

THE HIGH COURT

CIRCUIT APPEALS

[2023] IEHC 259

Record No. 2022/257 CA

BETWEEN

KIERAN EGAN AND MICHAEL EGAN JUNIOR

PLAINTIFFS

AND

HELEN EGAN AND ALAN EGAN

DEFENDANTS

JUDGMENT OF Mr. Justice Twomey delivered on the 16th day of May, 2023

INTRODUCTION

1. This is an appeal against a decision of the Circuit Court (Fergus J.) regarding an unfortunate dispute between a son, on the one hand, and his siblings and his mother, on the other hand, regarding the ownership of a 36-acre family farm in Shannonbridge, County Offaly (the “Farm”).

2. The key question for resolution is whether the second eldest son, Mr. Michael Egan Jnr, or the youngest son, Mr. Alan Egan, is the owner of the Farm, which was purportedly bequeathed to Mr. Alan Egan by their father Mr. Michael Egan Snr under the terms of his will.

3. The dispute has arisen because, a matter of weeks after his father’s death, Mr. Michael Egan Jnr claims that he discovered for the first time, that he was in fact the owner of the Farm and that his father only had a life interest in the Farm. On this basis, he claims that the Farm

belonged to him and so his father was not legally entitled to bequeath the Farm to his youngest brother, Alan.

4. In dealing with this dispute, this judgment considers an issue that does not appear to have been considered by the Irish courts to date, namely whether it is permissible, as a matter of law, for a beneficiary to disclaim an interest in an estate *in favour of* another party or whether this is impermissible, as it amounts to an attempt to re-write the will of the testator.

BACKGROUND

5. Under the terms of a will dated 25th September, 1975, Mr. Thomas Egan bequeathed the Farm to his nephew Mr. Michael Egan Snr for his life, with remainder to Mr. Michael Egan Snr's two oldest sons, Mr. Michael Egan Jnr and Mr. Kieran Egan.

6. Mr. Thomas Egan died on 13th December, 1984. Insofar as relevant, Mr. Thomas Egan's will states:

“I give the money I have in Post Office savings certificates to the said Michael Egan in trust for his children to be divided equally between them as they respectively attain the age of 21 years.

All the rest residue and remainder of my property of every kind and description I give devise and bequeath to the said Michael Egan for life with remainder to his sons Michael and Kieran jointly as tenants in common in equal shares absolutely.”

(Emphasis added)

7. Mr. Michael Egan Snr was also appointed as Mr. Thomas Egan's sole executor and trustee.

8. When Mr. Thomas Egan made his will, Mr. Michael Egan Snr had only three children. He went on to have nine more children with his wife, Mrs. Helen Egan. As already noted, their youngest child is Mr. Alan Egan.

9. Mr. Michael Egan Snr died on 22nd January, 2015 and under the terms of his will dated 4th February, 2014, he stated, insofar as relevant, that:

“I GIVE DEVISE AND BEQUEATH my lands at Garrymore, Shannonbridge, Co. Offaly [the Farm] comprising of approximately 35/36 acres to my son Alan Egan for his own use and benefit absolutely.”

Under the terms of his will, Mr. Michael Egan Snr appointed Mrs. Helen Egan and Mr. Alan Egan as his executors.

Transfer of freehold by a person with only a life interest?

10. On the face of it, the foregoing narrative appears to contain one fatal flaw, namely that Mr. Michael Egan Snr only had a life interest in the Farm. Accordingly, he could not, it seems, bequeath the freehold in the Farm to his youngest son Mr. Alan Egan, since his two eldest sons Mr. Michael Egan Jnr and Mr. Kieran Egan were the owners of that freehold.

11. In this regard, it is relevant to note that Mr. Michael Egan Jnr, who is now 53, gave evidence that it was only in March 2015, when he was 45 years old, and a few weeks after the death of Mr. Michael Egan Snr, that he became aware for the first time that he was in fact entitled to a 50% share of the freehold in the Farm under his grand-uncle’s will. Mr. Michael Egan Jnr was only 14 in 1984, when Mr. Thomas Egan died and when (or some time thereafter) he might have been expected to have been made aware, by the executor of his grand uncle’s will (his father), of his inheritance.

The release of Mr. Michael Egan Jnr’s freehold interest in the Farm?

12. The reason for the apparent inconsistency in the foregoing narrative, and indeed the cause of this litigation, is the existence of a one sentence document (the “Release”), which was apparently signed by Mr. Michael Egan Jnr at some stage in 1990, when he was 19 or 20 (his birth date is 30th January, 1970). Although the year ‘1990’ appears on the document, this Release is not dated, nor is it witnessed. The Release in full reads as follows:

“Thomas Egan Deceased

I, MICHAEL EGAN of Curnavarna, Banagher, County Offaly hereby **release my claim to a remainder share in the residue of the estate of the above deceased, in favour** of my father Michael Egan.

