



Neutral Citation Number: [2021] EWHC 2206 (Ch)

Case No: PT-2019-000314

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES

PROPERTY TRUSTS & PROBATE LIST (ChD)

IN THE ESTATE OF BRENDA MARGARET WELER DECEASED

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

Date: 05/08/2021

Before :

DEPUTY MASTER LINWOOD

Between :

ANN RAINEY

Claimant

- and -

(1) PAUL JAMES WELER

(2) STEPHEN WELER

(3) TONI WELER

(4) FRANCESCA MAPP

(5) JAMES WELER

(6) ARRY WELER

Defendants

**Mr Mark Blackett-Ord (instructed by Streathers) for the Claimant
The First Defendant appeared in person, on behalf of himself and the 3rd-6th Defendants.
The Second Defendant did not appear nor was he represented.**

Hearing: 23rd, 24th and 25th June 2021.

JUDGMENT

Deputy Master Linwood:



1. This is another sad and bitter family dispute concerning wills. Here it concerns whether Mrs Brenda Weller deceased (“Mrs Weller” or “mother”) made one or two wills, as the beneficiaries of her estate apparently changed from Ann Rainey, the Claimant to Francesca Mapp, James Weller and Arry Weller, the 4th - 6th Defendants, over the course of some four weeks. I will refer to the parties by their first names with no disrespect intended. Below I set out the issues, the family, the background, the law, the evidence of fact and opinion, my findings of fact and my decisions. The use of [] indicates a paragraph number in this judgment unless the context appears otherwise.

The Issues

2. They, as put by Mr Blackett-Ord, the Defendants not objecting, are simply:
 - i) Is the will made on 9th February 2018 genuine?
 - ii) Is the will made on 5th March 2018 genuine?

The Family

3. Mrs Weller married Jim Weller. They had three children; Paul, Stephen and Toni, the 1st-3rd Defendants respectively. Jim Weller had a sister, Joan. She had four children, one of whom is Ann Rainey, the Claimant. Paul, Stephen and Toni are therefore cousins of Ann. Ann had three children; Paula, Keeley and Rory. Paul has four children, James (the Fifth Defendant), Arry (the Sixth Defendant), Georgina and Sophie.
4. Toni has three children, Francesca (the Fourth Defendant), Anthony and Alexander. Francesca has a child, Olivia. Stephen, named as Second Defendant, has played no part in the trial. He has a child, Paige. He was served with proceedings and then objected to the Defence filed by Garden House Solicitors on his and the other Defendants’ behalf, saying he did not approve it. By Order of Master Clark dated 5th May 2020 proceedings were stayed against him, with no order as to costs, but he is bound by the outcome.

Background

5. I set this out as neutrally as I can, indicating where there are differing views within the family as to matters I consider material to my judgment. That means some background matters may be disputed or not agreed by one or more family members but it may not be necessary for me to make a finding.
6. Mrs Weller’s husband died when she was quite young, when their children were about 7 (Toni), 5 (Paul) and 3 years old (Stephen). They lived in a rented house in Tottenham for many years which was in poor condition; Mrs Weller was a sitting tenant. In about 2012 Mrs Weller inherited a bungalow in Clacton from her sister-in-law. This she sold and in 2014 purchased 38, Lawrence Gardens, Cheshunt, Hertfordshire, for £250,000. Paul, Toni and Stephen live in that area, but Stephen



moved to Wales. Francesca also lives in the vicinity of Cheshunt, and James and Arry live with Paul. Mrs Weller was glad to leave Tottenham as she had been mugged twice. She would not have been able to afford to move had it not been for her inheritance.

7. Ann says that she was always close to her aunt, Mrs Weller, who was not close to her sons Stephen and Paul. That is contested by the Defendants. In February 2018 Ann says Mrs Weller telephoned her and asked her to be her executor. Mrs Weller instructed Austin Ryder, solicitors, to make a will and prepare a Lasting Power of Attorney (“LPA”). The will was executed on 9th February 2018 (“the February Will”), which is not formally challenged by the Defendants but their Amended Defence states it is not admitted. The February Will leaves the entire estate to Ann. I set out the circumstances surrounding this and the preparation of the LPA below.
8. Paul says in early March 2018 his mother asked him to make a will for her; this he did, his mother leaving her entire estate to Francesca, James and Arry (“the March Will”). The executor is Paul, and he and Toni say they witnessed it. This is challenged by Ann, who says the signature of Mrs Weller was a forgery. Mrs Weller went into hospital in early November 2018. When Ann and her sister Jane Maynard visited Mrs Weller in hospital, she gave them keys to her house and asked Ann to collect a suitcase (“the Suitcase”) from under a bed, which they did. Mrs Weller told them she did not want her sons to know about the Suitcase. That is not accepted by them.
9. On 24th November 2018 Mrs Weller died. Shortly afterwards, at her home, Ann opened the Suitcase in the presence of various family members. In it were 5 sealed envelopes, addressed to Toni, Francesca, James and Arry, and also Olivia, daughter of Francesca. The envelopes contained £1,000 in cash for each of them. There was some jewellery for two named beneficiaries, Francesca and Olivia, and a copy of the February Will. On reading it Ann realised she was to be the beneficiary of Mrs Weller’s estate, of which she (and everyone else on her side of the family) was unaware until then. These matters were all subject to criticism and challenge by the Defendants, who were unaware of the February Will until their mother died.
10. Paul says after his mother died he was unsure when the March will was made and where it physically was but by about December he found it. Without telling Ann, he applied for probate, which he obtained on 9th January 2019. He immediately put his mother’s house up for sale and informed the debtors of the estate; one bank asked Ann to return monies of Mrs Weller they had sent her in view of the grant to Paul. Paul, so Ann and her relatives say, did not permit them to attend the funeral, which they found most distressing, as the funeral directors told them they could not release details of where it was to take place. Paul says he told the funeral directors to pass his telephone number to any person who wanted details of the funeral, but no-one called him.
11. On 25th February 2019 Ann via Streathers, her solicitors, obtained a report from Mr Browne, a handwriting expert, who opined that the signature on the March Will was not made by the person whose signatures had been provided for comparison – namely



Mrs Weller. Proceedings were issued in April 2019, a Defence was served in May 2019 by Garden House, solicitors for the Defendants, and amended in January 2020. Shortly thereafter, Garden House ceased to act and thereafter the Defendants represented themselves.

The February Will

12. None of the witness and documentary evidence I set out below was challenged by the Defendants. In the evidence me are the will/LPA file of Austin Ryder, their *Larke v Nugus* response, and witness statements of the three individuals involved.
13. On 2nd February 2018 Mrs Weller went to the offices of Austin Ryder on the High Street in Cheshunt. She met with Mr Bruce Crabb, solicitor, admitted in 1973, and Ms Vitella Thompson, solicitor, admitted in 2002. They each made witness statements in February 2021. Ms Thompson appeared at trial and was sworn in but the Defendants had no questions for her. Mr Crabb was on holiday over the week of the trial. Arrangements were made for him to give his evidence remotely but were not needed as again the Defendants said they had no questions to put to him.
14. Ms Thompson made a handwritten attendance note of the meeting on 2nd February, which she exhibited to her statement. She says she wrote the first page, in which she records that Mrs Weller wanted a Finance LPA, and not a Health & Welfare one. Her note then records:

“Mrs Weller is widowed & has no children. Her attorney would be her niece Ann Rainey and her replacement would be Ann’s daughter.”
15. Ms Thompson took responsibility as fee-earner to prepare the LPA. She says Mr Crabb was instructed to prepare Mrs Weller’s will, and that the second handwritten page of the attendance note was in his handwriting, which she recognised.
16. Mr Crabb confirms that second page was written by him, and the first page by his colleague, Ms Thompson. After Mrs Weller’s full name and address and the date of the meeting he has written:

“Exec. – niece –

ANN RAINEY

130 PEABODY COTTAGES

TOTTENHAM N17

All estate to niece,

if predecease,



Great niece PAULA RAINEY

address to follow

exec. & beneficiary.”

17. Mr Crabb says in his statement:

“I remember Brenda Weller being clear about what she wanted.”

18. Mr Crabb then on 6th February sent Mrs Weller a draft of the will that he had prepared. It provides:

“1. I APPOINT my niece **ANN RAINEY** of 130 Peabody Estate Lordship Lane Tottenham London N17 7QN to be the sole Executrix of this my Will.”

2. I DEVISE AND BEQUEATH all my real and personal estate whatsoever and wheresoever situate after payment thereof of my just debts and funeral and testamentary expenses unto my said Niece **ANN RAINEY** absolutely.”

