



Neutral Citation Number: [2022] EWHC 3013 (Ch)

Claim No. PT-2020-000320

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

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

Date: 29 November 2022

Before: Deputy Master McQuail

Between:

(1) ANNE LETTICE	<u>Claimants</u>
- and -	
(1) LINDA LETTICE (AS EXECUTOR AND BENEFICIARY OF THE ESTATE OF MARGARET LETTICE DECEASED)	<u>Defendants</u>
(2) FREDERICK MICHAEL LETTICE	
(3) PETER LETTICE	
(4) SYLVIA RICKS	
(5) BRIAN LETTICE	
(6) SAMUEL LETTICE	
(7) EMILIE LETTICE	
(8) JANINE HIGGINS	
(9) FLEUR LOUISE NICHOLLS	
(10) VANDRA LEE WYATT	
(11) NINA RICKS	

The **Claimant** in person
Mrs Anna Metcalfe (instructed by **Lupton Fawcett**) for the **Defendants** (as beneficiaries)
apart from the **Eighth Defendant**
The **Eighth Defendant** attending in person
Spencer Lewis of **Martin Shepherd LLP** for the First Defendant as personal representative
Hearing dates: 27, 28 and 29 September 2022

Approved Judgment

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Deputy Master McQuail:

1. This is my judgment following the trial of proceedings under the Inheritance (Provision for Family and Dependants) Act 1975 (“the 1975 Act”) brought by Anne Lettice against the estate of her late mother, Margaret Lettice. I will refer to Margaret and her family members by their first names in the remainder of this judgment, without intending any disrespect.

Background to the Proceedings

2. Margaret was born on 15 July 1919 in Ireland and died on 15 April 2019 in London aged 99. She moved to England in the middle of the last century. She married, and she and her husband, Frederick, had six children. They moved, with their children, to 94 Warham Road, Harringay (“the Property”) in the mid-sixties and lived there together until his death on 11 November 2001.

3. Margaret’s children are Frederick (dob 30 August 1950), Anne (dob 22 April 1952), Peter (dob 22 June 1953), Sylvia (dob 15 April 1956), Brian (dob 1 May 1959) and Linda (dob 25 May 1961). Margaret’s grandchildren are Frederick’s children, Samuel and Emilie, Anne’s daughter, Janine, Peter’s daughters, Fleur and Vandra, and Sylvia’s daughter, Nina Ricks. The grandchildren are all adults.

4. By her last will dated 12 August 2014 (“the 2014 Will”) Margaret left her estate as follows:

(i) the Property to be sold and divided into 6 shares of which:

(a) one share is to pass to Linda;

(b) one share is to pass to Brian;

(c) one share is to pass as to 70% to Anne and as to 30% to Janine;

(d) one share is to pass as to 40% to Frederick and as to 30% each to Samuel and Emilie;

(e) one share is to pass as to 40% to Peter and as to 30% each to Fleur and Vandra;

(f) one share is to pass as to 70% to Sylvia and as to 30% to Nina; and

(ii) the residue is to be held on trust for her six children in equal shares absolutely.

5. The 2014 Will appointed Frederick, Peter and Linda as executors. Linda, acting by Martin Shepherd solicitors, extracted a grant of probate from the Newcastle District Registry on 24 October 2019 with power reserved to the other executors.

6. The most recent draft estate accounts prepared by Martin Shepherd date from August of this year and show the residue to be £20,631.01, of which one sixth is £3,438.50. The latest valuation of the Property also dates from August of this year and gives £875,000 as the guide price for sale. One sixth of that amount is £145,833.33 and 70% of that is £105,521.83. The completed IHT400 shows that there is no inheritance tax to pay in Margaret’s estate.

7. By a Part 8 claim form dated 21 April 2020 Anne, who was at that stage represented by solicitors, commenced these proceedings. Anne seeks:

“an order for reasonable financial provision to be made to her from the Deceased’s estate under s.2 of the Inheritance (Provision for Family and Dependants) Act 1975 (“the 1975 Act”):

(a) pursuant to section 1(1)(c) of the 1975 Act as a child of the Deceased; or

(b) pursuant to section 1(1)(e) of the 1975 Act as someone who, immediately before the death of the Deceased was being maintained by her.”

and:

“An order that such reasonable financial provision as the Court thinks fit be made to the Claimant from the net estate of the Deceased.

An order pursuant to section 9 of the 1975 Act that the whole, or alternatively such part as the court considers appropriate of any bank account the Deceased held jointly with any other party on death be treated as part of the Deceased’s estate and further, or alternatively a declaration that any such account is held by the joint account holder upon trust for the estate upon such terms as the court considers fit

Such further or other relief as shall be just
Costs.”

8. The Claim Form was supported by a statement made by Anne dated 16 April 2020.
9. The only named defendant to the original claim form was Linda, as personal representative of Margaret. An amended claim form naming all the other beneficiaries of the 2014 Will as additional defendants was issued on 25 November 2020.
10. Janine filed an acknowledgment of service dated 17 December 2020 stating:
“I would ask the court record reflect my neutrality in that I have not contested this claim at any point, I would therefore ask that I am not held liable for any costs in relation to this case.”
11. Pursuant to directions of Chief Master Marsh the other defendants, who had all indicated their intention to contest the claim, filed evidence on which they intended to rely in late 2020 and early 2021. Anne filed her second witness statement dated 8 February 2021 in reply. Exhibited to it was a witness statement of Janine.
12. An order declaring that Anne’s solicitors were no longer acting and removing them from the record was made on 16 December 2021.
13. Anne appeared at trial in person. Janine attended the trial remotely by CVP but took no active part. Anne decided not to call Janine as a witness, and I place no reliance on her witness statement. The other defendants in their capacity as beneficiaries appeared by Mrs Anna Metcalfe of counsel. A representative from Martin Shepherd, acting for Linda in the administration, put in a brief position statement and was present at trial.

