3 extract from
Stephen's medical records).
7. Stephen asked me for help in preparing his will and I prepared the draft which he
took to be witnessed. (Attached and marked LAP4: copy of draft of updated will).

74. By a letter dated 3 August 2023 Lynn raised the question of whether the TR1 in relation to Renditt had been properly executed, having, by this time, obtained copies of the register from HM Land Registry, in the following terms:

"*Moving forward to a matter relating to my brother's estate, I am looking into the transfer in 2012 of my brother's property into joint names of Stephen Packer and Debra Packer and I am concerned that the TR1 has not been properly executed. Section 12 shows the deed being witnessed in the presence of A. C Shaw of 2 Church Square Taunton. However, the solicitor has not shown her full name or signed her signature, as per the requirements for a legal execution of a deed. Could you confirm that Anne Charlotte Shaw was practising as a solicitor in the firm of Bailhache Solicitors on 7/6/12 and if you have a copy of the TR1 which was allegedly witnessed by her? If you no longer hold records from Bailhache Solicitors, could you confirm if these records were passed to Taunton Solicitors? Further concern is raised by the anti-fraud consent notice*

which was sent to Stephen and was supposedly signed by him. The signature does not appear to be Stephen's and shows clear resemblance to Debra's writing. As I have previously mentioned, I will continue to make sure my brother, Stephen Packer's testimonial wishes are upheld, the above-mentioned land registry transfer is contrary to Stephen's wishes and I believe that your client made the application without Stephen's consent or knowledge. Copies enclosed."

75. By letter dated 11 August 2023 Bailhache Law responded as follows:

"*The 2012 transfer of Renditt was properly executed and completed at these offices, which were the offices of my previous firm, before being registered at the land registry. The signatures on all the papers are in order including the signature of Anne Shaw which is familiar to me. She was in my employment at the time. It is well established law, confirmed as recently as 2018 in the Court of Appeal, that her style of signature is perfectly valid. Any papers would have been securely destroyed by now. but you can ask my old firm about that.*"

76. Lynn did not provide further information to Bailhache Law in relation the 2022 Will until after they had sent her a letter before action on 10 August 2023.

77. On 22 August 2023 Lynn responded to the Bailhache letter before action, of 10 August 2023, enclosing the main documents which have since been relied on in these proceedings, namely a copy of the 2022 Will and the 2017 Will.

78. In relation to the former she stated:

"*…this was his final will which he proceeded to get independently witnessed*".

79. In relation to the 2017 Will she stated "*Stephen asked me to help him draft…which he took to be witnessed.*"

80. Thus, at this time, in relation to both wills, the suggestion, both in the statement of 18 July 2023, and in the letter of 22 August 2023, was the 2022 Will was taken away to be witnessed (i.e. not witnessed in the presence of Lynn or her family).

81. On 1 September 2023 the current proceedings were issued by Debra seeking an order that the court propound against the alleged will/s and for letters of administration, alleging Stephen died intestate and Debra is the only person entitled, Stephen having died without issue, and no other person entitled to share under rules of intestacy. The claim was accompanied by Particulars of Claim which refers to the copies of the 2022 and 2017 Will and states at paragraph 10 that neither of these Wills were executed in accordance with section 9 of the Wills Act 1837, and are invalid in that they were not signed by the deceased and not attested by the witnesses.

82. Lynn signed her first statement in these proceedings on 15 October 2023, on the same day she filed her Defence. She was acting in person when she did so, though the quality of drafting suggests she had considered the claim carefully. In the Defence at paragraph 10 it was denied that the Wills were not in compliance with section 9 of the Act and stated:

"*The Will produced in 2022 was agreed by the Deceased and signed by the Deceased in the presence of family members, however, the Deceased was advised by the Defendant that the document should be taken to be witnessed independently. The witnesses of this document have currently been unable to be located due to the Claimant's lack of co-operation and obstructive behaviour in providing the requested documents and information that could help in locating the witnesses of the Will*."

83. Thus the notion that there was execution by Stephen in the presence of family members emerged in October 2023. In Debra's October 2023 statement at paragraph 4 she stated as follows in relation to the 2022 Will:

"*After being prompted by his medical team in early 2022 to create/update his Will, Stephen again sought my assistance to draft his Will. I drafted this Will on my computer under full instructions from Stephen. Stephen approved the contents and signed this Will in the presence of family members, however, after research I advised Stephen that these family members could not witness his Will and that he needed to get the Will independently witnessed. I recommended that he take the Will to any local solicitor or friend/contact. During subsequent investigations, it has become apparent that most legal firms will not witness a signature unless they have prepared the document. When I later asked Stephen about the outcome, he stated that 'I've got it all done now.*"