Dated the day of **1990**

Signed.....

MCIHAEL (sic) EGAN” (Emphasis added)

13. An identical document was also apparently signed by Mr. Kieran Egan regarding the other half share in the Farm.

14. Based, it seems, on this document, and in his capacity as executor of Mr. Thomas Egan’s will, Mr. Michael Egan Snr signed an Assent dated the 18th December, 2006 to his registration as full owner of the Farm, some 16 years after the Release had been executed. On 2nd February, 2007, Mr. Michael Egan Snr was duly registered in the Land Registry as the full owner of the Farm and, on this basis, he bequeathed the Farm to Mr. Alan Egan under his will dated 4th February, 2014.

15. Just under two years after the death of their father (on 22nd January, 2015), Mr. Michael Egan Jnr and Mr. Kieran Egan issued proceedings on 21st December, 2016 against their mother

(Mrs. Helen Egan) and youngest brother (Mr. Alan Egan), in their representative capacity as executors of Mr. Michael Egan Snr's will (the "Executors"). Mr. Kieran Egan discontinued the proceedings on 8th August, 2019.

16. Mr. Michael Egan Jnr has continued with the proceedings and in them he seeks an order that Mr. Michael Egan Snr was not entitled to have been registered as the owner of the Farm in the Land Registry. He also seeks a declaration that the Release '*purportedly executed*' by him is '*void ab initio*' and has '*no legal effect*'.

17. Although the Release does not contain the word 'deed' (nor is it sealed or witnessed), nonetheless, in these proceedings, Mr. Michael Egan Jnr, in seeking to challenge the legality of that document, describes it as a "Deed of Release". Accordingly, references in his pleadings to a Deed of Release are to this Release. In addition, it should be borne in mind that, as these pleadings were finalised before Mr. Kieran Egan ceased to be a plaintiff, they refer to two Deeds of Release and to two plaintiffs. At para. (i) of his Indorsement of Claim, it is stated:

"It is alleged that Deeds of Release in respect of the Plaintiffs' claim and entitlement over their share in the residue of the estate of Thomas Egan (deceased) **purportedly containing the signature of the Plaintiffs** were signed and executed by the Plaintiffs in favour of the said Michael Egan, (deceased). **No such Deeds of Release were at any time signed or executed** by the Plaintiffs or either or them and any such purported Deed of Release [are] **invalid and/or forged and/ or void ab initio and are of no legal effect** and the Plaintiffs understand the said purported Deeds of Releases are undated and unwitnessed. The Plaintiffs believe that the said purported **Deeds of Release were executed by and on behalf of the said Michael Egan** (deceased)." (Emphasis added)

18. It will be seen from this Indorsement of Claim that Mr. Michael Egan Jnr claims that his signature on the Release was forged by and on behalf of Mr. Michael Egan Snr.

The forgery claim

19. In relation to the forgery claim, this Court was provided with two expert reports from handwriting experts (one on behalf of Mr. Michael Egan Jnr and one on behalf of the Executors). The Court also heard oral evidence from the handwriting expert on behalf of the Executors (Mr. William Craythorne). It is clear from all of this evidence that the handwriting experts were both of the view, that it was more likely than not, that the signature of Mr. Michael Egan Jnr on the Release was not forged.

20. This Court observed Mr. Michael Egan Jnr when giving evidence and carefully considered the precise terms of his evidence. Having done so, it seemed to this Court that the conclusion of the handwriting experts was consistent with the evidence of Mr. Michael Egan Jnr under cross examination. This is because it appeared to this Court that he found it difficult to deny that it was his signature, since he sought instead to emphasise that he had not '*signed that document*', rather than deny that it was his signature.

21. Based on the foregoing evidence, this Court concludes, on the balance of probabilities, that Mr. Michael Egan Jnr's signature was not forged on the Release.

Is the case at an end if Mr. Michael Egan Jnr's signature was not forged?

22. The Executors argued that Mr. Michael Egan Jnr's case was limited to a claim that his signature was forged and that, if this Court found that this was not so, which this Court now has, his case was at an end.

23. However, this Court does not accept the Executors' argument that because Mr. Michael Egan Jnr has been unsuccessful in his claim that the signature was forged, this means that the case is at an end. This is because on any reading of paragraph (i) of the Indorsement of Claim, it is clear that Mr. Michael Egan Jnr is making a number of claims and not simply claiming that his signature was forged. This is because he pleads that the:

'purported' Release is *'invalid and/or forged and/or void ab initio and are of no legal effect'* (Emphasis added).