Witnesses

14. The witnesses who gave evidence in Court were Anne, Linda, Sylvia, Brian and Nina. Peter and Frederick gave evidence by CVP from the same location in Australia, to which country they both emigrated many years ago. Linda’s partner, Simon Rayner, also gave evidence by CVP from their home in Cornwall. Hearsay notices were served in respect of statements made by Samuel, Emilie and Fleur, who live in Australia. Additionally, hearsay notices were served in respect of statements made by Sheila Duffy, who is Margaret’s niece

and lives in the USA, and Germain Ng, the Parish Secretary of the Catholic Church, St John Vianney, London N15 which was the church attended by Margaret in later life.

15. In addition, the trial bundle included two brief letters apparently written by neighbours in support of Anne's case as to the care she claimed to have given to Margaret. Neither neighbour was called to give evidence and no hearsay notices were served. In each case there was an issue whether the content of the letters had been suggested by Anne. I take no account of the content of those letters.

Anne's evidence

16. Anne was not a satisfactory witness. She failed to provide answers or explanations when it did not suit her to do so and admitted that in certain respects her witness statements were wrong. I cannot accept Anne's evidence unless it is either inherently plausible or independently corroborated.

17. The particularly unsatisfactory aspects of her evidence were that:

(i) neither of Anne's witness statements dealt with her status as an ordained minister (of a church of which she was unable or unwilling to provide the name) or with the amount of her time that she devotes to following that vocation. Despite being asked, more than once, at what time of day she would leave the Property to pursue her vocational activities Anne would not give either counsel or me a clear answer;

(ii) Anne claimed in her first statement to have provided "round the clock care" for Margaret for 17 years and claimed the necessity for providing care "full time" was incompatible with her having a job. Anne's own second statement acknowledged that her siblings shared in providing such care and support as Margaret actually required from time to time. Anne gave no realistic account of what full time care meant either in her witness statements or orally. In evidence Anne at one stage retorted to counsel "you make it sound as though I needed to be there 24 hours a day. Nobody stays in a house 24 hours a day. I have a life to live."

(iii) in her first witness statement Anne stated "my financial dependence on my mother was a direct consequence of my mother's wish for me to give up work and care for her" and "my mother therefore had a very high degree of responsibility to take care of my future needs". When cross-examined she said that neither statement was true.

(iv) Anne acknowledged that the schedule of her claimed financial needs exhibited to her first statement was in some respects the product of her then solicitor's suggestions as to what she might be able to claim in the current proceedings;

(v) Anne's evidence about her finances was not straightforward or complete. Anne did not explain what income she received in the years between about 2002 and reaching state pension age in 2014. So far as regular deposits of cash were made into her bank account for the only year for which her bank statements were disclosed, her explanation was not credible.

The Evidence of Anne's Siblings

18. Quite apart from the hostile content of their witness statements, it was apparent from the manner in which Anne questioned them and the manner in which they answered that relationships between Anne and all five of her siblings are now broken and, in each case, broke down some years ago.

19. Anne suggested at various points that her siblings had colluded in their evidence. I agree that to an extent the siblings (and their children) must have compared notes and that is clearly

apparent from the terms of some of the statements themselves and answers given in evidence. Family members on good terms are likely to talk to one another about family matters as events occur and again in the context of a claim such as the present. I do not consider that there was anything underhand in this. What is apparent from their statements and the exhibits, many of which are duplicated, is that each sibling endeavoured to recount all the parts of the family history of which they were aware, even if they were not in a position to give a first-hand account.

20. Sylvia and Linda lived at the Property with Margaret at various stages, as I explain further below, and Brian lived 10 minutes away. Following the death of their father Frederick visited Margaret in the UK in 2001, 2009 and 2016 for 3 or 4 weeks each time while Peter visited every other year.

21. Overall, I conclude that the evidence of Linda, Sylvia and Brian who were on the scene in England is of greater weight than that of Peter and Frederick who were living in Australia and were reliant to a significant extent on telephone calls with Margaret and the reports of their siblings, although their accounts of their personal observations when visiting the Property accord with Linda, Sylvia and Brian's evidence.

The Evidence of the Grandchildren

22. Nina is the only grandchild who gave live evidence and the only one now permanently based in the UK. She was a regular visitor to the Property both when a student in London in the early 2000s and more recently from her home in Leeds. Emilie was based in the UK and lived at the Property in 2010-12. Fleur recalled visiting from Australia in 2001 and 2009 and recalled Margaret's presence at Samuel's wedding in Australia in 2010, to which Margaret travelled with Linda and her partner. Samuel's witness statement recounted his stay with Margaret at the Property during his honeymoon in 2010. The evidence of them all was consistent with the evidence of Linda, Sylvia and Brian.

Simon Rayner

23. Simon Rayner has been Linda's partner since 2006. He visited the Property regularly in the period 2006 to 2009 and accompanied Margaret and Linda on the trip to Australia in 2010 and recalled Margaret's visits to his and Linda's home in Cornwall in 2015.

Germaine Ng

24. Ms Ng's witness statement included evidence corroborating that of family members of the importance of Margaret's Roman Catholic faith, her attendance at Mass and the arrangements that were made for Margaret to receive Holy Communion at home when Sylvia or Linda were not able to accompany her to Sunday Mass in later years. It was not challenged by Anne and I accept that evidence.

Sheila Duffy

25. Sheila Duffy's evidence added little to that which other family members were able to give.

The Undisputed Factual Background

26. Much of the factual background and chronology was not in serious dispute either because of the undisputed documentary record or because, to the extent Anne disagreed or challenged events, timings or explanations, she provided no credible alternative.

Occupation of the Property

27. Save for the period from her last admission to hospital in October 2018 until her death, Margaret lived at the Property throughout her widowhood,

28. Anne was working as a minister in the USA immediately before her father's death. She returned from the USA in late 2001 upon hearing her father was dying and moved back into the Property and, save for very occasional holidays and an absence in about August 2017 and a stay at Chase Farm Hospital in 2018, continued to live there until trial.

