Neutral Citation Number: [2020] EWHC 1784 (Ch)

Case No: PT-2018-000846

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

IN THE ESTATE OF DEAN ASHLEY JAMES BRUNT DECEASED (PROBATE)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 06/07/2020

Before :

MASTER TEVERSON

- -

Between :

Mr WINSTON NEVILLE WRANGLE	**Claimant**
- and -	
(1) Mrs MARLENE ALICIA BRUNT	**Defendants**
(2) Mr DALE COLIN CHARLES BRUNT	

- -
- -

Duncan Macpherson (instructed by **Sillett Webb solicitors**) for the **Claimant**
Sophia Rogers (instructed by **Birkett Long Solicitors LLP**) for the **Defendants**

Hearing dates: 17, 18 and 19 March 2020
Written closing submissions 25 March 2020

- -

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.

.....

MASTER TEVERSON

MASTER TEVERSON:

1. This is my reserved judgment following the trial of a probate claim. It relates to the estate of Dean Ashley James Brunt ("Dean") who died on 8 December 2007 aged 35 in tragic circumstances. Dean was found dead on a railway line near Sawbridgeworth Station in Hertfordshire. He had stepped out onto a track in front of a train.

2. The Claimant, Mr Winston Neville Wrangle, was Dean's uncle by marriage. He was known as Bob. He was married until her death in 2010 to Dean's aunt, Valerie Wrangle. Valerie was the younger sister of Dean's mother Marlene Brunt who is the First Defendant to the claim. The Second Defendant, Dale Brunt, was Dean's elder brother.

3. Following Dean's death, and the inquest held into it, the First Defendant applied for and was granted letters of administration to Dean's estate on the basis that Dean had died intestate. Letters of administration were granted to the First Defendant on 25 July 2008.

4. By this probate claim issued on 8 November 2018, the Claimant seeks an order revoking the grant of letters of administration to the First Defendant on the grounds that Dean did not die intestate. The Claimant propounds two testamentary documents dated 2 March 1999. He claims these are valid duplicate wills.

5. The Defendants allege that these documents are forged. They claim that the documents were not executed in 1999 but were created several years after Dean's death. The Defendants invite the court to dismiss the probate claim on the grounds that the purported wills are invalid on grounds of (a) a forgery (b) want of due execution and (c) want of knowledge and approval.

6. The trial was listed for 8 days starting on 16 March 2019 with the first day allocated for judicial pre-reading. By the time the trial started, it was becoming apparent that lock-down restrictions could be introduced at any time. The Claimant is aged 80 and the First Defendant aged 82. The parties were agreed that they did not want the trial to be adjourned to a date to be fixed. In these exceptional circumstances, it was agreed that the oral evidence would be limited to the main witnesses and would be heard over 3 days. It was agreed that there was no need for the handwriting experts to be cross-examined. This meant that not all of the witnesses whose statements were before the court were cross-examined. I made it clear to the parties that I would take care to read all the statements and when reading the statements to take into account that their evidence had not been tested by cross-examination.

Family history and background

7. Dean was born on 17 April 1972, the middle of three children. His elder brother Dale, the Second Defendant, was born on 13 March 1970. His younger sister, Venetia, now Venetia Murray, was born on 31 October 1973. Dean's father was a successful jockey and trainer who was left unable to work by an accident in the late 1960's. He played no part in Dean's upbringing. The First Defendant ("Marlene") was left to look after her three children and admits that she struggled to cope.

8. Dean was starved of oxygen at birth and it is thought because of this had learning difficulties and mental health issues in later life. Marlene's father, Arthur Nicholls, Dean's maternal grandfather, took an interest in Dean. According to the Marlene, Arthur was Dean's hero and Dean looked up to him.

9. In 1982, when she was 8 or 9 years old, Venetia went to live with her aunt Valerie and uncle Bob, the Claimant. Valerie and Bob lived at Howewood Farm, White Stubbs Lane, in Bayford, Hertfordshire. They had no children of their own. Marlene considers that her sister spoiled Venetia and as a result she became estranged from her mother. Dale and Dean were brought up by their mother and Arthur. Dean was the gentler of the two but had difficulty controlling his temper which got him into trouble. The relationship between Marlene and her children lacked maternal warmth and tenderness. For that, the three children turned to their aunt Valerie. Dean lived with Valerie and Bob when he was in trouble or felt the need for his aunt's attention.

10. Arthur lived at Ettridge[i] Farm, Pembridge Lane, Broxbourne. He had bought the Farm in 1946. Arthur was married first to Blanche Nicholls. They had five children; Gordon Nicholls, Trevor Nicholls, Marlene, Barry Nicholls and Valerie. Dean had a particular interest in machinery. He was persuaded by his grandfather to go to college to train as a mechanic. It was whilst Dean was at college, that Arthur died on 1 February 1990.

11. Arthur's first wife, Blanche, had died in 1979. Less than a year before his unexpected death, Arthur married Mary Witcher Nicholls ("Mary") who had been his housekeeper.

Arthur's will

12. By clause 3 of his will dated 15 November 1989, Arthur left to his son Barry and his grandsons, Dale and Dean, and his granddaughter Venetia, in equal shares and contingent on their reaching 18, (a) his shares in A.H. Nicholls & Sons Limited, (b) the goodwill and assets of that business and (c) the land known as Calais Wood and the depot situate thereon. A.H. Nicholls & Sons Limited was a civil engineering and waste management company. Arthur's sons Gordon and Trevor ran it. Calais Wood was or had been a landfill site.

13. By clause 4 of his will, Arthur gave to his son Barry parcels of land totalling around 80 acres. Barry was the son principally interested in the farming business operated through Ettridge Farm Limited.

14. By clause 5, Arthur devised parcels of land totalling around 30 acres, including Ettridge Farm House, to his trustees upon trust to permit his wife Mary to reside in Ettridge Farm House and to have the use of the other parcels named in clause 5. Upon Mary's death, or her ceasing to reside in Ettridge Farm House, the clause 5 land was left by Arthur to his son Barry, his grandsons, Dale and Dean, and his granddaughter Venetia or such of them as should then be living in equal shares.

15. By clause 6 of his will, Arthur left the residue of his estate to his wife Mary. Arthur made no provision in his will for Marlene or Valerie. According to evidence filed by Gordon in proceedings relating to Arthur's estate in April 2002, this was because his father had begun a relationship with another lady after their mother's death of whom Marlene and Valerie had disapproved so strongly they had smashed the back door of

Ettridge Farmhouse down and beaten up the lady concerned. Gordon did not mention in his evidence that Arthur's will also made no provision for him or Trevor.

16. At the time of Arthur's death, Dale was 19 and Dean 17. Following Arthur's death a long series of disputes arose concerning his estate. In May 1997, Dale, Dean and Venetia authorised Howard Day to act on their behalf in the matters concerning Arthur's estate. This was at Mary's suggestion. She had been introduced to Howard Day by Mick Keeble, the Farm Manager at Ettridge Farm.

17. Howard Day was at that time working as a consultant for a firm called ASA & Co. They described themselves as "Private and Corporate Advisors". They had been assisting Mary since November 1994. ASA & Co provided litigation support and advice. They did so in return for a fee calculated as a percentage of the net gain or recovery. Howard Day was not a solicitor but was on occasions willing to let others think he was one.

18. The disputes concerning the administration of Arthur's estate involved virtually all its assets. Trevor, Gordon and Barry Nicholls were on one side and Dale, Dean and Venetia on the other, with support from Mary, Valerie and Marlene. Venetia was the least involved because in 1998 she moved to Canada. Her interests were looked after initially by Valerie to whom she had given a power of attorney on 22 October 1996.[ii]

19. According to the Claimant, Dean was deeply affected by the death of his grandfather in 1990 and by the bitter family disputes that followed and continued over the next 14 years.

20. Towards the end of 1998, Dean got into serious trouble with the Police. He was charged with assaulting four police officers and refusing to provide a sample. There was concern in the family that Dean might receive a prison sentence.

21. In 1997, Dean had appointed Dale as his attorney for the purposes of the Enduring Powers of Attorney Act 1985. In November 1998, Dale was replaced as Dean's attorney by Howard Day. This was, according to Dale, because Howard was assisting Dean in relation to the criminal prosecution and it was considered that Howard had more knowledge to deal with the court case and the Police.