19. There follows a survivorship clause in usual form appointing Ms Paula Rainey as executor and sole beneficiary should Ann not survive her for 28 days. On the 9th February, Mrs Weller went to her solicitors and executed her will in exactly the same form as the draft I quote from at [18] above.

20. The attesting witnesses were Mr Crabb and Ms Wendy Upson, who was asked to give evidence at the trial as at one point it appeared Mr Crabb was unable to appear. Her statement is dated 23rd June 2021, and sets out how she worked at Austin Ryder as a legal secretary for some 41 years until she retired in March 2020. She confirms that it is her signature upon the February Will and that the other subscribing witness was Mr Crabb who she knew as a former partner at Austin Ryder.

21. Mr Crabb confirms in his statement that Mrs Weller executed the February Will in the presence of him and Ms Upson, and that it bears his signature. Mr Crabb’s involvement did not end there. By letter dated 10th December 2018 Slee Blackwell Solicitors wrote to Austin Ryder, stating that they represented Toni, Paul and Stephen in the matter of the estate of the Late Mrs Brenda Weller. They said:

“We write on behalf of our above clients for whom we act in relation to a claim they seek to bring against the estate of Brenda Margaret Weller under the Inheritance (Provision for Family and Dependents) Act 1975 and/or for a declaration as to invalidity of the deceased’s last Will.



We have been informed that it is your firm who were instructed to draft the deceased's last Will dated 9th February 2018 and we would therefore be grateful if you could provide a copy of the Will together with the will preparation file to us by return."

22. They continued by setting out for the purpose of a *Larke v Nugus* request what they wished the "conducting fee earner" to provide by way of information. Mr Crabb acknowledged receipt promptly on 12th December, enclosing a copy of the February Will and copies of the identification documents he took from Mrs Weller at the material time. He then replied in detail to the queries by letter dated 14th January 2019, and enclosing copies of the attendance notes made by him and Ms Thompson both as to the February Will and the LPA.
23. I summarise Mr Crabb's statement as follows; Mrs Weller was a new client, not introduced by anyone, who first verbally instructed him and Ms Thompson in person as appears from the attendance notes on 2nd February 2018. Mrs Weller was alone and no-one else was present. Mr Crabb said in his view as everyone of sound mind knew the effect of making a will and that Mrs Weller requested one "...for the purpose of leaving everything to her niece after her death and the effects of making a Will were explained to her at the time."
24. Mr Crabb continued that he was unaware of any medical history relating to capacity and that Mrs Weller "...seemed healthy and of sound mind when intervening (sic) and giving instructions". Further, both he and Ms Thompson considered Mrs Weller had capacity and she knew the purpose and effect of making a will, the extent of her estate...

"...and she stated that she wanted to leave her estate to her niece only – on this basis the writer and his colleague coupled with their own experience assessed the deceased to have capacity."
25. Mr Crabb confirmed there was no sign of confusion or loss of memory, there were no prior wills that they had and Mrs Weller "...did not admit to there having been any prior wills." The provisions of the will were explained verbally and in accordance with an enclosed letter and in answer to the final question as to whether he had any concerns about any influence being placed upon the deceased in giving her instructions he replied "No."
26. Nothing was heard from Slee Blackwell in response. Streathers wrote to them some 9 days later, on 23rd January 2019, saying Ann considered Paul had forged the March Will. Slee Blackwell replied on 25th January 2019 saying they were without instructions and Mr Paul Weller should be contacted directly. Mr Crabb in his witness statement confirmed the truth of his *Larke v Nugus* statement that I have summarised at [23-25] above.

The LPA



27. I now turn to the oral and documentary evidence regarding the LPA. Mrs Weller signed the LPA form the same day she visited Austin Ryder’s office on 9th February 2018, and her signature was witnessed by Ms Thompson, who that day wrote to Ann, saying she was appointed as attorney for Mrs Weller and her daughter Paula was named as replacement, enclosing the form, and asking them both to sign in the presence of a witness and return it. That they both did on 17th February.
28. Mrs Weller then signed the final page – which could only be completed after the earlier sections – on 23rd February, which Ms Thompson sent to the Office of the Public Guardian (“OPG”) on 23rd February. On 13th April Ms Thompson wrote to Mrs Weller enclosing correspondence with the OPG and saying she hoped the matter would conclude within two weeks of the 9th May. That it did as that day the OPG confirmed the LPA was registered and that they had notified Mrs Weller, Ann and Paula.
29. On 16th May Ms Thompson wrote to Mrs Weller enclosing the registered LPA and a Letter of Authority. She also set out some further advice and confirmed payment of their costs. Mrs Weller signed the Letter of Authority on 21st May and returned it to Ms Thompson who replied by letter dated 24th May enclosing a copy. That concluded Mrs Weller’s instructions as to the LPA.

The March Will

30. Paul says in his witness statement that on various occasions his mother:
- “...made it clear that she was leaving [her estate] to her three grandchildren. She would say that it would be of more benefit to bypass us (her 3 children) and give it directly to the grandchildren...as she was very close to them, being the only grandparent they ever had...which is why they were by far her favourite grandchildren and were so very close, because she has had them constantly in her life since the day they were born.”
31. Paul says he agreed with that and he would tell his mother so. He then described the circumstances in which he came to prepare the March Will and continued:
- “Whilst at my mums one day, having a cup of tea, in general conversation she asked me about my Will...[and said] “you done yours yourself didn’t you”. I said yes, why do you want me to do yours for ya? I said you can do it yourself...its simple and straight forward you don’t need to waste money on a solicitor, it’s perfectly legal and I told her you can change it anytime you like by just doing another one...which would cancel out the previous one.” (sic)
32. His mother asked him to do one for her. He replied:



“I take it you just want the 3 kids on it? She said yes, you know that already, I said I’m just checking...I’d drop it round in a day or two, but would have to get Toni or someone to come as well because two people need to witness you sign it.”

33. Paul then set out the arrangements he made with Toni, how they went to their mother’s house, she read over the will, signed it and then he and Toni witnessed it. He does not mention the date in his statement but it is dated 5th March 2018. Mrs Weller asked Paul to keep the original at his house and to give her a copy, which he did.
34. In the Defence which predated Paul’s statement by almost two years, and the Amended Defence which predated his statement by over one year, it is pleaded at [13] that:

“In March 2018 the deceased asked Paul Weller to draft a will for her. He obtained a template online and filled it in on his home computer. On 5th March 2018 when visiting his mother, Paul Weller took a copy of the filled in draft will form and showed it to his mother. She read it and confirmed that this was what she wanted.”

35. The March Will appoints Paul as executor and trustee, with James in his place if Paul was unwilling or unable to act. It then provides (the clauses are not numbered):

“I give my estate to my trustees to hold on trust to pay my debts, funeral and testamentary expenses and pay the residue in equal amounts to my grandchildren, namely

FRANCESCA MAPP of...[address] and

JAMES WELLER of...[address] and

ARRY WELLER of...[address]

Should any of my residuary heirs not survive me, my residuary estate is to be shared equally to those who survive.”

36. Paul in his statement said he knew nothing of the February Will and :

“To me I believe Ann got my mum to do it. I have never in my entire life known Ann to visit my mum. No member of the family has ever seen Ann visit our mum. Not even when our mum lived in Tottenham.”

37. Then:

“It is the family’s belief that Ann intimidated and bullied our mum into the actions surrounding the other will. It has been



discovered that Ann came up from Tottenham to escort our mum to the solicitors, which rings alarm bells...she would not have needed anyone to march her across the road and wait outside. My mum would never have stated that she didn't have any children or grandchildren unless she was bullied into it...our mum was so scared (sic) to tell anyone what Ann was making her do..."

Mrs Weller's character

38. Various of the witnesses gave their views as to Mrs Weller's character which I consider is contextually relevant. Jane Maynard, Ann's sister, said Mrs Weller was:

"...always a fit woman and was fully compos mentis. When I planned to go on a holiday in August 2018, I asked Brenda if she would come and stay at my home for a week to look after my husband Gary who had a rare form of dementia. She agreed to do this. I would only trust someone who was fully capable mentally to do this."

39. As it happened, Mrs Weller became ill in July and did not then feel well enough. Linda Collins, who is Ann's cousin, said she and Mrs Weller were 7 years apart in age but were very close, like sisters. She described Mrs Weller as "...a very private and very independent person." Also that "Sometimes my Aunty Brenda did things in her own way and at her own pace" and "Brenda would not sign anything she didn't want to."

40. Paula Rainey, Ann's daughter, who also lived in Cheshunt, described Mrs Weller as quite fit, and that she would often see her walking and marching about in Cheshunt. Paula was shocked Mrs Weller became ill and died so quickly as she "...looked right as rain not long before she became ill."