29. The other residents from time to time, were:

- (i) Janine who lived at the Property in 2001 and 2002;
- (ii) Linda who lived at the Property from about 2002 to 2009;
- (iii) Emilie who lived at the Property for periods in 2010, 2011 and 2012;
- (iv) Linda moved back into the Property for 3 months in the summer of 2014; and
- (v) Sylvia who lived at the Property for one week per month from 2016 to 2019 during which period Linda was a regular overnight visitor.

Margaret's Health and Care Needs

30. Margaret was registered with the local Lawrence House Surgery in 1991 and the records of that surgery and other medical notes were in the trial bundle. The significant health events recorded in those records up to 2016 are as follows:

- (i) 1996 replacement of right hip;
- (ii) 2000 hearing loss
- (iii) 2007 left cataract extraction and implant;
- (iv) 2011 and 2013 skin carcinoma
- (v) 2013 fracture of radius and ulna; and
- (vi) 2016 surgery for bowel cancer.

31. After 2016 there are entries noting "frailty" and "atrial flutter and fibrillation." On 24 November 2017 a Haringey Integrated Locality Team transfer of care letter addressed to Lawrence House Surgery recorded her next of kin as Linda and Sylvia. It recorded also that a daughter had recently described Margaret as "fairly independent", "able to prepare meals, able to manage her personal care" and "able make basic snacks". On 25 April 2018 entries record the following: "independent bathing", bladder: fully continent", "bowels: fully continent", "independent with dressing" and "stick only for walking".

32. On 24 October 2018 Margaret was admitted to the North Middlesex University Hospital for a final time. The document recording her discharge on 10 December 2018 states that her admission was as a result of "recurrent falls, confusion, weight loss and metabolic acidosis". It records also that Margaret had been seen by the palliative care team because of her advanced frailty, cancer and likely dementia, and that, following discussion with Margaret and her family, she was being discharged for end-of-life care and was "not for further treatment".

33. Commencing in February 2018 Brian and Linda arranged for a District Nurse from the Whittington Hospital to visit the Property twice daily to assist Margaret with her medications. Linda and Sylvia engaged Constantia Care Agency to provide full-time live in care for Margaret at the Property starting on 11 September 2018. This arrangement continued until Margaret's admission to the North Middlesex. Linda and Brian arranged for Margaret's discharge to the Southgate Beaumont Care Home for palliative care on 10 December 2018 and, apart from a short Christmas stay at Janine's house, she remained there until her death.

Margaret and Legal Matters

34. On 11 March 2002 Margaret made a will with Martin Shepherd which would have left her estate as follows:

- (i) £100 legacies to each of Samuel, Emilie, Fleur, Nina, Frederick, Peter, Brian, Anne, Sylvia and Linda;
- (ii) the Property to be sold and divided into 6 shares of which:
 - (a) one share was to pass to Frederick;
 - (b) one share was to pass to Peter;
 - (c) one share was to pass to Brian;
 - (d) one share was to pass to Sylvia;
 - (e) one share was to pass to Linda
 - (f) one share was to pass as to 85% to Anne and as to 15% to Janine; and
- (ii) the residue to be held on trust for her six children in equal shares absolutely.

35. There is a contemporaneous handwritten note recording: a value for the Property of some £240,000, Frederick and Peter's then current Australian addresses, that the Property was to be given to the six children and that Janine and Anne would have six months to find alternative accommodation.

36. On the same date as her 2002 will Margaret executed an Enduring Power of Attorney appointing Frederick, Peter and Brian to act jointly and severally as her attorneys.

37. On 2 June 2003 Warran & Company, solicitors, wrote a letter to Margaret recording recent instructions received and advice given. The letter recorded that Margaret was the sole owner of the Property and that about 18 months before Anne had moved in following the death of Margaret's husband, it having been Margaret's intention that the arrangement should be temporary. The letter went on to record that Margaret had asked Anne to move out on numerous occasions, but she had refused. The letter summarised Margaret's instructions:

“you want her out of your house and you have asked us to advise [sic] you of your rights and assist you in whatever way we can”.

38. The advice was that Anne was Margaret's licensee and might be given a notice to leave and that legal proceedings might be necessary to compel Anne's eviction. The letter went on:

“you made it clear to us that it is not your intention to issue proceedings against your daughter you really just want her out of your property and you believe a notice will suffice.”

39. The letter went on to record an agreed plan of action:

“You agreed to give her four weeks notice to move out. Whilst you were in attendance we showed you the precedence [sic] we intended to use for the notice. We also gave you a draft of the covering letter we intend to send with the notice. You were happy with both documents.

“We can confirm that the Notice and the covering letter was sent by way of Recorded Delivery on 30th May 2003. Anne has been told to ensure that she moves out by 7th July 2003.”

40. A copy of the covering letter of 30 May 2003 addressed to Anne at the Property enclosing a notice to quit was also in the bundle.

41. Anne did move out of the Property briefly, but returned in circumstances that are not agreed.

42. In June 2004 Margaret contacted Martin Shepherd to give instructions for the making of a codicil. A short codicil was signed by Margaret on 21 June 2004. It included a declaration that “my trustees shall sell [the Property] on my death” and a direction that the net proceeds be divided in accordance with the shares directed by her 2002 Will.

43. In 2014 Margaret instructed Martin Shepherd to prepare a new will. A completed Will Questionnaire dated 6 August 2014 records that the Property was to be gifted as per a note which Margaret had written. The questionnaire included the following:

“one daughter – Anne – lives in two rooms at the property. Specifically wants the property to be sold and Anne will have to vacate. Felt Anne would leave without making a fuss – advised if she did not vacate executors may need to take steps to force her to vacate prior to the sale. Ms Lettice will prepare a letter to be left with her will to confirm the wish for Anne to leave the property prior to any sale also 12/8/14 T/C Mrs Lettice instead of letter add clause in will to say her wish to leave peacefully but do not name Anne,”

At the end it is recorded:

“One of Mrs Lettice’s sons tried to ask about the contents of the will – he had brought to the signing appointment.

