Neutral Citation Number: [2010] EWHC 2353 (Ch)

IN THE HIGH COURT OF JUSTICE

HC09C00899

CHANCERY DIVISION

IN THE ESTATE of: SMARAGDA SINGELLOS DECEASED (PROBATE)

Royal Courts of Justice
Strand, London WC2A 2LL

Date: 29 September 2010

Before:

ANDREW SIMMONDS QC
(sitting as a Deputy Judge of the High Court)

Between:

GABRIELLA SINGELLOS

Claimant

and

CHRISTOPHER SINGELLOS

Defendant

Mr Ulick Staunton (instructed by **Hunters**) for the Claimant
Miss Elizabeth Weaver (instructed by **Fladgate LLP**) for the Defendant

Hearing dates: 19, 20, 21, 22 and 23 April, 7 and 8 June 2010

APPROVED JUDGMENT

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

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Andrew Simmonds QC:

Introduction

1. Mrs Smaragda Singellos ("Mrs Singellos") died on 30 April 2008 aged 78. Her husband George ("Mr Singellos") predeceased her on 15 January 2008. She left two children, namely the Claimant ("Gabriella") who was born in 1952 and the Defendant ("Christopher") who was born in 1956.

2. In these proceedings Gabriella seeks to prove in solemn form what purports to be the last Will of Mrs Singellos dated 19 March 2008 ("the March Will"). In fact, as I will explain later in this Judgment, Gabriella's case is that Mrs Singellos executed two Wills on 19 March 2008 with the March Will superseding one executed an hour or so earlier in substantially the same form. In her pleaded case Gabriella relies on that earlier will in the alternative but, in the light of the evidence, it was not seriously suggested on her behalf in closing submissions that I should pronounce in favour of the earlier Will if the March Will were found to be invalid for any reason.

3. The March Will dealt only with Mrs Singellos' UK estate. At her death she also had assets located in Cyprus and in the Isle of Man. Her assets in Cyprus were dealt with by a Will ("the Cyprus Will") purportedly executed on 27 April 2008. The validity of the Cyprus Will has been challenged by Christopher and is the subject of litigation in Cyprus. I am not asked to make any findings in respect of it. Mrs Singellos' assets in the Isle of Man (principally, as I understand it, accounts with Barclays Bank) are dealt with by a much earlier Will made on 16 October 1986 ("the 1986 Will") the validity of which for this purpose is, as I understand it, not in dispute.

4. Christopher challenges the validity of the March Will on two grounds:

   (1) he says that Gabriella (on whom the burden of proof lies) has not proved that it was duly executed in accordance with the provisions of section 9 of the Wills Act 1837 as amended; and

   (2) he says that, in any event, Mrs Singellos did not know and approve of its contents.

It is not in dispute that Mrs Singellos had testamentary capacity on 19 March 2008.

5. By his Counterclaim Christopher seeks to prove the 1986 Will as being the Will which effectively deals with his mother's UK estate.

6. Gabriella also seeks a declaration that a number of documents purportedly executed by Mrs Singellos in the period between 21 and 28 April 2008 ("the Company Documents") were validly executed. The Company Documents, if valid, operated in substance to accelerate certain of the dispositions contained in the March Will so as to effect *inter vivos* gifts of certain London properties to (in substance) Gabriella and Christopher. The purpose of the Company Documents was to save inheritance tax by moving those assets off-shore and then disposing of them *inter vivos* at a time when, so it is contended, Mrs Singellos was domiciled in Cyprus.

7. I was told that HM Revenue & Customs have not as yet accepted that the Company Documents, even if validly executed, were effective to achieve their purpose. That is not an issue which I am asked to decide. However, plainly, the inheritance tax saving scheme will have failed if the Company Documents were not validly executed.

8. Consistently with his challenge to the dispositions made by the March Will, Christopher challenges the validity of the Company Documents with a view to the disposal of Mrs Singellos' UK estate being governed entirely by the 1986 Will. This challenge is based on two grounds:

   (1) The documents purportedly executed by Mrs Singellos on 28 April 2008 were not in fact executed by her at all. As will appear, this is not an allegation of out-and-out forgery but it is said that the purported signatures of Mrs Singellos on the relevant documents were the product of a purely mechanical process whereby Mrs Singellos' hand was guided by Gabriella (because Mrs Singellos was by this stage physically incapable of holding and controlling a pen) and that Mrs Singellos' mind did not accompany her physical signature.

   (2) In any event, Mrs Singellos did not have sufficient mental capacity to execute the documents purportedly executed by her on 28 April 2008.

9. Unfortunately, and even though Gabriella and Christopher are full brother and sister, their relationship has for many years been characterised by mutual suspicion and mistrust. As a result this litigation has been hard-fought and, on occasion, acrimonious. I emphasise at the outset that it is no part of the Court's function to investigate the precise reasons, still less to attribute blame, for the breakdown in the relationship between Gabriella and Christopher, although it will be necessary to refer to some incidents as part of the relevant background to the events of March and April 2008. Nor am I concerned with the fairness or otherwise of the dispositions purportedly made by Mrs Singellos in the light of the family's troubled history. I am concerned only with whether the March Will and the Company Documents were validly executed by her.

10. Gabriella was represented by Mr Ulick Staunton (instructed by Hunters). Christopher was represented by Miss Elizabeth Weaver (instructed by Fladgate LLP). I am grateful to both of them for their clear and helpful submissions.

Background facts

11. Mr and Mrs Singellos were born in Cyprus. They came to the UK in 1953 and thereafter ran grocery businesses in North London. They worked very hard and invested the profits of their businesses wisely. In the 1950s and 1960s they acquired a number of investment properties in London. Over the years they also purchased and inherited properties in Cyprus, particularly around Limassol.

12. At the time of Mr Singellos' death in January 2008, the London properties were owned as follows:

    (1) Mr Singellos owned 1, 3 and 5 Agar Grove, London NW1;

    (2) Mrs Singellos owned 66A Connaught Gardens, Palmers Green, London N13 (the matrimonial home), 643 Green Lanes, London N8 and also 647 Green Lanes (the title to which also incorporated a property known as 4 Fairfax Mews).

13. Following her husband's death Mrs Singellos was also the holder of accounts with the Bank of Cyprus in London and Guernsey which had aggregate balances in excess of £2m and also of an account or accounts with Barclays Bank in the Isle of Man.

14. In October 1986 Mr and Mrs Singellos made Wills in substantially mirror image terms. By her will (that is, the 1986 Will) Mrs Singellos

    (a) appointed as executors her husband and their Solicitor Mr Michael Votsis (a partner in YVA Solicitors of North Finchley);

    (b) gave her jewellery and chattels to Gabriella;

    (c) gave an amount equal to the nil-rate band for inheritance tax purposes at the date of her death to Gabriella and Christopher in equal shares;

    (d) gave the residue of her (worldwide) estate to Mr Singellos.

    Since Mr Singellos predeceased his wife, the residue of Mrs Singellos' estate would pass as on intestacy (i.e. to Gabriella and Christopher in equal shares) if the March Will is invalid.

15. The 1986 Will was made by Mrs Singellos before the occurrence of events which resulted in a significant change in the relationship between Christopher on the one side and his parents and Gabriella on the other which I must now describe.

16. In 1987 Christopher met his future wife Iphigenia. They were engaged in December 1987 and married in June 1988. Regrettably, Christopher's relationship with his parents and with Gabriella soured following his marriage.

17. Christopher's evidence was to the following effect. His parents were very materialistic and did not respect Iphigenia's family because they were not wealthy (although in fact her father was a diplomat at the Cyprus High Commission). Christopher's parents suggested that Iphigenia was after the Singellos family's money. In this regard Christopher's parents were egged on by

Gabriella who resented and was jealous of Iphigenia. Christopher was caught in the middle between his family and his wife but naturally had to support his wife.

18. It seems that the relationship between Gabriella and Christopher was also damaged when, as Gabriella saw it, she was snubbed by being replaced as the maid of honour shortly before Christopher and Iphigenia's wedding.

19. Whatever the rights and wrongs of these events may be, the upshot was that after his marriage Christopher became estranged from his parents. Although it was punctuated by occasional periods of rapprochement, that estrangement continued at least until Mr Singellos' death in early 2008, nearly twenty years later.

20. There was no contact whatever between Christopher and his parents between 1988 and 1993. There appears to have been a short period of contact in early 1993.

21. Sadly, in October 1993, Iphigenia's parents were killed in a car crash. Contact between Christopher and his parents was renewed following this but they lost touch again between 1994 and 1997 and then again until about June 2000.

22. Meanwhile, in 1995 Mr and Mrs Singellos retired from running their grocery shops and thereafter divided their time between Cyprus and the UK. From about 2000 onwards they spent more time in the UK as Mr Singellos required medical treatment (he had developed diabetes in the mid-1970s).

23. According to Christopher, the renewal and then loss of contact between himself and his parents over these periods followed a familiar pattern. Mrs Singellos would contact him for help in relation to some matter. Christopher would try to assist but then they would soon disagree and fall out again.

24. Christopher described his mother as a very strong woman who was independent-minded (as was Mr Singellos) and that everyone was rather frightened of her (a point concurred in by Mr Votsis in the course of his evidence).

25. Christopher became frustrated that his parents would not use their wealth in order to make life easier for themselves. He tried unsuccessfully to persuade them to retire from their grocery businesses long before they actually did and, when Mr Singellos' health deteriorated, Christopher, again unsuccessfully, tried to persuade him to move from an NHS hospital to a private one. Discussions on these matters inevitably led to disagreements and Christopher and his parents would lose contact again.

26. Gabriella's perspective on this was that Christopher's relationship with his parents and with Gabriella was damaged by Christopher's obsessive and over-controlling nature.