84. By the time of trial Lynn's evidence had further evolved. In her trial statement of 11 June 2024 she stated as follows at paragraph 5:

"Stephen was asked by his medical team in early 2022 if he had done his will and his medical notes indicate that Stephen said he wanted to do his will. These medical notes were 'flagged' as a reminder to the medical team to review the topic (Exhibit ME2). No further reference is made in Stephen's medical notes to indicate that Stephen had not competed his will. Stephen asked me in February 2022 to help him prepare his will. I drafted this will on my computer under full instructions from Stephen. (Exhibit: LAP4). Stephen approved the contents, the will was printed and signed by Stephen in the presence of two family witnesses, Clive Hacon and Giles Hacon. I advised Stephen that it may be better to additionally get the will independently witnessed and I recommended that he took the will to a local solicitor or friend/contact for independent witnessing. When I later asked Stephen about the outcome, he stated that 'It's all sorted and done now."

85. The evolution was to move from the October 2023 position, that whilst Stephen had signed in the presence of family members, and that Stephen had been advised to have the will to be taken to be witnessed independently, but such

witnesses could not be located, to the position, in June 2024, that "*it may be better to additionally get the will independently witnessed and I recommended that he took the will to a local solicitor or friend/contact for independent witnessing*". Whilst not stating it expressly, this hinted that the case was moving towards the notion of a case based on the signing of the will being witnessed by Clive and Giles in the sense of signed in their presence and attested and signed by them too, as opposed to it just being signed in their presence, as had previously been suggested. It did not spell this out however and remained somewhat ambiguous.

86. Clive's trial statement, also made in June 2024, was to similar effect, stating at paragraph 12:

"*In February 2022, Stephen asked Lynn to help him prepare his will. I witnessed Stephen sign his will In the living room of 38 Glebe Rd Southdown Bath. I asked him if he was happy with the will that he had made, which is always a question that I asked my clients when they finalised documents. He said, 'Yes' and I asked if he had protected Debra financially and he said 'Yeah'. He folded up the will and put it in his pocket.*"

87. Giles' trial statement, also made in June 2024, stated as follows at paragraph 8:

"In late February 2022, Stephen visited our house so my mother could assist him in preparing his updated will. Stephen and my mother worked on his will and during this time I came and went from the room. After Stephen's will was prepared, it was printed
and my father and I witnessed Stephen sign his will. He seemed in good spirits and appeared relieved that his will was finalised."

88. I will return below to consider the evidence provided orally, under cross-examination, in relation to the events in February 2022 in relation to 2022 Will.

89. I have already referred to the order of District Judge Markland on 23 September 2024 in the context of a failed application by Lynn to seek to introduce handwriting expert evidence. In addition, at the same hearing Lynn sought to adduce additional witness statements from Giles and Clive Hacon. This application was also refused. I was not provided with these statements, or told what was in them, but the suggestion by Mr Vasilescu was that they were seeking to clarify what Giles and Clive had said about witnessing Stephen's will, and what they meant by that, and whether what they meant by it complied with the requirements of section 9 of the Wills Act 1837. This was approaching the matter somewhat back to front, in that evidence is to be adduced to support the statement of case, rather than leading evidence in support of what may become a pleaded case. I will consider this aspect of the case further below when considering Issue 1A below.

The law

90. Section 9 of the Wills Act 1837 (headed "signing and attestation of wills) states:

"(1) No will shall be valid unless –
a. It is in writing, and signed by the testator, or by some other in his presence and by his direction; and
b. It appears that the testator intended by his signature to give effect to the will; and
c. The signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
d. Each witness either –
i. Attests and signs the will; or

ii. Acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness)."

91. Section 15, concerning gifts to an attesting witness being void in certain circumstances, states:

"if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will."

92. It is sometimes said there is a presumption in favour of due execution of a will. Theobald on Wills (19th Edn, 2021), states at para 3-033:

"*The presumption that everything was properly done (omnia rite et solemniter esse*
acta), arises whenever a will, regular on the face of it and apparently duly executed,
is before the court, and amounts to an inference, in the absence of evidence to the
contrary, that the requirements of the statute have been duly complied with."

93. Mr Vasilescu submitted that the presumption of due execution arises in this case, even where the 2022 Will cannot be found. The authority he cited in support of this was a recent decision of HHJ Klein in *Cooper & Cooper v Chapman & Others* [2022] EWHC 1000 (Ch). However, that case principally concerned a different presumption, the presumption of revocation (which I will consider further below), not the presumption of due execution.

94. So far as the presumption of due execution is concerned the authors of Theobald on Wills go on to state at 3-038, under the heading "*No presumption where the will cannot be foun*d" that (footnote references omitted):

"In principle, where a will cannot be found, it may still be admitted to probate if
its terms and execution can be satisfactorily proved. However, for these purposes,
clear proof of the terms and execution will be required (albeit still on the balance
of the probabilities)."