“I sd I could not discuss the contents with him at all.”

44. There is a further attendance note of instructions dated on the day the 2014 Will was executed:

“please add clause in her will to state if any beneficiary in occupation of the property at time of death they are to vacate peacefully at the request of my trustees and any cost incurred to get them out will be at the cost of that beneficiary – do not name Anne thought this would cause upset.”

45. On 4 November 2016 Martin Shepherd wrote to Margaret further to a recent meeting. The letter recorded that the firm held the 2014 Will and explained its provisions and that it held the 2002 Enduring Power of Attorney and explained that document. The letter went on to enquire whether Margaret wished to update her will or revoke the EPA.; Margaret did neither.

46. On 12 December 2016 Martin Shepherd wrote to Margaret again. The letter recorded that Margaret had attended the solicitors with Anne and had presented a doctor’s letter confirming capacity and a handwritten draft will, neither of which was in evidence. The letter went on to explain that Anne had stated Margaret wished to revoke the Power of Attorney and make a will along the lines of the draft. The author recorded that he would need to take instructions from Margaret directly and asked Anne to leave the room. The author recorded his concerns that the instructions given by Margaret alone did not match those given by Anne and that he was concerned that the changes might have been prompted by one of Margaret’s children and that the author would not proceed unless confident Margaret’s instructions were given freely. Margaret made no changes to her arrangements.

47. On 24 February 2017 the same solicitor wrote to Margaret in answer to a request, enclosing two copies of her will and confirming that Martin Shepherd held the original.

48. There is then a note handwritten by Margaret dated 10 March 2017 which reads as follows:

“Dear Peter, Id like you to have this copy of the will and solicitors letter. For now Bye Bye, God Bless, Mam xx”

49. In July 2017 Margaret handwrote a longer note to Peter as follows:

“Regarding my home.

“1st I do not want any disagreements. No need for that, My will has made it clear what I wish to be done. I must say I have had a good family & I hope you all can say I was a good mother and I must say you were all there I needed you over the years.

I thank God for giving me the strength to look after myself & I hope it continues.

I still cook and clean & eat without help. May it continue. Lastly I must thank you all for being there when I needed you. Bye.

Have a good life.

God bless

Love from Mam x

xxxxxx”

50. On 4 September 2017 Martin Shepherd wrote a further letter to Margaret following a recent meeting. The letter explained the appointment of executors in the 2014 Will and why there might be disadvantages in appointing solicitors in place of the named children. The letter also explained how and why the EPA might be useful.

51. After Margaret had been discharged to the Beaumont Care Home, Brian attempted to register the 2002 EPA. Anne objected to that course and proceedings were commenced in the Court of Protection, those proceedings were not resolved by the date of Margaret’s death.

Disputed Matters

52. There were a number of matters in significant dispute between Anne and the represented defendants. To the extent it is necessary and relevant to determine these matters, I set out the facts as I find them.

Margaret’s Health and Care Needs

53. The documentary record of Margaret’s state of health, the evidence of family members other than Anne and the arrangements made for assistance from a district nurse and later professional carers during 2018 are consistent with Linda, Sylvia and Brian’s descriptions of Margaret as able to manage at home without the need for full time or round the clock care but with support from family members, including to an extent Anne, until about the time of her 99th birthday in July 2018

54. The picture I have of Margaret from what has been said by her children, (apart from Anne) and her grandchildren, as well as from Margaret’s medical notes and from the terms of the letters and attendance notes of her solicitors is of a proudly independent woman who managed at home and in dealing with legal matters without substantial assistance until very late in her life. I note the trip she made to Australia in 2010 and her visits to Linda and Simon in Cornwall in 2015. I note also her own letter to Peter in July 2017 recording her continued ability to cook and clean. Margaret did not need much in the way of care, rather than some assistance or support with her shopping and with attending medical appointments, before her cancer diagnosis in 2016 and even after that it was only in 2018 that Linda, Sylvia and Brian

arranged the visits of the District Nurse and then full time care for her at the Property because that was when she first needed assistance at that level.

55. Anne's first statement contained an account of her care giving which telescoped a near two decades into a couple of sentences and included a list of daily tasks which, by her own account, she carried out only "particularly towards the end of [Margaret's] life." Neither in her written evidence nor in answer to questions in Court was Anne able to present a realistic account of what she did in caring for Margaret and how it would inevitably have changed as time passed. In explaining the evidence of her siblings and nieces and nephews that they did not see her caring for Margaret, Anne said that when Margaret had family visitors from Australia she would step back, keep herself to herself and give them space to spend time with Margaret. While it might be the case that she avoided her brothers during their visits from Australia, this explanation does not make any sense in respect of the evidence of Linda, Sylvia and Emilie who also lived at the Property for extended periods or of Brian and Nina who were regular visitors. I do not conclude that Anne did nothing for Margaret, but her account of providing full time or round the clock care for 17 years is simply not credible and was contradicted by her own oral evidence of the involvement of others.

Anne's Employment or Occupation

56. Anne was employed by a branch of the Arriva bus company shortly after her return to England from the USA in 2001. She was in that employment for three or four months but since then it was her evidence that she had not been in paid employment.

57. Anne acknowledged in answer to questions in cross-examination that she had left her employment with Arriva voluntarily. She acknowledged also that she could have worked after leaving Arriva until retirement age but chose not to. At one point she said she was "a minister full time to this very day" and that she had been a minister for 40 years in a variety of countries. She said that she was not paid for this work.

58. Anne gave a vivid account in her evidence of an occasion shortly before trial when she was called to exercise her vocational skills to heal a pastor in the setting of a mission local to the Property. She explained that she could not predict when she would be called to undertake her vocational work in this way. However, she was entirely unable to give even an estimate of the time she spent on this work or what amount of time it meant she had to be away from the Property. She also mentioned conducting work connected with her ministry at her office in Warham Road.