Accordingly, this case is not at an end simply because this Court has concluded that Mr. Michael Egan Jnr's signature was not forged.

24. Indeed, of critical significance in determining the outcome of this case, is not whether Mr. Michael Egan Jnr's signature was forged or not, but rather the legal effect of the Release.

Is the Release of no legal effect?

25. In considering whether the Release is a document which is of no legal effect, it is necessary to consider firstly what that document purports to achieve.

26. On the assumption that it was executed at some stage in 1990 (since this is the only date on the document), Mr. Michael Egan Jnr would have been at that time either 19 or 20. There is no dispute between the parties that at that stage he was the beneficiary of his grand uncle's will and was thus entitled to a 50% share in the freehold of the Farm (subject only to his father's life interest).

27. This Court carefully observed Mr. Michael Egan Jnr as he gave convincing evidence that, even though he was a beneficiary under Mr. Thomas Egan's will, with effect from his death on the 13th December, 1984, he was not told by his father (the executor of that will) or anyone else at that time of this inheritance. At that time, Mr. Michael Egan Jnr was 14.

28. Similarly, he gave convincing evidence that, six years later, in 1990 when the Release appears to have been signed and when he was only 19 or 20, he was still not aware of his entitlement to the Farm. This is because he gave evidence that he only became aware of his inheritance for the first time in March 2015 *after* his father died on 22nd January, 2015. At this stage, Mr. Michael Egan Jnr was 45. He gave convincing testimony that he only became aware of the terms of his grand uncle's will and therefore his inheritance, when, after his father's death, one of his brothers asked him had he seen his grand uncle's will. This led him to get a

copy of the will from the National Archives in March 2015. On the day he obtained the will in Dublin, he immediately went to a solicitor in the city and then subsequently he went to his local solicitor. It was only at these meetings that he discovered for the first time his entitlement to a 50% share in the Farm, which his father had purportedly just bequeathed to his youngest brother. As a result of enquiries by his own solicitor, he says he saw the Release for the first time when the Executors' solicitors sent a copy of the Release to his solicitor on the 29th April, 2015.

29. Apart from the very curiously drafted Release (to which reference is made below), all the documentary evidence available to the Court is consistent with this oral evidence of Mr. Michael Egan Jnr. In particular, the date and content of the correspondence from Mr. Michael Egan Jnr's solicitor is consistent with the conclusion that Mr. Michael Egan Jnr only became aware of his inheritance of the Farm in March 2015 and the existence of the Release in April 2015. This is because the first correspondence from Mr. Michael Egan Jnr's solicitor regarding his entitlement to the Farm was on 16th April, 2015 in which he sought from the solicitors dealing with Mr. Thomas Egan's estate:

“an explanation from your offices as to why the lands in Folio OY 18648 [the Farm] which [Mr. Thomas Egan] left to [Mr. Michael Egan Snr] for his life and thereafter to [Mr. Michael Egan Jnr], vested in the late Michael Egan [Snr] in Fee Simple”.

30. This Court does not believe that Mr. Michael Egan Jnr knew about his inheritance prior to this solicitors' correspondence in 2015 (*i.e.* in 1984, when his grand uncle died or in 1990 when the Release was signed), but that he waited until after his father died to raise it. This is particularly so, since the Executors produced evidence to the Court of the very poor relations between Mr. Michael Egan Snr and Mr. Michael Egan Jnr. For example, a barring order was obtained by Mr. Michael Egan Snr against Mr. Michael Egan Jnr on 12th April, 2002. Mr. Michael Egan Jnr gave evidence that he agreed to, and did not contest, this barring order as he

had no intention of visiting his home at that stage. Since this was the state of the relations between father and son, it seems highly improbable that Mr. Michael Egan Jnr knew all along that he was entitled to be registered as the owner of the farm but chose not to raise it until after his father died.

31. The explanation for how Mr. Michael Egan Snr, with a life interest was registered as full owner of the Farm, was provided by the solicitors for the Executors on 22nd April, 2015. It was that:

“Michael and Kieran Egan had signed releases of their remainder interest in the residue in favour of their father.”