22. On 11 November 1999, Dean pleaded guilty to the charges against him of assaulting a police officer. In December 1999, Dean received a 12 month ban on driving, put on probation for 12 months and ordered to pay prosecution costs. He avoided going to prison.

23. Dean's uncle Barry had sided with his brothers, Gordon and Trevor Nicholls, in connection with Arthur's will and the administration of his estate. Between them, they ran and controlled both A.H. Nicholls & Sons Limited and Ettridge Farm Limited.

24. A.H. Nicolls & Sons Limited was a waste management company. It claimed the right to occupy Calais Wood and its depot. The Official Solicitor had been appointed as judicial trustee of Arthur's estate and will trusts. The Brunt Grandchildren with the assistance of Howard Day managed to stop the Official Solicitor from granting a commercial lease of Calais Wood and the depot to A.H. Nicholls & Sons Limited.

25. Instead, in January 2000, the High Court gave the Official Solicitor as judicial trustee of Arthur's estate liberty to compromise the proceedings brought by him against A. H. Nicholls & Sons Ltd on terms that involved selling the land known as Calais Wood to A.H. Nicholls & Sons Limited for £850,000 and accepting £534,945 for the company's use and occupation of the land from Arthur's death to 31 December 1999 and payment at the rate of £85,000 per year from 1 January 2000 to completion of the sale.

26. Ettridge Farm Limited claimed to have the right to occupy the 30 acres of land which Mary was permitted to occupy under the terms of Clause 5 of Arthur's will.

27. On 21 March 2000, ASA & Co wrote to Anthony White & Co solicitor in connection with the proposed sale of Ettridge Farm by Mary Nicholls to the Brunt Grandchildren. The letter included the following paragraph on the second page:-

"After the sale/purchase has been completed there remains the matter of the trust which includes Barry Nicholls and the three grandchildren. It is the intention to settle the trust prematurely in respect of the grandchildren's beneficial interest which extends to 75% and the option likewise to settle Barry's 25% interest prematurely or hold on trust for the remainder of Mary's life as she is permitted to enjoy the benefits or interest income from Barry's 25%".

28. In December 2000, Mary was registered as the proprietor of Ettridge Farm at H.M. Land Registry as the tenant for life of the land devised under clause 5 of Arthur's will.

29. In February 2002, Mary granted to the Brunt grandchildren, a lease of the clause 5 land. The validity of this lease was disputed by Barry. In the same month, Mary moved out of Ettridge Farm House because of the unpleasantness caused by the Nicholls brothers.

30. In April 2004, Mary released her life interest in the clause 5 land in favour of the Brunt Grandchildren. On 18 May 2004 Barry as the Assignor entered into an agreement with the Brunt Grandchildren as the Assignees under which Barry's interest in the clause 5 land was assigned to the Brunt Grandchildren in consideration of £300,000. Mary Nicholls and Valerie Wrangle were parties to this agreement. The assignment was completed on 19 May 2004. The Brunt Grandchildren agreed to hold Ettridge Farm as tenants in common in equal shares. The £300,000 needed to pay Barry was lent to the Brunt Grandchildren by Valerie and the Claimant on terms the money would be repaid within 6 months.

31. In 2003 Mr Howard Day was sent to prison having been convicted of dishonesty as a result of his involvement with Fayers Legal Services Limited. The family stopped using his services. On 18 February 2005, Dean appointed his uncle, the Claimant, to be his attorney for the purpose of the Enduring Powers of Attorney Act 1985 in place of Howard Day.

32. This left unresolved the gift of shares in A.H. Nicolls & Sons Ltd to Barry and the Brunt grandchildren. Barry had chosen to side with his brothers Gordon and Trevor. This gave them control of the company. The directors were alleged on behalf by the Brunt grandchildren to have vastly increased their salaries after Arthur's death and to have voted themselves bonuses.

33. The shares of the Brunt grandchildren were eventually bought out in 2007, shortly before Dean's death. Each grandchild, including Dean, received £185,000 for their shares. As a result, following Dean's death, this sum formed part of his estate.

34. Dean died on 8 December 2007 aged 35. An inquest was held into his death on 24 April 2008. A verdict of accidental death was recorded. A death certificate was registered on 9 May 2008.

35. On 22 February 2008, Maddersons solicitors (incorporating Anthony White) wrote to Marlene following a visit on 19 February 2008 to their offices by Marlene and Valerie. The letter refers to Marlene's sister getting together the relevant information required for the valuation of Dean's estate. This was referred to again in a reminder letter dated 12 March 2008.

36. On 13 June 2008, the First Defendant signed the Inland Revenue Account relating to Dean's estate. In answer to the question "Did the deceased leave a Will?", a cross was put in the No box. Dean was recorded as owning a one third share in Ettridge Farm with an open market value of £296,667and £185,000 in an HSBC Premier Account and £1,792 in a Current Account.

37. On 3 July 2008, the First Defendant made and swore an oath stating that Dean had died intestate a bachelor without issue or any other person entitled in priority to share in the estate. Letters of administration were granted to the First Defendant on 25 July 2008.

38. By November 2008, Marlene had instructed Maddersons that she wanted to transfer the one third share previously held in Dean's name to Dale. Maddersons agreed to prepare a Deed of Variation and register Ettridge Farm at HM Land Registry showing it held as to two thirds in Dale's name with the remaining one third held in Venetia's name.

39. By early December 2008, a Deed of Variation had been prepared and sent out to Marlene. A Supplemental Deed was prepared for execution by Dale accepting and agreeing that the one third share being transferred to him was subject to mortgage.

40. A postscript to Maddersons letter to Dale dated 4 December 2008 records that Birmingham Midshires had rung and required the transfer of equity form to be signed both by Dale and by Venetia in order to remove Dean's name from the mortgage. A further letter referring to this requirement was sent by Maddersons to Dale on 9 December 2008.

41. The Deed of Variation and Supplemental Deed were executed in January 2009 and attached by Maddersons to the grant of letters of administration. Maddersons informed the First Defendant they were unable to register Ettridge Farm in the proportions two thirds to Dale and one third to Venetia because the transfer of mortgage requiring Venetia's signature was not dealt with. Maddersons explained this in letters to the First Defendant dated 22 July 2009 and 18 November 2009 to which they did not receive a reply.

42. In January 2009, Valerie was diagnosed as having an adenocarcinoma in the oesophagus. She had been unwell in 2008. Valerie suffered a stroke in October 2010

and died on 22 December 2010. She had been close to all the Brunt Grandchildren. She had helped them set up a partnership called Dalevedean in 2004 following the resolution of the dispute relating to Ettridge Farm under Arthur's will. The business of the partnership was a livery and letting of stables and other buildings at Ettridge Farm.

43. Venetia came back to live permanently in the United Kingdom in January 2007 having been living in Canada since 1998. She was married here in December 2008. Following Dean's death, she assumed that she and Dale owned Ettridge Farm and the partnership Dalevedean on a 50/50 basis.

44. She says that as the mother of a young child, she did not have the time or energy to continually press Dale and her mother about Dean's estate. She says when Valerie died on 22nd December 2010, she was pregnant with their second child. She says it was a very difficult time for her as Bob was very upset and she wanted to devote her time to helping him get over his grief and care for him.

45. Venetia says that in 2011 and again in 2013 she asked Dale what was happening with Dean's estate and was "fobbed off" with the answer that it was complicated because of the mortgage. She says Dale told her it was being sorted out and that he was not willing to discuss it further.

46. In November 2011, the First Defendant went to another firm of solicitors, Horizon Law, with a view to them drafting a deed of gift of her share of Ettridge Farm in favour of Dale.

47. I find that Marlene and Dale deliberately kept Venetia and by extension the Claimant in the dark about the fact that letters of administration had been granted to Marlene on the basis that Dean had died intestate and in respect of the Deed of Variation. They did not reveal that the First Defendant had executed a Deed of Variation in order to pass on Dean's one third share in Ettridge Farm to Dale.