27. A further period of contact between Christopher and his parents occurred between about June 2000 and May 2002. Gabriella and Christopher were both in the property management business. Their parents' London properties were being managed by Gabriella but she had a temporary falling out with her parents in 2000 over her relationship with and possible marriage to Tony Tsindos, who later became the father of her children. During this period Christopher managed his parents' properties on their behalf.

28. After May 2002 Christopher's only contact with his parents up to 2008 consisted of very occasional visits (according to Gabriella, there was only one) to see his father in hospital.

29. In 2004 Christopher and Iphigenia adopted a son, George. Because of their estrangement, Christopher did not tell his parents. They found out through other relatives. Mr Singellos never met George and Mrs Singellos did not meet him until after her husband's death and, accordingly, not long before her own death. It seems clear that this caused Mrs Singellos considerable upset and was the source of much resentment on her part.

30. In 2006 Gabriella had twins, Anthony and Georgiana.

31. In September 2006 Mrs Singellos was diagnosed with breast cancer. She underwent a mastectomy at the Nuffield hospital. From December 2006 she was under the care of Dr Mary McCormack, a consultant clinical oncologist at University College Hospital ("UCH"). Mrs Singellos underwent post-surgical chemotherapy and radiotherapy. Because Mrs Singellos was no longer well enough to look after her husband, Mr Singellos went into residential care.

32. In January/February 2007 Mrs Singellos was told by Dr McCormack that the cancer had metastasised to her lungs and that the disease was terminal.

33. As I have mentioned, Mr Singellos died on 15 January 2008. Probate of his Will had not been granted at the time of Mrs Singellos' death. Mr Singellos' Will appointed Mrs Singellos and Mr Votsis as executors, provided for a nil-rate band legacy to Gabriella and Christopher in equal shares and left residue to Mrs Singellos.

34. Christopher's evidence was to the effect that he and his mother were reconciled after Mr Singellos' death and that Mrs Singellos then met, and became very fond of, George. The evidence given by Christopher and Iphigenia as to Mrs Singellos' contact with George was as follows. First, from the latter part of January 2008 (after Mr Singellos' funeral) up to mid-March, Mrs Singellos spent time with George on a number of occasions in the absence, and without the knowledge, of Gabriella. This was managed by Iphigenia taking George to visit his grandmother at her home. Secondly, after mid-March, Gabriella and Christopher were getting on better and George was therefore taken to see his grandmother and to play with his cousins at Gabriella's house. As will appear, these visits must have taken place after 19 March and hence after the March Will was executed (assuming that it was indeed executed on the date which it bears).

35. On 13 March 2008 Mrs Singellos had a consultation with Dr McCormack and was told that the cancer had spread more extensively in her chest.

36. On 19 March 2008 Mrs Singellos was admitted to UCH and stayed overnight.

37. Gabriella's case is that the March Will was executed in the late evening of that day while Mrs Singellos was on a ward at UCH. The Will was witnessed by Mr Votsis and his wife. The provisions of the March Will were as follows:

    (a) Gabriella was appointed sole executrix.

    (b) Mrs Singellos gave to Gabriella: her jewellery, 66A Connaught Gardens and its contents, 1 Agar Grove (which, along with 3 and 5 Agar Grove, were of course still part of Mr Singellos' unadministered estate) and 643 Green Lanes.

(c) Mrs Singellos gave to Christopher: 5 Agar Grove and 647 Green Lanes (with 4 Fairfax Mews).

(d) Mrs Singellos gave to Gabriella on trust for Anthony and Georgiana in equal shares on attaining 18: 3 Agar Grove.

(e) The residue of Mrs Singellos' UK estate was left to Gabriella and Christopher in equal shares.

The March Will contained no gift in favour of Christopher's son George.

38. Mrs Singellos was discharged from UCH on 20 March and then stayed with Gabriella until 27 March, during which period the visits made by George to which I have already referred took place.

39. Mrs Singellos was readmitted to UCH on 27 March and remained there until her death in the early hours of 30 April. During this final period of Mrs Singellos' life, a number of relevant events occurred.

40. On or about 10 April, Mrs Singellos was visited by Mr Athanasios Athanasiou (a partner in the firm of BSG Valentine and her English accountant) and they discussed a proposal to implement an inheritance tax saving scheme by moving her principal UK assets off-shore. This marked the revival of a proposal which Mr and Mrs Singellos had discussed with Mr Athanasiou and on which they had received written advice in July 2000. At that time Mr and Mrs Singellos did not wish to proceed with the proposal as it would result in their losing control of the relevant assets and because of the cost of the scheme (including stamp duty).

41. On 11 April Mrs Singellos was visited by Mr Panicos Loizou, a partner in KPMG and her accountant in Cyprus. They discussed arrangements for distributing her wealth in Cyprus.

42. On 15 April Mrs Singellos had a further meeting with Mr Athanasiou to discuss the inheritance tax saving scheme. Gabriella's case is that Mrs Singellos gave instructions to Mr Athanasiou to proceed with it.

43. On 21 April Mr Athanasiou visited Mrs Singellos and obtained her signature to some of the Company Documents which were designed to implement the inheritance tax saving scheme.

44. On 25 April Mrs Singellos was attended by Gabriella, Mr Athanasiou and a manager from the Bank of Cyprus. She arranged for her two accounts in London and Guernsey to be placed in the joint names of herself and Gabriella so that they passed to Gabriella by survivorship on her death.

45. On 27 April Mrs Singellos executed the Cyprus Will which was witnessed by Mr Athanasiou and Mr Charalambos Singellos, another family member. The Cyprus Will provided for her properties in Cyprus to be divided between Gabriella, Christopher and Gabriella's children with, again, no gift being made in favour of George.

46. On 28 April, Mrs Singellos was attended by Mr Athanasiou, Mr Votsis, Gabriella and (at least for some of the time) Christopher. On this occasion Mrs Singellos signed the remainder of the Company Documents with the physical assistance of Gabriella.

47. It is common ground that, at no time before Mrs Singellos' death, was Christopher told that she had made either the March Will or the Cyprus Will or that she had transferred the Bank of Cyprus accounts into the joint names of herself and Gabriella.

The witnesses

48. Gabriella relied on witness statements from

(a) herself

(b) Mr Votsis

(c) Mrs Votsis

(d) Mr Athanasiou

(e) Mr Norman Strong (a Chartered Accountant and colleague of Mr Athanasiou at BSG Valentine who assisted in the preparation of the Company Documents)

(f) Mr Loizou; and

(g) Dr McCormack.

49. Christopher relied on witness statements from himself and his wife.

50. All these witnesses were cross-examined before me, including Mr Loizou by means of a video-link from Cyprus.

51. In addition, the parties jointly instructed Dr Audrey Giles, a well-known expert in the field, to conduct a forensic document examination of the March Will and the Company Documents so as to give an opinion on the authenticity of Mrs Singellos' purported signature on each document. I have had the benefit of two reports from Dr Giles. She was not cross-examined.

52. I will refer later in this Judgment to the detailed submissions made on the evidence which relates to the issues which I have to decide. However, I should at this stage make some more general points which go to my assessment of the witness evidence.

53. First, I am satisfied that all the witnesses were honest and were trying to assist the Court. Given the mistrust and antagonism between Gabriella and Christopher, I should emphasise that that applies to each of Gabriella, Christopher and Iphigenia as well as to the more independent witnesses.

54. Secondly, whilst I am satisfied that Christopher and Iphigenia were not trying to mislead the Court, I formed the view that they had so completely convinced themselves that Gabriella was up to no good, they simply could not bring themselves to accept otherwise compelling objective evidence which did not support their case. One example will illustrate this although it is not an isolated one. There was disagreement as to Mrs Singellos' state of health on 26 April (two days before the final Company Documents were signed). The evidence of Christopher and Iphigenia was to the effect that Mrs Singellos was already in a weak state and had to wear an oxygen

mask all the time. Gabriella's evidence was that her mother was not in such a poor state at this stage and she produced three photographs taken on her mobile phone showing Mrs Singellos smiling, with Georgiana lying on her stomach and with a nasal cannula but no oxygen mask or drip. She said the photos were taken on 26 April 2008. Christopher and Iphigenia maintained that these photographs had in fact been taken on a much earlier occasion, possibly a year before. Gabriella was able to demonstrate by reference to data stored on her phone that the photographs were indeed taken on 26 April. Nevertheless, Christopher and Iphigenia stood by their contention and said that they were "not convinced" by the photographs.

55. I find that the intense suspicion with which Christopher and Iphigenia have regarded the evidence adduced on Gabriella's behalf to be, to some extent, understandable. It is the product of their fractious relationship with Gabriella over many years and has, it appears to me, been fuelled by the failure of Mrs Singellos (and Gabriella) to tell Christopher about the March Will, the Cyprus Will and the dealings with the Bank of Cyprus accounts during Mrs Singellos' lifetime. That is not to say that both Mrs Singellos and Gabriella did not have what were no doubt in their minds good reasons for not disclosing these matters to Christopher: they felt that he would just cause trouble if he was told.

56. Although Christopher's and Iphigenia's suspicions are, as I have said, understandable in the context of relationships within the family, in my judgment those suspicions are not justified. Moreover, they have in my view coloured and affected the reliability of, in particular, Christopher's evidence so that on some points of detail, to which I shall refer subsequently, I am not able to accept his account of events.

57. Thirdly, given the mistrust which exists between Gabriella and Christopher, it is fortunate that I have had the benefit of evidence from a number of independent professional witnesses on most of the contentious factual issues. In particular

    (a) Mr Votsis acted as Solicitor to Mr and Mrs Singellos for thirty years. He had also become a family friend.

    (b) Mr Athanasiou had known Mr and Mrs Singellos also for thirty years. He had acted as their accountant since 1997.

