



Neutral Citation Number: [2023] EWHC 1664 (Ch)

Claim No PT-2021-000841

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

Rolls Building
Fetter Lane
London EC4A 1NL

Date: 6 July 2023

Before :

HIS HONOUR JUDGE MONTY KC
Sitting as a Judge of the High Court

Between :

MONICA MARGARET RAMJI

Claimant

- and -

(1) GRAHAM JOHN HARVEY

*(in his capacity as Executor of the estate of Sugrim
Orlando Ramji Deceased)*

(2) DEVIKA LAMBERT

(3) CHANDRA RAMJI

(4) LYNN-MARIE MONEK NEALE

(5) JOANNE NEWMAN

(6) KATIE NEWMAN

(7) DANIEL NEWMAN

(8) CHRISTOPHER NEWMAN

(9) LAUREN RUNACRE

(10) WILLIAM NEWMAN

Defendants

Mr Otchie (instructed by **Mould Haruna**) for the **Claimant** and the **Ninth Defendant**
Ms Challenger (instructed by **IDR Law**) for the **Second, Third and Eighth Defendants**
Ms Lynn-Marie Neale, the **Fourth Defendant**, in person

Hearing dates: 15 -19 May 2023

Approved Judgment

HHJ Monty KC:

Introduction

1. This is my judgment following the trial of two preliminary issues in relation to a claim made under the Inheritance (Provision for Family and Dependents) Act 1975.
2. The 1975 Act claim is brought by Mrs Monica Ramji, also known as Nicky, whose husband, Mr Sugrim Ramji, died on 17 January 2021.
3. Mr Ramji's last Will was executed on 15 May 2019. Mr Harvey, who is a solicitor, was appointed by the Will as executor of his estate. Mr Harvey had acted for Mr Ramji in the preparation and execution of the Will, and in his capacity as executor he is the First Defendant.
4. Mr and Mrs Ramji had married on 14 December 1978. It was a second marriage for them both. Each had children (and grandchildren) from their previous marriages. I will refer to them in the main in this judgment by their first names, as they were referred to at the trial, without any discourtesy intended.
5. Mr Ramji had six children, Michael, Chandra, William, Devika, Lawrence and Lynn-Marie. Devika is the Second Defendant, Chandra is the Third Defendant, Lynn-Marie is the Fourth Defendant and William is the Tenth Defendant.
6. Joanne, Katie, Daniel and Christopher are William's children, and are therefore grandchildren of Mr Ramji. They are the Fifth to Eighth Defendants respectively.
7. Mrs Ramji had three children, and Lauren, one of her grandchildren, is the Ninth Defendant. Lauren's mother Nicola and Lauren's sister Kerry also feature in the narrative.
8. When he died, Mr Ramji had interests in three South London properties.
 - 4 Montacute Road – Mr and Mrs Ramji were the owners in law and in equity and each had a 50% interest. There is no dispute about the legal and beneficial ownership of 4 Montacute Road, which I shall refer to as “4 MR”.
 - 2 Montacute Road – this was registered in Mr Ramji's sole name. I will refer to this property as “2 MR”.
 - 51 Ravensbourne Park Crescent – this was registered in the names of Mr Ramji, Mrs Ramji and Lauren. I will refer to this property as “51 RPC”.

The preliminary issues

9. The preliminary issues are in respect of 2 MR and 51 RPC and are formulated (pursuant to the order of Deputy Master Nurse dated 25 April 2022) as follows:

“There be tried and determined as a preliminary issue (‘the Preliminary Issues’) the extent and nature of beneficial interests of the Claimant and the deceased at the date of the deceased's death in the properties known as;

(a) No.2 Montacute Road, London, SE6 4XL, and

(b) No.51 Ravensbourne Park Crescent, London, SE6 4Y[G].”

10. As to 2 MR, Mrs Ramji claims that she has a 50% beneficial interest. That claim is said to be based upon the fact of her marriage to Mr Ramji, and upon a constructive trust.
11. As to 51 RPC, this was originally registered in the names of Mr and Mrs Ramji. By a transfer dated 26 September 2016, 51 RPC was transferred for nil consideration to Mr Ramji, Mrs Ramji and Lauren as joint tenants (there was an express declaration of trust in Box 10 of the TR1 transfer form). In circumstances which I shall come to later in this judgment, the joint tenancy was severed in 2019. Devika, Chandra and Christopher seek to set aside the transfer. They say that the signature on the TR1 which purports to be that of Mr Ramji is in fact not his signature. They also assert undue influence and want of knowledge and approval.

Representation

12. The only active parties in the trial of the preliminary issues were the Claimant, Mrs Ramji, and the Ninth Defendant, Lauren, both represented by Mr Otchie, and the Second, Third and Eighth Defendants Devika, Chandra and Christopher, represented by Ms Challenger. Mrs Neale, the Fourth Defendant, is a litigant in person and she was present in court but played little part in proceedings. She asked some brief questions of Mrs Ramji, but these were designed to counter some of the assertions about family relationships Mrs Ramji had made in her statements, none of which are directly relevant to the issues I have to decide. Mr Harvey, the First Defendant, took no part in the trial save as a witness.

The approach to the evidence

13. Mr Otchie in his closing submissions described this as a very unfortunate intense case where emotions were running high, and where the facts were unique and the authorities of limited assistance.
14. I think it might be helpful if I set out here some of the helpful observations about how judges decide cases made in *James v Scudamore* [2023] EWHC 996 (Ch), by HHJ Matthews sitting as a Judge of the High Court, at [11-18]. That was a probate case, but the observations apply equally here.