41. Ann said until when Mrs Weller became unwell around July/August 2018 she was very fit and healthy, with no cognitive problems or memory issues. Mrs Weller asked Ann to be her executor and attorney to which she agreed. The will was as she put it a private matter and:

"Had I asked Brenda to tell me what was in her will she would have told me in no uncertain terms to "get lost" (I think she would probably have sworn.) She was a very independent and stubborn lady who was intent on doing things her own way."

42. Mrs Weller therefore was fit and active until about the summer of 2018. She was an independent, stubborn woman who kept certain matters to herself alone; she could be very private at times. At no time was there any doubt as to her capacity, as is also the opinion of Mr Crabb and Ms Thompson, two very experienced private client solicitors.



The Law

43. Mr Blackett-Ord cited, as to the burden of proof, *Face v Cunningham* [2020] EWHC 3119 (Ch) where His Honour Judge Hodge QC sitting as a Judge of the High Court at [46] said:

“...where the forgery of a will is alleged, then the ultimate burden of proving that the will is not a forgery must rest on the party propounding the will, as part of the formal requirements of proving that the will was duly executed by the testator and was duly witnessed.”

44. It is therefore for the Defendants to establish, on the balance of probabilities, that the signature of Mrs Weller on the March Will was genuine. In closing submissions I said to Mr Blackett-Ord and the Defendants that in my approach to the evidence I would very much have in mind the well-known paragraphs 15-22 in *Guestmin SGPS S.A. v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) where Mr Justice Leggatt as he then was set out the difficulties of recollection based oral evidence, and the importance of documentary evidence.

WITNESSES OF FACT

45. A total of thirteen witnesses were called and a further two (Mr Crabb and Ms Upson) would have given evidence but the Defendants said they had no questions for them. Before I turn to the view I formed of each witness I emphasise there was a deep divide between the two sides of the extended family, namely witnesses that were part of Ann’s family and those who were part of Paul and Toni’s side of the family.
46. There is one particular area where they maintained strongly opposing views; namely the contact between each side and Mrs Weller. Some say it was only them that had Christmas with Mrs Weller; others that they never saw the other side of the family in their visits. The frequency of visits and contact was also hotly disputed.
47. In my judgment, that contact is not something I need to consider in detail so as to make findings of fact. First, it does not necessarily determine Mrs Weller’s testamentary intentions. Secondly, whilst it is a factor in the relationships, it appears to me having heard the witnesses from the extended family that Mrs Weller herself may well kept the two sides of her family separate. Thirdly, it does not directly relate to the question as to whether the Wills were genuine or not.
48. I now turn to the witnesses individually. I will start with the four who are wholly independent of the parties.

Mr Crabb, Ms Upson and Ms Thompson

49. As I have set out above Mr Crabb and Ms Thompson met Mrs Weller when she instructed them as to the February Will and the LPA. Ms Upson and Mr Crabb



witnessed the February Will. I accept all they say unreservedly; they were, as to be expected, professional people telling the truth.

Ms Ioana Jelea

50. Ms Jelea is and has since January 2019 been a paralegal employed by Streathers. In September 2020 she was asked by her supervising partner to conduct a thorough search of their Highgate office for four original bank cards and an original driving licence that Paul said he had sent by recorded delivery to Streathers. The envelope in question appeared to have been signed for at that office on 11th August 2020. The searches had not turned up the documents.
51. Ms Jelea was the person solely responsible for the post on that day. She said on reflection she remembered a recent occasion (her statement being made on 29th October 2020) when a recorded delivery white A4 non-padded envelope was opened by her. She remembered it as the envelopes her firm use are brown. The envelope was empty. She thought that odd and threw it away. There was a tracking number on it and her firm's address. She assumed the sender would realise their mistake and send on what should have been in the envelope.
52. Ms Jelea gave her evidence in a direct, straightforward manner. She was cross examined with some skill and in depth by Arry, so her evidence was properly tested. Ms Jelea is a professional lawyer, and as to be expected was wholly honest and clearly independent. I accept all she said.

Ms Ann Rainey

53. Ann in her statement said:

“I loved my aunt Brenda dearly. We had a very close relationship...Brenda would spend lots of time with my mother when she was alive. My mother died in November 2016. I will never forget what Brenda said to me at my mother's funeral. She said something to the effect of “*Can I still come and see you?*”. Brenda lived close by to my mother who also lived in Tottenham. I would see Brenda regularly before my mother died and before Brenda moved to Cheshunt...in 2014. Brenda would still come and see my mother about once a week after she moved to Cheshunt...[after which] I continued to see her, but not as often...we spoke every few weeks.”
54. She then set out what she saw as to Mrs Weller's relationships with her immediate family:

“Brenda did not have a good relationship with her sons...from what Brenda would tell me they did not see each other. Brenda's daughter [Toni] was in and out of Brenda's life



...particularly in the last few years of Brenda’s life. Brenda told me she didn’t trust any of her children...[she] was closer to her grandchildren [Francesca, James and Arry]...She mentioned them to me occasionally.”

55. Ann also described how she did not have a relationship with any of the Defendants, and that when Mrs Weller had to be taken to hospital some 15 years ago Ann called the ambulance and at the end of her stay picked her up and took her home. Ann said she felt she was Mrs Weller’s next of kin in that sense. Ann then said in February 2018 Mrs Weller called her and asked her to be the executor of her will, which she was happy to agree to. At no time until after her death was she aware of the provisions of the February Will.
56. In cross examination Paul challenged how close Ann was to his mother, and her visits to her in Cheshunt. Ann accepted that Mrs Weller spent her last three Christmases’ with Toni. Arry then cross examined her as to the making of the February Will. Ann said that she had offered to go with Mrs Weller if the appointment could be after 2pm but two weeks later Mrs Weller called her and said the will was already done, so the first time she knew where the offices of the solicitors were was when she went there to collect the original of the February Will.
57. Ann was a little careless with certain facts. I will set out events concerning the Suitcase in detail below but first, Arry did elicit from Ann that when it was opened in the presence of various members of Ann’s family, in addition to it being done in the presence of as Ann said in her statement her daughters Paula and Keeley plus her cousins Jane and Linda, the latter’s husband Rob was also present. Ann agreed and said she forgot he was there.
58. Secondly, Ann was also questioned about the envelopes addressed to the grandchildren with £1,000 for each in. She said she did not open them but that “Brenda told me she’d left envelopes with £1,000 each in”. She accepted that was also not mentioned in her statement.
59. Thirdly Ann said that Francesca was under the impression that Ann was appointed as executor, relying on certain text exchanges between them around 30th November – 2nd December 2018. The texts do not categorically state that, but Francesca does say:

“Thanks for being there for my nan I am glad she could trust some people bless her, and if you do happen to find any pictures I would love to see them as I am making a book..”
60. Ann’s response, before the dispute started, was by return. She said:

“I would like you and your mum [Toni] to go through all of your nan’s things and take whatever you want whenever your ready..” (sic)



61. Clearly Francesca considered there was a lack of trust by her grandmother in certain people – but as to what and by whom is not stated. As well as being somewhat careless with certain less important facts, Ann was somewhat argumentative when giving evidence. But I do appreciate that giving evidence is rarely easy especially when one is being cross examined by a family member in detail on these matters when relationships had gone very, very wrong, especially as Ann and her family felt they were excluded from the funeral by Paul.
62. A more important part of the evidence also arose when Paul questioned Ann about the Suitcase, and when she first knew of it. Ann said Mrs Weller had told her before she went into hospital “...and I didn’t put that in my statement either. She told me this on the ‘phone. I couldn’t see what big thing it was to get the suitcase out of the house”. She accepted that she had not said this before. In re-examination Ann said Mrs Weller had asked her to pick up the Suitcase on a Wednesday but then she went into hospital before that day arrived.
63. Overall, whilst certain matters were omitted from her statement, this was by error and not intent. Further, Ann was quick to accept when she was wrong in her recollection. In summary, I find her to be a truthful witness who did her best in at times somewhat difficult circumstances to assist the court. I am conscious that she like Francesca, Arry and James has a personal financial interest in the outcome of her claim and so have approached their evidence with caution. Having said that, I accept what she said and especially her description of her relationship with Mrs Weller. As Francesca put it in her text, she was there for Mrs Weller, and was trusted by her.

Ms Jane Maynard

64. Jane is Ann’s sister. She in her statement set out how Mrs Weller was close to most of their side of the family and very close to their mother. She also said Mrs Weller told her that she did not see her children and that “...it is fair to say Brenda and her sons were estranged. She somewhat rekindled her relationship with [Toni] in the last few years of her life after she moved to Cheshunt.”
65. Jane was present when in hospital Mrs Weller requested her and Ann to collect the Suitcase and also at its opening. She said that she was unaware of the February Will until the Suitcase was opened. Further, she said with a frankness that I find welcome in witness statements that:

“I am not sure why Brenda chose to leave everything to Ann above anyone else. However Brenda did not have a good relationship with her children...Brenda used to go to my mother’s when she was alive. In many ways Ann took over that role from my mother and I think Brenda deeply appreciated this. She also felt Ann had saved her life.”