(c) Mr Loizou had acted for Mr and Mrs Singellos as their Cyprus accountant and tax adviser since 1983. He was also a family friend.

I felt able to place considerable reliance on their accounts of the relevant events. They had no axe to grind and, in the light of their long professional and social relationships with Mr and Mrs Singellos, it is in my judgment inconceivable that their evidence could have been influenced by Gabriella, a suggestion never actually put to any of those witnesses in cross-examination but which was implicit in some of the statements made by Christopher during his evidence and in some of the criticisms made of those witnesses' evidence on Christopher's behalf.

Validity of the March Will

Facts

58. Having explained the general factual background to the dispute, it is necessary now to deal in more detail with the events leading up to the purported execution of the March Will. I will set out, first, the version of events contended for by Gabriella. This account is based on her evidence and, predominantly, that of Mr and Mrs Votsis.

59. In August 2007 Mr Votsis had a chance meeting with Mrs Singellos at Gabriella's house. He had called to obtain Gabriella's signature to a document for the purposes of a transaction in which he was acting for her. Mrs Singellos said that she wanted to discuss her affairs with him, particularly her Will. They arranged to meet a few days later at 66A Connaught Gardens. They duly met and Mrs Singellos told Mr Votsis the following:

(a) She and Christopher had not been in contact for a number of years. She was particularly aggrieved by the fact that he had not told her and Mr Singellos about the adoption of George and that George had never been introduced to them.

(b) Mr Singellos had suggested that they change their Wills in order to cut Christopher out.

(c) Christopher did not deserve to receive anything from his parents as he had excluded them from his life but she did not want to cut him out completely as he was nevertheless her son and in any event she did not want to make more trouble for Gabriella.

(d) Mrs Singellos had it in mind to leave to Gabriella 66A Connaught Gardens, 1 and 3 Agar Grove (with the possibility of leaving one of those properties to Gabriella's children instead) and one of the Green Lanes properties together with 4 Fairfax Mews and to leave to Christopher 5 Agar Grove and the other Green Lanes property. This was on the assumption, as Mrs Singellos and Mr Votsis discussed, that Mrs Singellos would survive her husband and the Agar Grove properties would form part of her estate.

(e) Her accountant had suggested transferring the properties to off-shore companies. Mr Votsis said that if Mrs Singellos was indeed domiciled abroad, this made sense from an inheritance tax point of view.

60. Mr Votsis made no attendance note of the meeting. This is unfortunate but possibly explained by the fact that, as he told Mrs Singellos, he did not do Wills or probate work anymore and was seeing her more as a friend than as a solicitor. He said that he was in any event familiar with the properties in question.

61. A few weeks after Mr Singellos' death in January 2008, Mr Votsis spoke to Mrs Singellos in respect of her husband's estate. At that time she said that she would make a decision soon about her own new Will.

62. I turn now to the events of 19 March 2008.

63. At about 9.00 am Mrs Singellos telephoned Gabriella and asked her to come round to her house as soon as possible as she felt very unwell. Gabriella duly went round and Mrs Singellos told her that she had had a bad night, felt nauseous and was anxious about what was happening to her. She said that she wanted to make a fresh Will in order to leave her affairs in order and wanted to speak to Mr Votsis, Mr Athanasiou and Mr Loizou.

64. Gabriella phoned each of these advisers on her mother's behalf. Mr Athanasiou was not available. In the case of both Mr Votsis and Mr Loizou she handed the phone to her mother so that she could speak to them. While Mrs Singellos was speaking to Mr Votsis, Gabriella went into the garden so as to give her privacy and accordingly did not hear what was said. According to Mr Votsis, Mrs Singellos gave him final instructions for her new Will. Gabriella was to receive her jewellery, 66A Connaught Gardens and its contents, 643 Green Lanes and 1 Agar Grove with 3 Agar Grove being held on trust for Gabriella's children. Christopher was to receive 5 Agar Grove, 647 Green Lanes and 4 Fairfax Mews. Her residue was to be shared equally between Gabriella and Christopher. Mrs Singellos asked Mr Votsis to act as executor together with Gabriella but he said that he would rather not and suggested his probate partner instead. But Mrs Singellos did not know the partner and therefore decided that Gabriella should be sole executrix. There was no discussion of a possible gift in favour of George.

65. It was agreed that Mr Votsis would visit Mrs Singellos the same day with the fresh Will, probably after office hours as Mr Votsis was exceptionally busy. He had to complete various property transactions and was leaving for a holiday in Cuba a few days later. Mr Votsis made a few scribbled notes during his telephone conversation with Mrs Singellos which he later disposed of. He did not retain any attendance note of her instructions. Telephone records show that this conversation lasted 7 minutes 48 seconds starting at 12.13 pm.

66. Mr Votsis said that he prepared the fresh Will in accordance with Mrs Singellos' instructions on his word processor within an hour or two of the telephone conversation.

67. Mrs Singellos and Gabriella decided that it would be best for Mrs Singellos to be taken to the Accident & Emergency Department at UCH. Mrs Singellos asked Gabriella to phone Mr Votsis to let him know that she would be at UCH and not at 66A Connaught Gardens. Gabriella and Mr Votsis could not recall when or how this message reached Mr Votsis but Mr Votsis was clear that it did. Gabriella helped Mrs Singellos to pack a bag and she remembered that Mrs Singellos' spectacles and medication were put in it. They then drove to UCH, arriving at about 2.30 pm. Gabriella phoned Christopher to inform him what was going on.

68. Gabriella stayed with her mother at UCH until about 4.30 pm when she had to leave in order to collect her children from nursery. Christopher at that point took over from her.

69. By the time Gabriella left UCH, Mrs Singellos was feeling much better and was alert but it had been decided, at Mrs Singellos' request, that she would nevertheless be admitted overnight as she felt unsettled and did not want to be at home alone. Gabriella made child care arrangements so that she could return that evening and did so at about 6.30-7.00 pm. Gabriella thinks that she spoke to Christopher by telephone before she returned and Christopher told her which ward her mother was on. On her return Gabriella stayed on Ward T7-32 with her mother and Christopher until about 9.00 pm when she and Christopher left together.

70. When Mr Votsis found out that Mrs Singellos was at UCH and not at home, he assumed (wrongly, as it turned out) that she might be at death's door and execution of her new Will was a matter of urgency. Accordingly, he left work that evening taking Mrs Singellos' new Will with him. He went home to collect his wife as he intended that she should act as the second attesting witness: Mr Votsis knew from experience that nursing staff at hospitals were often reluctant to fulfil this role. They then drove together to UCH.

71. Mr and Mrs Votsis arrived at UCH at about 9.15-9.30 pm, that is after Gabriella and Christopher had left. Mr Votsis had a good recollection of the time as he is a Tottenham Hotspur fan and was following the commentary on the derby match with Chelsea on the car radio. They arrived at UCH just after the second Spurs goal had been scored. At about this time Mr Votsis and Gabriella spoke to each other on their mobile phones and Gabriella told Mr Votsis which ward Mrs Singellos was on.

72. When Mr and Mrs Votsis arrived on the ward, Mrs Singellos was dozing in bed but, when the nurse roused her, she was alert and greeted Mr and Mrs Votsis. At that point Mrs Votsis withdrew to enable Mrs Singellos to speak in confidence with her husband. Mr Votsis and Mrs Singellos had a discussion as follows:

    (a) Mr Votsis asked if good relations with Christopher had been re-established as he noted that it was now proposed that Christopher should receive a more generous gift than had been envisaged in August 2007 (because he was now to

receive 4 Fairfax Mews). Mrs Singellos said that contact had been re-established but she did not trust Christopher's motives: she thought he was trying to preserve his inheritance as she was terminally ill.

(b) Mrs Singellos said that she would make a separate Will in respect of her property in Cyprus and was still considering the transfer of her UK assets off-shore.

(c) On reading the Will, Mrs Singellos pointed out that Clause 3 provided for Christopher to take 5 Agar Grove only and there was no mention of 647 Green Lanes/4 Fairfax Mews.

73. Mr Votsis was highly embarrassed by this error: he had failed to give effect to the instructions given to him by Mrs Singellos that very morning. He suggested that the additional gifts could be written into the Will in manuscript. Mrs Singellos agreed to this and the Will was amended accordingly by Mr Votsis. Mrs Singellos then signed the Will and her signature was attested by Mr and Mrs Votsis in accordance with the provisions of section 9 of the Wills Act.

74. Mrs Singellos then said that she was not happy with the manuscript alteration to the Will as Christopher might think that the additional gifts were merely an afterthought. Mr Votsis was so embarrassed by the error that he offered to return immediately to his office, amend the text, print off the revised Will and return to UCH. That is what happened. Mr Votsis and his wife returned to UCH at about 11.00 pm. Mrs Singellos re-read the Will with Mr Votsis pointing out the correction which he had made.

75. Mrs Singellos then signed the revised Will (that is, the March Will) and her signature was attested by Mr and Mrs Votsis in accordance with section 9 of the Wills Act.

76. The evidence of Gabriella, Mr Votsis and Mrs Votsis which formed the basis of the account which I have just set out was thoroughly tested in cross-examination by Miss Weaver. I am satisfied that that account is truthful and accurate in all material respects. I will deal in due course with the specific criticisms of the evidence which were made on Christopher's behalf.

Due execution

77. The parties are agreed that this issue turns on whether or not I accept the evidence of Mr and Mrs Votsis. I do accept that evidence. In particular, I found Mr Votsis to be an impressive witness.

78. The principal criticisms made of the evidence adduced on Gabriella's behalf were as follows.

79. First, it is said that it is unclear how Mr Votsis knew that he needed to go to UCH rather than to 66A Connaught Gardens in order to see Mrs Singellos. However, I find that Mr Votsis was informed of this by Gabriella at some time after the decision was made that she and Mrs Singellos should go to UCH and that Gabriella so informed Mr Votsis at her mother's request.