32. The rapid response to this explanation from Mr. Michael Egan Jnr *via* his solicitor, and its tone, is consistent, with Mr. Michael Egan Jnr’s evidence that this was the first he had heard of the existence of the Release. This is because, the very next day, the 23rd April, 2015, his solicitor wrote to the Executors’ solicitor stating:

“The writer has spoken with our clients this morning and indeed, when we initially attended with our clients, we requested confirmation from them as to whether they were ever obliged to sign any document at the behest of their late father and or ever received any correspondence from your office requesting them to sign a Release. **Our clients were adamant when they attended with the writer and again this morning they have never signed any such Deed of Release. They further are clear they had no knowledge of the contents of the will of the late Thomas Egan and or their entitlement to the lands therein. The contents of the will and their entitlement thereunder only came to light in the last number of weeks since the death of Michael Egan decd.**

Please forward a copy of the alleged Deeds of Release you refer to in your correspondence and we shall bring them to our clients' attention and take instructions."

(Emphasis added)

33. Under cover of a letter dated 29th April, 2015 from the Executors' solicitors, the solicitors for Mr. Michael Egan Jnr received copies of the Deeds of Release. Again, consistent with Mr. Michael Egan Jnr's evidence that this was the first time he had seen the Release, there was a very quick reply from his solicitors, by letter dated 7th May, 2015, again in trenchant terms:

"Our clients each confirm they did not sign the said Releases and each instruct and confirm the copy signatures are not their signatures. **Our clients are at a loss as to how these Releases were prepared** and as to who signed the said Releases. [...] Our clients are very clear they did not sign the said Releases. They **were not aware of their bequest of the lands from their late granduncle Thomas Egan** until after the death of their late father and as advised to you previously." (Emphasis added)

34. It is important to note that, save for the curious Release document and the hand-writing evidence regarding the signature thereon, no evidence was provided on behalf of the Executors to contradict Mr. Michael Egan Jnr's evidence that he only became aware of his inheritance of the Farm and the Release in 2015.

35. Thus, apart from the Release document, all the evidence supports the conclusion that Mr. Michael Egan Jnr was not aware of his inheritance until 2015.

36. As regards the Release, it allegedly supports the contrary conclusion on the basis that it is a document, which by its very terms refers to a release of a remainder in the '*estate of the above deceased*' i.e. Mr. Thomas Egan (*albeit* that Mr. Michael Egan Jnr claims that he '*never signed that document*'). The Release is therefore, on its face, a reference to an inheritance by

Mr. Michael Egan Jnr of some sort, without specifying the nature of that inheritance. However, in view of the very curious terms of the Release and the circumstances surrounding its execution (set out in detail below), this Court concludes that it is of limited evidential value. For this reason, while this Court finds that Mr. Michael Egan Jnr's signature was not forged on the Release, it also finds that, despite the existence of the Release, Mr. Michael Egan Jnr did not become aware of his inheritance until 2015, after his father died (and that he also only became aware in 2015 of the existence of the Release).

The curious nature of the Release

37. It is necessary now to set out the very curious features of the Release and the curious circumstances surrounding its execution and its appearance on the solicitor's file. These curiosities have led this Court to conclude that the Release is of limited evidential value. In particular, the Release does not amount to sufficient evidence to counteract the oral evidence of Mr. Michael Egan Jnr (as well as the timing of his solicitors' correspondence), to the effect that he only became aware of his inheritance of the Farm in 2015.

(i) No recitals in this significant document

38. First, it is to be noted that this Release does not contain any recitals giving any background to what was intended to be achieved by the document, despite the significance of the transaction, *i.e.* the release by a young son of a 50% share in a farm in favour of his father for nothing in return.

(ii) A one sentence document to achieve a significant release and a transfer

39. Secondly, as well as not having any recitals, it is the briefest of legal documents imaginable, being just one sentence to achieve a very significant transaction, namely the release of a bequest of a valuable asset in favour of another party for nothing in return.

(iii) **Not the language one would expect in such a document**

40. Thirdly, the language used in the Recital is not what one would expect a lawyer to use, since one normally ‘disclaims’ a bequest, rather than granting a ‘release’ of it, see for example Keating, *Succession Law in Ireland* (2015, Clarus Press) at para. 10.44, where it is stated that:

“A beneficiary cannot be forced to take a gift in a will and **it is for him to accept or disclaim it. Where a beneficiary wishes to disclaim a gift**, he may do so by deed of disclaimer or by some other form of writing, or he may be held to have disclaimed by conduct.” (Emphasis added)

Similarly, a beneficiary *has an interest* in the estate of a deceased regarding his/her bequest, he/she does not have a ‘claim’ on the estate of a deceased to a bequest. For example, *Keating* at para. 10.46 goes on to note, in the context of the disclaimer on intestacy, that:

“Where the entitled person applies for a grant and then **disclaims his interest** the application for the grant must be discontinued as he no long has the necessary beneficial interest in the estate entitling him to apply for the grant in the first place.” (Emphasis added)

Therefore, it is also curious that there is a reference to the release of a ‘claim’ under Mr. Thomas Egan’s will, rather than the disclaimer of an *interest* under that will.