59. The evidence of Linda, Sylvia and Brian, as well as other family members, was that Anne was out of the house from early morning until late at night. In the absence of any sensible description of the time she spent out each day from Anne and consistently with her own description of being a full time minister and "having a life to live" I accept the evidence of Linda, Sylvia and Brian that the usual pattern was for Anne to leave the Property early in the day and return late, because she was engaged for much of her time in her vocational activities.

60. While Anne must have slept at the Property almost every night since November 2001, I conclude she was often absent for much of the day time and that such assistance as she provided to Margaret was not in the nature of full-time care. Margaret did not need that level of care and Anne was not always present to give it.

Anne's Dependence on Margaret

61. Anne's first witness statement includes the following passages:
- “9.1 I was my mother's daughter, and I had a very close relationship with her. After my father passed away in 2001, I moved back into the Property to care for my mother in 2002. I took on a full time caring role to the detriment of my working career, my finances and future security.
- 9.2 I was fully dependent on my mother for income and housing and was being maintained by her. My financial dependence on my mother was a direct consequence of my mother's wish for me to give up work and care for her.
- 9.3 I supported my mother for 17 years, providing round the clock care for her both physically and emotionally.
- 9.4 My mother therefore had a high degree of responsibility to take care of my future needs.”
62. Anne's second witness statement contains the following passages:
- 3.12 While I was living with my mother I did not receive any financial remuneration from her. I did have a small income from a pension I receive. I relied wholly on my mother for accommodation and for paying the majority of the household bills, although I did contribute towards the latter.....
- 3.15.... I had devoted 17 years of my life caring for her and had been supported with accommodation and financially (through her payment of utility bills) during that time.”
63. When asked whether her financial dependency resulted from Margaret's wish for her to give up work Anne responded that that was not true and was an error made by her lawyer and agreed that it was her own choice to give up work. She also volunteered that paragraph 9.4 was incorrect and that, save to the extent she was a beneficiary of Margaret's will, she did not expect Margaret to take responsibility for her future needs “in no way whatsoever”.
64. After she had questioned Peter about his statement that Margaret did not give Anne money because she did not want to encourage Anne to remain at the Property, Anne herself confirmed that she did not take any money from Margaret.
65. On her own admission Anne made a free choice to give up conventional paid employment in 2002 and pursue her vocational activities rather than work until retirement age. She was enabled to take that course because Margaret provided rent-free accommodation for 17 years. It was not a course taken because Margaret requested it or a course that was in any way necessary for Margaret's benefit.
66. Although not mentioned in her written evidence, Anne asserted in court that Margaret made statements to the effect that she wanted Anne to reside with her. Linda's evidence was that Margaret often told Anne to get out and get her own place. Again, despite not being included in her written evidence Anne said that Margaret said on many occasions that she would like all her children to have their own homes. In this respect I accept Linda's evidence not Anne's and interpret any wish expressed by Margaret for all her children to have their own places as consistent with a preference for Anne to move out to her own place.

Dealings with Lawyers

67. Anne suggested it was Linda who instigated Margaret's instruction of Warran & Co in 2003 seeking to try and remove her from the Property. Linda denied any involvement. Anne's evidence was that, when she did leave briefly in 2003, Margaret did not understand why that had happened and requested, via Janine, that she return to the Property. Frederick's account

was that he asked Margaret why she had allowed Anne back into the Property and that Margaret told him that she did so because Anne threatened to embarrass Margaret by telling her friends that she had evicted her daughter.

68. Given that Anne resided at the Property for a further 16 years, the 2003 incident taken alone is of relative insignificance. However, it is one among a series of occasions where the contemporaneous documentation consistently demonstrates that Margaret wanted to ensure that Anne did not secure any inheritance advantage over her siblings by being resident at the Property at the time of Margaret's death. The first such event is the 2002 note of will instructions stating that Anne and Janine would have six months to move out. After the 2003 temporary eviction, the next such event is the 2004 codicil which made express that the Property was to be sold on Margaret's death. Then come the instructions for and terms of the 2014 Will. Those instructions are clearly recorded as not being shared with the son who took her to the solicitors' appointment. Although Anne initially suggested the terms of these instructions had been influenced by Linda, which Linda denied, she later agreed that they were more likely to be Margaret's instructions. Finally there are the terms of the July 2017 handwritten note sent to Peter. Notable also is that Margaret did not change her will following her contact with solicitors in late 2016.

69. In light of that pattern of consistent expressions of intention, made independently of her children, I conclude that Margaret was the sole actor behind the 2003 attempt to evict Anne and that the failure successfully to do so informed her ongoing concern to do what she could to make clear that Anne should leave the Property after her death, if she had not left before that. I accept Linda's evidence that she was not involved in 2003 or 2014. I also accept Frederick's evidence that Margaret told him she allowed Anne back into the Property in 2003 for fear of being embarrassed and that he believed that to have been the case.

70. The visit to solicitors in late 2016 did not result in any change to the 2014 Will, but I consider from the terms of the letter following the visit that Anne was the driver behind that visit and the proposed, unknown, instructions. The visit would appear to have prompted Margaret to obtain a copy of the 2014 Will and make sure that its contents were known to, at least, Peter.

71. Anne's second witness statement refers to another visit to solicitors in 2018 said to have been at Margaret's request and with the aim of removing Brian as her attorney. There is no documentary evidence of this visit and I am not persuaded that it happened or happened in the manner Anne recounts.

Anne's Mental Health

72. Anne was adamant that to the extent that she had been referred to mental health professionals that had not been necessary.

73. The documents in the bundles show that there were two occasions when such referrals occurred. The first occasion was in July 2017 when, it is clear from a letter from the office of the CEO of Barnet, Enfield and Haringey Mental Health Trust addressed to Janine responding to a complaint about Anne's treatment, there was an attempt to detain Anne under section 2 of the Mental Health Act 1983. The second occasion was in August 2018, and this led to Anne being hospitalised at Chase Farm Hospital for around three months in 2018.