95. This passage suggests that where a will cannot be found the presumption of due execution does not apply. The authors refer to the case of *Ferneley v Napier*, which I have already referred to in paragraph 10 above. In *Ferneley v Napier* the court rejected there being sufficient evidence of a later will. In *Ferneley v Napier* Mann J also refers, at [94], to the earlier decision of the Court of Appeal in *Harris v Knight* [1890] 15PD 170. The majority judgments in that case, which concerned a will which could not be produced by the time of the litigation (and after the death of the widow), but had been produced at the funeral of the deceased, contains some further discussion of the presumption, Lindley LJ described it as reflecting an inference which may be reasonably drawn when an intention to do some formal act is established, when the evidence is consistent with that intention having been carried into effect in a proper way, but when the actual observance of all due formalities can only be inferred as a matter of probability (see at 179). Lopes LJ, who agreed with Lindley LJ, identified the issue as whether the trial judge was right to presume that the testator had signed the alleged will in the simultaneous presence of two attesting witnesses (see at 182, 183-184). He concluded the presumption applied with more or less force according to the circumstances of each case.

96. Seeking to distil the principles to be derived from this commentary and these cases it seems to me that:

a. it is putting it too high to say that the presumption of due execution can never apply when a will cannot be found, as might be taken from the heading in Theobald on Wills to 3-038, and the text at 3-038, as is demonstrated by the case of *Harris v Knight*;
b. the passage in Theobald on Wills might be interpreted as applying to the situation where a will cannot be found at the date of death (in *Harris v Knight* the will was found at the death, but could not be found later after the death of the widow), but even this may be putting it too high;
c. there may be features of a case which show an intention to do some formal act, coupled with evidence which is consistent with a tension to have carried that into effect, but which falls short of producing the actual will, which may still support the application of the presumption;
d. but in order for the presumption or inference to have any force it will be necessary to show an intention to do some formal act and the evidence

adduced must be consistent with an intention to have carried that into effect.

97. I should add that there are some exceptions to the need to prove due execution, but they are limited statutory exceptions (relating to soldiers in military service, mariners at sea). These exceptionally provide that oral or nuncupative wills may be valid, but only where those exceptions apply to that privileged category. Those exceptions do not apply here.

98. In short, due execution in accordance with section 9 needs to be proved, with or without any favourable presumption. The usual way to prove section 9 compliance, where it is a controversial issue, is to call one or more of the attesting witnesses.

99. I turn now to the second presumption referred to by counsel in this case, namely the presumption of revocation. Where a will has been duly executed but as at the date of death cannot be found, there is sometimes a presumption in favour of revocation. In particular this presumption may apply where the will was in testator's possession but is missing at his death. This is discussed by the authors of Theobald on Wills at 7-058 as follows (footnote references omitted):

"Thirdly, where a will, or codicil, is last traced into the testator's possession and is not forthcoming at his death after all reasonable search and inquiry, the presumption arises that he has destroyed it with the intention of revocation (animo revocandi). The burden of proving, in these circumstances, that the will was not destroyed animo revocandi is upon the party propounding its contents.

As Parke B said in Welch v Phillips:
"The presumption is founded on good sense; for it is highly reasonable to suppose that an instrument of so much importance would be carefully preserved by a person of ordinary caution in some place of safety, and would not be lost or stolen; and if, on the death of the maker, it is not found in his usual repositories, or else where he resides, it is in a high degree probable that the deceased himself has purposely destroyed it."

Direct evidence of the destruction of the will is therefore not essential; the court may act on a properly drawn inference.

Before any presumption arises, the court must be satisfied that the will is not still in the testator's repositories, or elsewhere.

In most cases the repositories of the deceased are duly searched by those whose good faith is not impugned.

However, where the repositories of the deceased were clearly accessible to and were proved to have been investigated first by the only person interested in destroying the will the court has refused to presume that the missing will was destroyed by the testator unless satisfied that it was not in existence at his death.

These decisions, however, are in substance based on an inference or suspicion of fraudulent abstraction, and it has been rightly held that it cannot be presumed that the destruction has taken place without his knowledge or authority, for that would be to presume a crime. It is submitted, therefore, that they are incorrect. Of course, fraudulent suppression of a will can be proved on the evidence."