(iv) **No direct reference to the transfer of the Farm – the purpose of the Release**

41. Fourthly, and perhaps most significantly, the Release does not refer explicitly to the release by Mr. Michael Egan Jnr of his 50% share in that Farm. Instead, the document is drafted in a very opaque manner, since the asset with which the document is concerned is described simply as ‘*a remainder share in the residue of the estate of the above deceased*’.

42. This of course means that, unless the reader or the signatory of such a document had legal expertise and/or knowledge of the background, he would not have known what was being released. Depending on the circumstances, a release of a share in the residue of an estate could be a reference to the release of anything or a release of nothing. This is because the '*residue*' of any estate could be a nominal asset or a valuable asset, depending on which assets are subject to specific bequests under the will. Similarly, the '*residue*' of an estate could be nothing at all, if there is no residue such as where all the testator's assets are subject to specific bequests.

43. Mr. Michael Egan Jnr's oral evidence that he did not '*sign that document*', in light of this Court's conclusion that his signature was not forged, leaves open the possibility that he signed a blank document or that he did not *knowingly* sign a document to disclaim his bequest of the Farm in favour of his father.

44. However, even if one assumes that Mr. Michael Egan Jnr did in fact '*sign that document*' then for him, as a 19/20 year old, to understand its effect, he would have had to have been aware that the reference to a '*remainder share in the residue*' meant a 50% share in the Farm. Only then, would he have understood that he was releasing his interest in the Farm by signing the Release (and not say, releasing his interest in the post office savings bonds, to which he was also entitled under his grand uncle's will and which were worth *circa* €1,000).

45. It is relevant to note that Mr. Michael Egan Jnr, by his own admission was not very academic and in 1990, he had not long left school and was only beginning his working life in a local factory at that time. It is also relevant to note that, just as he had to have a solicitor explain to him in 2015 the meaning of Mr. Thomas Egan's will, he also had to have a solicitor explain to him in 2015 what the Release meant. This is not surprising in view of its opaque terms. Thus, it seems clear that, for Mr. Michael Egan Jnr to have understood the Release, if he '*signed that document*', it would have had to have been explained to him that he had

inherited the Farm and therefore the reference to his release of a '*remainder share in the residue of the estate*' was a release of his interest in the Farm in favour of his father.

46. Crucially however, this Court has already concluded on the evidence before it that he was not aware of his inheritance of the Farm in 1990. Thus, even if he did '*sign that document*', he did so without knowing that he had inherited the Farm and so could not have understood that he was purportedly releasing his interest in the Farm in favour of his father.

(v) **The Release is not dated or witnessed**

47. Fifthly, the Release is not dated or witnessed, even though it purports to be a very significant document, purportedly entitling Mr. Michael Egan Snr to the freehold of 36 acres and depriving Mr. Michael Egan Jnr of his entitlement thereto, without any monetary or other benefit accruing to Mr. Michael Egan Jnr for this release. The purpose of having a witness is to have some third party who could be called to give evidence that Mr. Michael Egan Jnr did in fact sign that document or give evidence as to the circumstances in which Mr. Michael Egan Jnr's signature came to be on the Release. It is curious to note that this important document is not witnessed by a solicitor or indeed any other third party, who might be able to give such evidence.

(vi) **Not stated to be a deed or stamped or sealed even though dealing with land**

48. Sixthly, even though it purports to be a release of an interest in land in favour of another, the Release is not stated to be a deed, nor is it sealed or stamped. In relation to sealing, it is relevant to note that, as the Release was executed in 1990, it was executed *prior* to the enactment of s. 64 of the Land and Conveyancing Law Reform Act, 2009. This is relevant because it was not until that section was enacted, some 19 years after the execution of the Release, that the requirement for the sealing of deeds was removed.

49. Indeed, when one considers that the Release was not stated to be a deed, was not sealed, was not stamped, was not dated, was not witnessed, has no recitals, is one sentence long and

uses the expression 'release of a claim' rather than 'disclaimer of an interest', it would be surprising if the Release was drafted by any solicitor, let alone the solicitor dealing with Mr. Thomas Egan's estate (since, as noted below, he appears to be a careful and thorough solicitor).

(vii) **No reference to the Release anywhere on the solicitors' file**

50. Seventhly, it is very curious that the solicitor's file dealing with Mr. Thomas Egan's estate, where the Release was found, contains absolutely no reference to the Release in any other document on the file. In particular, there are no attendances or letters dealing with the drafting or execution of the Release or indeed the sending or giving of the document to Mr. Michael Egan Snr. Nor is there a letter to, or an attendance on, Mr. Michael Egan Jnr providing an explanation to him regarding the purported legal effect of this very opaquely drafted Release.