48. In June 2013, following a trial in the County Court at Chelmsford, Howard Day was ordered to pay £40,000 on account of costs by 1 July 2013. A bankruptcy order was made against him on 13 May 2014. The proceedings involved property belonging to the late Rona Newton.

49. In September 2015, Dale started collecting rent monies from the tenants at Ettridge Farm. Venetia says he bullied her out of running the farm. She says Dale allowed the farm to fall into disrepair by refusing to pay for regular maintenance. Relations between her and Dale deteriorated.

50. According to Venetia's evidence, a meeting took place in the spring of 2016 at the farmhouse attended by herself and her husband, Dale and his wife and by the First Defendant. She says they would not discuss Dean's estate and Marlene said she wanted her third share in Ettridge Farm and in Dalevedean. She says this came as a shock to her as she believed she owned half of Ettridge Farm and the business. Venetia says Dale and Marlene also demanded that Bob leave the Log Cabin to which he had moved following Valerie's death situate on land at Ettridge Farm to the west of Pembridge Lane. Venetia says it was at this meeting that the First Defendant told

her for the first time that Dean did not have a will and that she (Marlene) was in charge of Dean's estate and all his assets belonged to her.

51. On 24 February 2017, Howard Day wrote to Dale at Ettridge Farm a letter headed "Re Family Affairs". He said he had been approached by Venetia who was concerned that their relationship was deteriorating and wanted him to try and mediate a solution that was clearly needed. He proposed a meeting with Dale and his mother to try and find a way forward. This proposal was not taken up.

52. In July 2017 Dale wrote to Venetia accusing her of fraud in her management of the partnership. He asked for £8,920 to be repaid into the account. He also demanded that Bob move out of the log Cabin and from Ettridge Farm.

53. Venetia replied in a 6 page letter dated 19 July 2017. She said in the final paragraph:-

"*Quite frankly Dale your behaviour towards uncle Bob is absolutely appalling when you think back to everything he has done for us dating back to when we were children and he gave us roof over head when our mother could not provide one. The money he lent you to start up Animal Fayre, the hundreds of hours he has done for you at Animal Fayre. Doing deliveries every Friday for you at Animal Fayre, all the machine work he did at Animal Fayre. We wouldn't even have Etteridge Farm if he hadn't put up so much of his own money towards solicitors fees. … The comment you make about him owing rent for the cabin, which he paid for and has the proof, is also unbelievable! Auntie Val, whom you so coldly refer to in your letter as Bob's wife, would also have been appalled by your behaviour towards uncle Bob and how you mistreated so many people. If our grandfather were alive today to see how you have been behaving he would be disgusted. He trusted you to do the right thing and you have failed him terribly. Why would I want to be in partnership with someone who would walk over the backs of their own family to get what they want. Someone who can go through life mistreating so many people in the way you have done and think it's okay to do so."*

54. During an argument on 9 September 2017, the First Defendant told the Claimant that he must leave the log cabin (situate at Ettridge Farm on the land to the west of Pembridge Lane) and that she owned one third of Ettridge Farm.

55. The Claimant says he asked Venetia to help him search through Valerie's papers and they found a purple folder with the words "Dean's Will" written on the outside. The folder was empty.

56. On 10 October 2017, Jonathan Day wrote to Dale and Venetia on behalf of A.S.A. Land Consultants. The letter stated they had been instructed by Bob to recover the assets and money that he and Valerie loaned to the grandchildren. The letter says the monies were loaned to the Brunt grandchildren's partnership and that Bob now wanted the loans repaid *"by reason of Dale's behaviour as a partner being unacceptable and likely to bring the business to failure, putting the repayment of his money at serious risk"*. The letter referred to an agreement in 2002 that the old barn now known as Monks Well would be transferred to Bob and Valerie. Monks Well is situated to the east of Pembridge Lane. It was claimed that a total of £470,300 was owed to Bob.

57. In May 2018, Birkett Long solicitors, acting for Dale, gave Bob Wrangle notice to terminate his occupation of the Log Cabin. A response was sent by Howard Day on behalf of Bob. The letter referred to a mediation that had been arranged for 20 June 2018 in connection with the dispute between Venetia and Dale. A request was made that Bob should attend the mediation.

58. On 12 June 2018, 8 days before the date of the mediation, the solicitors then acting for Venetia wrote to Dale's solicitors enclosing a copy of the purported will dated 2 March 1999. The will is said to have been found by John Thorpe in a correspondence file in Howard Day's offices relating to Dawsons Solicitors work on Arthur's estate.

59. On 18 June 2018, two days before the mediation, the solicitors acting for Venetia emailed Howard Day asking for further information as to the circumstances surrounding Dean Brunt's will dated 2 March 1999 and the value of his estate. They specifically asked Howard Day to confirm:-

"1 whether the two witnesses, Mr Thorpe and Mr Keeble, were present when the will was signed by you in Dean's presence and at his direction

2 that both Mr Thorpe and Mr Keeble saw the will being signed by you; and

3 an estimated value for Etteridge Farm."

60. Howard Day sent an email in reply to the solicitor:-

"Dear Serhat

I have only just returned to the farm office, and received your email.

1)Mr Thorpe and Michael Keeble were present at our Willow Lodge Office when Dean's Will was signed, and observed me signing the Will, and they witnessed me sign it and confirmed my signature on the Will. Dean Brunt was present when the Will was signed by all parties. It was at Dean's directions that the Will was drawn up and signed by me under my Power of Attorney, for him.

2)Both John Thorpe and Michael Keeble were present and witnessed me signing of Dean's Will.

3)It is difficult to place a value on Etteridge Farm, its value when acquired 2002/3 was £1,200,000 and Marlene had it valued for probate at the same value, and did not increase the value for the Monks Well dwelling, which at the time of probate had been built.

If I can help further please let me know."

61. On 2 August 2018, a letter before claim was sent to the First Defendant. It was settled by Mr Macpherson acting on a direct access basis. The letter was drafted at a time when both John Thorpe and Howard Day were alive. The letter enclosed a copy of the will. It also enclosed copies of Howard Day's attendance notes of his meetings with Dean. The letter stated that Howard Day signed the will at Dean's request. It stated that John Thorpe remembered witnessing Howard execute the Will; so did Michael Keeble. It stated Dean was in the room, and told John and Michael that he had asked

Howard to sign the Will on his behalf. It said Howard, John and Michael all knew Dean well, and would confirm that he was of sound mind at the time, understood the Will that he asked Howard to sign, and was not subject to any bullying.

62. In paragraph 9 the letter states:-

"Starting with the Will:

a. Howard Day tells me you knew that Dean had executed a Will. Dean told you & Valerie that ASA had prepared his Will a few days before he executed it. You wanted to see the draft, but he said no. You then asked him to take the draft to Anthony White, a solicitor in Broxbourne, to be checked, which he did. Once executed, Dean took a copy of the Will (as it turns out; Howard thought it was the original) back to Howewood Farm for safekeeping.

b. I think you or Dale took Dean's copy of the Will and hid it, or destroyed it; if it wasn't you, you knew about it. Dean's copy was kept in a folder in Valerie & my office at Homewood, on which Valerie had written: "Dean's Will". A copy of this is attached. When Howard searched my office for papers relating to the Will in March 2018, the file was empty. Someone took Dean's copy of the Will. You and Dale spent a lot of time in my office after Dean died. You and Dale benefited from it going missing, so it was you or him. Dale would not have done it without your encouragement."

63. On 23 August 2018, Birkett Long LLP replied on behalf of Marlene and Dale Brunt. They said:-

As you are aware, our clients dispute that it is a genuine Will. There are a number of reasons for which at present we will not go into."

They suggested the first step would be for the will to be forensically tested *"to see whether or not it could possibly be a document that was produced on 2 March 1999"*.

64. In reply on 21 September 2018, it was stated that Mr Wrangle agreed to the will being tested forensically but would not allow this to delay the issue of proceedings. The letter stated it was wrong that Mr Wrangle or Howard Day were aware that it was disputed the will was genuine. The letter said Mr Wrangle required Dr Audrey Giles to carry out any forensic test.