80. Secondly, it is said that Mr Votsis could not have known which ward Mrs Singellos was on as she was only admitted overnight after Gabriella had left UCH at 4.30 pm and Gabriella did not return to UCH that evening so she could not have told Mr Votsis where to find her mother. As to this, I accept the evidence of Gabriella that the decision to admit Mrs Singellos overnight was made before Gabriella left at 4.30 pm and that Gabriella returned and stayed on the ward with her mother and brother from approximately 7 pm to 9 pm. When cross-examined, Gabriella was able to give an accurate description of the ward onto which Mrs Singellos was admitted on 19 March (Ward T7-32) and she would not have been able to do that if she had not visited her mother on 19 March. Mrs Singellos was discharged from UCH the next day and when she returned on 27 March she was admitted onto a different ward. I am not able to accept Christopher's evidence to the contrary and I reject his suggestion that Gabriella was only able to describe the relevant ward because, after her mother's death, she obtained the hospital notes, discovered which ward her mother was admitted onto on 19 March and then reconnoitred it in advance of giving evidence in order to bolster her case.

81. Thirdly, it is said that the sequence of events described by Mr and Mrs Votsis is inherently unlikely. I disagree. The circumstances in which the March Will was executed were, perhaps, a little unusual but the account of events given by Mr and Mrs Votsis was, in my judgment, coherent and credible.

82. Fourthly, it was said that Mr Votsis' account was inconsistent with statements which he had made on earlier occasions. In particular, he was cross-examined by reference to the statement which he made in November 2008 pursuant to the guidance in Larke *v* Nugus and a letter from his firm dated 23 October 2008 giving certain other details. In my judgment, the discrepancies between those earlier statements and Mr Votsis' evidence to the Court were not significant. I do not find it surprising that small discrepancies existed.

83. My conclusion that Mr Votsis' evidence should be accepted is reinforced by two further points.

84. First, Dr Giles was asked to consider the authenticity of Mrs Singellos' signature on each of the Wills purportedly executed on 19 March and her conclusion (expressed in her first report dated 19 September 2009) was as follows:

> "These factors in each case amount to positive evidence that signatures in this first group, Group A [*which included each of the 19 March Wills*], are genuine signatures of Mrs Singellos. However, because of the restrictions placed upon my examinations, the evidence, although positive, is only weak. On the basis of the evidence before me I have concluded that there is more support for the view that Mrs Singellos signed the following documents [*again including each of the 19 March Wills*] than there is support for the view that any of these signatures are simulations".

It is to be noted that Dr Giles expressed her conclusion cautiously. One reason for this may spring from what Dr Giles said in the previous paragraph of her report:

> "At the relevant time in March and April 2008 Mrs Singellos was an elderly individual receiving medical treatment. The signatures of elderly and infirm individuals are difficult to assess since they are often variable, and they are characterised by uncertain pen lines and lack of fluency. Handwritings of individuals receiving medication often vary very considerably from day to day".

Dr Giles also expressed the following further conclusion:

> "The Group A signatures listed above...show sufficient similarity in detail to the normal form of Mrs Singellos' signature for me to conclude that they have been written without significant influence from any other person".

85. Whilst, as I have said, Dr Giles' views are expressed with some caution, they plainly support a conclusion on the balance of probabilities that the purported signature of Mrs Singellos on each of the Wills executed on 19 March 2008 is genuine and unassisted. This is significant because Christopher advances no positive case as to the circumstances in which the two 19 March Wills came to be signed by his mother if those circumstances were not as described by Mr Votsis. I

accept, of course, that Christopher is under no obligation to advance a positive case and is entitled simply to require Gabriella to discharge the burden of proof which lies on her. However, the absence of any credible alternative version of events must affect my appraisal of the evidence and whether Gabriella has in fact discharged that burden of proof.

86. Secondly, Mr Votsis gave a very detailed description of the events of 19 March 2008. Except, possibly, in relation to minor details, his account of events could not simply be mistaken: either he was telling the truth or he was not. To my mind, it is wholly implausible that Mr Votsis would fabricate the account which he gave and thereby betray his long-standing professional and personal relationship with Mrs Singellos. It is equally implausible that Mrs Votsis would have connived in such a fabrication.

87. For these reasons, therefore, Christopher's challenge to the March Will on the grounds of want of due execution fails.

Knowledge and approval

88. "Knowledge and approval" is the label traditionally given to the requirement which is perhaps better expressed in more modern language as being that the Will in question must have truly represented the testator's testamentary intentions: see per Chadwick LJ in Fuller *v* Strum [2002] 1 WLR 1097 at paragraph 59.

89. In normal circumstances, knowledge and approval is established by proof of testamentary capacity (which is not in issue in relation to the March Will) coupled with due execution of the Will (which I have found to be proven here). In such circumstances, knowledge and approval is inferred by the Court.

90. Christopher contends that the circumstances of the present case are not normal. He argues that this is a case where "the circumstances are such as to arouse the suspicion of the Court" (see Fuller *v* Strum per Peter Gibson LJ at paragraph 33) with the result that Gabriella must prove affirmatively that Mrs Singellos knew and approved of the contents of the March Will.

91. Whether the circumstances are such as to arouse the suspicion of the Court is evidently a question of fact in each case. In my judgment, this should not be reduced to some sort of tick-box exercise. It is important that the suspiciousness or otherwise of the features of the case identified by the party challenging the validity of the Will is judged in the light of the full background of the relationships between the relevant parties.

92. In her closing submissions, Miss Weaver identified the following circumstances as being ones which should arouse the suspicion of the Court:

(a) Gabriella "facilitated" the making of the March Will and was the main point of contact between Mrs Singellos and her professional advisers.

(b) Gabriella claimed to have had a close relationship with her mother and managed her parents' finances.

(c) Mrs Singellos was recently bereaved and in ill-health.

(d) The March Will made no provision for Christopher's son George in contrast to that made for Gabriella's children.

(e) On 25 April 2008 Mrs Singellos transferred her Bank of Cyprus accounts into the joint names of herself and Gabriella thereby making a gift to Gabriella on her death of £2m outside the March Will.

(f) The appointment of Gabriella as sole executrix when Mrs Singellos must have known that this was bound to cause trouble with Christopher.

93. When evaluated in the context of the history that I have summarised earlier in this judgment, I do not accept that these features, whether considered individually or cumulatively, amount to circumstances which should arouse the suspicion of the Court such as to require affirmative proof of knowledge and approval from Gabriella. I will deal with each of them in turn.

94. As for (a), the degree of "facilitation" on Gabriella's part was minimal. She played no part in preparing either of the Wills executed on 19 March or in communicating Mrs Singellos' instructions to Mr Votsis. In August 2007 Mrs Singellos met Mr Votsis in Gabriella's absence. On 19 March 2008 Gabriella was out of earshot when the telephone conversation between her mother and Mr Votsis took place. On her evidence, which I accept, Gabriella did not know the contents of the March Will until after her mother's death. Nor was she present when the March Will was executed. Her only material involvement was to telephone Mr Votsis on two occasions on 19 March at her mother's request, first of all in the morning to enable Mrs Singellos to give instructions to Mr Votsis and, secondly, later that day to enable Mr Votsis to meet Mrs Singellos at UCH.

95. The paradigm case where the Court's suspicions are aroused is where the relevant Will is prepared by the principal beneficiary without the involvement of the testator's solicitor or other professional adviser. In contrast, in the present case, Mr Votsis was fully involved at all stages of the preparation and execution of the March Will.

96. As for (b), this feature existed but cannot carry much weight in the light of the involvement of Mr Votsis, and the lack of involvement of Gabriella, in the preparation of the Will as I have mentioned in relation to point (a).

97. As for (c), it is of course true that Mrs Singellos was recently bereaved and in ill-health. However, on Christopher's own evidence, his mother was strong, independent-minded and a somewhat intimidating character. I do not accept that, on 19 March 2008, she was vulnerable in the sense of being likely to make a Will contrary to her true wishes. Any such vulnerability as did exist was counteracted by the involvement of Mr Votsis.

98. As for (d), the omission from the March Will of any provision for George (which in the event was the most contentious issue between the parties) is, in my judgment, explained by the family history. Due to Christopher's estrangement from his parents, Mrs Singellos did not set eyes on George until three months before her death. Although I accept the evidence given by Christopher and Iphigenia as to the degree of contact between Mrs Singellos and George from January 2008 onwards, the fact remains that she only saw him on a handful of occasions

whereas she had been in regular contact with Gabriella's children since their birth. It is also to be noted that George's visits to Gabriella's house to play with his cousins only took place after the execution of the March Will.

99. Moreover, Mrs Singellos plainly resented the fact that she had been kept in the dark about George's adoption. This is apparent from Mr Votsis' evidence of his meeting with Mrs Singellos in August 2007. Just as significant was Mr Loizou's evidence, which I accept, as to what Mrs Singellos said when they met at UCH on 11 April. He said that Mrs Singellos initially refused to consider a gift to George of part of her assets in Cyprus, saying "Why should I when they never even bothered to introduce the child to me?" At first sight this statement is puzzling because, by 11 April, Mrs Singellos had spent time with George on several occasions. But I take it to be a reference to the fact that there was a long period of time when Christopher did not introduce George to his grandmother and that that still rankled with her. I should mention that, in the course of the discussion with Mr Loizou on 11 April, Mrs Singellos apparently changed her mind and was willing to leave something to George but the envisaged *inter vivos* gifts of property in Cyprus which were discussed on that occasion were never implemented and the Cyprus Will which was executed on 27 April made no provision for George. Whatever the explanation for this, Mrs Singellos' statement to Mr Loizou on 11 April seems to me to be revealing of her attitude to the question of provision for George on 19 March. Furthermore, although Christopher considered that he and his mother were reconciled following Mr Singellos' death, Mrs Singellos remained wary of his motives as she explained to Mr Votsis on 19 March.