100. In *Broadway v Fernandes* [2007] EWHC 684 (Ch) Robert Miles QC, then sitting as a Deputy Judge of the High Court, was faced with the situation where a 1991 will had been proved but the question arose whether it had been revoked by a later will. He concluded no later will was made. His observations in relation to the application of presumption of revocation were therefore not essential to the decision he made (see first sentence at [103]), and I had some initial reservations as to their utility. Nevertheless they have been drawn to my attention as an example of where the presumption of revocation was applied (albeit obiter) even where the first person who conducted the search was a person who may stand to gain from no will being found. The judge approved at [10] a summary of the presumption of revocation at [9] as follows:

"*Fourth, where a will was last traced to the possession of the testator and is not forthcoming at his death, there is a prima facie presumption, in the absence of circumstances tending to a contrary conclusion, that the testator destroyed it with the intention of revoking it. The presumption may be rebutted by evidence, but the evidence must be clear and satisfactory: Williams, paras 18.28–18.29*."

101. At [103], having found there was no later 2003 will and no revocation of the 1991 will, he added, if he had concluded there was a new will in 2003, it would not have affected the result. He stated as follows in the last two sentences:

"Since the later will has not been found, and there is no contrary evidence to explain what became of it, it is to be presumed that that the testator destroyed it with the intention of revoking it before his death. So any specific gift under the alleged later will would have failed and the estate would have fallen into residue."

102. The feature Mr Murrell seeks to draw from this is that the fact that the initial search was by the beneficiary of the earlier will did not automatically displace the application of the presumption of revocation, even, where, in that case, there was an allegation of deliberate destruction (which was rejected).

103. It is a fair point that on this reasoning the presumption of revocation was found to apply irrespective of the fact that the person who first searched for the will was a beneficiary who stands to gain from no will being found. This supports the conclusions reached by the authors of Theobald on Wills at 7-058 in the passage I have quoted at the end of paragraph 99 above, that it is a fact specific question whether the court will conclude that a search by an interested person displaces any presumption, and the conclusions in the other cases are influenced by inferences of deliberate or fraudulent abstraction and destruction.

104. In Theobald on Wills the authors discussed the rebuttal of the presumption at 7-059 in the following terms (footnote references omitted):

"The strength of the presumption as to the revocation of a missing will traced into the testator's possession varies according to the character of the custody that the deceased had over the will. It is a presumption that may always be rebutted by adducing evidence which raises a higher probability to the contrary. It may be shown that the testator had no opportunity or was incapable of destroying the will, or may establish a combination of circumstances leading to the conclusion that the testator did not himself destroy the will. It may be shown that the will was in existence after the testator's death that he destroyed it while of unsound mind or in error or under duress; or that it was destroyed in his lifetime by some person without his approbation or consent.

The older cases lay down that the evidence in rebuttal must reasonably produce moral conviction. But in recent cases the court has repeatedly held the presumption to be rebutted on a balance of probabilities and has leaned towards testacy. Indeed, it seldom happens that cases, which set out upon legal presumptions, require to be decided on the mere presumptions. The general circumstances of the case usually lead to a tolerably satisfactory conclusion of the real facts, either confirming or repelling the presumption. The presumptions are to be treated as indications of inferences to be drawn and not as rigid rules."

105. Mr Vasilescu sought to emphasise this recent trend by reference to the decision in *Cooper & Cooper v Chapman and others* [2022] EWHC 1000 (Ch) (already mentioned by me in paragraph 93 above). He relied on it both as a case where the presumption was rebutted and because of what he said where the factual similarities to this case: the draft will found on the Deceased's computer after his death could be admitted to probate as his last will in circumstances where the executed will could not be located, and the fact that it could not be located did not mean that it should be presumed to have been revoked by the Deceased. In my judgment this case amply shows a will may be proved without producing the original, but I do not find the facts of that case to help to show why any presumption of revocation should be found to be displaced in this case, if it applies.

106. My attention was also drawn to the decision of Master March in *Treacy v Jones* [2023] EWHC 2242 (Ch) at [17] and following which contains a useful discussion of the commentary and case law. He questions in it whether the days of the *Welch v Phillips* presumption are numbered, but notes that the strength of otherwise of the presumption depends on the nature or character or custody the testator had over the will, and he went on to apply the principles, and found that any weak presumption was rebutted on the facts.

107. In my judgment where the competition is between a will being executed and (i) destroyed during lifetime because the testator wanted to revoke it, or (ii) remaining, but lost/cannot be found, or (iii) found and destroyed by a person who has an interest in its destruction, then the court may be willing to start with (i), on the basis of a presumption of revocation. But how strong that presumption

is will vary from case to case, and its main utility is encouraging the court to consider what is most likely on the facts of each case. It will be a rare case where, for example, the competition is between scenario (i) and (ii), where the case will turn solely on the presumption. Case law and commentary suggest a key factor in assessing its strength, or the application of an inference in favour of revocation applies, depends on the character of custody the testator had over the will. This will inevitably be a fact sensitive enquiry.

Application and analysis

Issue 1: Was a draft will created by Lynn on the instruction of Stephen in the form of the 2022 Will which she seeks to propound?