66. Jane was a little anxious when giving evidence. She clearly wanted to assist the court and I found her to be a straightforward, clear and truthful witness, and I accept all she said.

Ms Paula Rainey

67. Paula is one of Ann's daughters, so Mrs Weller was her great aunt. She lives in Cheshunt and said she would often see Mrs Weller out and about. Paula said she would come over most Saturdays when she lived in Tottenham and would get the bus to see them after she moved.

68. She said Mrs Weller:

“... would tell me that she didn't get on with [her children] and that she didn't trust them” and that “Brenda never mentioned a will to me specifically, but she often said she wouldn't leave anything to her children, and that she would not leave anything to [Francesca] either, because, in her exact words, “*Toni would get her hands on it*”...Brenda always said if anything were to happen to her, that she would want Ann to look after her. She said that Ann would do the right thing, whereas her children would do the cheapest thing.”

69. Unlike Jane, Paula was not surprised that Mrs Weller left everything to Ann, and not her children as “She never said anything nice about them, and would say she didn't trust them. From what Brenda would say to me and my partner Jamie Wood, I don't believe there is any chance that Brenda would have left the defendants anything in a will.”

70. In her oral evidence her answers were quick and to the point. She did add that Mrs Weller never mentioned her grandchildren to her save Francesca. I found her to be a straightforward witness who gave direct evidence on the points in question. I have no reason to doubt what she said and accept it all.

Mr Jamie Wood

71. Jamie is Paula's partner. He set out in his statement how close Mrs Weller was to Ann and that Ann “...did a lot for her over the years” including taking her shopping every Saturday when she lived in Tottenham, and thereafter lunch at Ann's home, and hosting her for special occasions such as birthdays and Christmases. He also said Mrs Weller told him she did not have a good relationship with her children, not speaking to them for considerable periods at times, and her “...saying she did not trust any of her children.” Of the Defendants, he had only met Francesca, when he went to Mrs Weller's home in Tottenham in 2012 to pick her up.

72. In cross examination Jamie confirmed he rarely saw Mrs Weller in Cheshunt (where he lives with Paula) but that he last saw her at Christmas 2016 in his and Paula's



home – which Paul who was then questioning him denied. I found Jamie to be a good witness, who did his best to assist the Court. He was direct honest and to the point. I accept all he said as to his memory of conversations and events.

Ms Linda Collins

73. Linda explains in her statement that she is a niece of Mrs Weller. Linda's mother Sylvia Stubbings was her sister. She is therefore a cousin of Ann Rainey. As Mrs Weller was just seven years older than her, and she was an only child, Mrs Weller was like an older sister to her as they spent a lot of time together. Linda explained how close they were; Mrs Weller lost her husband the same year Linda had her first child. She and her husband would babysit Paul, Toni and Stephen, who were 5, 7 and 3 when their father died.
74. As to Mrs Weller's relationship with her children, Stephen she said did a quite a bit for her when she lived in Tottenham but that changed when he went to live in Wales. She thought – a view held by others – that Mrs Weller's relationship with Toni improved after she moved to Cheshunt in 2014, and she added that Toni had found the house in Cheshunt for her.
75. That, Linda said, was also the basis of the main falling out she had with her sons as Paul and Stephen wanted her to stay in Tottenham but for her to let them use the inheritance she received to buy a house from which they could buy, do up and sell used cars, which she refused to do. Linda emphasised how Brenda in her view loved being with Ann and her family and her love for them was reciprocated by her. Linda said once Mrs Weller, referring to Ann and her family, said "Why aren't my kids like that?".
76. Linda spent a lot of time with Mrs Weller when she was in the process of moving to Cheshunt, sorting things out. Linda also drove Mrs Weller to hospital on or about 25th October 2018. As to her will, Linda said Mrs Weller never mentioned anything about it to her, observing that "Sometimes my Aunty Brenda did things in her own way and at her own pace", that she left the house to Ann as she was the person closest to her and that "I believe Brenda gave [Ann] the house because she wanted the house to go to the person who she felt should have [it]. Brenda wouldn't do that if she didn't want to."
77. At the end of Mrs Weller's life, when she was in hospital, Linda used to go and see her every other afternoon. She saw Toni and Francesca there too, who she said were always by her side. On one occasion, Toni asked her mother if she wanted to see Paul and Stephen. She said no. However Linda in the week before Mrs Weller died said to Toni that she should contact them. Shortly thereafter Toni asked Linda to call Stephen, which she did. When she and Ann saw him at the hospital, and asked why he had not gone into his mother's room, he said he would not as Toni was in there as they had fallen out and not spoken for some time.



78. It was Toni who called Linda on the Saturday of her mother's death to tell her. Linda went to the hospital that morning with her husband, Rob. She said Toni and Francesca were devastated. Linda was not present when Mrs Weller asked Ann to take possession of the Suitcase but was at Ann's home when it was opened and the February Will read. Linda also explained how she was upset she was not being able to go to her aunt's funeral.
79. Linda was cross examined by Paul and then Arry. Paul pushed her on her account of various matters. He put to her that Toni asked her not to visit their mother in hospital, which Linda denied. He then said outright that his mother did not want her at the hospital, to which Linda replied his mother did not want him or Stephen there. Linda gave a detailed account of what her aunt wanted in a house and how the Cheshunt house met all her requirements.
80. I found Linda to be an impressive witness. She was straightforward and when challenged on points in her statement amplified the detail. Overall, her evidence recounted how she had known Mrs Weller for many decades and how close they were. She was involved in all the major family events and I found her even handed – for example her evidence as to Toni and Francesca – and she has no direct financial interest in this claim. I accept all she said.

Ms Keeley Rainey

81. Keeley is Ann's other daughter. She also recounted that her mother would take Mrs Weller shopping every Saturday when she lived in Tottenham, and then they would have lunch at Ann's home. This, she said, went on for years, and when Mrs Weller moved to Cheshunt, she would take a bus to Tottenham to see her mother. Keeley also said that Mrs Weller never spoke highly of her sons, but developed her relationship with Toni once she moved to Cheshunt and got on well with Francesca.
82. However, Keeley said Mrs Weller told her she would not leave anything to her children, nor her grandchildren, not even Francesca as she knew Toni would get her hands on it. Mrs Weller, said Keeley, told her that "...she didn't trust her children, and that if they had anything to do with her care, they would put her anywhere, and didn't care about her."
83. In her oral evidence Keeley said Mrs Weller told her how she would slam the door to Paul or Stephen, and all the latter wanted was money from her inheritance – this was said about 5 or 6 years ago. The statement that Toni would get her hands on anything given to the grandchildren was said by Mrs Weller in her house in Cheshunt one Friday afternoon when she was looking after her great granddaughter Olivia (Francesca's child).
84. Further, the only grandchild Mrs Weller spoke about was Francesca and her daughter Olivia, about whom she had nothing bad to say. Arry cross examined her about this and she said she did not know that he, his father Paul and Toni lived in Cheshunt as Mrs Weller only spoke about Francesca and Olivia. When asked she guessed the



move to Cheshunt was so she could be close to Francesca, and that Mrs Weller never spoke about Arry to her.

85. Keeley was direct, honest and certain in her evidence and I accept what she said.
86. I now turn to the evidence of the Defendants. I have in mind that as litigants in person their statements may not be as crafted or fully informed as those tendered on behalf of the Claimant, and so I have made due allowance for that in my approach to their evidence. Having said that, I do record that the statements served for the Claimant, save for the slightly unnatural references to family members as “the Claimant” or “Fourth Defendant” or whatever, were in their own words and did not to me appear in any way “overlawyered” when tested in cross examination. I also bear in mind that the accounts of the Claimant’s family witnesses, in general, could not be tested against independent contemporaneous documentary evidence.

Mr James Weller

87. James in his statement said:

“My whole life I have always known that myself, Arry and Francesca were my nan’s favourite grandchildren. We have always found this to be funny, that our Nan had favourites. I also knew that my Dad has always been her favourite child...I know she would often talk to him and tell him things that she didn’t want to tell anyone else. I know my dad was the only person that she would talk about money and finances with, what she had or didn’t have etc.”