65. In reply on 28 September 2018, Birkett Long LLP set out their clients concerns about the will. They said:-

"Our client's main concern is that the will was not created in 1999. The reasons for this are not only was the existence of the will not revealed until recently, but also as follows:

The date is typed when usually this is handwritten when the will is signed;

On the front of the will, it states "Dean Ashley ***Charles*** *Brunt" when Dean's name was actually Dean Ashley* ***James*** *Brunt; and*

In relation to clause 4, Dean only had a quarter share in 1999, and did not acquire a 1/3 share until later."

They said that even if the will was created in 1999, it may not have been correctly executed. They said it was for the person claiming the will was valid to establish the testator knew and approved its contents.

66. The probate claim was issued on 8 November 2018 to propound the alleged will of Dean dated 2 March 1999.

67. The will consists of three pages. The first page is a front sheet. Between "Dated" in the left hand margin and "1999" in the right hand margin is typed "2nd MARCH". The heading of the front sheet is:

WILL

Of

Dean Ashley Charles Brunt

At the bottom is typed the name and address of ASA & CO.

68. Page 2 reads:-

"THIS IS THE LAST WILL AND TESTAMENT

of me **DEAN ASHLEY JAMES BRUNT** of Howewood Farm, White Stubbs Lane, Bayford, Hertfordshire SG13 8QA **HEREBY REVOKE** all former wills and testamentary dispositions made by me

1. **I APPOINT** my Mother Marlene Alicia Brunt, of Keksys Farm, Sawbridgeworth, Hertfordshire to be the executrix and trustee of this my will

2. **I DESIRE** that my body be interred.

3. **I GIVE** free of all taxes the sum of **TWENTY THOUSAND POUNDS** (£20,000) to my mother Marlene Alicia Brunt of Keksys Farm, Sawbridgeworth, Hertfordshire and to my Aunt, Valerie Ann Wrangle and my Uncle Winston both of Howewood Farm, White Stubbs Lane, Bayford, Hertfordshire SG13 8QA

4. **I GIVE** free of all taxes my one third share in the freehold of Ettridge Farm to my brother Dale Brunt and sister Venetia Anne Marie Brunt.

5. **I GIVE** free from all taxes my one third share in the property, part of the freehold of Ettridge Farm known as the Old Barn to my Aunt and Uncle Valerie Ann and Winston Wrangle, in thanks for all they have done for me in my lifetime.

6. **I GIVE DEVISE AND BEQUEATH** all of my property and assets both real and personal whatsoever and wherever situate and not otherwise effectually disposed of by this Will or any Codicil hereto **UNTO** my Trustee **UPON TRUST** to sell call in and convert into money so much thereof as does not already consist of money (with power in their absolute discretion to postpone such sale calling in

and conversion or to appropriate to any beneficiary such assets in specie as they may think right) and after such sale calling in and conversion **TO HOLD** the proceeds **UPON** the following trusts:-

Page 3 continues:-

(i)to pay thereout my just debts funeral and testamentary expenses

(ii) **TO HOLD** the residue **UPON TRUST** to divide the same into two equal parts and **TO HOLD UPON TRUST** for such of them, my Brother **Dale Brunt** and my sister **VENETIA ANNE MARIE BRUNT** as shall be living at the date of my death.

7. **IN** addition to the statutory powers to use income but in place of the statutory power over Capital my Trustee shall have power at any time or times to raise the whole or any part of the actual or potential share or shares of any beneficiary hereunder and pay the same to or apply the same for the maintenance or otherwise howsoever for the benefit of such beneficiary **PROVIDED ALWAYS** that the amount so paid or applied shall in due time be brought into account by such beneficiary or by any other person or persons who shall take by substitution the share of such beneficiary and **PROVIDED FURTHER** and not withstanding anything which hereinbefore appears that my Trustee shall in no circumstances exercise their power under this Clause or any other power in such manner as to prevent limit or postpone the entitlement of a beneficiary to the presumptive interest in possession in his or her share of the Capital

69. The attestation clause reads:-

IN WITNESS whereof I have to this last Will and Testament set my hand this 2nd day of March One Thousand Nine Hundred and Ninety Nine

SIGNED by the said HOWARD JOHN DAY

AS ENDURING POWER OF ATTORNEY FOR

DEAN ASHLEY JAMES BRUNT, DATED

NOVEMBER 1998

in his and our presence and then by us in his:"

70. On the right hand opposite to the attestation clause, the will is signed by Howard Day in his own name. Below the attestation clause is typed on the left hand side in columns, **Witness One, Signature:, Name: Address:**. On the right hand side opposite **Witness One** is typed **Witness Two**. The will is signed by John Thorpe as witness one and by Michael Keeble as witness two. Each witness has written his name and address.

71. Up until the summer of 2019, Howard Day had been assisting the Claimant with this claim. Howard Day went into hospital in July 2019. He died on 1 September 2019. The Claimant then instructed Sillett Webb Solicitors. On Sunday 2 February 2020, Katherine Sillett, discovered a duplicate original of the will in a file of papers that she

says had been provided to her by Mr Jonathan Day on 15 October 2019, from Howard Day's office.

72. The experts agree that the two wills ("the First Will") and ("the Second Will") are separately executed duplicates. That is to say, they were executed one after the other and are in exactly the same form. The only variation is that the second page of the First Will was printed separately from pages 1 and 3 of that document.

73. The Defendants' case is not that the signatures of Howard Day or the two witnesses to the will are forged but that the will was not created in 1999 but some considerable time after Dean's death. The Defendants accept that that the legal burden of proving that the will is a forgery rests on them. In *Ali Haider v Syed* [2014] WTLR 390 this was accepted by counsel for the party alleging a signature on the will was forged in view of the serious nature of the allegation. The issue of where the burden of proof lay was left open in *Supple v Pender* [2007] WTLR 1461. In my judgment, in the circumstances of the present case, where the will has been produced over ten years after Dean's death and is alleged to have been signed in his presence and at his direction but not by him, convincing evidence is needed to defeat the allegation that the will is a forgery. The evidential burden is on the Claimant.

74. As to the standard of proof, it was agreed by both counsel that the approach was as set out in *Re H* [1996] AC 536 where Lord Nicholls stated at pages 586-7:-

> *"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence …Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event in itself is a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established…This approach also provides a means by which the balance of probability standard can accommodate one's instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters".*

75. This passage is of application both to the Defendants' allegation that the will is a forgery and to the Claimant's allegation that the First Defendant hid or destroyed the will following Dean's death.

76. In assessing whether the will is a forgery, there is one particular factor relied upon by the Defendants. It is the bad character of the late Howard Day. Howard Day would have been a key witness in this claim. As Mr Macpherson, counsel for the Claimant, put it in his closing written submissions, Howard Day's name runs through this case

like a stick of rock. He is the person who is said to have drafted and signed the will on Dean's behalf at Dean's direction.

77. Howard Day was convicted of fraud and sentenced to a three year prison sentence on 15 April 2003. This resulted from his involvement with Fayers Legal Services Limited. This was a company into which a Mr Fayers had raised around £1.6m for the purpose of a litigation finance company. It was found that the entire operation was a fraud and that most of the money was diverted to finance Mr Fayers' own lifestyle. Howard Day was involved by receiving around £385,000 into two accounts and also £88,000 to his own account. Fayers Legal Services Limited by its liquidator brought a claim against him for knowing receipt of trust money, knowing assistance to Mr Fayers's committing a breach of trust, and breach of fiduciary duties as a de facto director. Collins J. found against Howard Day in respect of knowing assistance and knowing receipt by a judgment dated 11 April 2001. The judge determined that Howard Day had known that Mr Fayers was operating a fraudulent and dishonest scheme.

78. It is recognised by Mr Macpherson, counsel for the Claimant, that this judgment, and the subsequent conviction must certainly make the court think twice about accepting Howard Day's evidence at face value. He recognises that someone who has participated in a dishonest scheme may act dishonestly again.

79. Howard Day's conviction for participating in a fraudulent and dishonest scheme is part of all the background circumstances before the court. It does not of itself require the court to reject the claim or to be pre-disposed against it. I accept however the Defendants' submission that Howard Day's involvement in the production and discovery of the purported will and his conduct of these proceedings on behalf of the Claimant until his death are matters of concern and requires the court to evaluate documents and evidence coming from Howard Day with caution.