108. I accept the evidence of Lynn that she created a will for Stephen on her computer on 21 February 2022. There is a slightly different question, however, as to whether she did this on the instruction of Stephen, which is the question posed by issue 1. I have no doubt he was involved in discussing his testamentary wishes with Lynn and she typed up what might be one interpretation of them, and that this happened on 21 February 2022. I conclude that the document Lynn has produced is more likely than not to be what she interpreted to be his instructions and in her presence he would have likely have affirmed that these were in accordance with his testamentary wishes. I feel less confident in concluding that what she typed was necessarily precisely in accordance with his instructions or intentions. Civil law does not require certainty, however, and I conclude that the draft will was created by Lynn on the instruction of Stephen in the form of the 2022 Will which she seeks to propound, and so issue 1 is answered in the affirmative.

109. Issues 1 and 2 were also treated by counsel as including, before me, a further question of how Lynn's Amended Defence should be interpreted. In particular, the issue is whether or not the Amended Defence should be interpreted as (i) solely advancing the case that the 2022 Will was alleged to have been taken for witnessing, attestation and signature by independent witnesses, or (ii) whether it is to be interpreted as advancing case that it was witnessed, attested and signed by family members. I will call this issue below as Issue 1A as it logically falls for consideration after issue 1 and before issue 2.

Issue 1A: interpretation of the Defence

110. As noted in paragraph 82 above, in the Defence at paragraph 10 it was denied that the Wills were not in compliance with section 9 of the Act and stated (underlining emphasis added by me):

"*The Will produced in 2022 was agreed by the Deceased and signed by the Deceased in the presence of family members, however, the Deceased was advised by the Defendant that the document should be taken to be witnessed independently. The witnesses of this document have currently been unable to be located due to the Claimant's lack of co-operation and obstructive behaviour in*

providing the requested documents and information that could help in locating the witnesses of the Will."

111. In my judgment this paragraph and the underlined words show that a case of attestation and signature by the family members referred to is not being advanced, and instead the case being advanced is one based on attestation and signature by independent witnesses. In short the requirement of section 9(1)(d) is being met by independent witnesses not family members. My conclusion in this respect is fortified by consideration of paragraph 6 of the Defence, which states, after denying paragraphs 5 and 6 of the Particulars of Claim (which put in issue attestation and signature by witnesses) (underlining emphasis added by me):

"*The Claimant states she has contacted local solicitors and conducted a Will search; however, it is unlikely that the Will would be found in any such searches if the Will was not prepared by a solicitor. The Defendant has requested information on multiple occasions in locating the witnesses of the Will but the Claimant has been obstructive and uncooperative and has not provided any information as requested.*"

112. It is also reasonable to interpret the Defence in the context of what was said in Debra's statement served at the same time. As noted in paragraph 83 above, in paragraph 4 of that statement she stated (underlining emphasis added by me):

"*Stephen approved the contents and signed this Will in the presence of family members, however, after research I advised Stephen that these family members could not witness his Will and that he needed to get the Will independently witnessed. I recommended that he take the Will to any local solicitor or friend/contact...*"

113. A reasonable reader might also place some reliance on what was said by Lynn earlier in 2023, including in her letter of 22 August 2023 which enclosed the copy of the 2022 Will which she seeks to propound and in which she stated (as I have noted in paragraphs 77-79 above) (underlining emphasis added by me) "*Stephen asked me to help him draft…which he took to be witnessed.*"

114. In my judgment therefore the case being advanced in the Defence (and the Amended Defence, which did not amend paragraphs 10 or 6) is that the 2022 Will was alleged to have been taken for witnessing, attestation and signature by independent witnesses. It cannot reasonably be interpreted as also including an additional case that that it was also witnessed, attested and signed by family members.

115. Mr Vasilescu acknowledged in his oral closing submissions that this was a reasonable interpretation to be placed on the Defence but contended that I should bear in mind the pleading was drafted by Lynn as a litigant in person and should be interpreted benevolently with that in mind. There are four difficulties with this submission.

116. The first is that there is no reason why the court should adopt a different approach to interpretation of a document simply because one side is a litigant in person. I remind myself that litigants in person are not to be awarded a special status in civil court proceedings. Whilst the courts may justify making allowances in making case management decisions and conducting hearings, it will not usually justify a lower standard of compliance with rules or orders of the court; see *Barton v Wright Hassall LLP* [2018] UKSC 12 at [18]. This applies with even greater force, in my judgment, with questions of interpretation. The fact that a pleader is a litigant in person might be relevant to the court's determination of what they meant by the statement of case, and whether they made a mistake. It may also be relevant to assessing whether the case can fairly be disposed by treating the litigant in person as advancing a different case, if it becomes apparent that the alternative case is their true case and no prejudice arises to the other side from treating the case as being advanced differently from what would ordinarily to be expected (i.e. in effect by way of an informal amendment).