“How judges decide cases

11. For the benefit of the lay parties in this case I will say something about how English judges decide civil cases like this one. I borrow the following words largely from other judgments of mine in which I have made similar comments. First of all, judges do not possess supernatural powers that enable them to divine when someone is mistaken, or not telling the truth. Instead, they take note of the witnesses giving live evidence before them, look carefully at all the material presented (witness statements and all the other documents), listen to the arguments made to them, and then make up their minds. But there are a number of important procedural rules which govern

their decision-making, some of which I shall briefly mention here, because non-lawyer readers of this judgment may not be aware of them.

Burden of proof

12. The first is the question of the burden of proof. Where there is an issue in dispute between the parties in a civil case (like this one), one party or the other will bear the burden of proving it. In general, the person who asserts something bears the burden of proving it. But in a probate case the person propounding the will or codicil in contention must prove that it is valid. Here the claimant asserts that the 2002 codicil is invalid, and it is the first defendant who is in effect propounding it. So the legal burden of proving that the codicil is valid is borne by the first defendant. She is however assisted by certain presumptions of fact which operate in relation to wills and probate. I will deal with this in more detail later.

13. The importance of the burden of proof is that, if the person who bears that burden satisfies the court, after considering the material that has been placed before the court, that something happened, then, for the purposes of deciding the case, it did happen. But if that person does not so satisfy the court, then for those purposes it did not happen. The decision is binary. Either something happened, or it did not, and there is no room for 'maybe'. That may mean that, in some cases, the result depends on who has the burden of proof.

Standard of proof

14. Secondly, the standard of proof in a civil case is very different from that in a criminal case. In a civil case it is merely the balance of probabilities. This means that, if the judge considers that a thing is more likely to have happened than not, then for the purposes of the decision it did happen. If on the other hand the judge considers that the likelihood of a thing's having happened does not exceed 50%, then for the purposes of the decision it did not happen. It is not necessary for the court to go further than this. There is certainly no need for any scientific certainty, such as (say) medical experts might be used to. However, the more serious the allegation, the more cogent must be the evidence needed to persuade the court that a thing is more likely than not to have happened.

Role of judges

15. Thirdly, in our system, judges are not investigators. They do not go looking for evidence. Instead, they decide cases on the basis of the material and arguments put before them by the parties. So, it is the responsibility of each party to find and put before the court the evidence and other material which each wishes to adduce, and formulate their legal arguments, in order to convince the judge to find in that party's favour. There are a few limited exceptions to this, but I need not deal with those here.

The fallibility of memory

16. Fourthly, more is understood today than previously about the fallibility of memory. In commercial cases, at least, where there are many documents available, and witnesses give evidence as to what happened based on their memories, which may be faulty, civil judges nowadays often prefer to rely on the documents in the case, as being more objective: see *Gestmin SGPS SPA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [22]. This is not a commercial dispute, but a probate dispute. Nevertheless, it concerns money and property, in the way that many commercial disputes do, and there are a number of useful documents available. This is important in particular where, as here, the relevant facts occurred many years ago, some witnesses are no longer available to give their evidence, and the memories of those who are available have been dimmed by the passage of time.

17. In deciding the facts of this case, I have therefore had regard to the more objective contents of the documents in the case. In addition to this, and as usual, in the present case I have heard witnesses (who made witness statements in advance) give oral evidence while they were subject to cross-examination and re-examination. This process enables the court to reach a decision on questions such as who is telling the truth, who is trying to tell the truth but is mistaken, and (in an appropriate case) who is not telling the truth. I will therefore give appropriate weight to both the documentary evidence and the witness evidence, both oral and written, bearing in mind both the fallibility of memory and the relative objectivity of the documentary evidence available.

Reasons for judgment

18. Fifthly, a court must give reasons for its decisions. That is what I am doing now. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered. They deal with the points which matter most. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. Expressed findings are always surrounded by a penumbra of imprecision which may still play an important part in the judge's overall evaluation. Put shortly, judgments do not explain all aspects of a judge's reasoning, although they should express the main points, and enable the parties to see how and why the judge reached the decision given.”

15. In the present case, the burden of establishing that she has a beneficial interest in 2 MR is on the Claimant, Mrs Ramji, and the burden of establishing that the transfer of 51 RPC is ineffective is on the Second, Third and Eighth Defendants, Devika, Chandra and Christopher. However, there may be circumstances in which the evidential burden will shift the other way, and I will deal with those in the course of this judgment.