88. That statement that Paul was the only person his mother would discuss money and finances with does not bear examination in the face of the evidence for four reasons. First, it is novel, in the sense that it has not appeared before and is unsupported by any further commentary as to how, why and in what circumstances it arose, especially as it is preceded by the statement that Mrs Weller would only speak to her son Paul of such matters.
89. Secondly, and more importantly there is no independent documentary evidence to support it; indeed the very opposite. In my judgment a) the February Will file and particularly b) the LPA file each maintained by Austin Ryder & Co, which have not and cannot be impugned clearly show who Mrs Weller did trust with her affairs, especially as there were two separate instructions to her two solicitors, that ran over different albeit partially concurrent periods of time.
90. Thirdly, by the LPA, which could not have been made by Mrs Weller after being forced to the office of the solicitors as Paul has alleged due to the ongoing correspondence until May 2018 she had with her solicitor, Ms Thompson. Mrs Weller appointed Ann as her attorney, with her daughter Paula as replacement. None of her children or grandchildren (all of whom were of age) were nominated. This shows Mrs



Weller placed her trust in Ann and Paula, but not Paul or his siblings nor their children.

91. Fourthly, as I set out below, Paul knew nothing of the Suitcase, in which his mother had made her final arrangements I describe at [8-9] above. It contained the totality of her departing gifts; first her estate by her February Will, a copy of which was in the Suitcase, to Ann. Ann was also appointed executor as well as being the sole beneficiary. In the event of Ann not surviving, her daughter Paula was executor and sole beneficiary. Secondly, there were gifts of £1,000 in cash to each of Toni, Francesca, James, Arry and Olivia in named envelopes. Thirdly, Francesca and Olivia also were gifted specific pieces of her jewellery. Paul and Stephen were not given anything. Nor were they given any position of trust. No-one until shortly before Mrs Weller went into hospital was aware of the existence of Suitcase. Only after her death did people learn of its contents. That does not evidence trust and confidence in Paul's ability to financially guide and advise his mother; indeed the opposite.
92. James then said:
- “I've heard my Nan speak about her Will and what she was going to do, on several occasions when I've been round there. Most of the time it was just a comment she would make in conversation, saying she's leaving it to you three (meaning me Arry & Francesca).”
93. There are two possible explanations for this statement; first that Mrs Weller decided to keep her February Will a secret from Paul, Stephen, Toni, Arry, James and her acknowledged favourite, Francesca and then in the few weeks before (on Paul's account) she made the March Will in a complete change of heart, she had numerous visits from them in which she told two of them that they as her three favourite grandchildren (but not including in this announcement the actual favourite Francesca nor acknowledging her five other grandchildren unmentioned by anyone) were to be the beneficiaries of her estate.
94. The second explanation is that she just did not say it. In my judgment, I find the latter as a) it is inherently improbable she would make such a statement in all the circumstances b) to do so would fly in the face of the family relationships I have referred to above and the evidence of Mrs Weller's other relatives and c) there is no evidence of any supervening event that would so change Mrs Weller's testamentary intentions and d) as I find at [105] below, it is inherently improbable that she would not have told her favourite grandchild of her intentions as to her will.
95. In his oral evidence James to his credit accepted that there were arguments in his family and his father fell out with his grandmother as a result. He then accepted that Paul was not always as favoured as he had said, but then tried to maintain that he was. He was reluctant to speak about when his grandmother told him about her will. He said it just arose in the course of conversation. He could not recall when. When pressed he said “...a few years ago, obviously.”



96. However he maintained that as to his grandmother saying she was leaving everything to the three of them "...that happened multiple times". When pressed he said it was more than weeks before she died but that he "...did not log it at the time as I do not take time stamps. She wasn't speaking to me. Once she was speaking to my dad Paul."
97. James was not a credible witness. I found him glib at times, truculent and evasive. His evidence as to his father being the person Mrs Weller trusted with financial matters is unsupported save by the oral evidence of Paul, Toni and Arry. It does not bear examination in the light of the independent contemporaneous documentation, namely the February Will file and the LPA file, and so I do not accept his evidence in that respect.
98. Likewise I do not accept his evidence that Mrs Weller told him, Arry and their father that she was leaving her estate to her three grandchildren for the reasons I have set out at [93-94] plus that he was hopelessly vague, indeed evasive as to when he was told by her of his impending good fortune. Finally, he has a substantial personal financial interest in his evidence being accepted.

Mr Arry Weller

99. Arry in his short statement said:
- "...my nan had said to me, both alone and in the presence of my brother James Weller and dad Paul Weller that she had always planned to leave her home and belongings to her three favored (sic) grandchildren myself, James and Francesca, this was something she mentioned often during visits."
100. Like James, he said he had never heard of Ann until after his grandmother died. In cross examination Arry was asked when the above was said; he replied that he could not give an exact date but in the last 12-18 months of her life, and whilst she had mentioned a will she had not actually said she had made one. Arry was careful in giving evidence; when asked if his father always told the truth he said he could not say yes or no.
101. Arry was also asked if he told anyone about the will that he was to benefit by? He said he had not. I found Arry to be intelligent and measured in giving his evidence. Unlike James and Toni he did not say that their father was trusted in financial matters by their grandmother. However, I cannot accept his evidence as to his grandmother telling him of her intention to leave everything she had to him and his brother and sister for the same reasons I did not accept James' account of this alleged episode as set out in [93-94] above plus he has a substantial personal interest in his defence succeeding.

Ms Francesca Mapp



102. Francesca said in her statement she "...had an exceptionally close and very strong relationship with my grandmother. Throughout my childhood I was always referred to as the Golden child, by the rest of the family. This continued even as an adult".
103. She then described how she was the first grandchild and how she was always made a fuss of by her grandmother, who regularly looked after her daughter so Francesca could return to work as a pharmacist. She said she and Toni would spend every Friday at her grandmothers for fish and chips plus almost every weekend together. Nothing was said about a will to her but "...on a couple of occasions while my daughter was sitting on [her] lap, playing with the sparkly rings on her fingers, she said 'these will be yours one day'".
104. In her oral evidence Francesca confirmed that she was left by her grandmother a little blue cardboard jewellery box. Inside was a silver bracelet and a slip of paper with Olivia's name on it. She likewise received a specific named item of jewellery and each also received separate envelopes with £1,000 cash in.
105. I find on the evidence that Francesca was correct in saying she was the favoured grandchild. I find it improbable that whilst all of James, Arry, Toni and Paul say Mrs Weller told them she would make a will in favour of the three grandchildren she never said that to her favourite grandchild or in her presence. I also note Francesca does not say her father was trusted on financial matters by her grandmother.
106. Francesca was a thoughtful, somewhat hesitant and clearly honest witness who did her best to assist the Court. I accept all she said.

Ms Toni Weller

107. Toni said her mother didn't speak to her of financial matters but:

"She always tended to talk to Paul about anything financial. I believe my mother always seemed to think he was a bit more wiser when it came to money matters."
108. She also spoke of her relationship with her mother being very good and how they would speak or see each other at least 3-4 times per week, and regularly on a Friday when they would have a takeaway. All that seems to me to fit with the rapprochement that Ann, Jane, Linda and Keeley acknowledged after Mrs Weller moved to Cheshunt.
109. As to the making of the March Will Toni said:

"I remember sometime in March, my brother Paul came to my house and said he was going round to our mothers and could I pop round there quickly as she need some paperwork signed...I said I would be there in 10 minutes or so...I let myself in...My mum and Paul were sitting in the front room. Paul said mum needs you to sign her Will...[she] picked up the pen and then



signed her Will. Paul then signed it and passed it to me to sign. I had a quick look at it, it was very basic, there was just the grandchildren named on it, which didn't come as any surprise, as that is what my mother had often said she was doing. I signed it, stayed for a few minutes, and then said it that's it, I'm going...And with that, I left."

110. I gave permission on Paul's application for Toni to give her evidence remotely, due to her medical condition. Unfortunately the Court video system malfunctioned and her evidence was heard over a very poor audio connection. Toni confirmed she did witness her mother's signature on the 5th March 2018, and not later as Mr Blackett-Ord suggested to her. I did not find Toni's evidence in certain respects to be credible. I mention three examples below.
111. First, Toni sent Anna text on the Wednesday following her mother's death on Saturday 24th November 2018. It was put to her in cross examination. It read:

"Ann I've been trying to contact Paul today and he's not answering. I'm concerned that they are concocting something between them. I'm worried about how he is going to react to the locks being changed. [by Ann as executor]..I def don't think you should go there only tom x [corrected in next text] Alone tom x"
112. Toni was asked what that was about. She said she'd had an argument with her brother Stephen, who was staying with Paul. She thought Stephen was up to something. It was, she said, basically Stephen. She thought he was going to try and do something, and that she did not know what was on his mind.
113. I do not accept her evidence in this respect for these reasons; first Toni does not mention Stephen directly in her text but she says she is trying to contact Paul, not Stephen. Secondly she says she is worried about how "he" is going to react to the locks being changed. One point that is agreed between the parties is that Paul did change the locks on his mother's house after Ann did, and it was Paul who went to the house, not Stephen. Thirdly I find this is an attempt to divert blame on to Stephen, who left these proceedings some time ago, did not appear and was not represented.
114. In my judgment, the direct language of the contemporaneous text is to be preferred to Toni's attempt almost three years later to explain it in such a way as to exculpate Paul. Secondly, I find I cannot accept all of what Toni says as, for the reasons I set out at [88-91] above, I reject her statement that her mother trusted Paul in financial matters.
115. Thirdly, I do not accept that her mother often told her she was going to leave her estate to the three grandchildren for the reasons I set out in [93-94] above. Mr Blackett-Ord submitted that Toni's evidence was crucial as to her witnessing the March Will and that she was the second most important witness in that respect; I



agree. He also submitted that Paul submitted when obtaining my permission for her to give evidence remotely that due to her "...extremely poor health" she should be "...kept isolated."