100. In these circumstances, what seems to me to be striking is that Mrs Singellos made the provision for Christopher in the March Will that she did. She did not cut him out. She made substantial gifts to both Gabriella and Christopher. During the trial it was suggested that the properties left to Gabriella were more valuable than those left to Christopher but Gabriella disputed this and no valuation evidence was adduced. The only change in Mrs Singellos' instructions between August 2007 and 19 March 2008 was to make more extensive provision for Christopher.

101. As for (e), Mrs Singellos' instructions in relation to the Bank of Cyprus accounts were given in the presence of two professional advisers, although it is true that Gabriella was present on this occasion. The fact that the transfer of the accounts into joint names would result in Gabriella

receiving £2m outside the March Will in which Christopher would not share does not seem to me to be particularly surprising given the family background. In any event, this was a separate transaction which was effected more than one month after the execution of the March Will and cannot, in my judgment, cast any serious doubt on whether the March Will represented Mrs Singellos' true intentions given the circumstances in which that document was executed.

102. As for (f), a theme of the submissions made on Christopher's behalf was that Mrs Singellos wanted to promote family harmony and was unlikely to have done anything which was calculated to cause trouble between Gabriella and Christopher. Mrs Singellos may well have hoped for better relations between Gabriella and Christopher but I do not accept that this had an overriding influence on the dispositions which she made. Hence the transfer of the Bank of Cyprus accounts into joint names. In any event, the very fact that Mrs Singellos knew that Gabriella and Christopher could not be relied upon to co-operate makes the appointment of Gabriella as sole executrix understandable: if Gabriella and Christopher had both been appointed executors, nothing would ever have been decided.

103. Even if I am wrong in concluding that the circumstances surrounding the execution of the March Will were not such as properly to arouse the suspicion of the Court, I am satisfied that Gabriella has adduced evidence sufficient to prove affirmatively that the March Will truly did represent Mrs Singellos' testamentary intentions.

104. Although Miss Weaver argued that the March Will was prepared and executed in a rush, I do not think that is a proper characterisation of what happened. Mrs Singellos gave her initial instructions to Mr Votsis in August 2007. She then had seven months in which to contemplate any changes which she wished to make. The conversation she had with Mr Votsis following Mr Singellos' death indicated that she was giving the subject active consideration. She confirmed her instructions on the morning of 19 March with an adjustment to them in favour of Christopher. Mr Votsis was satisfied that Mrs Singellos was well aware of the provisions of the earlier 1986 Will and the extent to which her new Will would make different provision. At UCH, Mrs Singellos read through each of the two wills executed on 19 March and on the first occasion spotted Mr Votsis' drafting error which indicates both that she was alert and that she understood the provisions of the Will. I should add that there was a dispute as to whether Mrs

Singellos had her spectacles with her when she was in hospital. I accept Mr Votsis' evidence that she did and was wearing them when she read the Will. If she had not been wearing them, she could not have spotted Mr Votsis' error and she would have asked Mr Votsis to read the Will aloud.

105. I also accept the evidence of Mr Athanasiou that when he met with Mrs Singellos on or about 10 April she told him that she had changed her Will and summarised the new provisions. This indicates that some three weeks after executing the March Will Mrs Singellos still recollected, and was content with, its provisions.

106. For these reasons I reject Christopher's challenge to the validity of the March Will on the grounds of want of knowledge and approval.

107. It follows that Gabriella's claim to prove the March Will succeeds.

Validity of the Company Documents

Facts

108. Thus far I have referred only briefly to the inheritance tax saving scheme ("the IHT scheme") and the Company Documents which were intended to implement it. It is necessary now to go into rather more detail.

109. The basic structure of the IHT scheme was relatively straightforward. The London properties were to be transferred to two companies incorporated in the BVI with the shares in one such company being transferred to Gabriella and the shares in the other company being transferred to Christopher. In particular, 66A Connaught Gardens, 643 Green Lanes and 1 and 3 Agar Grove were to be transferred to London Town Investments Limited ("London Town") for the benefit of Gabriella. 647 Green Lanes (plus 4 Fairfax Mews) and 5 Agar Grove were to be transferred to Gromdale Investments Limited ("Gromdale") for the benefit of Christopher. The properties would be transferred in consideration of loan notes issued by the respective companies, the benefit of the loan notes then being assigned to Gabriella and Christopher respectively.

110. The effect of the proposed transfers was broadly to accelerate the gifts in the March Will. I say "broadly" because 3 Agar Grove was to be transferred to London Town which was to be owned beneficially by Gabriella so the testamentary gift in favour of Gabriella's children would not be replicated.

111. The only purpose of this exercise was to avoid inheritance tax on the London properties which would otherwise be payable on Mrs Singellos' death. The IHT scheme carried with it a cost in the form of professional fees and, in particular, stamp duty on the transfers but the respective rates of inheritance tax and stamp duty meant that the IHT scheme, if successful, would give rise to a substantial net tax saving.

112. Although the IHT scheme was in essence relatively simple, it required a multiplicity of documents to give effect to it. These documents were prepared, principally, by Mr Athanasiou's firm. There were in total 21 documents falling into the following categories:

(1) consents of Mrs Singellos to act as a director of London Town/Gromdale;

(2) resolutions to issue shares in London Town/Gromdale to Mrs Singellos;

(3) resolutions to transfer the shares in London Town/Gromdale to Gabriella/Christopher and to issue replacement share certificates;

(4) share transfers in respect of London Town to Gabriella and in respect of Gromdale to Christopher;

(5) TR1 property transfers in respect of 66A Connaught Gardens and the Green Lanes properties;

(6) deeds of assignment of Mrs Singellos' interest in the Agar Grove properties;

(7) loan notes issued by London Town/Gromdale to Mrs Singellos in consideration of the transfers and assignments;

(8) deeds of assignment of the benefit of the London Town loan note to Gabriella and of the Gromdale loan note to Christopher.

113. The executed documents bore various dates, namely 17 April, 18 April, 21 April and 28 April.

114. Gabriella's case in opening, based at least in part on Mr Athanasiou's witness statement, was as follows:

(1) The six documents dated 17, 18 and 21 April were all executed by Mrs Singellos on 21 April when she was capable of signing unaided.

(2) The fifteen documents dated 28 April were all signed on 28 April: some of them were signed by Mrs Singellos unaided; others were signed by her with the assistance of Gabriella.

115. Since the documents which actually effected the transfer of the properties to the offshore companies were all executed on 28 April, Gabriella accepted that the IHT scheme could not be effective unless Mrs Singellos had sufficient mental capacity to execute the relevant documents on 28 April.

116. On Christopher's behalf a number of points were taken in relation to the Company Documents. It was said that the purpose of some of the documents which were executed was unclear and that, for no apparent reason, some of the documents (for example, the consents to act as a director, the share transfers and the loan notes) were duplicated in the sense that different versions of the same document had been executed by Mrs Singellos. Moreover, it was pointed out with some force that it was highly improbable that the documents dated 28 April had been executed in the manner contended for initially by Gabriella as that would have involved Mrs Singellos being both capable and incapable of signing unaided on the same occasion.

117. Recognition of the force of this last point led Mr Athanasiou to change his evidence in the witness box. His revised version of events was that the twelve documents signed by Mrs Singellos in blue ink were all executed on 21 April although some of those documents were left

undated and were subsequently dated 28 April. The nine documents signed by Mrs Singellos in black ink were all executed on, and dated, 28 April.

118. It seems clear, and I find, that Mr Athanasiou's revised account is correct. It is entirely consistent with Dr Giles' reports in which she opined that Mrs Singellos' unaided signatures had been made in blue ink and her guided signatures had been made in black ink.

119. It was argued on Christopher's behalf that this demonstrated that Mr Athanasiou's evidence was generally unreliable. I do not accept that. It is certainly regrettable that the precise sequence of events was not examined more carefully at an earlier stage of the case but Mr Athanasiou frankly accepted that errors had been made in his witness statement and I am sure that the confusion stemmed from the multiplicity of documents required to implement the IHT scheme and the fact that implementation became somewhat rushed towards the end when it was appreciated how ill Mrs Singellos had become. As a result Mr Athanasiou's file did not record clearly what had been done and in what order. A similar explanation can be given for the other curious features of the documentation identified on Christopher's behalf but Mr Strong pointed out in his evidence that an explanation for at least some of the duplication of documents was that an original and counterpart had to be executed in some cases. In any event, I am satisfied that none of these features indicates that anything sinister was taking place.

120. There are two issues which I have to decide in relation to the Company Documents:

(1) Can the guided signatures of Mrs Singellos on some of the documents dated 28 April properly be regarded as signatures of Mrs Singellos?

Counsel were agreed that the issue here is whether, on the evidence, Mrs Singellos wanted and intended to sign the relevant documents even though she could not physically do so without Gabriella's help or whether Mrs Singellos was unwilling to sign or was unaware of what was happening so that her purported signature was in reality an empty mechanical process. In essence, Christopher's argument is one of *non est factum* in one of its more extreme forms: see **Gallie *v* Lee** [1971] AC 1004, 1015G. It is to be noted that this is a different issue to the question whether Mrs Singellos was

capable of understanding, and did understand, the nature and effect of the documents which she executed on 28 April, which is the next issue.

(2) Did Mrs Singellos have sufficient mental capacity to execute those documents which were executed on 28 April?

Gabriella accepted that she had to succeed on both issues for the declarations sought as to the validity of the Company Documents to be granted.