The evidence

16. I will start with some brief comments about the witnesses.

17. Before I do so, I need to say something about Mr Ramji himself. Mr Ramji came to this country in the 1950s from Guyana (then British Guyana). His first marriage ended in divorce, and as I have noted, there were six children from that marriage, two of whom were adopted. In late 1977, he met Mrs Ramji, and they moved in together to 2 MR (a property which he had bought in 1977, before they met). They married in December 1978. Mr Ramji was a hard-working man who built up a successful career as a tiler. He was an intelligent, confident, warm and friendly man, and his Hindu religion was very important to him. He was in good health until around 2016, when he began to slow down a bit (there is an issue as to his health as at the time of the 2016 transfer), and in his last few years he needed quite a lot of care in relation to his diabetes and his feet, and he had a series of urine infections. His medical records show that he was suffering from osteoarthritis, diabetes and cervical spondylosis with radiculopathy (a degenerative disease of the spine) since 2000, as well as postural hypotension (2002) and diabetic retinopathy (2013). In 2019 he was diagnosed with Alzheimer's disease. In 2020 he had right knee septic joint arthritis. By that time, he was noted as being "at risk of neglect, skin break down, isolation and physical and mental health general deterioration without appropriate support in place." Mrs Ramji was herself unwell and bedbound, and unable to support him. Relationships at home were fractured, and the medical reports note ongoing safeguarding concerns "due to verbal abuse from his wife and children". Mr Ramji had become distanced from his own children, save for Lynn, but in 2018 others, in particular Devika, came back into his life. The family dynamic is important to the second of the issues I have to decide. Lynn had been appointed by Mr Ramji as his attorney under a Lasting Power of Attorney, but she was replaced by Devika and Chandra. In May 2019, Mr Ramji had been psychiatrically assessed, and Dr Series' report notes that he was showing signs of choreiform movements (sudden and uncontrollable jerky movements of the limbs – it had at one time erroneously been thought that he might have had Parkinson's disease). Dr Series concluded that Mr Ramji had testamentary capacity. Dr Series' report was commissioned by Mr Harvey, who had been instructed in relation to Mr Ramji's will. Mr Ramji had made a number of wills over the years, the last of which was made on 15 May 2019. Mr Ramji's health continued to deteriorate in 2020, and he was admitted to hospital. He spent a period in a nursing home, but he died in January 2021.
18. I heard evidence from each of the active parties, as well as from Mr Adegboye, whose signature appears on the TR1 as having witnessed Mr Ramji's signature, Mr Bisram, who is Mr Ramji's nephew, Mr Lawrence Ramji (one of Mr Ramji's children), Mr Dale Stewart (who had done some work at 51 RPC) and Mr Astley Sinclair, who knew Mr Ramji from the Shree Radha Krishna Cultural Centre where Mr Sinclair was a priest.
19. The first witness was Mr Adegboye. He was a very reluctant witness, having been approached by both sides and having refused to respond to calls or correspondence save to say that he did not want to get involved. In the event, a witness summons was issued and served, he produced a witness statement the working day before the trial, and he attended court. He said he had known Mr and Mrs Ramji for several years as he was the accountant for the tiling business. He says that in 2016, Mr and Mrs Ramji wanted to make a property transfer and he recommended a solicitor to them. It was on one of his visits to 51 RPC that he was asked to witness their signatures on a transfer: "This I did and had a little chat with them about an unrelated issue and left the property." Mr Adegboye was adamant that he did indeed witness both Mr Ramji and Mrs Ramji sign the TR1 and that he then signed the TR1 as a witness to each signature. There were a

number of unsatisfactory aspects of Mr Adegboye's evidence. He said that he would see Mr and Mrs Ramji twice a year, whereas Mrs Ramji's evidence was that he came to see them at least 2 or 3 times a month. He said nothing in his statement about the nature of the transfer, but in his oral evidence he said that there was a discussion about it in his presence when they said that they were transferring to Mrs Ramji's daughter or granddaughter, he could not recall which. He said that he was not asked to advise about the transaction, and did not do so, and that the meeting was simply one of his regular meetings with them, but Mrs Ramji said that the meeting had been specially called because they wanted to discuss the transfer with Mr Adegboye and that "We asked him about all aspects of it ... I'm sure he pointed out things and we still decided to go through with it, it was quite a long discussion, he pointed out that if we passed away Lauren would have to pay inheritance tax." I got the distinct feeling that Mr Adegboye was not telling the court the whole truth about the meeting, or his involvement, but the one thing he was certain about was that he had witnessed the signatures on the TR1, and that the document had been signed by Mr Ramji in his presence before he did so. On balance, I am satisfied that Mr Adegboye was telling the truth about that crucial point.

20. Mrs Ramji gave evidence remotely. She is now 82 years old, and bedridden. Mr Harouna, her solicitor, was at her bedside during her evidence, and gave invaluable assistance in repeating counsel's questions (Mrs Ramji is also quite hard of hearing) and finding documents for her in the bundle. Mrs Ramji was at times a little confused about timelines, and had some difficulty in recalling dates, but she was certain that the TR1 was signed by her and Mr Ramji in Mr Adegboye's presence. She was less clear about which documents did, or did not, bear Mr Ramji's genuine signature. An unusual feature of the case is that in 2020 Mrs Ramji had started divorce proceedings, she said on her solicitor's advice to reduce Mr Ramji's assets (at a time when she had a concern that money was "going missing" from a safe and from a bank account); she said that she reassured Mr Ramji that they were "alright" and explained to him why she had started proceedings. In my view, it is clear that Mr and Mrs Ramji had a very close and harmonious married relationship for 40 years. Against that backdrop, even if there were concerns about the finances, I find it very difficult to understand the thinking behind the divorce proceedings (which were not finalised before Mr Ramji's death, at which time they remained married), and I accept Devika's evidence that Mr Ramji was very confused and upset by the divorce proceedings. I also got the firm feeling that Mrs Ramji was in charge of the family finances, and that although she would discuss financial matters with Mr Ramji, most of the decisions on money were left to her.
21. Devika is now a full time carer for her daughter but is also a nursery nurse and was at one time a special needs advocate. Nothing turns, in my view, on that. As the narrative shows, there were periods when she and her sister Chandra were not involved in their late father's life at all. I accept that in defending this claim they were doing what they genuinely believed accorded with their late father's intentions. In the same way, I accept that they were acting in what she believed were her father's best interests when they became his attorneys and spent a lot of time and energy assisting him, particularly with his medical needs. There were times when I thought Devika gave slightly evasive answers, particularly in relation to the family meeting in March 2019, but on the whole I think Devika was doing her best to be a genuine and honest witness. Similarly, I thought Chandra was an genuine and honest witness.