80. On behalf of the Claimant, it was submitted the general approach I should adopt to the assessment of evidence and the making of findings of fact should follow that of HHJ Simon Barker QC in *Re Parsonage (deceased)* [2019] EWHC 2362 (Ch at paragraph [38]:-

"This selection from the authorities seems to me to demonstrate an established approach to fact finding. The court takes as a platform for fact finding reliable contemporaneous documentary evidence. It adds to that known, established or agreed facts, probable facts (both inherently probable and by inferences properly drawn from known, established or agreed facts), and then builds further with witness evidence which is consistent or compatible with that underlying body of reliable documentary evidence and is not tainted or flawed by other indicators of unreliability."

I respectfully agree with that approach to fact finding.

81. I start with the will itself. There is no documentary evidence of the instructions given by Dean to Howard Day. The Particulars of Claim state that the will was drafted on the instructions of Dean during 5 hours with Howard Day on 2 March 1999. The letter before claim addressed to Marlene however said that *"Dean told you & Valerie that ASA had prepared his will a few days before he executed it".*

82. I turn to the will itself. The date is typed in on the first page not handwritten as is more usual. Dean's third name is typed as Charles on page 1 and correctly as James on the second page. Charles is Dale's third name. The name of the First Defendant's Farm is incorrectly spelt as "Keksys Farm and not "Kecksys Farm" on the second page. These are not matters that go to whether the document is genuine but as to whether it was read or its content understood by Dean.

83. Clause 4 reads:-

I GIVE free from all taxes my one third share in the freehold of Ettridge Farm to my brother Dale Brunt and sister Venetia Anne Marie Brunt."

84. As set out above, it was not until April or May 2004 that the Brunt Grandchildren each became entitled to a one third share in Ettridge Farm. In May 2004, Barry assigned his 25% interest to the Brunt Grandchildren in consideration of £300,000.

85. In the Reply it is pleaded that the Brunt Grandchildren considered that they received their inheritance from Arthur together and they were entitled to a third each of what they inherited from Arthur. In my view, it is possible to read the gift as being intended as a gift by Dean to his siblings of his one third share of the Brunt Grandchildren's share of Ettridge Farm.

86. The Claimant said that by 1999 it was known that Ettridge Farm would end up in the hands of the three Brunt Grandchildren. I accept this evidence as plausible given that between them the Brunt Grandchildren had a 75% interest in remainder.

87. The same point arises under Clause 5:-

"I GIVE free from all taxes my one third share in the property, part of the freehold of Ettridge Farm known as the Old Barn to my Aunt and Uncle Valerie Ann and Winston Wrangle, in thanks for all they have done for me in my lifetime.".

88. In addition, Dale said that Dean always referred to the building as the cart shed. He said there was no plan in 1999 to convert the Old Barn. The Claimant however says there was an agreement or understanding going back to 1999 that this property would be given to him and Valerie.

89. In my judgment, it is not possible to determine looking at the contents of the will alone whether or not it is a forgery.

90. The documents are with one important exception all documents coming from Howard Day. These include:-

(i)A list of meetings headed "1999 Diaries – Meetings" with members of the Wrangle and Brunt families. These include meetings with Dean on 21/2 and 2/3. The words "Will Signed" appear beside Dean's name for the entry on 2/3. This list is accepted on behalf of the Claimant (that is to say by Howard Day) not to have been prepared contemporaneously. It was not examined by the experts.

(ii) A handwritten diary for 1999 with a page for each day. The page for 21 February 1999 records a meeting with Dean. The entry does not record any request to prepare a will. It does however say *"See Report"*. The page for 2 March 1999 has added to the

entry "& Signed Up Will". The experts agree that these words have been appended in a different ink relative to other entries on the page. According to Ms Radley, the ink used to write the entry "& Signed Up Will" is not found anywhere else in the diary. The experts agree the evidence suggests this entry was appended at a different time but that it is not possible to determine when. There was no opportunity for Howard Day to be cross-examined about when these words were appended.

(iii) typed file notes of meetings. In a witness statement dated 24 May 2019 made in response to my order dated 21 May 2019, Howard Day said these notes *"would have been typed up by John Thorpe, but I cannot give a true date when he would have done the notes."*.

91. The typed record of the meeting with Dean on 21 February 1999 includes:-

"I meet with Dean yesterday at his request to discuss his personal problems, and his grandfather's Will, I picked Dean up from Howewood farm at 12-30pm and took him to lunch at the Fish and Ells pub, cost £ 42. Dean is worried about the court actions over the estate, and the fact that we were not being paid, we discussed this at great length and he seemed pleased at the way it was progressing, he had not been informed by Valerie or Dale as to the progress.

Dean was very concerned at the coming Police court action, and asked if I thought he would be going to prison, and if so for how long. I advised him that if he played the game straight and continued with the hospital consultations, the consultant would give his recommendations to the court, he must keep it up.

He discussed, what he considered was to be his future, it was clear he missed his grandfather, who he had spent a lot of his time with, he said Dale was horrible to him and aggressive, his mother had no time for him. It was clear he love is Aunt Valerie and Bob, who were always there for him.

I'm worried for him as he did not see much in life for him in the future, I told him he had a lot to live for, and I told him that we could continue to work to finalise the estate regardless of fees being paid, and when finished his life would change for the better.

Dean asked me to make his Will out for him, and we discussed what he wanted to do, he was clear on the terms, but said Dale would argue the will saying he was mental and unfit. It was clear he wanted to follow his grandfather's wishes. I told him I would think about and discuss it with Jon."

92. The typed record of the meeting with Dean on 2 March 1999 includes:-

"Fee to be Jon collected the Police tapes from Hertford, and delivered them to Phillip at Singletons

We sent copies to Dr Watts and Dr Williams

Dean confirm the contents of his draft Will, and JT asked him to take it to Anthony to check the way it was drafted, Jon went with him. Valerie and Marlene were pleased he had taken it to Whites solicitors, I would not tell them what was in his will, it that's

up to Dean to tell them. On his return Dean asked me to sign his Will under my Power of Attorney, he said Anthony White said we could, it was discussed at long length, he was adornment that I sign it, as the family would argue if he signed it. We all agreed, and told Dean he could change his will at any time. Dean took the signed will with him.

Time spent, HD 5 hours JD 3 hours JT ! hour. No charged to Dean"

93. On behalf of the Claimant it was submitted that the contents of the file notes give every impression of authenticity in that they deal with other contemporary matters relevant to Dean, not just making his will. If the will is a forgery, then these typed attendance notes are part of a criminal attempt to put forward a forgery.

94. As stated above, there was found in Valerie's office a purple folder with the words "Dean Will" on the outside. The experts agree these words are in Valerie's handwriting. The existence of this folder is evidence that at some point Valerie held a will or a copy of a will for Dean.

95. The Claimant was cross-examined before me for nearly a day. The Claimant was not involved in the preparation of the will and was not present when the will is alleged to have been signed and witnessed. His case and evidence is in part based on what he has been told by Howard Day.

96. The Claimant is 80 years of age. I am in no doubt that he genuinely believes that Dean made a will.

97. The Claimant said he was told by Valerie that Dean had made a will on the evening she collected Dean from Howard Day's offices in March 1999 and brought Dean back to Howewood Farm where he and Valerie lived. He remembers her saying they would have to go out to dinner as there was no dinner at home.

98. I take into account that in paragraph 5(b) of his Reply to Defence, the Claimant averred that in or around 1999 Valerie told him about the will *"and explained they were to receive £20,000"; and in or around August 2008, she had a similar discussion with the Claimant"*. In his oral evidence, the Claimant claimed that he saw Valerie carrying a brown envelope. He then said the envelope might not have had anything to do with the will. The Claimant was clear in his oral evidence (i) that in 1999 he did not see the will and did not know what was in it (ii) all he knew was that Valerie told him Dean had a will. I accept the Claimant's evidence that Valerie mentioned to him that Dean had made a will.