121. The resolution of these two issues requires attention to be focused in particular on (i) the discussions between Mr Athanasiou and Mrs Singellos about the IHT scheme before execution of the documentation on 21 and 28 April; and (ii) the events of 28 April.

122. On or about 10 April, Mr Athanasiou met with Mrs Singellos on the ward at UCH for about one hour. Mr Athanasiou's evidence was that he explained to Mrs Singellos both the structure and mechanics of the proposed IHT scheme and the potential inheritance tax saving and the cost of the scheme including stamp duty. He dealt with the tax saving and costs in round figures which he was able to do because he knew the approximate values of the London properties from his previous dealings on behalf of Mrs Singellos. Mrs Singellos told him that she would think about it.

123. On 15 April, Mr Athanasiou and Mrs Singellos had a further discussion about the IHT scheme. Mr Athanasiou explained the mechanics again and Mrs Singellos asked him questions about the amount of the inheritance tax saving and the costs associated with the scheme. On that occasion Mrs Singellos instructed Mr Athanasiou to proceed. Mr Athanasiou then returned to the office and told his partner Mr Strong that Mrs Singellos had given the go ahead (as Mr Strong confirmed in his evidence) and they made a start on preparing the relevant documents. Mr Athanasiou charged for two hours of his time and Mr Strong for one and a half hours reflecting both the discussion with Mrs Singellos at UCH and the preliminary steps which were taken to set up the BVI companies and draft the documentation.

124. It is unfortunate that Mr Athanasiou did not make any attendance notes of his two visits to UCH to discuss the IHT scheme with Mrs Singellos. However, I am satisfied on the basis of his

evidence that, on 15 April, Mrs Singellos had a sufficient understanding of the IHT scheme, that she formed a settled intention to proceed with it and instructed Mr Athanasiou accordingly.

125. In reaching this conclusion I have had regard to the following matters. First, at this stage in the chronology there is no issue as to Mrs Singellos' mental capacity. Secondly, the basic structure, legal effect and financial implications of the IHT scheme were, in my judgment, not hard to grasp for a woman of Mrs Singellos' astuteness. Mr Athanasiou referred to her as a "very clever and dynamic businesswoman". In particular, Mrs Singellos would have appreciated that implementation of the scheme would result in an irrevocable loss of control of the London properties as that was the principal reason why she had rejected the idea in July 2000. As for the financial implications, although the figures given to her by Mr Athanasiou were approximate, Mrs Singellos had in my view sufficient detail in order to reach an informed decision. As I have pointed out, provided the scheme was effective, the respective rates of inheritance tax and stamp duty were such that the inheritance tax saved would always substantially exceed the stamp duty incurred. In fact, although as I have mentioned no valuation evidence was adduced at the trial, the figures contained in the London Town and Gromdale loan notes suggest that the combined value of the properties was approximately £4.5m resulting in a net tax saving of about £1.6m. In my judgment, it was not necessary for Mrs Singellos to have a detailed understanding of the legal effect of each of the Company Documents signed by her provided that she understood the effect of the documentation as a whole. In her closing submissions, Miss Weaver accepted this. Thirdly, as I have mentioned, the IHT scheme was not a new idea. It represented a revival of the proposal considered in July 2000 and on which Mr and Mrs Singellos received written advice from Mr Athanasiou's firm. Mr Athanasiou confirmed that, during their discussions in April 2008, Mrs Singellos remembered the earlier proposal and advice quite well. That is corroborated by the fact that Mrs Singellos referred to the proposal in her discussions with Mr Votsis both in August 2007 and on 19 March 2008.

126. Contrary to the submission made on Christopher's behalf, I do not find it surprising that Mrs Singellos was in favour of the IHT scheme in April 2008 when she had not been in July 2000. Her circumstances were now completely different. She knew that she was terminally ill and so the loss of control of the relevant assets was of diminished importance. She had recently made

arrangements to dispose of her assets in the UK on her death and the impact of inheritance tax on those dispositions would have appeared of much more immediate importance, which would have justified the costs associated with implementing the scheme.

127. Miss Weaver also submitted that Gabriella played a much more significant role than she was willing to admit in the implementation of the IHT scheme and that it was her rather than Mrs Singellos who really wanted to proceed with it. I am satisfied that Gabriella's role was at most peripheral. She was not a party to the discussions between Mr Athanasiou and Mrs Singellos and had no significant influence on Mrs Singellos' decision to proceed. In fact, the meetings between Mr Athanasiou and Mrs Singellos in April were preceded by a meeting between Mr Athanasiou and both Gabriella and Christopher at which the possibility of such a scheme was discussed and, according to Mr Athanasiou, Christopher was more keen than Gabriella for the matter to be progressed with Mrs Singellos.

128. On 18 April the BVI companies were acquired by BSG Valentine and on 21 April Mr Athanasiou took the first batch of the Company Documents to Mrs Singellos at UCH for execution. He told Mrs Singellos that he would bring the remaining documents to her for execution when they were ready.

129. I turn now to the events of 28 April.

130. All the witnesses were agreed that Mrs Singellos' condition had deteriorated significantly by 28 April.

131. The UCH clinical notes for 27 April recorded that Mrs Singellos was "desperately unwell" with "cancer in lungs; blood clots in lungs; chest infection". There is a reference to giving Mrs Singellos high-flow rate oxygen "to minimise her breathlessness" and to her prognosis being "probably measurable in days". For 28 April, the notes refer to "deterioration over the weekend" (28 April was a Monday). They refer to the patient being "very unwell" with "breathlessness". It appears that Mrs Singellos was breathing oxygen through a mask for some of the time but there is a reference to substituting a nasal cannula for the mask as that was "better tolerated". It is not clear which was in use by the evening. There is also reference to

starting a "syringe driver", that is a device to enable Mrs Singellos to receive continuous doses of morphine over a prolonged period to maximise pain relief.

132. Christopher told me that the last rites were administered to Mrs Singellos by a Greek Orthodox priest at 2 pm.

133. The execution of the remaining Company Documents took place in the early evening. Mr Athanasiou described Mrs Singellos as "a lot worse" than she had been the previous day when he witnessed the Cyprus Will. He said that Mrs Singellos could speak but with difficulty; that she was very weak and drowsy; but they exchanged brief greetings when they arrived. Mr Votsis said that Mrs Singellos appeared very tired and drowsy; that she could speak but only softly; and that she smiled when he entered the room, indicating that she recognised him, and said goodbye when he left after the signing had taken place. Gabriella said that her mother was not "out of it" but could not talk much.

134. The recollections of Gabriella, Mr Athanasiou and Mr Votsis as to the execution of the remaining documents were not identical but they did present a coherent picture as follows. Gabriella and Christopher were both on the ward with Mrs Singellos. At about 6.30 to 7.00 pm Mr Athanasiou arrived with a briefcase containing the remaining Company Documents except for the Assignments of Mrs Singellos' interests in the Agar Grove properties which were being prepared by Mr Votsis. Mr Votsis arrived a little later with the Assignments, probably about 7.00 to 7.30 pm. They had come because Gabriella had telephoned Mr Athanasiou earlier in the day to alert him to her mother's deteriorating condition.

135. In the presence of Gabriella, Christopher and Mr Votsis, Mr Athanasiou told Mrs Singellos that he had brought the remaining Company Documents with him; explained briefly what they were and asked if she was willing to sign them. Mrs Singellos gesticulated with her hand as if she were signing a document and either said, or nodded to indicate, "Yes" and (according to Gabriella) said words to the effect "I want to finish this".

136. It quickly became apparent that Mrs Singellos did not have the strength to control the pen. Mr Athanasiou asked those present what they should do. Mr Votsis said that it would be permissible for Mrs Singellos to sign with assistance. Mrs Singellos said to Mr Athanasiou "We

must do this" or words to that effect. Someone, probably Mr Votsis, suggested that Gabriella assist her mother. Accordingly, Gabriella sat on the bed next to her mother and guided her hand so as to sign the documents. The documents were signed in turn and this took about 10-15 minutes. Mrs Singellos did not read them.

137. Christopher remained present throughout the process and did not object to what was going on. Mr Votsis described him as saying little and being "passive".

138. Christopher's account of events differed in two principal respects. First, he said that his mother was less responsive than was indicated by Gabriella, Mr Athanasiou and Mr Votsis. He said that his mother's eyes were closed most of the time; she was wearing an oxygen mask; she mumbled words but was barely conscious. Secondly, he said that, when it became clear that Mrs Singellos could not sign without assistance, he got up and protested that his mother was not in a position to sign or understand anything. At that point he left the ward in order to move his car which he was worried would get locked overnight in the car park in which he had left it. When he returned the others were already in the process of obtaining Mrs Singellos' signature with Gabriella's assistance.

139. I prefer the account given by Gabriella, Mr Athanasiou and Mr Votsis. In particular, so far as Christopher's alleged protest is concerned, I think it highly unlikely that either Mr Athanasiou or Mr Votsis, given their respective long professional and personal relationships with Mrs Singellos, would have ploughed on in the teeth of opposition from her son. Mr Athanasiou told me explicitly that he would not have done so and I accept that. Mr Votsis' evidence was that he was keen for Gabriella and Christopher both to be present on this occasion as he wanted to ensure consensus between them so that there would be no later suggestion that Mrs Singellos had been forced to sign documents unwillingly. Mr Athanasiou also told me that Christopher actually thanked him and Mr Votsis for their efforts before they left. I also note that during her cross-examination, Christopher's wife, Iphigenia, said Christopher told her on 30 April about the signing of the documents but did not mention the fact that he had protested. The alleged protest is also not mentioned in correspondence between the parties' respective solicitors after Mrs Singellos' death. There are other oddities about this aspect of Christopher's evidence. I find it implausible that he would have left the hospital in order to move his car if he had really

thought that Gabriella, Mr Athanasiou and Mr Votsis were about to procure the execution of documents by his mother when she was incapable of doing so; he would surely have stayed in order to ensure that it did not happen. Moreover, there was no suggestion in his evidence that he continued his protest when he returned from moving his car and found the others doing what he thought was inappropriate.