22. Lauren was an unsatisfactory witness. She said nothing in her statement about having discussed the transfer with her grandparents, but in her oral evidence she went into considerable detail about just such a discussion. In my judgment, had that been true, it would have been in her statement. Lauren also said that if she had been asked by her grandfather to give back her share in 51 RPC for any reason, she would have agreed. In my judgment, that was untrue. I approach Lauren's evidence with considerable caution, and where it differs from that of the other witnesses, I prefer the evidence of Chandra and Devika.
23. Christopher Newman is the Eighth Defendant. He gave evidence forthrightly and with conviction and self-confidence (which he rather overdid on occasion). I accept his evidence, in particular that from his perspective this was about doing the right thing in accordance with what his grandfather would have wanted.
24. Mr Lawrence Ramji, whilst plainly truthful, was not really able to give any evidence which has any real bearing on the preliminary issues.
25. Mr Dale Stewart had done some painting at 51 RPC in February 2020 and he had moved a safe from 51 RPC in March 2020. I accept his evidence, in particular that the safe was empty when he moved it, and that Devika, Chandra and Lynn all came to 51 RPC to tend to Mr Ramji.
26. Mr Astley Sinclair is the priest at the Temple attended by Mr Ramji. Mr Sinclair gave evidence about what he saw when he visited 51 RPC and what he was told by Mr Ramji. He was criticised by Mr Otchie as having betrayed confidences placed in him as a priest by Mr Ramji but I thought that criticism was misplaced. I accept his evidence.
27. Dr Vishnu Bisram is a nephew of Mr Ramji's. He now lives in New York and he gave evidence remotely from Fiji, where he was on holiday. He gave evidence about what he says Mr Ramji told him about relationships in the family, and I accept his evidence.
28. Mr Harvey was cross-examined at some length about his attendance note of 19 March 2019, when he met with the family and then with Mr Ramji alone in the context of preparing a will for Mr Ramji. It is rare to see such a detailed and comprehensive attendance note. In my view, Mr Harvey came across as a conscientious and competent solicitor who was readily prepared to accept where he had made an error in his statement (he referred to Lauren as a bare trustee, whereas in fact she was a joint tenant under the express trust in the TR1) and was open and frank about his views on the family and their relationships with Mr Ramji. I have no hesitation in accepting his evidence.
29. I will draw on the evidence and set out my findings of fact, so far as it is necessary to make findings in relation to the preliminary issues, in the next sections of my judgment. However, much of the evidence – in particular that of Dr Bisram, Mr Stewart, Mr Sinclair, Mr Newman and Mr Lawrence Ramji – have no real bearing on the preliminary issues.

2 Montacute Road and Mrs Ramji's claim to a beneficial interest

30. Mr Otchie said, in his opening submissions, that Mrs Ramji has a beneficial interest in 2 MR on two bases.
31. First, that because of the fact of her marriage to Mr Ramji, 2 MR became joint property. This is with respect a misconceived argument, confusing the concept of ownership with family law principles which define what is matrimonial property for the purposes of financial relief on divorce.
32. On a divorce, property purchased and owned by a spouse before the marriage is usually a pre-marital asset and is usually not part of the matrimonial pot, but such property may be a matrimonial asset depending upon the facts of the case. For example, where there is a lengthy marriage, the property may have become to be viewed as matrimonial property particularly where it has been the matrimonial home. If that is the case, then it may fall to be divided between the parties on divorce, in proportions which again depend on the circumstances. However, that does not mean that the spouse who did not purchase or own the property becomes, by virtue of the marriage, an owner of it in equity, although that spouse may well have acquired what are known as home rights in it if it was the shared matrimonial home (giving both the right to live there until the divorce is finalised).
33. As it happens, in the present case this was a long marriage, and in February 2020 Mrs Ramji had commenced divorce proceedings against Mr Ramji, but those proceedings were not finalised and Mr and Mrs Ramji remained married at the date of Mr Ramji's death in January 2021. Whether or not in the divorce proceedings 2 MR would have been a matrimonial asset, the fact of the (long) marriage does not of itself give Mrs Ramji a beneficial interest in it.
34. This first basis of Mrs Ramji's claim to an interest in 2 MR did not really feature in Mr Otchie's closing submissions, only in his opening submissions and skeleton argument, but to the extent that it may have been advanced as a separate basis for Mrs Ramji having an interest in the property, it is rejected.
35. The second basis is a common intention constructive trust claim.
36. The law in relation to constructive trust claims has been set out in a number of cases, and was summarised by HHJ Matthews sitting as a Judge of the High Court in *Dobson v Griffey* [2018] EWHC 1117 (Ch):

“20. For a common intention constructive trust to arise, the parties must have had a common intention to share the property beneficially, upon the faith of which the claimant then acts in reliance to her detriment. The common intention by itself is not enough for the constructive trust to arise. Otherwise s 53(1)(b) of the 1925 Act would be meaningless. It is the detrimental reliance that makes it unconscionable for the defendant landowner to resile from their otherwise unenforceable agreement.