99. The Claimant also said that Dean had mentioned to him he had made a will when he had visited Dean in hospital together with Hugh McCutcheon. The Claimant said Dean told him he had made a will and that Auntie had got it. He said Dean was in a lot of pain and was scared he was about to die. He said Dean said to him words to the effect "I've done a will just as grandad would have wanted. Dale and Venetia get my share, not mum." That evidence is similar to that given by Mr McCutcheon but Mr McCutcheon's evidence was that Dean talked to him about his will after they had gone down in the lift to the tea room and when the Claimant was wandering around and about and not present. I accept that Dean told the Claimant in 2005 when in hospital that he had made a will.

100. The Claimant said that Dean's will came up again after Dean's death. He said a van belonging to him had got smashed up and he and Valerie went to buy a new one. He said he had to pay a deposit out of his old age pension. He said Valerie told him not to worry as he would get money out of Dean's estate. He said this was in August 2008. By that date, it was six months after Valerie had accompanied Marlene to Maddersons solicitors. I accept that in August 2008 the Claimant was told by Valerie about their getting a legacy of £20,000 from Dean's estate.

101. There were times in the Claimant's evidence when he claimed to remember an additional event or detail. He mentioned for the first time that on one New Year's Day up at the Huntsman's Pub when Dean was not feeling well he had said he didn't want his dinner and hoped his will was alright if anything happened to him. I found the Claimant to be a truthful witness. I can see no reason why he would be prepared to fabricate evidence relating to his knowledge of Dean's will if he did not genuinely believe it.

102. Venetia does not claim to have been told by Dean that he had made a will. I accept that Venetia was genuinely shocked to discover in 2016 that Dean's one third share of Ettridge Farm and Dalevedean had not passed to her and Dale in equal shares. Venetia said, and I accept, that she was not aware that instructions had been given by the Brunt Grandchildren to Anthony White in May 2004 that they were to hold Ettridge Farm as tenants in common in equal shares. At that time, Venetia was living in Canada and she had given power of attorney to her mother. I accept it would not have occurred to Venetia that on Dean's death his share would pass under intestacy to Marlene.

103. I was impressed by Venetia as a witness. I do not think she would for one moment associate herself with a fraudulent claim.

104. I turn next to the evidence of those who claim to have been present when the will was made. This follows the approach adopted by Mr John Martin QC (sitting as a Deputy Judge of the High Court) in *Pittas v Christou* [2014] EWHC 79 (Ch) at paragraph 13 following *Supple v Pender* [2007] WTLR 1461.

105. Mr Keeble gave evidence before the court. He had made a witness statement dated 19 December 2019. This was after Howard Day's death. It referred in one paragraph containing twelve lines to his being present when Dean *"did a will".*

106. Mr Keeble agreed in cross-examination he had known the Claimant for a long time. He was in addition a client of Howard Day. Howard Day was up until the time of his death assisting Mr Keeble in partnership proceedings relating to Botany Bay Farm at which Mr Keeble is a tenant farmer. A claim form was issued by Mr Keeble as a litigant in person on 5 December 2016 in the Chancery Division C/O ASA Land Consultant. The Particulars of Claim were re-amended on 1 March 2019. A defence to the claim was filed in the Business and Property Courts in April 2019. On 21 June 2019 Howard Day sent to the court on behalf of Michael Keeble a trial fee of £1,050.

107. Mr Keeble described Howard Day as "a wonderful man who was all about helping people". He cannot be regarded as an independent witness by any stretch of the imagination. I do not however think his evidence was fabricated so far as it concerned the alleged execution of the will. Mr Keeble was able to recall the event in detail

notwithstanding that it would have been 20 years ago. Mr Keeble failed to mention that he had signed two wills and not one. Mr Keeble accepted in cross-examination this was a material detail that should have been included. His statement was made before the duplicate will was found. Mr Keeble admitted that he chose not to mention in his statement that Jonathan Day was around at the time. Jonathan Day was not one of the two attesting witnesses. I do not see that omission as a reason to reject Mr Keeble's evidence.

108. Mr Keeble described in cross-examination how Howard Day, Dean, John Thorpe and himself had all sat around the kitchen table when the will was signed. It would have been better if that evidence had been included in his witness statement. The statement was however clearly Mr Keeble's own statement and not one prepared for him by Howard Day.

109. His evidence was inconsistent with that given by Jonathan Day regarding timings. Jonathan Day said he brought Dean back from Anthony White solicitors at around 2pm and went off for lunch. Mr Keeble said he was telephoned by Howard Day around 4pm and asked to come down to the office immediately as Jonathan Day and Dean wouldn't be long. He said he left Ettridge Farm almost straightaway and arrived at the office of ASA at around 4.15pm to 4.20pm. I do not find it surprising that there is a difference of recollection between the witnesses over the sequence. It is likely Mr Keeble recalled inaccurately what Howard Day said on the phone. I do not think it probable notwithstanding his close links with Howard Day that Mr Keeble would have been prepared to give wholly false evidence before the court. He had even less reason to do so following Howard Day's death.

110. The other person called to give evidence about the making of the will was Howard Day's son, Jonathan Day. Jonathan Day said he had taken Dean in the car to the offices of Anthony White & Co, solicitor, in Broxbourne at the request of his father. He said in his oral evidence that Dean had taken the draft will with him and read it in the car. He said Dean had spent 15 to 20 minutes alone with Anthony White. He said he had dropped Dean off back at the office of ASA at 2pm. He had then gone off to have lunch. He says he was called back to the office of ASA a couple of hours later. He arrived back at 4pm and was told by his father they were waiting for Mr Keeble to arrive.

111. Mr Jonathan Day was able to give the court very specific details about the meeting on 2 March 1999 including what everyone was wearing. As in the case of Mr Keeble, his oral evidence expanded in important respects on his witness statement. In his oral evidence Mr Jonathan Day described how he had been in and out of the kitchen area making coffee and drinks for everyone. He said he had heard his father ask Dean if he wanted him to sign the will but had gone out again before Dean answered. He said he returned again to see his father and Mr Thorpe and Mr Keeble signing the will.

112. Jonathan Day says that he took Dean over to Anthony White with the draft will. This is said to have been at the instigation of John Thorpe (in the typed file note for the meeting on 2 March 1999), at the instigation of Marlene (in the letter before claim) and at the request of Howard Day to Jonathan Day (in Jonathan Day's witness statement).

113. There is no supporting evidence from Anthony White & Co of any kind. The Claimant referred in his evidence to them (presumably himself and Howard Day) having been to see Mr White who was elderly and looked ill. I am nevertheless satisfied that Jonathan Day's evidence that he drove Dean over to see Anthony White and stayed outside for 15 to 20 minutes whilst Dean was with Mr White was truthful.

114. The first round of witness statements served on behalf of the Claimant was four statements each dated 1 October 2018. They are the statements of James Downs, Russell Farman, Peter John Daniels and Hugh McCutcheon. The statements were prepared by Howard Day based on interviews. Mr Daniels and Mr McCutcheon gave oral evidence before me. I take into account that Mr Farman and Mr Downs's evidence was not tested in cross-examination.

115. Mr Downs and Mr Farman were drinking friends of Dean. Mr Downs says:-

"Dean told me he had left Ettridge farm because he had fallen out with Dale, and went back to live with Bob and Val, I didn't understand the details, but he told me he owned a third of the farm. It was at this time he discussed his Will and said it was what his Grand Father would have wanted; he spoke as if I had known the details of all his affairs. He said his will would not allow his mother to get anything out of Etteridge Farm as his Grand Father would not have wanted that to happen. I was in no doubt that Dean had made a proper Will."

116. Mr Farman says:-

"One evening at the pub Dean told me he had made a Will and was glad he had with all the family problems. And he had given it to his Aunt to look after. He was not feeling well at this time, and shortly after he was taken in to hospital. He worried a lot about his mental and physical health."

117. Mr Peter Daniels says:-

"Bob and Valerie Wrangle was like Dean's Mother and Father they had brought him up from an early age and he thought the world of them. When we went for a drink with Dean he didn't discuss his affairs, thou one night I remember Dean did mention about all the problems he had with his Grand Fathers Will and wanted his own Will to be carried out as per his instructions as it would be what his Grand Father would have wanted, but details he generally seemed happy to leave it to others to deal with, he said he trusted Bob and Val and the firm at Nazeing who were trying to sort out his Grand Father's estate."