116. However, Mr Blackett-Ord also submitted that when giving evidence she sounded perky and confident, and did not give evidence as a sick woman. I do not accept that submission; a person may be very ill physically or mentally but be able to maintain an outward appearance of – or here as it was audio only – impression of well-being. He added that I should take into account that if I had heard her face to face I would have found it easier to disbelieve her.
117. I have not taken that approach as first I think it would be wrong to make such an assumption, secondly live evidence may have been more believable and thirdly I have set out three examples above of why in any event I cannot accept some of Toni's evidence as being credible; it was self-serving in the interests of her daughter.

Mr Paul Weller

118. As to be expected, as the contentious aspects of this claim and the evidence centre around Paul, he spent longer in the witness box than any other witness. I will set out in my findings of fact particular aspects of his evidence, but below set out the essence of his evidence and my view of it.
119. I have set out at [30-37] above Paul's statement and his Defence that his mother said to him she would leave her estate to these three grandchildren, how he prepared the March Will, how his mother signed it in the presence of him and Toni who then both witnessed it and that he believed Ann intimidated or bullied his mother into making the February Will.
120. In his skeleton argument for trial Paul addressed a new piece of his evidence; namely how a junior solicitor when he was in a meeting with his then acting solicitor had said there was metadata on Paul's smartphone that could prove the time, date and place when the photograph he produced as evidence that he had taken of his mother's executed March Will was made. Paul said he was then unaware of what metadata was. The junior examined his smartphone alone, returned and said he had found the metadata to show the photograph was taken on 7th March 2018 at 08.57. I address this further when I set out the evidence of Paul's expert, Mr Cufley at [137-140] below.
121. Paul in his statement makes various allegations against Ann such as Ann burgled the caravan they were on holiday in when he was a child and how his mother since then had always been scared of Ann. He also went into some detail as to how she broke into and then changed the locks on his mother's house, how he reversed that and reported the matter to the police. He said Ann had stolen £13,000 in cash his mother kept in her house, and so on. None of these matters which took up quite a part of his evidence are in my judgment relevant to the matters I must determine. They were attempts to destroy Ann's credibility, none of which I accept in any event, as there is no evidence to support them at all.



122. Mr Blackett-Ord submits that Paul’s evidence was at times evasive, implausible and punctuated by allegations of memory loss when it suited him. I agree. There were points when he accepted matters, such as when the February Will was put to him. He said he knew nothing about it and accepted he could not challenge it, and that the same applied to the LPA.
123. I set out below an example of Paul’s evidence being implausible and inherently improbable. As to the making of the February Will, he said Toni told him that Ann told her she took their mother to the solicitors to do the February Will and waited outside. There is no evidence for this; Ann says the opposite in that she was asked to be executor, to which she agreed, and she offered to accompany Mrs Weller but she went alone, and told Ann of that later, the latter action being in accordance with what several witnesses described as her being stubborn independent and very private on certain matters – as shown by the fact no-one knew of her testamentary intentions until the February Will was read after her death.
124. There was not a shred of evidence that she did not have capacity; indeed the opposite, from all who knew her. I therefore cannot accept the hearsay account Paul puts forward which is inherently improbable and implausible in all the circumstances. That directly impacts on his allegation of Ann intimidating and bullying his mother, which is part of the same episode. I reject that and find there was no such conduct on Ann’s part; it was all made up by Paul. My conclusion is supported by the making of the LPA at a later point in time as I set out at [27-29] above.
125. Paul was also uncooperative, contradictory and deliberately awkward in his evidence as to the provision of certain original handwriting samples, being bank cards and a provisional driving licence (“the Cards”) which he had given to his expert, Mr Craddock, and appeared in his report, for comparison by his expert with the original signature on the March Will. Mr Grant, Ann’s solicitor, asked for them to be provided on 10th July 2020 for his expert to examine them. Reminders followed on 24th July, 3rd and 25th August. On 10th September Mr Grant threatened an application to the court if they were not provided. Paul replied on 16th September saying they were sent on 7th August.
126. In cross examination Paul was asked why he had not said he had sent the Cards before 16th September. He said he did not know why. Upon being pressed as to this he said it was because Streathers had been uncooperative with his then solicitors. He then tried to say he did not know who at Streathers to speak to about it. This I find was just untrue; the emails from Streathers referred to Mr Grant as the author/reference. Paul then contradicted himself by saying he never said that when he clearly he had.
127. In re-examination he said he had not seen Mr Grant’s name as the sender of the emails (including the attached letters from Streathers) as he received thousands of emails so he did not read them. This I find untrue for the simple reason he did reply to some of Mr Grant’s emails.



128. He tried again to dig himself out of this hole of his own making by then saying that Streathers had ignored correspondence from his then solicitors. But he could not point to any such correspondence and then said it was what his solicitors had told him. Again this was unevicenced and I cannot accept what he said.
129. Another example of Paul’s implausible and improbable evidence concerned the Suitcase. Paul said he did not accept that it belonged to his mother. As to the contents, he alleged Ann had put £1,000 into each of the five envelopes. When asked why she would do such a thing, he replied “perhaps guilt”. But Toni in her evidence said those for Francesca and Olivia had been addressed to them by her mother in her handwriting. He then said there was no evidence of the Suitcase being opened – which I can only describe as nonsense in view of the evidence of Ann, Jane, Paula, Keeley and Linda, all of which I accept.
130. In summary, I do not accept much of what Paul said unless it was supported by independent testimony or contemporaneous documents. He was an unreliable historian who did at times try to mislead the court on substantial and significant matters. He would say whatever he thought would assist his case with little regard for the truth.

THE EXPERT EVIDENCE

131. I heard evidence from four experts, two for Ann and two tendered by Paul, who had not appreciated that his experts had to give live evidence. Fortunately, arrangements were made for two of them to give evidence remotely, and with some reorganisation of the trial timetable they were heard.

Dr Chatfield

132. Dr Chatfield gave expert evidence as to the examination of weights of the contents of the “signed for” recorded delivery that Streathers had received. Ms Jelea’s evidence as I set out at [50-52] was she recalled receiving a recorded delivery white A4 non-padded envelope which was empty so she threw it away. Paul claims he sent the Cards which had been examined by his handwriting expert to Streathers on 7th August 2020 with delivery taking place on Monday 10th August 2020, and Paul produced a tracked receipt (“the Certificate of Posting”) to evidence same.
133. Dr Chatfield’s instructions were to determine what the weight of the Cards would be and whether they plus the envelope corresponded with the figure on the Certificate of Posting produced by Paul of 20 grams used to determine the postal charge of £2.06. He did not have access to exactly the same Cards but he weighed his own, similar cards. He found that the envelope type weighed 15.2g, that 4 plastic credit/debit cards weighed 5.1-5.4 g each and the driving licence 11.00g. Therefore the total would be, with a single piece of A4 as a covering letter at 4.9-5.6g, 51g. Without the A4 sheet it would be 46g.



134. Therefore, in his opinion, the weight of the Cards exceeded 20g by a considerable margin – over double. In his conclusion he said the total without the A4 sheet would be 46g, considerably exceeding the 20g weight on the certificate of Posting, which:

“...strongly indicates that the A4 envelope either could only have contained one credit/debit card when posted, or that if it had contained the 4 credit/debit cards and the driving licence described, that they had been lost or stolen in transit.”

135. Dr Chatfield was cross examined as to his conclusions. He was steadfast in his opinion as to the disparity in weights of the envelope with and without the Cards, as the total weight was so much more than the envelope alone. Paul had in his evidence alleged he had posted the Cards in a brown A4 envelope, not a white one. This was put to Dr Chatfield in re-examination and he was asked to estimate what such an envelope would weigh.