21. But the common intention of the parties may be either expressed between them, as when they have a discussion and reach a conclusion, or it may be inferred from the whole course of conduct between them: see per Lord Bridge

in *Lloyds Bank v Rosset* [1991] 1 AC 107, 132. However, even when it is inferred, it still represents the court's conclusion as to what the parties actually intended: see e.g. per Lady Hale in *Stack v Dowden* [2007] 2 AC 432, [61]. The court has no power to impute an agreement or common intention to the parties based on what it considers would have been fair or reasonable. I add only that, when the court is considering what the parties actually intended, the court looks at the objective phenomena available for consideration, and not into their minds themselves. The assessment is thus an objective rather than a subjective one: see per Lord Walker and Lady Hale in *Jones v Kernott* [2012] 1 AC 776, [34].

22. Once the common intention is established, the question is whether the conduct of the claimant in relying on the common intention to her detriment makes it unconscionable for the defendant to renege on that agreement: see *Culliford v Thorpe* [2018] EWHC 426 (Ch), [76]. Nowadays there is no doubt that making physical improvements to the land which add significant value to the property can amount to such conduct: see per Lords Hope, Walker and Neuberger in *Stack v Dowden* [2007] 2 AC 432, [12], [36], [139].

23. If such detrimental reliance is established, then the next stage is the quantification of the claimant's share. If that is established by the common intention itself, then there is no need for the court to attempt to quantify it. But in cases where it is clear that the parties intended that the claimant should have a share, but did not quantify it themselves, the court must do so. It does this, once again, by having regard to the whole course of conduct between the parties. But this time, because the parties have not reached an agreement, it is necessary for the court to consider what is fair. Here, at this final stage, the court imputes to the parties that which they did not agree: see per Lord Walker and Lady Hale in *Jones v Kernott* [2012] 1 AC 776, [51]-[52].”

37. Thus (as set out in *Dobson*, and following the well-known cases of *Stack v Dowden* and *Jones v Kernott*), there must be an agreement between the parties as to the beneficial interests, and a claimant must prove that they acted to their detriment in reliance upon that agreement.
38. What is required is evidence of a common intention to share the beneficial interest. This can be proved first by direct evidence of an agreement, arrangement or understanding, however imperfectly remembered, to share the beneficial interest combined with detrimental reliance; or secondly by inferring from conduct such an agreement, arrangement or understanding (followed by detrimental reliance).
39. Mrs Ramji's pleaded case is as follows (the quotations are from the Claimant's Points of Claim):
 - (1) 2 MR was purchased by Mr Ramji in October 1977.
 - (2) Mrs Ramji and Mr Ramji met in 1977 and they moved in to 2 MR in November 1977.
 - (3) Mr and Mrs Ramji married in 1978.

- (4) Mrs Ramji then gave up her existing job as a supermarket cashier and thereafter worked with Mr Ramji in his tiling business as an office administrator.
 - (5) The mortgage on 2 MR was paid from the profits of that business.
 - (6) Mrs Ramji contributed £4,000 towards the mortgage, which was money she received on her divorce from her first husband in 1977.
 - (7) Mr and Mrs Ramji lived at 2 MR until January 1985, when they purchased 51 RPC.
 - (8) Mrs Ramji generally maintained and contributed to the upkeep of 2 MR,
 - (9) “Mr Ramji allowed the Claimant to believe that 2 Montacute Road was to be shared as marital property (which it was).”
 - (10) “The Claimant avers that it was the common intention, between her and Mr. Ramji, that they both contributed mortgage payments towards 2 Montacute Road, so that it could be used as their marital home. Whilst the property had been acquired in the name of Mr. Ramji, the parties had married, and had both decided to share their assets on an equal basis from then on.”
 - (11) “The Claimant further avers that, Mr. Ramji’s tiling business was successful, in part, due to the contribution that she had made. Thus, in the event that the Claimant had not contributed to the business and family home, Mr. Ramji would not have paid the mortgage for 2 Montacute Road (in the rate and manner that he did).”
 - (12) “Mr. Ramji did not suggest (to the Claimant) that he intended 2 Montacute Road to be his property alone. In fact, the Claimant always believed the property to be marital property, that was shared equally, and thus she referred to 2 Montacute Road as property that she had an interest in, before Mr. Ramji’s demise, when completing a financial statement (Form E) in [*sic*] 18 December 2020.”
 - (13) “The Will dated 15 May 2019 does not refer to 2 Montacute Road as Mr. Ramji’s sole property. Furthermore, the Will does not terminate, or otherwise seek to diminish the Claimant’s beneficial interest in 2 Montacute Road.”
40. On that pleaded basis, I am invited to find that there was an express agreement between Mr & Mrs Ramji to the effect that Mrs Ramji had a beneficial interest in 2 MR or alternatively to infer that there was such an agreement.
41. Mrs Ramji has provided a total of four witness statements. Most are directed to the 1975 Act claim. In relation to the claim to a beneficial interest in 2 MR, Mrs Ramji says:
- (1) “Mr Ramji bought No. 2 Montacute Road in October 1977. I moved in there with him in 1978 and we got married on 14 December 1978.”

I note that in her pleaded case, Mrs Ramji said that she moved into 2 MR in 1977. I accept her evidence that she moved into 2 MR in 1977. I also accept her evidence given in cross-examination that Mr Ramji bought 2 MR before the couple met each other.

- (2) Mrs Ramji worked in the tiling business, taking and processing orders, doing invoices, receipts, ordering materials and other tasks.

I accept that evidence.

- (3) The mortgage on 2 MR was paid for from the profits of the business.

I accept that evidence.

- (4) “I can categorically state that I worked with my late husband to build up our business and earn the funds which assisted us purchasing No.4 Montacute in February 1986 and No.51 Ravensbourne Park Crescent in January 1985. I also used some of my financial settlement funds from my previous divorce to help fund the deposit for No.4.”