51. All of this is very curious, to say the very least, since one is dealing with a release by a young man, who is in his teens or just out of his teens, of a very valuable interest in favour of his father in return for no apparent payment or benefit in return. Despite this being the apparent legal purpose of the Release, there is no evidence on the file that any concerns about undue influence have been addressed regarding the execution of this one sentence document by such a young man/teenager. The absence of any reference to the Release on the file is made more curious by the fact that this document, as already noted, would not be clear to non-lawyers, let alone a school-leaver who was not academic.

52. The absence of any attendance or correspondence referring to the Release on the solicitor's file is made even more curious by the fact that there are numerous attendances with, and letters to, Mr. Michael Egan Snr in relation to Mr. Thomas Egan's estate. In particular, it is relevant to note that the absence of any reference to the Release on the solicitors' file contrasts with the approach to other documents of similar legal effect. For example, there is a detailed attendance dated 25th September, 1975 headed '*INSTRUCTIONS FOR WILL*' in which

the person, presumably a solicitor, who was taking instructions for that will, shows himself to be very careful regarding Mr. Thomas Egan's bequest to Mr. Michael Egan Snr's two sons. This is because the attendance states that the solicitor '*quizzed*' him about his desire to leave only a life interest to his nephew:

“On quizzing him [Mr. Thomas Egan] about this he said that what he really wanted was for Michael Egan to be the owner of all for his life with remainder to the two children jointly as tenants in common in equal shares.”

53. For this reason, it is astonishing that there is no reference to the Release anywhere in the file. It is as if the Release just appeared out of nowhere and ended up on the file. The closest one gets to a reference to anything even related to the execution of such an important document is a handwritten attendance of a meeting between, it seems, the solicitor and Mr. Michael Egan Snr dated 27th November, 1989, in which it is stated that Mr. Michael Egan Snr '*will talk to his two sons about what to do with the land – let me know*'. This is the sum total regarding any reference to this crucial document, the Release, which then appears on the file. The Court is therefore left with a most unsatisfactory situation where a very curiously drafted Release appears almost out of nowhere on a solicitor's file. There is absolutely no explanation or evidence anywhere regarding this very significant transfer of a valuable interest from a son, barely out of his teens, to his father for nothing in return. Accordingly, this Court must treat this document with considerable caution.

(viii) A gift of a Farm by a son to a father with whom he had a strained relationship?

54. Eighthly, evidence was provided on behalf of the Executors that there was a strained relationship between Mr. Michael Egan Jnr and his father, and that Mr. Michael Egan Jnr was not someone who took direction from his father. On the other hand, Mr. Michael Egan Jnr gave evidence that he loved working on the Farm and it played an important part of his life when he was in school, and that he returned to work on the Farm at weekends when he left school.

55. For this reason, the Release is a curious transaction whereby Mr. Michael Egan Jnr would have transferred his share in a valuable farm which he loved to somebody with whom he had a strained relationship, without any apparent payment/benefit in return.

(ix) **An 11-year gap between one draft of Assent and its execution**

56. A ninth curiosity is the fact that there is an unexplained 11-year gap between a draft of the Assent which is dated 1995 and is on the solicitors' file and the Assent, which is in the exact same format as the 1995 draft, but which was signed by Mr. Michael Egan Snr in 2006.

(x) **16-year gap between Release and application to be registered as owner**

57. Finally, in this regard, reference has already been made to the tenth and final curious feature of the Release, namely that there is an unexplained 16-year gap between the execution of the Release in 1990 and the date in 2006, when Mr. Michael Egan Snr signed the Assent in order to be registered as a full owner of the Farm.

Summary of the curious features of the Release

58. In summary:

- the Release is an incredibly brief and opaque document, which refers nowhere to the subject matter of the Release (*i.e.* the Farm),
- its effect would not be understood by most non-lawyers, let alone a person who was in, or just out of his teens, who was not very academic,
- it was not witnessed, sealed, stamped or dated, even though it purports to deal with a valuable piece of land and uses unusual language (to achieve a disclaimer) and so does not appear to have been drafted by a solicitor,
- it is a document which Mr. Michael Egan Jnr denies ever signing, but if it was signed by him, it was done at a time when this Court has concluded that he was not aware that he had inherited the Farm,

- it purports to transfer a share in a Farm from a son hardly out of his teens to his father, with whom he had a strained relationship, with no apparent monetary or other benefit in return,
- it appears on an otherwise careful solicitor's file, as if out of nowhere, with no other document referring to it or dealing with issues of undue influence that might arise on a transfer of a valuable asset for no payment from a son to a father.