136. In his opinion, he said it would weigh less than a white version of the same envelope – probably about half or slightly less due to the quality of the paper being inferior. He estimated it at 8g. In other words, the use of a brown envelope only strengthened his conclusion. I accept all he said.

Mr Ronald Cufley BEM

137. Mr Cufley was instructed by Paul on behalf of the Defendants to examine a digital photograph and to extract the internal metadata from it, the picture being the one Paul took of the original of the executed March Will, as I have described at [120] above. Mr Cufley said he had examined the metadata by using an x-Ways Forensic Toolkit and the resulting data showed the photograph was taken on 7th March 2018 at 08.57. Mr Cufley did state that the metadata:

“are dependent upon the accuracy of the clock within the camera used to produce the photograph and may be modified by a user with the necessary skill and software.”

138. In cross examination Mr Cufley said he stood by his conclusion as to what the metadata said but added – which was not in his report – that the data exhibits a GPS stamp based on the atomic clock. He confirmed that the Apple software on Paul’s iPhone 6 was 11.4.1 version 221. Mr Blackett-Ord put to Mr Cufley that 11.4.1 was only released on 9th July 2018 so it could not be the employed software at that time. Mr Cufley could not comment as to the software release but said he could not see how the GPS stamp could be wrong.

139. Mr Cufley did accept that the GPS stamp could be altered, but most people would be unable to do it. In re-examination he said specialist tools and knowledge would be necessary, such as possessed by someone who could hack into computer games to give themselves more lives, but not the ordinary person.



140. I do not accept that the software release in July meant the photograph could only have been taken thereafter as there was no proper evidence as to those operative dates before me. I accept all Mr Cufley said but note a) Streathers asked by letter dated 9th December 2020 for access for their expert to examine Paul’s iPhone but none was given and b) Mr Cufley specifically stated that both the metadata and GPS time stamp could be manipulated. In those circumstances, and especially in the absence of an expert opinion for Ann, I find his report is not determinative of the point Paul seeks to prove namely that he took the photograph of the March Will on the 7th March 2018.

The Handwriting Experts – Mr Browne for the Claimant and Mr Craddock for the Defendants.

141. I take these reports together for convenience as they number four in all plus there is a Joint Report. Mr Browne in his first report states as to the February Will there is conclusive (being the top of the 5 point scale) evidence it was signed by Mrs Weller, so “...that the possibility of another person writing that signature can safely be discounted.”
142. As to the March Will he finds that there “...is strong evidence [third point on the scale] that the signature...was not written by the author of the reference signatures [i.e. Mrs Weller] and that “...I mean that whilst I cannot totally exclude the possibility that the same person wrote the signatures, I consider this to be very unlikely.”
143. Mr Craddock, using the same 5 point scale, opines in his first report that “... the evidence is inconclusive [so at the bottom of the scale] as to whether the alleged signature of Brenda Margaret Weller on the [February Will] is genuine.” In his second report, having been able to inspect the originals of the February Will and reference signatures, he changed his opinion to there being “...moderate evidence...” [the penultimate point on the scale] that her signature was genuine.
144. Mr Craddock in an addendum to his first report said there “...was moderate evidence that the [March Will signature] was genuine.” He maintained this in the Joint Report. Mr Browne considered Mr Craddock’s opinion as to the March Will and his reasons but said if he were to concede anything he would only come down half a point so his final position was that there was “...Moderate to Strong evidence that the signature of 5/3/2018 was not written by [Mrs Weller].
145. Nothing arose during their oral evidence so as to alter their opinions as set out by them in writing, once they both had access to the same material; as Mr Browne put it “He stands firm and so do I...but I still think I am right and he says the same”.
146. I am more persuaded by the views of Mr Browne than Mr Craddock for these reasons; first Mr Craddock opined that it was inconclusive the signature on the February Will was that of Mrs Weller when on the evidence of the witnesses to the February Will combined with the Will file itself leads me to conclude that it could only have been her; as found by Mr Browne.



147. Secondly, Mr Browne expresses a more positive view on the scale they both worked to that the signature on the March Will was not that of Mrs Weller. Thirdly, but at the very bottom of my scale of expert witness factors/considerations, is that Mr Browne just edges Mr Craddock in his credentials, although I place very little weight upon that. Mr Craddock professionally, as I would expect, did accept when giving oral evidence that Mr Browne had more experience than he did.
148. In summary, the signature on the February Will was that of Mrs Weller but there is "...Moderate to Strong evidence" that she did not sign the March Will.

FINDINGS OF FACT

149. I now turn to my findings on the balance of probabilities, which takes into account the matters I have made findings on above, plus further facts and circumstances I refer to below. The February Will is genuine, as Paul on his own and on behalf of the other active Defendants accepts.
150. If he had not so accepted, and in any event, I find it genuine in the circumstances set out above namely the evidence as to the instructions for what she intended given by Mrs Weller, the proof of her identity that she supplied to her solicitors as appears on the will file and the evidence by the attesting witnesses as to her signing it in their presence. Finally, there is the expert evidence of Mr Browne, which I accept. The totality of that evidence is unassailable in my judgment.
151. Paul did however maintain that his mother was bullied, forced or intimidated by Ann into making the February Will, which I assume led to his justification for the making of the March Will. I find there was no evidence whatsoever in that respect; Mrs Weller made it of her own free will and also I find kept it secret from everyone during her life. As I have found above, there was no question of any lack of capacity on her part; indeed the opposite. The making of the LPA reinforces and supports my conclusion in that respect.
152. I turn now to why did Mrs Weller make the February Will in favour of Ann or alternatively, Paula, and not her immediate family? The answer must be in the relationships in the wider family as there is no other evidence before me. First, I find that Mrs Weller had a long, deep and loving relationship with Ann as I accept her evidence and that of Linda, Jane and Jamie in that respect. Ann was trusted by Mrs Weller as evidenced by the facts a) she was executor, b) she was her attorney for the LPA and c) it was Ann (and also Jane) in Ann's family whom she told about the Suitcase and entrusted it to her care.
153. Paul was not as Toni and James alleged trusted by Mrs Weller as to financial matters; Mrs Weller told many of the witnesses that she was estranged from her sons and did not trust them. It was therefore highly unlikely that she would have appointed him as executor. I accept the evidence of all of Keeley, Jane, Linda, Jamie, Paula and Ann that Mrs Weller did not trust her children Paul, as I have set out above. I also accept



their evidence that Mrs Weller rarely saw Paul. There was no independent evidence of that such as, with Toni, recent telephone records.

154. I find Toni rekindled her relationship with her mother after she moved to Cheshunt and that they spent time together on a regular basis, apparently every Friday at least, and as appears from disclosed telephone records, they spoke regularly.
155. As to Francesca, James and Arry, I find that Francesca was as she said herself the favoured one of the three (or eight bearing in mind there are five other grandchildren who did not feature in this claim), and that Mrs Weller also was especially keen on Francesca's daughter Olivia. As appeared from photographs Paul put forward in evidence, the fireplace wall in Mrs Weller's living room was covered in pictures of those grandchildren.
156. However, I do not accept the evidence of Paul, Toni, James and Arry that Mrs Weller had always said she was leaving her estate to James, Arry and Francesca for these reasons:
 - i) It is inherently improbable that she would say this to James and Arry but not Francesca who was the favoured one and as Toni's daughter appeared to be regularly at her grandmother's house, with or without her mother.
 - ii) Likewise why would Mrs Weller go to the time, trouble and expense of making the February Will if she always intended those three and only them to benefit? Again, I find that inherently improbable.
 - iii) There was no evidence of a major supervening event which led Mrs Weller to change her mind as to her testamentary gifts, such as a substantial falling out with Ann, Paula nor anyone else in their family. Nor was there some event which led Mrs Weller to wholly change her view of her children. Indeed, nothing seemed to change after the move to Cheshunt as the February Will was executed some four years after that move.
 - iv) Likewise, their evidence was not limited to a period of time after the February Will was executed, and before the March Will was.
 - v) Mrs Weller's intentions as to those three appeared in the gifts of £1,000 to each of them found in the Suitcase, plus the same to Toni, and the jewellery to Francesca and Olivia. The absence of any gift of anything to Paul and Stephen is notable by its absence. If Mrs Weller, a determined, independent woman, had intended to give more, from the evidence I heard and saw, she would have done so.
 - vi) Mrs Weller's statement that she had no children to her solicitors as appears in the note I describe at [14] above. I can only surmise that in accordance with the views of Linda at [39] above, this was an example of her keeping things that she considered private, to herself, until after her death.