It was Mrs Ramji’s pleaded case that the funds from her divorce were used towards the mortgage on 2 MR. Mrs Ramji was not cross-examined about this. I find as a fact that her witness statement (rather than her pleading) is right, and that she did not contribute funds from her divorce towards 2 MR in any way.

- (5) “I have a beneficiary [*sic*] interest in no. 2 Montacute Road as it was our matrimonial home for several years. We both paid the mortgage to that property. We lived there until buying no.51 Ravensbourne Park Crescent. We then put more funds together and purchased No.4 Montacute Road to use for rental income. We have never lived in No.4 Montacute.”

42. It is clear on the facts that there was no common intention before or at the time of the purchase of 2 MR, because (as Mrs Ramji confirmed in her evidence) it was bought by Mr Ramji before he met Mrs Ramji.
43. Looking at events after the couple starting living together, and after their marriage, the position is this.
44. First, the mortgage was funded from profits from the business. The business was the only source of income for Mr and Mrs Ramji, as Mrs Ramji confirmed in her evidence, and I can see no material difference between the facts in the present case and those in *James v Thomas* [2007] EWCA Civ 1212 at [27]:

“Although it is possible to envisage circumstances in which the fact that one party began to make contributions to capital repayments due under a mortgage might evidence an agreement that that party was to have a share in the property, the circumstances of this case are not of that nature. On the facts found by the judge, the only source of funds to meet Mr Thomas’ commitments under the mortgage, as well as all other household and personal expenses, was the receipts of the business. While the parties were living together they were dependent on the success of the business to meet their

outgoings. It was not at all surprising that, in the early days of their relationship, Miss James should do what she could to ensure that the business prospered. That is not to undervalue her contribution; which, as Mr Thomas recognised, was substantial. But it is to recognise that what she was doing gives rise to no inference that the parties had agreed (or had reached a common understanding) that she was to have a share in the property: what she was doing was wholly explicable on other grounds.”

45. Secondly, I do not accept that the money from Mrs Ramji’s divorce settlement was used towards the 2 MR mortgage. In her statement, she does not say that it was (she says it was used towards the deposit for 4 MR) and she was not questioned about that by Ms Challenger. Even if I am wrong about that, I do not see how such a contribution without more (in other words, without evidence of a discussion between Mr and Mrs Ramji about it) could give rise to an implied agreement about the beneficial interests in the property.
46. Thirdly, whilst Mr and Mrs Ramji are likely to have referred to 2 MR as “our house” or “our family house” or the like, and I accept that they probably did, that is not in my judgment evidence of an agreement, either express or implied, that Mrs Ramji was to have a beneficial interest. As Lord Millet observed in *Otway v Gibbs* [2000] UKPC 39 at [17-18]:

“17. [The Privy Council is] satisfied that no significance should be attached to expressions such as ‘our money’ or ‘the money we have’. These do not refer to ownership and do not evince an intention to change existing rights of property. As Lord Bridge of Harwich explained in *Lloyds Bank plc v Rosset* [1991] 1 AC 107 at p. 127:-

‘Spouses living in amity will not normally think it necessary to formulate or define their respective interests in property in any precise way. The expectation of the parties to every happy marriage is that they will share the practical benefits of occupying the matrimonial home whoever owns it. But this is something quite distinct from sharing the beneficial interest in the property asset which the matrimonial home represents.’

18. As with marriage, so with stable relationships outside marriage. Cohabiting couples, like married couples, speak of ‘our home’ and ‘our money’ meaning ‘the home where we live’ and ‘the money we live on’, without distinguishing between what belongs to one or the other or both.”

47. The same can be said for the fact that once Mr and Mrs Ramji moved out of 2 MR, it was rented out and the rental income went into their joint account. Mr Ramji paid the tax on the rental income. I do not see how this can assist Mrs Ramji, as this was simply a case of a couple with a joint account pooling their income and using the joint account for their living expenses.
48. Fourthly, in my judgment Mrs Ramji is not able to rely on her application to register a caution against the title of 2 MR for one simple reason. The application was based on a false premise, because it was said by Mrs Ramji that her interest arose because she contributed to the purchase price. That was incorrect, because she did not; the purchase

was completed before she met Mr Ramji and she did not make any contribution to the purchase.

49. Fifthly, neither is Mrs Ramji able to rely on the Form E she completed (the Form E was her financial statement for the purpose of the divorce proceedings). In the Form E, Mrs Ramji said in relation to 2 MR at section 2.2:

“Applicant [that is, Mrs Ramji] has a beneficial interest as couple brought the property during the marriage together. Couple bought the property together but put in sole name of Respondent [that is, Mr Ramji]. Mortgage paid together by couple.”

50. This assertion was, for the same reasons as before, untrue.
51. In my judgment, Mrs Ramji has not established that there was a common intention to share the beneficial interests in the property.
52. I therefore need not deal with the question of whether (if I was wrong about intention) there was detrimental reliance. But if I had to deal with that point, my finding is that there was no evidence of detrimental reliance at all. None is pleaded. It was said in closing submissions that the detriment was twofold. First, that Mrs Ramji had given up her job at the Co-Op in order to assist Mr Ramji in the tiling business. She said that Mr Ramji found dealing with the paperwork too much for him after a day’s work, and so she took over all the secretarial and managerial tasks. I accept that she did. This was not a detriment. It was swapping one job for another and was one from which she greatly benefitted, as it enabled the business to flourish. Secondly, that she sourced and provided some tiles from Italy for the house. This is not a detriment in any sense. So the claim would have failed on that basis too.