140. For these reasons, I do not accept that Christopher protested against his mother being asked to sign the documents and that fact seems to me to support the evidence of Gabriella, Mr Athanasiou and Mr Votsis as to Mrs Singellos' state of health.

141. I accept that Christopher did leave the hospital in order to move his car and he produced the car park ticket which shows that he moved the car at 7.18 pm. However, that is consistent with him having moved his car before Mr Votsis arrived at the hospital and hence before the signing process took place. In cross-examination, Christopher accepted that this was possible. On that footing, he would have been present throughout the signing process which is consistent with the evidence of each of Gabriella, Mr Athanasiou and Mr Votsis.

Non est factum

142. In my judgment, the evidence is sufficient to justify a finding that, on 28 April, Mrs Singellos wanted and intended to sign the remaining Company Documents despite her inability to effect her signature unaided.

143. The IHT scheme was something which Mrs Singellos was initially advised on in July 2000 and which she had had in mind in both August 2007 and March 2008 and then considered further with Mr Athanasiou on two occasions in the first half of April 2008. I have found that Mrs Singellos had a settled intention to proceed with the scheme on 15 April and instructed Mr Athanasiou accordingly. She executed the first batch of documents on 21 April and was told by Mr Athanasiou to expect further documents for signature which would be presented to her in due course.

144. When Mr Athanasiou and Mr Votsis arrived on the ward on 28 April Mrs Singellos greeted them in a way which suggests that she recognised who they were. I accept the evidence of Gabriella

and Mr Athanasiou that, when asked to sign, Mrs Singellos indicated her consent and said words to the effect of "I want to finish this" and "We must do this". These words seem to me to indicate not only a willingness to sign the relevant documents but an appreciation that the documents were the promised second batch which were required to complete the IHT scheme and to which Mr Athanasiou had referred on 21 April.

145. For these reasons, I reject Christopher's argument based on *non est factum*.

Mental capacity

146. The mental capacity required to enter into an *inter vivos* transaction is dealt with in, among other cases, **Re Beaney Deceased** [1978] 1 WLR 770 and **Masterman-Lister *v* Brutton & Co** [2003] 1 WLR 1511.

147. The test is issue-specific, in that the degree of understanding required depends on the nature and complexity of the transaction in question. The more complex the transaction and/or the more extensive the nature of the disposition, the greater the degree of understanding which is required. So, as in **Re Beaney**, an *inter vivos* gift of substantially the whole of the donor's estate requires a comparable degree of understanding to that required for the execution of a Will, namely an understanding of the nature and effect of the act, of the extent of the property of which the donor is disposing and an appreciation of the moral claims to which he/she ought to give effect: **Banks *v* Goodfellow** (1870) LR 5 QB 549.

148. In the present case, by virtue of executing the Company Documents, Mrs Singellos effectively made an *inter vivos* gift of both her home (66A Connaught Gardens) and five valuable investment properties, with a total value (according to the London Town and Gromdale loan notes) of approximately £4.5m. Although Mrs Singellos had other substantial assets, this argues for the requirement of a high degree of understanding.

149. I am satisfied that Mrs Singellos had that degree of understanding on 15 April when she gave Mr Athanasiou instructions to proceed with the IHT scheme. However, I am unable to conclude that this degree of understanding persisted up to and including the 28 April.

150. There had been a marked deterioration in Mrs Singellos' physical condition by 28 April, as evidenced by the UCH clinical notes and noted by all the witnesses. In the event, I did not have the benefit of any expert medical opinion to help me determine the extent to which Mrs Singellos' physical deterioration may have affected her mental capacity. The issue of expert medical evidence was the subject of an application at the start of the trial. Opinion evidence on this issue from Dr McCormack had been served on Gabriella's behalf but without the Court having made any direction for expert evidence. Christopher's legal team produced a rival report from a Dr Keet shortly before the trial and argued that Dr McCormack's evidence should not be admitted unless Dr Keet's was also. When the matter came before me for decision, Gabriella elected not to rely on Dr McCormack's evidence, and in the light of that, I refused permission for Dr Keet's report to be adduced.

151. Nevertheless, even in the absence of expert medical evidence, it seems to me likely that the weakness and drowsiness noted by all the witnesses together with the physical pain which Mrs Singellos must have been experiencing (necessitating the introduction of a syringe driver) must have had an appreciable effect on her intellectual capacity even if I put on one side, in the absence of such medical evidence, the possible sedative effects of the drugs which were being administered to her.

152. I also consider it important that Mr Votsis, an experienced solicitor, was sufficiently concerned as to Mrs Singellos' capacity on 28 April for him to ask Gabriella to obtain a letter from the hospital confirming that Mrs Singellos was of sound mind on that day.

153. My conclusion is that Mrs Singellos was capable of understanding, and did understand, on 28 April that she was signing documents which gave effect to her earlier instructions to Mr Athanasiou. However, on the balance of probabilities, I do not consider that she had any greater understanding than that.

154. On that basis, Mrs Singellos did not have the high degree of understanding required by **Re Beaney** on 28 April. *Prima facie*, therefore, Gabriella is not entitled to the declaration which she seeks in relation to the Company Documents. However, that is not the end of the matter as Mr Staunton advanced a fall-back argument. The argument was that, even if Mrs Singellos did not

have sufficient capacity on 28 April, she did have such capacity on 15 April when instructions were given to Mr Athanasiou to proceed with the IHT scheme and that is sufficient as the Court should apply to *inter vivos* dispositions the doctrine recognised in relation to the execution of Wills in **Parker *v* Felgate** (1883) LR 8 PD 171 and subsequent cases. I turn, therefore, to consider that argument.

Parker *v* Felgate

155. In **Parker *v* Felgate**, the testatrix gave instructions in respect of her Will to her solicitors at a time when she had testamentary capacity but did not execute the Will until a month later when she had ceased to have capacity. The action to prove the Will was tried (as was the practice at that time) before a Judge and jury. Sir James Hannen P, in the course of his summing up, directed the jury as follows (pp.173-174):

> "If a person has given instructions to a solicitor to make a will, and the solicitor prepares it in accordance with those instructions, all that is necessary to make it a good will, if executed by the testator, is that he should be able to think thus far, "I gave my solicitor instructions to prepare a will making a certain disposition of my property. I have no doubt that he has given effect to my intention, and I accept the document which he put before me as carrying it out". Now, I have only put into language that which flashes across the mind without being expressed in words. Do you believe that she was so far capable of understanding what was going on? Did she at that time know and recollect all that she had done with Mr Parker? That would be one state of mind. But if you should come to the conclusion that she did not at that time recollect in detail all that had passed between them, do you think she was in a condition, if each clause of this will had been put to her, and she had been asked, "Do you wish to leave So-and-So so much", or do you wish to do this (as the case might be), she would have been able to answer intelligently "Yes" to each question? That would be another condition of mind. It would not be so strong as the first, *viz.* that in which she recollected all that she had done, but it would be sufficient. There is also a third state of mind which, in my judgment, would be sufficient. A person might no longer have capacity to go over the whole transaction, and take up the thread of business from the beginning to the end, and think it all over again, but if he is able to say to himself, "I have settled that business with my solicitor. I rely upon his having embodied it in proper words, and I accept the paper which is put before me as embodying it;" it is not, of course, necessary that he should use those words, but if he is capable of that train of thought in my judgment that is sufficient".

156. So a Will will be validly executed if (i) the testator gives settled instructions in respect of it to his solicitor at a time when he has testamentary capacity and (ii) the testator executes the Will knowing or believing (as is the case) that it reflects those earlier instructions, this being the "third state of mind" referred to by Sir James Hannen. Hence Sir James Hannen's actual question to the jury (at p.175) was as follows:

> "Was she capable of understanding, and did she understand, that she was engaged in executing the will for which she had given instructions to Mr Parker?"

157. There are three obvious differences between **Parker *v* Felgate** and the present case:

(1) the present case concerns *inter vivos* dispositions not a testamentary disposition taking effect only on death;

(2) a Will is usually a single document whereas the Company Documents consisted of a series of documents implementing a composite transaction; and

(3) Mrs Singellos' instructions were given to her accountant and not to a solicitor.

Do these differences mean that the principle in **Parker *v* Felgate** is not applicable in the present circumstances? Counsel's researches have revealed no authority on the point either way.

158. If these differences are not critical, my findings of fact suggest that the principle should be applied in the present case. Mrs Singellos gave instructions to Mr Athanasiou to proceed with the IHT scheme on 15 April when she had full capacity and, as I have found, Mrs Singellos was capable of understanding, and did understand, on 28 April that she was signing documents which gave effect to those instructions. In fact, the case for upholding the validity of the Company Documents is even stronger than that: the majority of the documents required to implement the IHT scheme were executed on 21 April when all agree that Mrs Singellos had capacity. The scheme was therefore completed in part before incapacity intervened.

159. Whether the differences identified are critical should depend on an examination of the rationale for the decision in **Parker *v* Felgate**. Although that case has been followed consistently for more than 100 years, the rationale was not fully articulated until the issue was examined by the Court of Appeal in **Perrins v Holland** [2010] EWCA Civ 840. In fact, **Perrins** had not even been argued in the Court of Appeal when closing submissions in the present case were completed on 8 June. In the circumstances I thought it right to defer judgment until after the Court of Appeal judgments were delivered on 21 July and then invited written submissions from Counsel on the impact of that decision in the present case.