117. Secondly, Lynn has had the benefit of legal representation and assistance at different hearings in advance of trial, and at trial. It is not therefore a case where she has not had the benefit of considering the issue in advance of trial without the benefit of legal advice and assistance from a solicitor or barrister.

118. Thirdly, Mr Vasilescu confirmed that consideration had been given to the question of whether or not an application to amend should be made on behalf of Lynn, in advance of trial, but it was concluded this would likely be faced with difficulties, given it was an application which was being made very late and would be opposed. That being so, it is apparent that it was identified before trial, with the benefit of legal advice and assistance, that the Defence would unlikely be interpreted as advancing a case that the 2022 Will was witnessed by family members, and this was the principal basis on which section 9(1)(d) validity would be proved, and a deliberate and informed decision was made not to apply to amend. Lynn knowingly took the risk this point might be determined against her, but chose to proceed and call evidence which would seek to develop the evidential case before pleading or advancing any amendment.

119. Fourthly, I repeat what I have said above in relation to the order of District Judge Markland in paragraph 89 above. It is a reasonable conclusion to draw that if Lynn wished to be able to develop a case based on family members giving evidence to show compliance with section 9(1)(d) they should have appealed this order.

120. In these circumstances the fact that Lynn has been acting as a litigant in person does not provide any justification for the course taken. Mr Vasilescu did not make any formal application to amend before me. At one stage in his submissions he suggested an application to amend would be made if the court gave an indication that one should be made. However, there is no obligation on the court to encourage a party to make an application to amend, and Mr Vasilescu did not invite me to rule on the interpretation of the pleading at the start of the trial, or in closing, in order that he could take instructions on whether he should make an application to amend. I made it clear in opening and in

closing that I was dealing with the statements of case as they stood, and no-one suggested to me that they had any application to amend.

121. In conclusion, therefore, the evidence Lynn adduced at trial to support the validity of the 2022 Will, based on it being witnessed by family members, was not the case she advanced in her Defence. She could not introduce this at trial without seeking an amendment to the Defence. In closing submissions, Mr Vasilescu confirmed that no argument was being pursued that the 2022 Will was rendered valid due to being witnessed by independent witnesses. Both counsel acknowledged this was unlikely, bearing in mind that Stephen was averse to instructing solicitors and had no friends outside his family. It is most likely that after he left 38 Glebe Road on 21 February 2022 he never had the 2022 Will witnessed by independent persons, similar to the 2017 Will.

122. The above conclusions are sufficient to dispose of the case, but in case I am wrong, and it may be said that I should have encouraged, and granted, an application to amend on the basis that Clive and Giles witnessed Stephen signing the 2022 Will, and attested and signed it, I shall go on and consider that unpleaded case. In doing so I should not be taken as accepting that if such application had been made it would have been granted; indeed there is every indication it would have been opposed, and on substantial grounds (including the question of whether further investigation might have taken place in relation to that new case in advance of trial). That takes me to issue 2.

Issue 2: If so, was the 2022 Will executed in accordance with section 9 of the Wills Act 1837?

123. As noted in paragraph 121 above, it was not submitted in closing that the 2022 Will was executed in accordance with section 9 because an inference should be drawn that it is more likely than not that it was signed or the signature of Stephen was acknowledged in the presence of independent witnesses, and so this issue falls to be determined on the assumption that the case is based on witnessing by family members, and attestation and signature by those family members.

124. As noted in paragraph 86 above, Clive's trial statement states at paragraph 12 that "*I witnessed Stephen sign his will*". He goes on to state "*I asked him if he was happy with the will that he had made, which is always a question that I asked my clients when they finalised documents. He said, 'Yes' and I asked if he had protected Debra financially and he said 'Yeah'. He folded up the will and put it in his pocket.*" His oral evidence was that by witnessing what he meant was not just that he witnessed Stephen's signature, but that he also signed his name on the document and put his address. Similarly, whilst Giles' trial statement does not expressly say so, his evidence was that he not only witnessed Stephen's signature, but also put his signature and address on the document. Mr Vasilescu submitted this was sufficient: the attesting witnesses had both been called and gave evidence to show due execution of the 2022 Will. Lynn also gave evidence that they not only witnessed Stephen's signature but also signed

it themselves in his presence, and before he left. It might be said they cannot all be wrong.

125. In my judgment there are significant weaknesses in this evidence, no matter how strong it may appear to be at first sight, and shorn of the context in which it was given.