51 Ravensbourne Park Crescent and the 2016 Transfer

(a) The transfer

53. 51 RPC was purchased jointly by Mr and Mrs Ramji. There is no dispute about that.
54. In 2016, a firm of solicitors called Frank Stimpson (“FS”) was approached to draft a transfer of 51 RPC from Mr and Mrs Ramji into the names of Mr Ramji, Mrs Ramji and Lauren Runacre (the Ninth Defendant).
55. A TR1 was drafted and sent by FS to Mr and Mrs Ramji under cover of a letter dated 16 September 2016.
56. The TR1 named Mr and Mrs Ramji as the transferors, and Mr and Mrs Ramji and Lauren as the transferees. In Box 8, it was confirmed that the transfer was “not for money or anything that has a monetary value”. In Box 10, there was a declaration of trust whereby the transferees “are to hold the property on trust for themselves as joint tenants”.
57. The TR1 bears the handwritten date of 26 September 2016. It is written over the fainter words, “Do not date”, and it is likely that the date was written in by someone at FS.

58. The TR1 bears what purports to be the signature of Mr Ramji, witnessed by Mr Adegboye. Mrs Ramji's signature is also witnessed by Mr Adegboye.
59. The FS letter of 16 September 2016 says:

“We now have pleasure in enclosing the Transfer of the above property into the joint names of yourself and Lauren Emma Runacre and if the same is in order, we should be obliged if you could both sign it where indicated in the presence of an independent witness who should sign their signature and write their name and address where indicated. Please then return the same to us.

We have provided in the Transfer that if any of you die, then the deceased interest will pass to the remaining two and not under their Will or Intestacy and is this correct?”

60. There is no copy of any letter sending the signed TR1 back to FS, and no indication as to whether FS's query was answered, but on 16 November 2016, FS wrote to Mr and Mrs Ramji confirming that registration had been completed. Shortly thereafter, in December 2016, FS was the subject of an SRA intervention and their file for this transaction is not now available.

(b) *Mr Ramji's signature*

61. Put simply, it is said that the signature on the Transfer which purports to be that of Mr Ramji in fact is not his; it is also said that if it was his signature, it was not witnessed by Mr Adegboye.

(c) *Execution of the transfer*

62. The first issue I therefore need to decide is whether the TR1 was signed by Mr Ramji and whether his signature was properly witnessed.
63. Mr Adegboye was certain that he witnessed Mr Ramji (and Mrs Ramji) sign it and that he then signed it as witness to their having done so. He recalled going to their house, and that he met them in the living room, with Mr Ramji on the right hand side, and Mrs Ramji on the left, with him in the middle. He thought it was probably some time between 4 and 6 pm. He said that it was just the three of them in the room and he did not know whether there was anyone else in the house or not. He said that Mr and Mrs Ramji discussed the transfer in his presence, and he knew that the transfer was to the granddaughter. He said Mr Ramji did not leave the room at any time during this meeting, which he thought lasted between 10 and 20 minutes. He says they talked about a number of things to do with taxation, although he could not recall the detail. He said that he was not asked to advise on the transfer and did not do so. Whilst I have some reservations about his evidence, particularly because I got the impression that he had in fact given some taxation advice in connection with this and other properties (which is what Mrs Ramji said), and was not giving the court the full picture, I was impressed by Mr Adegboye's confirmation that as an accountant, his integrity was paramount, and that he would not say he had witnessed a signature or put his name on a document as a witness if he had not in fact witnessed the signature. I thought this was genuine, truthful evidence and I accept it.

64. Mrs Ramji was clear that it was. She said that Mr Adegboye had given some tax advice about the transfer and what might happen after their deaths if Lauren sold the property. Mrs Ramji gave evidence about the meeting in the house when the TR1 was signed. She said she was sure that Mr Adegboye had “pointed out things” and they “still decided to go through with it. It was quite a long discussion.” She could not remember how long the meeting took. Mrs Ramji became a little confused when asked about the signing of the TR1. She said she was sure that Mr Ramji signed it and it was witnessed, but then she wondered if the witness was the solicitor. However, she then said, “As far as I am aware, [Mr Adegboye] signed it. I remember the meeting, discussing it, deciding what we wanted to do, and that [Mr Adegboye] said that if Lauren sold it she’d have to pay inheritance tax.” In cross-examination, before she was taken to the TR1 itself, it was put to Mrs Ramji that her husband had not signed it at the meeting, and she said, “Perhaps he didn’t. Perhaps he asked me to sign it on our behalf. I signed lots of things that were joint things.” It was then put to her that she signed the TR1 for them both, before the meeting, and that Mr Adegboye then put his name on the document. Mrs Ramji was certain that was not correct. She was then taken to the TR1. She immediately said that it was her husband’s signature at the top, and said, “I know how he did his ‘S’ in his name, it is definitely his signature.” Mrs Ramji was then taken to a number of documents which appear to show Mr Ramji’s signature, and asked if they were his. Most of them she thought were, some (which clearly were his) she thought were not. I thought she was confused about this exercise, which seemed to me to take us nowhere. There is no expert handwriting evidence in this case, and to my untrained eye the various signatures of Mr Ramji, including that on the TR1, appear to be genuine ones with the variations that one might expect over the years and where signatures are signed on different occasions. Sometimes Mr Ramji as what appears to be “Sugrim Ramji” or (as in the 2019 will, witnessed by Mr Harvey and a paralegal) it is a fairly illegible scrawl. It was put to Mrs Ramji that he signed as “S O Ramji”, but one of those was said to be on the copy of the marriage certificate which was completed by the deputy registrar and thus does not bear his signature at all. He appears to have signed “S O Ramji” on a legal charge in 1977, but it does seem that in later years he ceased signing in that way, for example in the 2018 tax return. I accept Mrs Ramji’s evidence that the TR1 was signed by Mr Ramji and that his signature was witnessed by Mr Adegboye.