74. The relevance of these referrals is that when the question arose of Margaret's discharge from the North Middlesex in late 2018 Linda, Sylvia and Brian were concerned that it would not be safe or comfortable for Margaret to return to the Property if Anne were also to be living there. That concern is echoed in contemporaneous letters of doctors at Lawrence House Surgery dated 27 September and 10 October 2018, written in the context of finding alternative accommodation for Anne and her assessment by a mental health tribunal. These letters record that it would be better for Margaret's health if Anne were to live elsewhere than the Property.

75. Notwithstanding Linda, Sylvia and Brian's discontent and their attempts to prevent her doing so, Anne did return to live at the Property in late November or early December 2018.

76. Anne accused her siblings of not allowing Margaret to go home for her last months because, she said, they were trying to get Margaret out of the Property so that they could get their hands on it.

77. I do not accept that there is any truth in Anne's accusation. I conclude that Anne's siblings had a genuine concern that what they understood to be Anne's mental health issues affected Margaret. In light of that concern they took a rational and caring decision in Margaret's best interests that she should be discharged to the Beaumont Nursing Home, despite Margaret's wish to return to the Property. Brian and Linda both emailed Janine in early December 2018 asking for her to help facilitate Margaret's return home, possibly by taking Anne into Janine's own home, actions which are plainly inconsistent with Anne's accusation.

DNACPR

78. Anne was exercised that "DNACPR" and "not for further treatment" instructions were entered in Margaret's medical notes in advance of her discharge to the Beaumont Nursing Home for "end of life care". She suggested that these entries had come about because her siblings were hoping to hasten Margaret's end for their own reasons. Both Linda and Brian said the instructions were as a result of medical advice as to what was appropriate. I find it unsurprising that there should be such entries in the medical notes of a 99 year old woman and I accept Linda and Brian's evidence.

Joint Accounts

79. The only joint account that has been discovered by Linda and Martin Shepherd in administering Margaret's estate is a Nationwide Building Society account held in the joint names of Margaret, her sister Nora Duffy and her niece, Sheila Duffy with a balance of £6.36 at the date of Margaret's death. Anne suggested both by the terms of her claim form and at trial that there might be another joint account available to satisfy her claim. She produced no documentary evidence in support of that assertion. I conclude that there was no other joint bank account by the time of Margaret's death and the small balance in the Nationwide account does not justify any further consideration of this aspect of the claim.

The Law

80. The 1975 Act provides, so far as relevant, as follows:

"1 - Application for financial provision from deceased's estate.

(1) Where after the commencement of this Act a person dies domiciled in England and Wales and is survived by any of the following persons:—

...

(c) a child of the deceased;

...

(e) any person (not being a person included in the foregoing paragraphs of this subsection) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;

that person may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.

(2) In this Act "reasonable financial provision"—

...

(b) in the case of any other application [i.e. other than by a spouse or civil partner] made by virtue of subsection (1) above, means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.

2 Powers of court to make orders.

(1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

3 Matters to which court is to have regard in exercising powers under s. 2.

(1) Where an application is made for an order under section 2 of this Act, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say—

(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

(b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;

(c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

(d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;

(e) the size and nature of the net estate of the deceased;

(f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;

(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

...

(2A) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(c) or 1(1)(d) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained

...

(4) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(e) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard—

(a) to the length of time for which and basis on which the deceased maintained the applicant, and to the extent of the contribution made by way of maintenance;

(b) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant.

(5) In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.

(6) In considering the financial resources of any person for the purposes of this section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.”

81. Lord Hughes JSC giving the leading judgment in the Supreme Court in *Ilott v Mitson* (No 2) [2017] UKSC 17; [2018] AC 545 explained at paragraphs 23 to 24:

“23. It has become conventional to treat the consideration of a claim under the 1975 Act as a two-stage process, viz (1) has there been a failure to make reasonable financial provision and if so (2) what order ought to be made? That approach is founded to an extent on the terms of the Act, for it addresses the two questions successively in, first, section 1(1) and 1(2) and, second, section 2. In *In re Coventry* [1980] Ch 461, 487 Goff LJ referred to these as distinct questions, and indeed described the first as one of value judgment and the second as one of discretion. However, there is in most cases a very large degree of overlap between the two stages. Although section 2 does not in terms enjoin the court, if it has determined that the will or intestacy does not make reasonable financial provision for the claimant, to tailor its order to what is in all the circumstances reasonable, this is clearly the objective. Section 3(1) of the Act, in introducing the factors to be considered by the court, makes them applicable equally to both stages. Thus the two questions will usually become: (1) did the will/intestacy make reasonable financial provision for the claimant and (2) if not, what reasonable financial provision ought now to be made for him?

24. There may be some cases in which it will be convenient to separate these questions, particularly if there is an issue whether there was any occasion for the deceased to make any provision for the claimant. But in many cases, exactly the same conclusions will both answer the question whether reasonable financial provision has been made for the claimant and identify what that financial provision should be. In particular, questions arising from the relationship between the deceased and the claimant, questions relating to the needs of the claimant, and issues concerning the competing claims of others, are all equally applicable to both matters. The Act plainly requires a broadbrush approach from the judge to very variable personal and family circumstances. There can be

nothing wrong, in such cases, with the judge simply setting out the facts as he finds them and then addressing both questions arising under the Act without repeating them...”

82. The 1975 Act provides in section 1(2) that reasonable financial provision is what it is “reasonable for [the applicant] to receive”, in this instance for maintenance. As Lord Hughes said in *Ilott* at paragraph 16, that these are words of objective standard to be determined by the Court and warned at paragraph 17 that, asking whether the deceased acted reasonably is to ask the wrong question under the Act:

“Nevertheless, the reasonableness of the deceased’s decisions are undoubtedly capable of being a factor for consideration within section 3(1)(g), and sometimes section 3(1)(d). Moreover, there may not always be a significant difference in outcome between applying the correct test contained in the Act, and asking the wrong question whether the deceased acted reasonably. If the will does not make reasonable financial provision for the claimant, it may often be because the deceased acted unreasonably in failing to make it. For this reason it is very easy to slip into the error of applying the wrong test. It is necessary for courts to be alert to the danger, because the two tests will by no means invariably arrive at the same answer. The deceased may have acted reasonably at the time that his will was made, but the circumstances of the claimant may have altered for example by supervening chronic illness or incapacity, and the deceased may have been unaware of the full circumstances, or unable to make a new will in time.”