157. I turn now to the Suitcase. Mr Blackett-Ord observed that at first it seemed not to be of any especial evidential value, but as one considers the totality of the evidence and the personal positions of the witnesses, that view changes and its importance becomes clear. I agree, for the reasons I set out below.
158. As I have set out at [8-9] when Ann and Jane visited Mrs Weller in hospital, Mrs Weller said to Ann that there was a suitcase she wanted Ann to collect from her home, which was under her bed. She handed over keys to her house. Ann says Mrs Weller was very clear that they were not to tell anyone else that she had given them the keys, and that she did not want Paul and Stephen to know about the Suitcase, saying something to the effect she knew what they were like.
159. Jane says that when she went to the house with Ann they were able to open the front door but not the door to the lounge through which they were to access her bedroom where they had been told the Suitcase was. Jane went back to the hospital the next day and told Mrs Weller that they could not access the bedroom as they could not unlock the lounge.
160. Jane said Mrs Weller panicked and wanted to leave the hospital, saying Toni had her keys. Jane calmed her down and then a couple of days later Mrs Weller gave Ann keys that did permit access to her bedroom, via the back patio doors. Ann and Jane found the Suitcase under her bed, just where she said it was, removed it, locked up and left. As I have indicated above I accept all of Ann's and Jane's evidence of which this is part. Jane's evidence was especially detailed as to this episode.
161. The Suitcase was taken by Ann to her home on the Saturday before Mrs Weller died on the following Wednesday. After her death it was opened by Ann in the presence of Jane, Linda, Paula and Keeley. All of them confirmed what was in the suitcase as I have set out at [9] above. I accept their evidence as to what was inside the Suitcase unreservedly. The omission that Linda's husband Rob was there does not detract from their joint evidence.
162. I did observe to the parties during closing submissions it seemed to me that notwithstanding witnesses on both sides saying Mrs Weller was "as right as rain" and suchlike before she went into hospital for the last time and how they expected her to come out my guess was that she knew she was likely to die.
163. First, she prepared the Suitcase carefully to resolve her affairs, in all respects, for the future, with the copy of the February Will and the physical gifts of cash and jewellery. Secondly, she had cancer, and may well have had a diagnosis of same; her medical records were never obtained. But whether I am right or wrong matters not in the sense that the Suitcase did, I find, represent her intentions as to what her family was to receive in the event of her death.
164. I find that the careful preparation of the contents of the Suitcase which could only have been by Mrs Weller and her concern, indeed panic when she realised it might be located by her children or those other than Ann and Jane, evidences:



- i) Her exclusion of her children from her testamentary intentions;
 - ii) Her distrust of her children especially concerning money;
 - iii) Her worries as to what would happen if Paul or Stephen became aware of her plans and what she had arranged – which as appears from Paul’s subsequent conduct she was correct in;
 - iv) Her meticulous, well organised approach which was very private in that no-one knew of the contents of the February Will nor the Suitcase;
 - v) Her intention to ensure her grandchildren did receive a bequest from her;
 - vi) Her absolute trust in Ann and Linda to do the right thing at the end of her life;
 - vii) Her intent that Ann was to be her sole executor and beneficiary.
165. I now turn to the March Will. I find that it was never signed by Mrs Weller and so her signature was forged for these reasons:
- i) It is highly improbable, indeed verging on the impossible, in the circumstances I have set out above that Mrs Weller decided in the very short gap between the 9th February – 5th March to wholly change her will – she knew her own mind;
 - ii) In particular there was no change of circumstances or intervening event as I have found above;
 - iii) Likewise it would not make sense that, had she so decided, she would not go back to the solicitors, with whom she was still in contact as they were finalising the LPA, to make any new will;
 - iv) The March Will was not mentioned by Paul (and for that matter Toni) to anyone. That appears unlikely if it had been made as Paul says as his sons Arry and James were living with him at all material times;
 - v) When his mother died Paul did not immediately produce the March Will. In oral evidence he said he could not remember where he had put it, and eventually found it in his loft. That I find unbelievable in circumstances where the natural reaction would be to keep one’s mother’s will close but safe and to produce it immediately upon her death;
 - vi) Paul had in his control the evidence as to from where he obtained the template for the March Will that he said he used; he never produced it;
 - vii) Likewise as I observed at the start of trial I was surprised no metadata was obtained from Paul’s laptop/PC to show exactly when he prepared it and how or from what, although as I said it was also open to Ann’s solicitors to apply for it had they appreciated that;



- viii) Paul provided to his expert the Cards which he had access to as he took control of his mother's house and effects including her papers after her death. Ann said in evidence and I accept that Mrs Weller did have various bank cards which she had not signed. One such blank card was produced by Ann on disclosure. I find that Paul or someone at his behest forged his mother's signature on the Cards in an attempt to manipulate the expert evidence;
- ix) However he had to provide the Cards for examination by Ann's expert, as appears from the correspondence I have referred to. He therefore decided to send an empty envelope to Streathers but obtained a Certificate of Posting to show he had provided the Cards to them;
- x) However Paul had not appreciated that the Post Office on the Certificate of Posting set out their weight of the envelope and any contents, for charging purposes, which according to the evidence of Dr Chatfield, was about twice the weight of what was actually despatched by Paul, namely the empty envelope;
- xi) Paul then tried to get around this evidential problem he had created for himself by saying the envelope was not, as Ms Jelea said, white but brown. However this attempt to manipulate the evidence also failed as Dr Chatfield said a brown envelope would actually weigh less, which only fortified his conclusion;
- xii) That none of James, Arry and Francesca were told by their grandmother of their future legacies, notwithstanding how close they all say they were to her, and – for James and Arry – that she regularly told them they were to inherit her house and possessions;
- xiii) That Paul in cross examination said his mother did not need to name her grandchildren who were to benefit as he knew who they were to be;
- xiv) Likewise his confidence that notwithstanding his mother not naming the three beneficiaries he prepared the March Will and got Toni to go round to witness it before his mother had even seen it;
- xv) The fact that when their mother died on 24th November 2018 neither Toni nor Paul told anyone of the March Will – in fact it did not surface until Paul applied for probate of it in January 2019. I do not accept Pual's explanation that the reason for this was because he was grieving;
- xvi) Further, that was in the circumstances of Arry, James and Francesca all receiving the cash sum of £1,000, as well as Toni, who on her evidence knew of the March Will when she received the monies;
- xvii) If Mrs Weller had really made the March Will, it would in view of her conduct of her affairs follow that she would have ensured a copy was in the Suitcase;



- xviii) Likewise all the urgent efforts and concern to locate and secure the Suitcase would have been clearly pointless to Mrs Weller if she really had appointed Paul as her executor;
 - xix) Especially, the evidence of Mr Browne that there was moderate to strong evidence that the signature of Mrs Weller had been forged.
166. I now turn to when the March Will was created. I do not accept that, as Paul and Toni say, it was prepared by him prior to or at the latest on 5th March 2018 for these reasons:
- i) The particular facts I have found in 165 above at i-vii and xii-xix;
 - ii) The metadata and the GPS time stamp are as Mr Cufley stated possible to manipulate for a person who, as he put it, has the capability to cheat at computer games;
 - iii) The fact that Slee Blackwell Solicitors, instructed by Paul, Toni and Stephen (but Toni said in oral evidence that she didn't instruct them but she thought Paul did) wrote on 10th December 2018 to Austin Ryder as I have set out at [21] above in essence a) making an Inheritance Act claim or one of invalidity of “..the deceased's last will” and b) stating, on instructions, apparently of Paul, that Austin Ryder prepared their mother's last will and c) asking for a copy of it. Clearly, if the March Will had existed as of then no such statements would have been made by Slee Blackwell.
 - iv) Paul would only have received a copy of the February Will after Slee Blackwell received it from Austin Ryder which would have been some time after 13th December 2018 – see [21-22] above.
167. In my judgment, the above facts show Paul concocted the March Will at some point after 10th December 2018 and some time before the grant of probate was obtained on 9th January 2019. However, even if I am wrong as to that, it does not affect my finding that Mrs Weller's signature on the March Will was forged. There is no evidence before me to identify without doubt who did so forge her signature, but on the balance of probabilities in view of the facts I have found I find it was Paul or someone at his behest, with the knowledge of Toni.
168. I find that it was on the balance of probabilities Paul who forged his mother's signature on the March Will for these reasons:
- i) He had access to his mother's house and actually did access it so he had her documents including examples of her original signatures and blank bank credit/debit cards,
 - ii) He deliberately ensured that the specimen bank cards on which he forged his mother's signature in an attempt to mislead his expert and thereby the Court



were never received by Streathers by posting an empty envelope to them as I have found above,

iii) He was always at the centre of the March Will.

169. As I have found forgery of his mother's signature, it follows that the execution of the March Will never took place. This event was fabricated by Paul and Toni.

170. I therefore answer the Issues as follows; the February Will is genuine. The March Will is a forgery. There will be judgment for the Claimant.

Deputy Master Linwood

5th August 2021