160. In **Perrins**, the decision in **Parker *v* Felgate** was challenged by the appellant on the basis that it was both wrong in principle and not based on earlier authority and should therefore not be

followed. This challenge was unanimously rejected by the Court of Appeal which held that the decision was soundly based.

161. The Chancellor (with whom Jackson LJ agreed) explained the rationale behind the decision as follows (paragraph 23):

> "Counsel for David submits with some force that if the validity of a will depends on both testamentary capacity and due execution logically the former should exist at the time of the latter. The cases to which I have referred demonstrate clearly that that was not and is not the law. What is required is due execution of a will which the court can be satisfied expressed the wishes of a testator at a time when he did have full testamentary capacity and has not been subsequently revoked. The reasons lie, I believe, in the freedom of testamentary disposition which the law favours, as explained by the court in *Banks v Goodfellow*, the usual preference of the court, if reasonably possible, to uphold transactions (cf. in the context of the interpretation of contracts the maxim *res magis valeat quam pereat*) and the pragmatic recognition in that context that the testator has no further opportunity to give expression to his wishes. Whatever the reason, the decision of the Privy Council in *Pereira v Pereira* is strong persuasive authority for upholding the decision in *Parker v Felgate*. Further the decisions to which I have referred demonstrate a proposition of some antiquity acted on for over 250 years. In those circumstances I do not consider that, even if I thought that *Parker v Felgate* had been wrongly decided, which I do not, it is open to this court to hold that *Parker v Felgate* was wrongly decided and should not be followed".

Moore-Bick LJ referred to the principles on which **Parker *v* Felgate** was based as follows (paragraphs 54-56):

> "54. Viewed broadly, the purpose of requiring proof of testamentary capacity and knowledge of approval is to ensure that the will as executed reflects the conscious intentions of a sound mind. Unless the testator writes the will himself and decides upon its dispositions as he does so, the execution of a will gives effect to decisions made before the document itself was prepared which continue to represent the testator's intentions. If they do not, he will give fresh instructions and start the process again. In that context it is important to note that the decision in *Parker v Felgate* does not displace the requirement for full testamentary capacity; it merely displaces the ordinary requirement that the deceased should have had such capacity at the time he executed the will.
>
> 55. Unless there is reason to question it, proof of testamentary capacity and the execution of the will are sufficient to establish knowledge and approval of its contents. It can normally be accepted that a person of sound mind is capable of disposing of his property and intends to do so in the manner provided for by the will. In such cases it is irrelevant to enquire whether he lacked capacity at the time when he gave the instructions, whether they continued to reflect his intentions or whether he realised that the document gave effect to them. It is enough that he was capable of making the decision at the time he executed the document. Where the testator loses some of his faculties between giving instructions and executing the will, however, the position is different. One must then ask (i) whether at the time he gave the instructions he had the ability to understand and give proper consideration to the various matters which are called for, that is, whether he had testamentary capacity, (ii) whether the document gives effect to his instructions, (iii) whether those instructions continued to reflect his intentions and (iv) whether at the time he executed the will he knew what he was doing

> and thus had sufficient mental capacity to carry out the juristic act which that involves. If all those questions can be answered in the affirmative, one can be satisfied that the will accurately reflects the deceased's intentions formed at a time when he was capable of making fully informed decisions.
>
> 56. That, it seems to me, is what *Parker v Felgate* decides. In the first example given by Sir James Hannen the testator can remember giving certain instructions to his solicitor, believes that they have been carried out and executes the will in that belief. In such a case there is testamentary capacity at the date of the decision and an intention to give effect to those decisions at the date of execution. In the second example, the testator cannot remember the details of the instructions he gave, but has capacity to understand each clause of the will as it is summarised to him and indicate his consent to it. Again, there is testamentary capacity at the date of decision and an intention to give effect to them at the date of execution. In the third example the testator can remember only that he gave instructions for his will, believes that the document correctly reflects them (as it does), and decides to execute it on that understanding. In that case also there is testamentary capacity at the date of decision and an intention to give effect to those earlier decisions at the date of execution".

162. Naturally, since **Perrins** (like **Parker *v* Felgate** itself) was concerned with the validity of a Will, the passages which I have quoted are couched in terms which are referable to testamentary dispositions, intentions and capacity. But the reasons given reflect broader considerations of policy which appear equally applicable to *inter vivos* dispositions. Thus:

(1) The first reason identified by the Chancellor was "freedom of testamentary disposition" but English law has long recognised a policy of freedom to alienate property *inter vivos* also. This can be seen, for example, in the rules prohibiting conditions against alienation of freehold property (*Megarry & Wade: The Law of Real Property* (7th Ed) paragraphs 3-036 and 3-063), the rule against perpetuities and the statutory restrictions on a landlord refusing consent to assignment of a lease in the Landlord and Tenant Acts 1927 and 1988.

(2) The second reason identified by the Chancellor, namely the usual preference of the Court to uphold transactions, plainly applies as much to *inter vivos* transactions as to Wills, as is demonstrated by the Chancellor's reference to contracts.

(3) The third reason identified by the Chancellor, namely the pragmatic recognition that the testator has no further opportunity to give expression to his wishes, applies just as much to a donor's wish to dispose of certain property *inter vivos* when incapacity intervenes before completion.

(4) The essence of Moore-Bick LJ's analysis seems to be that **Parker** ***v*** **Felgate** ensures that the capacity test is applied at the date of decision rather than at the date of the formal implementation of that decision. This in turn reflects the pragmatic considerations referred to by the Chancellor as it directs attention to what is the really material time, namely the time when the decision to make the disposition is made, and ensures that the capacity test does not frustrate the testator's intentions. It seems to me that all this reasoning can be applied with equal force to a gift *inter vivos*.

163. There are, however, counter-arguments to consider. First, it may be said that, if **Parker** ***v*** **Felgate** is properly applicable to *inter vivos* dispositions, this would have been recognised in the authorities before now. But, in **Re Beaney**, Martin Nourse QC (as he then was) noted (at 772F-H) that, as late as 1978, there was no authority dealing clearly with the test for mental capacity in relation to *inter vivos* gifts although there were countless cases dealing with testamentary capacity where the test had been settled at the latest by 1870 (**Banks** ***v*** **Goodfellow**). His explanation was that, for various reasons, litigation about *inter vivos* dispositions is less common. It is perhaps unsurprising, given that background, that the authorities do not address the issue which I have to decide.

164. Secondly, the law recognises other well-established differences between Wills on the one hand and *inter vivos* dispositions on the other, such as the requirement for knowledge and approval, which only applies to Wills. It might therefore be said that the Court should not strive to assimilate the requirements applicable to the different types of transaction. It seems to me that, whilst there is more force in this, it is nevertheless not a convincing argument. It is difficult to see why the fact that the law imposes different requirements in respect of Wills on the one hand and *inter vivos* dispositions on the other, whether in relation to the need for knowledge and approval or in relation to due execution, should mean that where the same or similar requirements are imposed (*viz* in relation to capacity to execute a Will and capacity to execute an *inter vivos* gift of the donor's entire estate: see **Re Beaney**) they should be applied at different points in time. Another distinction between Wills and *inter vivos* dispositions is, of course, that the latter take effect immediately whilst the former are ambulatory in nature and are revocable until death. But, again, I do not see why this distinction is material when, in both

cases, the capacity test is applied on or before execution of the relevant document rather than, in the case of a Will, on death when the disposition takes effect.

165. Thirdly, Miss Weaver argued that application of the **Parker v Felgate** approach to acquisitions of property would be unsatisfactory because the acquirer who loses capacity before completion could not then manage or deal with the property acquired. These concerns may or may not be justified but I am concerned with *inter vivos* dispositions by a party who loses capacity and not with acquisitions by such a party (which may involve bilateral contractual obligations). Whether there is scope for a similar approach to be adopted in respect of the latter type of transaction should be addressed as and when the issue arises.

166. As a first instance Judge (and perhaps particularly as a Deputy Judge) I feel some hesitancy about accepting Mr Staunton's submission. However, I think it is right to do so, if, as I believe to be the case, it represents a principled and coherent development of the law. The mere fact that the application of the **Parker *v* Felgate** approach to *inter vivos* dispositions has not been recognised before cannot be a sufficient reason to reject that submission.

167. My conclusion is reinforced by the following. First, if the **Parker *v* Felgate** approach is not applied to *inter vivos* dispositions, that will mean that the test of capacity applicable to *inter vivos* gifts may be more onerous than that applicable to testamentary dispositions. In the **Re Beaney** type of case, the full **Banks *v* Goodfellow** capacity test would be applicable but could only be applied at the date of execution of the deed even if it could have been satisfied when instructions for the deed were given. This seems counter-intuitive and illogical. Secondly, the Court of Appeal in **Perrins** said that, due to the antiquity of the principle and the length of time for which **Parker *v* Felgate** had consistently been followed, the Court should not overrule that decision even if it considered it wrong. If that had been the only reason for the dismissal of the appeal in **Perrins** and the Court had said that **Parker *v* Felgate** represented an unsatisfactory anomaly, it would clearly not be right to extend the anomaly any further. However, that is not the position. The Court of Appeal was at pains to emphasise that **Parker *v* Felgate** was a sound and principled decision.

168. If the approach in **Parker *v* Felgate** applies to *inter vivos* dispositions, it cannot, in my judgment, be material that (i) the transaction in question is a composite transaction requiring multiple documents rather than a single document (indeed a Will can be regarded as a composite transaction consisting of a series of separate gifts so this would be a distinction without a difference) or (ii) that the recipient of the donor's instructions is an accountant rather than a solicitor.

169. For the reasons which I have stated, I accept Mr Staunton's submission. I consider that the decision in **Parker *v* Felgate** can be applied *mutatis mutandis* to the IHT scheme as implemented by the Company Documents. As I have said, the factual requirements are satisfied and I will therefore grant the declaration sought.