118. These statements are unspecific about when Dean told his friends he had made a will. As such the statements are of no direct assistance in establishing the validity of the documents propounded.

119. The statement of Hugh McCutcheon, who like Peter Daniels, gave oral evidence before me, refers to what Dean is said to have told him relating to his will and when. He says:-

"I have been asked as to my knowledge relating To Dean's Will and I can confirm what Dean told me and when;-

a) Dean first told me he wanted to make a Will in 1997 when we were having a drink at the pub one evening.

b) Dean told me he had made a Will in 1999, and was pleased he had made it, and Aunt Val was looking after it with his other papers.

c) The matter of Deans will was discussed again in 2005, when Dean was in hospital with Pancreatitis for two weeks and was on medication, he thought he was going to die, when I visited him in hospital, he said he was worried about his Will, and asked me if anyone could overturn it, as he still wanted to honour his grandfather's wishes, which I remember him saying that his mother should have nothing to do with Etteridge Farm. And his third share should be split between Dale and his sister Venetia. He said his papers were in order and looked after by his Auntie Valerie."

120. It was put to Mr McCutcheon in cross-examination, he could not remember the date of an evening in the pub some 23 years ago. He said he had a feeling the evening was about that time. The date in 1999 he linked to a time when he was having heart trouble and when Dean was in trouble with the police. He recalled being asked by Valerie to write a letter of support for Dean. I found that evidence rang true. Mr McCutcheon was able to be much more specific about his visit to see Dean in hospital in June or July 2005 together with Bob. I accept his evidence that he was told about a will by Dean when visiting him in hospital in 2005.

121. There was in short a substantial amount of evidence before the court that at one time or another Dean had told friends he had made a will. A theme running through this evidence was Dean's wish to ensure his grandfather's wishes were carried out in the context of the continuing disputes relating to his grandfather's estate.

122. I am satisfied that the Claimant was told in March 1999 by Valerie that Dean had made a will. I am satisfied that Howard Day's attendance notes are not part of an elaborate fraud. Howard Day was in 1999 assisting the Brunt Grandchildren with the support of the Claimant, Valerie and Marlene in relation to Arthur's estate. I am satisfied that Mr Keeble and Mr Jonathan Day gave truthful evidence setting out their recollection of when the will was signed.

123. I find in addition that Howard told Marlene in March 1999 that Dean was making a will although not what was in it. I find that it was at Valerie's request that Dean was taken to see Anthony White to discuss the content of the will. I find that after the will was signed that Dean was collected by Valerie by car and that Dean confirmed to her that he had made a will carrying out his grandfather's wishes. I find that Valerie mentioned the will to the Claimant on that occasion and retained Dean's copy of the will.

124. This leaves unexplained why the will was not produced following Dean's death. The correspondence from Maddersons in February 2008 records that Valerie had agreed to play a role in identifying the assets and liabilities of Dean's estate. Valerie therefore had the opportunity to bring to the attention of the solicitors that there was a will.

125. I heard and saw Marlene give evidence. She denied ever having seen the will when a copy of it was shown to her. Her evidence then shifted to saying the document was Howard's will and not Dean's will. She was a most unimpressive witness. The court

must have sympathy for and respect her grief at the loss of her son. That cannot however justify concealing from her family apart from Dale that Dean's estate was being administered under intestacy which I find that she did.

126. In my judgment, the most likely explanation for the will not being provided to Maddersons following Dean's death is that Valerie provided her copy to Marlene who took the view that it was not Dean's will but a will done by Howard Day and chose not to reveal it.

127. This is consistent with the Claimant's evidence that in August 2008 Valerie told him about their legacy under Dean's will when he was having to pay a deposit for a new van out of his pension monies. By 2008 Valerie's health had begun to fall into terminal decline.

128. It explains why it took so long for the Claimant and Venetia to find out that Dean's estate was being administered on the basis that he had died intestate. It is consistent with the way Marlene and Dale concealed from Venetia the Deed of Variation under which Marlene gifted Dean's one third share in Ettridge Farm to Dale. It is consistent with their decision to leave Ettridge Farm registered in the names of all three grandchildren rather than seek to obtain Venetia's signature on the transfer of mortgage form required by the mortgagee. On behalf of the Defendants, the point is made that Maddersons Solicitors took over the practice of Anthony White and did not advise of any will. It is unclear what if any enquiries were made of the First Defendant or other family members.

129. I found Dale to be a witness intent principally on arguing his and Marlene's case. I did not find his evidence of any assistance in determining the issues before me. Where his evidence conflicted with that of the Claimant and Venetia I preferred their evidence. I reject Dale's statement in his witness statement that Valerie told him that Dean died intestate or that she told him that his mother was transferring Dean's share in Ettridge Farm to him by way of a Deed of Variation. The Deed of Variation was a matter known about only by Marlene and Dale in the family.

130. The circumstances in which the document referred to by the experts as the First Will came to light are inextricably linked to the escalation in family disputes between Dale and Venetia and then between the Claimant and Marlene and Dale. I see no reason to doubt the evidence of the Claimant and Venetia that whenever they asked for information regarding the administration of Dean's estate, they were put off with answers relating to a problem with the mortgage. I accept their evidence that it was not until 2016 they were told by Marlene that the estate was being administered on the basis that Dean had died intestate and that she had a one third share in Ettridge Farm.

131. In reaching my conclusion that the wills are not a forgery, I have taken into account the bad character of Howard Day. I have taken into account the potential for forgery arising from the signing of the will by Howard Day on behalf of Dean and I have taken into account that sometimes the execution of duplicates wills has been seen as an indicator of fraud.

132. Against that I have weighed all the evidence before me. The contents of the will do not arise suspicion. Dale and Venetia are the principal beneficiaries. Howard Day is not a beneficiary nor is any person associated with ASA. There is no obvious reason

why Howard Day, Michael Keeble or Jonathan Day or the late John Thorpe want to participate in a serious fraud. Nor is there any reason to believe that the Claimant and Mr McCutcheon would be willing to perjure themselves.

133. I have carefully read and reviewed the expert evidence before the court. The two original duplicates have been considered by the experts. They are referred to as "the First Will" and "the Second Will". The Defendants' expert is Ms Ellen Radley of the Radley Forensic Document Laboratory in Reading. The Claimant's expert is Dr Evelyn Anne Gillies of the Forensic Documents Bureau in Stonehaven, Aberdeenshire. The experts agree that there is evidence through ESDA Sequencing that supports the proposition that the First and Second Will were executed at the same point in time.

134. The experts agree that the lack of pen control found in the signature of Howard Day on the First Will is typical with the later date signature style of Howard Day. The later date signature referred to by the experts is number 49 dated 14 December 2016 in the known signatures of Howard Day appended to the report of Ms Radley (Trial Bundle 417-420).

135. The experts agree that if the First Will is considered as a standalone document, there is strong evidence to support the proposition that Howard Day did not sign this will in 1999 as purported, but at a later date, when his writing had deteriorated.

136. The experts agree however that the name of Howard Day on the Second Will has been written with greater fluency and line quality than the signature in his name on the First Will. The link between the two wills in respect to ESDA and ink findings means the First and Second Wills must be considered together and possible explanations for the differing executions evaluated.

137. The Experts conclude:-

"37 When considering the reasons for the differences in execution between the two signatures on the First and Second Wills, we agree that it is more likely than not that both of these signatures were written at a later point in time and the signature on the Second Will was appended with better pen control and fluency.

38 We consider that it would be quite a coincidence for Mr Day to have written the signature on the First Will in 1999 in an unusual style relative to his writing at that time and in a manner which is not found until later dated signatures."

138. The phrase *"it would be quite a coincidence"* implies it is unlikely but cannot be ruled out. The experts, as Ms Radley in her full and careful report explains, faced with the intrinsic link between the two documents, are having to look for possible explanations for the differing executions.

139. The experts were placed in the position of having to review their reports following the late production of the Second Will. For that reason, they do not state what their opinion would have been had the Second Will been considered as a standalone document. They are not to be criticised for that.

140. The examination of the printing and papers used reveals that two different printers were used to print off the contents of the First Will. In contrast to the First Will, the printing is consistent on each page of the Second Will. The explanation may be that the second page of the First Will was printed off again after the amendment of the attestation clause following the showing of the draft will to Anthony White.