59. For all of these reasons, this Court treats that Release with considerable caution and of limited evidential value, without the necessity for this Court to resolve how Mr. Michael Egan Jnr's signature could have ended up on the Release. However, the determining factor in this case regarding the status of the Release as a legal document is the substance of what that one sentence document is purporting to achieve as a matter of law.

The substantive effect of the Release

60. In this regard, at the time of the execution of the Release, Mr. Michael Egan Jnr was a beneficiary of Mr. Thomas Egan's will and thus entitled to a 50% share of the freehold in the Farm (subject to his father's life interest). However, rather than Mr. Michael Egan Jnr becoming the registered owner of the Farm (subject to a life interest) and dealing with it as he chooses, it seems to this Court that the only conclusion that one can draw from this one sentence Release document is that it *purports* to be Mr. Michael Egan Jnr disclaiming the bequest of a 50% share in the freehold of the Farm in favour of his father.

61. However, it seems clear that this is not legally permissible. As noted in Spierin, '*The Succession Act 1965 and Related Legislation*' (Bloomsbury, 5th ed., 2017) at para. 512:

“Disclaimer on intestacy generally

Disclaimer will usually arise in the context of tax planning, so it is important to have regard to the effect of a disclaimer in any given circumstances. A disclaimer will give

rise to an effect by operation of law. In other words **certain unavoidable consequences flow from disclaimer, the consequences cannot be dictated. [...] It is not possible to disclaim ‘in favour’ of someone else as is sometimes thought.**” (Emphasis added)

62. While this paragraph is headed ‘*disclaimer on intestacy generally*’, it seems to this Court that the principles set out (and in particular the ‘unavoidable consequences’ of a disclaimer) are equally applicable to a disclaimer of a bequest under a will. As regards what these ‘unavoidable consequences’ are, Keating in *Succession Law in Ireland* (2015, Clarus Press) notes that where a beneficiary under a will disclaims a gift, it automatically falls into the residue (and so is not available for the beneficiary to re-direct to someone else). At para. 10.44, he notes that:

“**Once a beneficiary disclaims a gift, it falls into the residue**, provided that there is a residuary clause in the will. In the absence of such a clause, the disclaimed gift will be distributed on intestacy.” (Emphasis added)

63. These consequences are ‘unavoidable’ as they cannot be avoided, for example by the beneficiary of the bequest. This is because, after disclaiming the bequest, a beneficiary cannot transfer his bequest to a third party, instead of it reverting to the residue of an estate. Thus, in this case it was not open to Mr. Michael Egan Jnr to disclaim his bequest and at the same time decide that his bequest should instead go to Mr. Michael Egan Snr. Yet this is the purported effect of the Release. Hence the conclusion in *Spierin* that it ‘*is not possible to disclaim in favour of someone else*’. No authority is cited by *Spierin* for this statement and no Irish case law was opened to the Court on this issue. However, on the basis of first principles, it seems clear to this Court that this conclusion is justified. Otherwise, it would be a simple matter for a beneficiary to, in effect, re-write a testator’s will, after his death. This is because if a disclaimer such as the one in this case were to be valid, that is exactly what would happen, since it would

have the effect of thwarting the intention of a testator (T) to leave an asset to A, by permitting A, after T's death, to decide that T should instead have bequeathed that very same asset to B.

64. In this instance, after having been 'quizzed' by his solicitor, Mr. Thomas Egan was very clear that he did not wish to leave the freehold in the Farm to Mr. Michael Egan Snr, but instead wanted to give him only a life interest. Yet, this stated intention of the testator would be thwarted, if Mr. Michael Egan Jnr, *via* the Release, was able to, in effect, 'force' Mr. Thomas Egan's estate to bequeath to Mr. Michael Egan Snr the freehold in the Farm.

65. If what occurred in this case were lawful, it would mean that a parent could get a child to sign a one sentence document and thereby have a bequest intended for that child, from say a grandparent or an uncle/aunt, re-directed to the parent and thereby have the will, in effect, changed. This cannot be correct.

66. For all these reasons, it seems clear to this Court that a beneficiary of an asset under a will cannot disclaim that asset in favour of someone else. For this reason, the Release in this case is not valid as a matter of law and so is void *ab initio*.