126. The first difficulty with it is the evolution of the case. Before trial it can be fairly stated that Lynn's position had evolved from (i) an initial indication in August 2022 that there was a will which was with solicitors, and believed to be witnessed by independent witnesses who needed to be located to (ii) the position adopted a year later, in July/August 2023, where information was provided to show that Lynn assisted in the creation of the 2022 Will, but still maintaining the position its validity was based on it being taken to be independently witnessed by unknown persons, to (iii) the position after proceedings were issued, in October 2023, after the absence of evidence of attestation and signature by witnesses had been put in issue by the Particulars of Claim of Debra, where it was suggested the Will was signed in the presence of family members, but witnessed by independent witnesses, to (iv) the position in June 2024, suggesting that the evidence was that the Will was "additionally" witnessed by independent witnesses, but without spelling out clearly whether or not the family members, Clive and Giles, had also in fact attested and signed the Will. The position at trial therefore represented the fifth iteration of the case, and earlier iterations were inconsistent with it.

127. It is possible that Lynn deliberately did not wish to advance this case because she believed the Will had to be witnessed by non-family members to be valid and so there was no utility in mentioning this case earlier. This is accurate to some degree in this case, because section 15 of 1837 Act renders invalid the gift to Giles. It might also have rendered invalid any benefit to Lynn if Clive had been her husband. This is how Stephen is recorded as describing him in the medical notes, though the evidence at trial from Clive was that they were not married. It is possible if the case had been advanced more openly before trial this is also an issue Debra might have wanted to explore further (and I was not addressed on the issue of whether "wife" or "husband" for section 15 purposes might be interpreted as a common law husband or wife).

128. But even if one overlooks the five iterations of the case, or accepts that they can be explained on the basis that Lynn considered, on the basis of research she carried out, that the witnessing and signatures by Clive and Giles were insufficient, and continued to do so (and hence this is the reason why this fact was not advanced before), there are three other difficulties with this case.

129. The first is that it strikes me as incongruous that Lynn, as a careful person, would get Stephen to sign the 2022 Will, and have Clive and Giles witness it and sign it, an only then research whether or not a family member could do so. She sent Stephen away with the 2017 Will for it be witnessed by independent witnesses. So why was she taking a different course in 2022? And why do this research after Stephen had signed it? I find this improbable.

130. Secondly, neither Clive nor Giles referred to this advice from Lynn to Stephen to go off to get the 2022 witnessed independently. It sits at odds with their evidence that they were the witnesses and attested and signed the will. Neither of their witness statements referred to the fact that Lynn had given this advice to Stephen. Clive could not recall this advice being given in his presence.

131. The third point relates to Clive's evidence as to what he would usually advise clients. In his oral evidence, under cross examination, he stated that he did with Stephen what he would normally do with his clients before they sign documents – ask them if they were happy with the document. However his witness statement, which I have already referred to at paragraph 86 above, suggested this conversation took place after Clive had witnessed Stephen sign his will. In my judgment the version of events Clive gave in his oral evidence is not consistent with what he said in his witness statement, but it is what he said in his oral evidence which seems more plausible. After all, what is the point in asking a client or a person if they are happy with something after they have signed it? The question is logically one which is asked before execution.

132. Taking all these points together I am not satisfied that Lynn has shown that the 2022 Will was validly executed, even if she is to be treated as having advanced a case based on it being witnessed and attested and signed by Clive and Giles. It seems more likely to me that Stephen was encouraged to take the 2022 Will to be witnessed independently, without any signature being placed on the 2022 Will, or any signature by Clive and Giles. I also reject any presumption in favour of due execution. Stephen did not demonstrate any settled intention to formalise his testamentary wishes, and the evidence does not consistently show he would likely have followed through on getting the 2022 Will executed in accordance with the requisite formalities. The oral evidence of Lynn, Clive and Giles is not reliable when stating the contrary.

133. All that said whilst I reject this evidence, on the balance of probabilities, even though it not strictly necessary to do so on my findings, I shall also go on to consider the third issue.

Issue 3: If so, where only a draft of the 2022 Will has been produced following Stephen's death, is the presumption of revocation, in favour of an intention to destroy the 2022 Will, to be rebutted?

134. Assuming, contrary to my conclusion on issue 2, there was due execution including in relation to section 9(1)(d) compliance, does the presumption of revocation apply, and if so how strong is it and was it rebutted on the evidence? Or putting it another way, independently of any presumption, what is more likely: that Stephen took away the 2022 Will but decided not to keep it, and destroyed it/disposed of it, or that it has become lost and cannot be found? The third possibility of it being found and deliberately destroyed by Debra is a case that Lynn appeared to be pursuing at one time, though it is an allegation in the nature of fraud or wilful default, and it was not pleaded in her Defence (other than perhaps by vague implication in paragraph 13). In any event Mr Vasilescu did not pursue the submission of deliberate destruction by Debra in closing. He

rested Lynn's case, in closing, on the most likely occurrence being that the 2022 Will was lost, having regard to the evidence given about Stephen's custody of the will and the searches conducted for it, such that I should find that the presumption of revocation was rebutted.