141. The examination of the paper used does not assist with the dating of the documents. The font used on the First Will was Times New Roman or a similar variant. Ms Radley states that Times New Roman was widely used in 1999 and continues to be commonly used today.

142. I have considered the possibility afresh in the light of the expert evidence that the First and Second Wills came into existence after Dean's death. In the light of the full factual background and the factual evidence given to the court including the circumstances in which the wills were produced, I am not persuaded by the expert opinion that I should alter my conclusions on the factual evidence or conclude that the wills are forgeries in the sense of being created after Dean's death.

143. In order to pronounce for the will, I must be satisfied that it was duly executed. Section 9 of the Wills Act 1837 (as amended) reads:-

"No will shall be valid unless-

(a)it is in writing, and signed by the testator, or by some other person in his presence and at his direction; and

(b)it appears that the testator intended by his signature to give effect to the will; and

(c)the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(d)each witness either-

(i)attests and signs the will; or

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

but no form of attestation clause shall be necessary."

144. It was submitted on behalf of the Defendants that there was no presumption of due execution because the attestation clause did not reflect what actually happened. Reliance was placed on *Kayll v Rawlinson* [2010] EWHC 1269 (Ch) where the view was expressed obiter by David Richards J (as he then was) that because it was common ground that the terms of the attestation clause did not reflect the manner in which the signing of the will by the testator had been witnessed, the presumption of due execution could not arise from the attestation clause. This approach was followed by Master Bowles in *Wilson v Lassman* [2017] EWHC 85 (Ch). On behalf of the Claimant, it was submitted that some force should be given to the attestation clause. It was submitted on behalf of the Claimant that the correct proposition in law established by those two cases is that the presumption does not apply when the attestation clause is wrong in fact. In particular, it does not apply where the

propounder of the will relies on a different part of section 9 to validate the will than that reflected by the attestation clause. It was submitted the attestation clause in the will contained one error and one omission. It wrongly stated that Howard Day signed as an enduring power of attorney. That was an admitted error of law. It omitted to state that Howard Day signed at Dean's direction and as a result the Claimant bears the burden of proof on that point.

145. In my judgment, where a will purports to have been signed by the holder of a power of attorney, no weight can attach to the presumption of due execution arising from the terms of the attestation clause. On the evidence before the court from Mr Keeble and Mr Jonathan Day I am satisfied that Dean was present when the will was signed by Howard Day and witnessed by Mr Thorpe and Mr Keeble.

146. The Court must also be satisfied the will was signed by Howard Day at Dean's direction and that the witnesses understood that Dean was adopting Howard Day's signature as his own. It was held by the Court of Appeal in *Barrett v Bem and others* [2012] EWCA Civ 52; [2012] Ch 573; that under section 9(a) of the Wills Act 1937, as amended, the court should not find that a will has been signed by a third party at the direction of the testator unless there is a positive and discernible communication (which may be verbal or non-verbal) by the testator that he wishes the will to be signed on his behalf by the third party: see paragraph 36 per Lewison LJ.

147. The evidence given by both Mr Keeble and Jonathan Day was that Dean was seated round the kitchen table together with Howard Day, John Thorpe and Michael Keeble when the signing took place. Jonathan Day gave evidence that although he himself was not seated at the table, he was in and out and heard his father ask Dean *"are you happy for me to sign this on your behalf?"*. Jonathan Day didn't hear Dean's answer because he [Jonathan Day] was on his way out of the room to make a cup of coffee but he said when he returned a few minutes later, he saw his father sign and John Thorpe and Michael Keeble signing the will. I consider that from this evidence the court can and should properly infer that there was a positive communication by Dean either in words or by a nod of his head that he wished Howard Day to sign the will on his behalf. I do not think the signing of the will would have gone ahead if Dean had simply remained passive or unresponsive. Mr Keeble in his witness statement which I am satisfied uses his own words said:-

"I read through the Will, <u>Dean confirmed that this is what he wanted to happen</u> and the Will was Signed by Howard Day first, then by John Thorpe, and then I signed it, John Thorpe took it away to be copied, so Dean could take it back to Howewood Farmwith him, I left them in the office as I had to get back to Etteridge Farm.

148. In his oral evidence, Mr Keeble in the context of referring to the signing of the will said "*Dean wanted it done"*. In re-examination, Mr Keeble was confused by the question *"Why didn't Dean sign?"* His reply after a pause was that he witnessed Howard Day sign because he had a power of attorney. I am satisfied that in Mr Keeble's presence round the table, Dean actively communicated that he wanted Howard Day to go ahead and sign the will on his behalf and that Mr Keeble understood he was witnessing Howard Day sign on behalf of Dean albeit that he may have mistakenly thought Howard Day had power to do so because he had a power of attorney. I am satisfied on the evidence before me that the will was signed in Dean's

presence and at his direction and that the witnesses understood that Dean was wanting Howard Day to sign on his behalf.

149. The court must also be satisfied that Dean knew of and approved the contents of the will. This means the court must be satisfied that when the will was signed in Dean's presence and at his direction on 2 March 1999 that Dean had understood what was in the will and approved its contents. Looking at the totality of the evidence before the court I am satisfied Dean had understood what was in the will and did approve its contents. I have taken into account that there is no written record of Dean's instructions. The circumstances in which the will was prepared are not entirely clear. It is not clear whether the will had been drafted before 2nd March or whether this was done on 2nd March. The time spent by Howard Day on 2 March 1999 with Dean was recorded as being 5 hours. Dean was as I find taken by Jonathan Day to see Anthony White. Dean spent 15 to 20 minutes with Anthony White. As a solicitor, it is reasonable to infer that Anthony White satisfied himself Dean understood its content. The language used in the will would have been entirely unfamiliar to Dean but its content was capable of being explained and summarised in a few sentences. There is nothing in the content of the will in terms of who benefits under it that arises suspicion.

150. The Defendants confirmed by letter dated 3 October 2019 to the Claimant's solicitors, following a court hearing on 5 September 2019, they were no longer disputing Dean's testamentary capacity. In my view, they were correct to do so. No evidence of mental disorder was found by his approved social worker following a thorough review on 1 April 1999 following a referral by Dr Watts for assessment on 23 February 1999.

151. The fact that Dean told Valerie when he was collected by her on 2nd March 1999 he had made a will and that she mentioned that to the Claimant confirms Dean understood what he had done. The evidence from the Claimant and Mr McCutcheon about being told by Dean he had a will confirms Dean understood he had a will and considered it important.

152. Although Dean was only 26 when the will was made, the need for him to make a will arose from his inheritance from his grandfather. At that time Howard Day was assisting in the disputes relating to Arthur's will and was trusted by Dean, Valerie, Marlene and Dale. They had all become disenchanted with their solicitors.

153. On the totality of the evidence before me, I am satisfied Dean understood and approved what was in the will when it was signed on his behalf by Howard Day.

154. In the circumstances, I will revoke the grant of letters of administration to Marlene and direct that the will executed in duplicate be pronounced for.

155. The court has power under section 50 of the Administration of Justice Act 1985 on the application of a beneficiary to appoint a substitute personal representative. I consider it is appropriate and necessary in the interests of all the beneficiaries to remove Marlene as executor and appoint an independent professional in her place. I will appoint Timothy Christopher James Adams of Barlow Robbins LLP if he remains willing to act as substitute personal representative of Dean's estate.

156. I am grateful to both counsel for their very able assistance.

157. This judgment will be handed down without attendance required on Monday 6 July 2020 at 10am. I will deal with consequential matters at a hearing to be arranged to take place by 20 July 2020. I will extend the time for asking for permission to appeal until that further hearing. Time for appealing will run from that hearing. I would ask counsel to provide and exchange concise submissions on costs at least 2 working days before the hearing. The hearing will be conducted remotely. I would be grateful to receive from counsel any typographical corrections by 9am on Monday.

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[i] The spelling varies between Ettridge Farm and Etteridge Farm in the documents and evidence before the court. I shall refer to the property as Ettridge Farm.

[ii] On the same date, Venetia made a will appointing her aunt Valerie as her executor and leaving her estate to such of her brothers Dale and Dean as should survive her.