Statute of limitations

67. In view of this Court's conclusion that the Release is void *ab initio* and that Mr. Michael Egan Jnr only discovered in 2015 that he had inherited 50% of the Farm and the existence of his purported disclaimer of that inheritance under the terms of the Release, it seems to this Court that it is not necessary to deal with the Executor's claim that Mr. Michael Egan Jnr was out of time in bringing these proceedings to decide the case. If the parties believe that this Court is wrong in this regard and that this Court needs to make a finding under s. 71 of the Statute of Limitations Act, 1957, submissions can be made by the parties.

CONCLUSION

68. Evidence was provided that Mr. Alan Egan had a good relationship with Mr. Michael Egan Snr, while on the other hand evidence was provided that Mr. Michael Egan Snr obtained a barring order against Mr. Michael Egan Jnr. Compelling evidence was also provided of the gratitude Mr. Michael Egan Snr's children owe both him and his wife, Mrs. Helen Egan, for the upbringing they received - one in which they never wanted for anything (no doubt as a result of considerable sacrifice and hard work by their parents who raised twelve children on one income).

69. Similarly, oral evidence was provided of the money (*circa* €40,000) and the considerable amount of time which was expended by Mr. Michael Egan Snr and Mr. Alan Egan on the Farm, which they believed was owned by Mr. Michael Egan Snr and on his death by Mr. Alan Egan. (Yet, if this Court affirms the Circuit Court order, it will mean that this time and money was expended by them on improving property owned by Mr. Michael Egan Jnr.)

70. In a family dispute like this one, it may be difficult for the parties to separate emotional evidence, such as the foregoing, from relevant evidence. However, that is what this Court must do, as it is not the role of a court to determine cases in favour of a party for which it has most sympathy. (In this instance, one might have sympathy for Mr. Alan Egan, who spent time and money on improving a farm that he wrongly believed belonged to his father and then himself.) However, if a court were to decide cases based on sympathy, it would be falling into the trap of allowing '*hard cases [to] make bad law*' rather than deciding cases on the basis of the relevant legal principles.

71. In this regard, it seems to this Court that the law is clear. The Release sought to achieve something which is legally impermissible, namely the disclaimer of a bequest under a will in favour of a third party. In reaching this conclusion, it is important to point out that this Court is making no criticism of Mr. Michael Egan Snr (and in particular it has rejected the allegation

of forgery made against him). Indeed, it recognises his (and Mrs. Helen Egan's) achievement in raising a large and loving family who never wanted for anything.

72. Nonetheless, this Court is constrained by law to find that the Farm belonged initially to Mr. Thomas Egan and, as is clear from his instructions to his solicitor, he was in no doubt that he wanted to grant his nephew (Mr. Michael Egan Snr) only a life interest in the Farm and that he wanted Mr. Michael Egan Jnr to have a 50% share of the Farm.

73. It was Mr. Thomas Egan's prerogative to deal with the Farm, however he wished, even though most other people, in his situation, might have left it to Mr. Michael Egan Snr absolutely. Indeed, this is evidenced by his solicitor '*quizzing*' him on this issue.

74. The Release, however it came into existence, is a most curious document for the reasons set out above and these cast considerable doubt over its validity. However, the determining factor in this case is that, as a matter of law, the Release did not operate as a disclaimer by Mr. Michael Egan Jnr of his bequest in favour of Mr. Michael Egan Snr. Accordingly, this purported disclaimer of a bequest in favour of a third party is void *ab initio*. This is because it is not legally possible for a person to disclaim his or her inheritance in favour of another. It certainly does not become legally possible where it is:

- a son barely out of his teens disclaiming a share in a farm,
- for nothing in return,
- in favour of his father with whom he had a strained relationship,
- by means of a one sentence document,
- which seems to appear out of nowhere on a solicitors' file,
- which is not dated, witnessed, sealed or stamped and does not use the language of disclaimer, and

- refers in a very opaque manner to the asset the subject matter of the release (the Farm), such that it would not be understood by most non-lawyers (*'release my claim to a remainder share in the residue of the estate'*).

Accordingly, Mr. Michael Egan Snr had no entitlement to the freehold in the Farm, which he purported to bequeath to Mr. Alan Egan on the back of the Release.

75. For all these reasons, this Court agrees with the decision of Fergus J., that Mr. Michael Egan Jnr is entitled to an undivided moiety in the property and to an order directing the Property Registration Authority to register Mr. Michael Egan Jnr as a full owner as tenant in common of a moiety thereof.

76. This Court orders the parties to engage with each other to see if agreement can be reached regarding all outstanding matters without the need for further court time, with the terms of any (draft) agreed court order to be provided to the Registrar. In case it is necessary for this Court to deal with final orders, this case will be provisionally put in for mention one week from the date of delivery of this judgment, at 10.30 am (with liberty to the parties to notify the Registrar, in the event of such listing being unnecessary).