135. The unusual feature of this case, when one comes to the question of presumption of revocation (or inherent probabilities, if no presumption is applicable), is that Lynn's evidence was that she advised Stephen he should go and get the 2022 Will witnessed i.e. that any signing and witnessing carried out so far did not render it valid. Stephen would therefore have left 38 Glebe Road believing he did not have a valid document: he would have left believing that for the will to be valid he needed to get it independently witnessed. In other words, the scenario is in substance the same as the 2017 Will, even though in this instance the assumption is being made Stephen had signed the 2022 Will, and the 2022 Will had been witnessed by family members.

136. Lynn's written evidence was that Stephen had later told him, on her enquiring, it was all sorted and done now, however in her oral evidence she realistically accepted she did not know whether this was correct.

137. Given what happened in relation to the 2017 Will, and given Stephen's reluctance to engage with making a will, or seeking out a solicitor to assist him doing so, it is more likely than not that he did not sort the matter out (whether or not he told Lynn he did). He had custody of the 2022 Will believing it was not valid. On these unusual facts in my judgment it is most likely that the 2022 Will was destroyed by him, not because it reflected any substantial change of heart, but because it was an act he was reluctant to perform, or follow through, and he had been told he had yet to complete in a valid manner. This evidence travels in the same direction, and supports the presumption of revocation.

138. Set against it, as another alternative, is that the 2022 Will was simply lost. The most likely location for the 2022 Will was at Renditt, and in particular in the bottom of the wardrobe in Stephen's bedroom (see paragraph 53 above). This was checked but it was not located there. Other parts of the house were also searched by Debra and Lorraine both before they were searching for the 2022 Will and after they became aware of the suggestion there was a will, including on or around the sofa (where some less important documents were kept by Stephen) and in the boot of his car (see paragraphs 53-54, and 66). The 2022 Will was not located; all that was located was the incomplete DIY will precedent. This was not the 2022 Will which had been prepared by Lynn. Other searches did not result in the 2022 Will being found, and it is also unlikely they would have resulted in it being lost (see paragraph 18 above).

139. The other factor to bear in mind is that Stephen likely knew he had not received any money from his mother's estate (he may have indicated to Debra something had been received, but he must have known no money had hit his account). I conclude his quiet way of dealing with the matter was to leave Joan's money with Lynn (whether or not he formalised this by way of a disclaimer, he clearly did not pursue Lynn for payment of his share during his life), and leave his estate to the rules of intestacy, which would mean that it would go to Debra.

He knew Debra had already encouraged him to sign a will, and it is likely she had mentioned to him the idea of him leaving something to Giles and Tiegan, so he would not have been particularly concerned to have, or retain, an invalid will recording what, as he then assessed it, would likely transpire anyway.

140. This may be said to leave unresolved the tension in relation to Renditt, between what was said in the 2022 Will and the TR1. However if it is concluded, as I have found (see paragraph 31 above), that Stephen probably did not fully understand the implications of the transfer into joint names, or if he did, he had forgotten them, then this becomes a less significant issue.

141. Bearing in mind all these factors I conclude that the presumption of revocation is not revoked in this case. On the unusual facts of this case the evidence reinforces the presumption. Even if there was no presumption I would have reached the same conclusion on the balance of probabilities.

Conclusion

142. The 2022 Will case as set out in the Defence of Lynn was not pursued in closing, it being realistically accepted Stephen would not have got the 2022 Will independently witnessed. The oral evidence adduced at trial as regards attestation by Clive and Giles was to support a case which was not pleaded, and no application was made to amend to bring the two in line. That is enough to dispose of Lynn's case. However, even if an application to amend had been made, and granted, I would have concluded there was insufficiently clear or cogent evidence to support the conclusion that the 2022 Will was executed in accordance with section 9 of the Wills Act 1837. Even if I was wrong about that too, I conclude it is more likely than not that Stephen disposed of the 2022 Will believing it was invalid on the basis of what Lynn had told him. The presumption of revocation therefore applies, on the usual facts of this case, or, to put it another way, the evidence supports the conclusion that destruction is more likely than loss. Stephen wished to die intestate and did so. That does not mean he would not also have wished Debra to consider making gifts to certain of his family members: she is likely to have told him that she thought he would want to. Whether she does so now, in the light of the litigation which has ensued, is a matter for her.

143. In the circumstances I pronounce against the validity of the 2022 Will and will grant to Debra letters of administration of the estate of Stephen. I invite counsel to try to reach agreement on a form order. I will hear submissions on the form of order, and any other submissions on controversial matters, at a hearing to determine the order and matters consequential on this judgment.