83. In cases other than those of spouses or civil partners, reasonable financial provision is limited to such provision as it would be reasonable for the applicant to receive for maintenance. Lord Hughes JSC explained at paragraph 13 the deliberate legislative choice of the maintenance standard and said at 14:

14. The concept of maintenance is no doubt broad, but the distinction made by the differing paragraphs of section 1(2) shows that it cannot extend to any or every thing which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living.”

84. Lord Hughes cited the judgment of Browne-Wilkinson J in *In re Dennis decd* [1981] 2 All ER 140, 145-146, which, as he said: “is helpful and has often been cited with approval”. The key passage is as follows:

“But in my judgment the word ‘maintenance’ connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses of living of an income nature. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example, to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure. Nor am I suggesting that there may not be cases in which payment of existing debts may not be appropriate as a maintenance payment; for example, to pay the debts of an applicant in order to enable him to continue to carry on a profit-making business or profession may well be for his maintenance.”

85. Lord Hughes noted also the judgment of Oliver J in *In re Coventry, decd; Coventry v Coventry* [1980] Ch 461, 474–475 and the reference made there to a moral claim and explained at [20]:

“There is no requirement for moral claim as a sine qua non for all applications under the 195 Act, and Oliver J did not impose one. He meant no more, but no less that in the case of an adult son well capable of living independently, something more than the qualifying relationship is needed to found a claim.”

Discussion

Eligibility

86. Margaret died domiciled in England and Wales. Anne is Margaret’s child and therefore an eligible claimant under section 1(1)(c) of the 1975 Act. The burden is on her to show that the disposition of Margaret’s estate by the 2014 Will is not such as to make reasonable financial provision and, if it is not, what reasonable provision would be.

The section 3(1) factors

S 3(1)(a) and (b) financial resources and needs of Anne

87. In her witness statement Anne stated that she had no assets or savings, no accommodation and that she was unemployed. She stated her monthly income was £669. Anne exhibited a schedule of claimed financial needs premised on living in a two-bedroom flat. Anne’s bank statements for an account with Lloyds Bank for the year February 2020 to February 2021 were in the bundle.

88. Anne adduced no evidence of either the purchase price or the likely rental cost of any alternative accommodation or why her prospective inheritance of around £100,000 would or might not be adequate to satisfy such accommodation need. She adduced no evidence of the possibility of being housed by the relevant local authority or through any other agency, she referred only to the difficulty she might have had in securing such alternative accommodation had she voluntarily left the Property in late 2018. She also adduced no evidence of how her prospective inheritance or any award of a further sum from Margaret’s estate would impact on her entitlement to any state benefits to which she may be or become entitled.

89. In advance of the trial the defendants’ solicitors invited Anne to provide an update as to her financial circumstances and provided her also with copies of estate agents’ particulars of one-bedroom retirement properties and, for comparison, more expensive one- and two-bedroom properties, without age restrictions. Anne’s email in response refused to engage with the solicitors’ enquiries.

90. It is apparent from the entries in her bank statements that Anne’s regular income in the financial year 2020 to 2021 comprised state pension of £591.96 and pension credit of £125.04 or a total of £695 paid every four weeks; that is a total of £9,035 per annum plus a winter fuel allowance of £200 or, on average, £769.58 per month. Anne acknowledged that these figures would have increased slightly in the current year.

91. The statements also showed other deposits into Anne’s account of just under £3,000 over the course of the year in question. Anne’s explanation was that after her pension income was credited to her account, she would withdraw a substantial cash sum and in due course re-deposit the amount she had not needed to pay her bills. This explanation makes little sense, given the size and pattern of the re-deposits. For example, in April 2020 following the credit of her pension income to her account on 31 March Anne withdrew £600, deposited £650 two weeks later, withdrew £800 the following day and then deposited £955 four days after that. Again, in January 2021 following the credit of her pension income to her account Anne withdrew £450, deposited £100 a week later and just over a fortnight later withdrew a further £400.

92. The account never went overdrawn and Anne agreed that she was careful to manage her money so that she did not get into debt. I conclude that it is more probable than not that Anne had and possibly still has another resource whether of income or savings from which she is able to supplement her pension income and that that was the source of at least some of the non-pension deposits into her account in 2020-2021.

93. Even if I am wrong and all the non-pension deposits were re-cycled pension income, Anne's total outgoings in the year must have been some £9,235 plus £1,099.50 (representing the fall in the account balance from £1,190.70 to £91.20) or a total of some £10,334.50. That was in a year when Anne must have been meeting all the outgoings at the Property, which is larger than any reasonably needed future home, and also paid a solicitors' bill in the sum of £528. In addition at some point between the date of her first statement and the exhibited financial schedule and trial Anne paid off a £400 bill for dental treatment.

94. Counsel challenged a number of items and amounts in Anne's schedule of projected outgoings as not constituting reasonable maintenance needs.

95. Although sums were claimed for running a car and Anne said in evidence it would be beneficial to her to have a car, and give her independence, nothing was said in Anne's witness statement about a need for a car. Anne accepted in cross-examination that she had not owned a car since at least her return to England in 2001 and she accepted that she currently had the benefit of free travel within London (the position would be similar wherever she lived in England). Although in submissions Anne asserted a need for a car for the purposes of her ministry, she was clear that she could carry out her ministry anywhere and she has not had the benefit of a car for that purpose for two decades. Accordingly, I reject the outgoings for running a car and the claim in relation to public transport costs as not reasonable.

96. Provision in Anne's schedule for payments towards life insurance, pension contributions, savings or professional fees are not in my judgment reasonable. I also do not consider that Anne has any reasonable need for a cleaner or gardener or to pay privately for medical or dental care. There is no evidence that she has made payments for any such items in the recent past.

97. Anne accepted when challenged that the figure of £100 said to encompass toiletries, health and gym was too high, in particular because she does not belong to a gym and that £30 was reasonable.

98. As to food and drink Anne's contention for £400 monthly was challenged by reference to the DEFRA statistical report published on the gov.uk website reporting that the average spend per adult in 2019/20 was £48.01 weekly. I conclude that in this respect a figure of £250 per month is reasonable.

99. Anne's figure of £125 per month for clothes was also challenged, Anne's response that items such as coats and shoes are expensive does not meet a contention, which I accept, that an average spend of £50 per month is reasonable.

100. Anne's monthly £100 figure for holiday travel was also challenged and, based on Anne's acceptance that a return flight to Ireland where Janine lives, would cost between £200 and £300, a monthly figure of £50 is in my judgment reasonable.

101. The monthly figures Anne advanced for council and other taxes of £102, water bills of £26, energy of £67, telephone and internet of £40, television of £12.88, home insurance of £7 decoration and maintenance of £40 and presents and social of £66.67 were not challenged.

102. In my judgment the figures for expenditure advanced by Anne and her then solicitor were in several respects ambitious ones without objective foundation, Once adjusted, as described above, the total reasonable outgoings figure is £741.55.

103. Anne's written evidence and schedule were drafted on the premise that she would in future be living in a two-bedroom flat and she referred to wanting such accommodation in her final submissions. She explained the rationale behind the need for such accommodation was to accommodate Janine and her husband and two children on visits from Ireland. Anne acknowledged that they had in fact only visited once since 2019 and on that occasion had stayed with Janine's in-laws. Anne pointed out that the pandemic influenced the frequency of visits and that Janine's in-laws have moved away. However, even if Janine and her family were to visit more frequently, I do not accept that Anne has a maintenance need for a two-bedroom flat.

104. Anne said in answer to questions that she would prefer to live in London or its suburbs but did not rule out the possibility of moving out of London. The agents' particulars of retirement properties sent to her in advance of trial and shown to Anne in Court were for: one-bedroom retirement flats in Gravesend which could be purchased at prices ranging from £60 to £80,000; a one-bedroom flat in Dagenham priced at £70,000 and a one-bedroom flat in West Wickham priced at £72,000.

105. Anne's reaction to these particulars was that she would not wish to live in a retirement property environment and would like to see details of other properties and in any event her preference was for a two-bedroom flat. She also said that if she lived further out her need for a car would be greater.

106. I note that the retirement properties would be subject to a service charge, but the service charge would cover some of the items presently among Anne's schedule of outgoings and, should Anne purchase such a property with her inheritance, she would have money left to meet a service charge for some years.

107. Anne has adduced no evidence as to where and how she might be accommodated and given no explanation why living in a retirement environment would be unreasonable, as opposed to not to her liking. Accordingly I cannot conclude that Anne has established a maintenance need for housing in excess of her inheritance under the 2014 Will of a sum of around £100,000. That sum would be sufficient to purchase one of the retirement flats, particulars of which were in evidence, and pay the service charge for some time, or to rent alternative accommodation.

Section 3(1)(c) The financial resources and financial needs of the defendants as beneficiaries of the estate

107. Margaret's children who relied upon their own financial needs were Linda, Peter and Sylvia. It was accepted by counsel that in each case they are in a better position than Anne in terms of security of accommodation and no worse position in income terms.

108. Margaret's grandchildren who relied upon their own financial needs were Nina, Emilie and Fleur. As adults with earning capacity they too are in no worse financial position than Anne.

Section 3(1)(d) Any obligations and responsibilities which Margaret had towards Anne and the Defendants as beneficiaries of the estate

109. What is relevant is the obligations and responsibilities Margaret had at the time of her death, that is clear from the judgments of the Court of Appeal in *In re Jennings decd* [1994] Ch 286.

110. As I have said, Anne accepted that she had not given up work at Margaret's request in order to care for her but did so voluntarily for her own reasons. Anne accepted also that Margaret did not have a responsibility for her needs whether by providing her with somewhere to live or otherwise and accepted that she had no expectation of provision beyond what was in the 2014 Will.

111. Just because Margaret de facto, but unwillingly, provided rent-free accommodation for Anne for a number of years, thereby enabling Anne to pursue her chosen vocation, cannot mean that Margaret came under any obligation in this regard.

112. Anne said in evidence that the reason she made her claim was to "purchase a reasonable abode". That may be correct, but it does not alter Margaret's obligations at the time of her death.

113. My conclusion is that Margaret had no greater obligations or responsibilities towards Anne than towards any of her other children and their families.

Section 3(1)(e) The size and nature of the net estate

114. Once the Property is sold there will be something under £900,000 less administration costs to be distributed. If I were to conclude extra provision should be made for Anne, the estate could afford it.

Section 3(1)(f) Any physical or mental disability of any applicant or beneficiary

115. Neither Anne nor any of the defendants have established or rely on a disability of a relevant type.

Section 3(1)(g) Any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant

116. Margaret's wishes as expressed in the 2014 Will are relevant. It is also relevant that Margaret took trouble over the years to demonstrate that her wish was for Anne to leave the Property after Margaret's death, in order to ensure that the division of her estate as provided by the 2014 Will would take place.

117. Anne's conduct, in bringing a claim in which she has relied upon witness evidence containing substantially exaggerated statements about the level of care she provided to Margaret and containing an explanation of the reason she gave up work in 2002 which she admitted to be untrue, are also relevant factors which count against Anne should there otherwise be doubt whether or not her claim should succeed.

Conclusion

118. In my judgment, for the reasons I have explained, Anne has not established that Margaret's last will fails to make such financial provision as it would be reasonable in all the circumstances of the case for Anne to receive for her maintenance. Accordingly, the second question referred to in paragraph 23 of *Hott* does not fall to be answered.

119. The claim is dismissed.