65. I therefore find as a fact that the Mr Ramji’s signature on the TR1 is his genuine signature, and that he signed it in the presence of Mr Adegboye, who then witnessed the signature.

(d) Undue influence

66. The second issue is whether the TR1 should be set aside for undue influence.

67. The Points of Claim for the Second, Third and Eighth Defendants assert that there was presumed undue influence arising as follows:

- (1) There was a relationship of trust and confidence between Mr Ramji on the one hand and Mrs Ramji and/or Lauren on the other, as Mrs Ramji controlled the finances and Mr Ramji relied on Mrs Ramji and Lauren for care and assistance.

- (2) The TR1 calls for an explanation because it provides a gift from Mr Ramji to Lauren of a substantial part of his assets, and there was no reason why he would have wanted to benefit her over his own children and grandchildren.

68. The principles I apply are those set out below.

69. In *Royal Bank of Scotland plc v Etridge (No 2)* [2002] 2 AC 773, Lord Nicholls said at [8, 9 and 11] that presumed undue influence:

“arises out of a relationship between two persons where one has acquired over another a measure of influence or ascendancy, of which the ascendant person then takes unfair advantage. ...

The relationship between two individuals may be such that, without more, one of them is disposed to agree to a course of action proposed by the other. Typically this occurs when one person places trust in another to look after his affairs and interests and the latter betrays this trust by preferring his own interests. He abuses the influence he has acquired. ...

The principle is not confined to cases of abuse of trust and confidence. It also includes, for instance, cases where a vulnerable person has been exploited. ... Several expressions have been used in an endeavour to encapsulate the essence: trust and confidence, reliance, dependence or vulnerability on the one hand and ascendancy, domination or control on the other.”

70. As to the burden of proof, Lord Nicholls said at [14]:

“Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof. On proof of these two matters the stage is set for the court to infer that, in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence. In other words, proof of these two facts is prima facie evidence that the defendant abused the influence he acquired in the parties' relationship. He preferred his own interests. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn.”

71. Snell's Equity, 34th Edition, at para 8-031, says this:

If, for example, B's claim is that undue influence was exerted by B's husband or wife, or by B's banker, then, as that relationship is not one that the law regards as necessarily involving influence, B will need to show that the specific marital or banking relationship was in fact one of influence. The essential question is whether A or X, the alleged influencer, “is in a position to influence [B] into effecting the transaction of which complaint is later made. It is not necessary for B to show that the relationship was one of domination, but clearly the finding of a relationship of influence should not be made on slim grounds, and a mere inequality of bargaining power between B and the alleged influencer cannot suffice.

A relationship of influence can be established by proof that B “placed trust and confidence in the other party in relation to the management of [B’s] financial affairs”, but it would be a mistake to think that B must prove such trust and confidence existed specifically in relation to financial affairs, or that the only relevant relationships are ones of trust and confidence. The question is one of influence, and a relationship of influence may be proved by, for example, evidence of B’s dependence or vulnerability.

It is therefore clear that, in a family or marital relationship, there must be some additional factor, such as circumstances of illness leading to dependency, or a background of trust and confidence in relation to the family’s financial affairs, if a relationship of influence is to be found.

72. Snell at paragraph 8-032 goes on to say:

The existence of a relationship of influence between B and A or X shows that it is possible that B was subject to undue influence when entering into a particular transaction. A presumption of undue influence will arise only if, in relation to that specific transaction, there is “something more something which calls for an... explanation”. It must therefore be shown that the transaction “cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship”.

Accordingly, the presumption that the transaction was procured by undue influence does not arise unless the nature of the transaction is sufficiently unusual or suspicious that, “failing proof to the contrary, [it] was explicable only on the basis that undue influence ha[s] been exercised to procure it”.

(e) Capacity, and want of knowledge or approval

73. It is common ground that the test for capacity when making a voluntary settlement is the same as for a testamentary disposition.

74. The essential question is whether Mr Ramji understood what he was doing and that he knew what he was signing.

75. The test is that set out in *Banks v Goodfellow* (1870) LR 5 QB 549 at 565:

“It is essential to the exercise of a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sent of right, or prevent the exercise of his natural facilities - that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.”

76. The question is one of ability to understand, rather than actual understanding: see *Re Beaney deceased* [1978] 1 WLR 770.

77. The correct approach to a post-Mental Capacity Act 2005 lifetime gift such as the Transfer is to apply the common law principles set out above, rather than those set out in the 2005 Act: see *Kicks and another v Leigh* [2014] EWHC 3926 (Ch) at [63].

78. In that case, the test in *Re Beaney* was explained as follows, at [27]:

“Thus the overall test is one of ability to understand, rather than actual understanding. If the maker of the gift does not in fact understand the transaction, in circumstances, where its general purport has not been fully explained, that does not establish lack of capacity. The test is whether he or she would have understood it, if the consequences had been fully explained.”

79. In *Re Beaney*, it was said at 774D-F:

“In the circumstances, it seems to me that the law is this. The degree or extent of understanding required in respect of any instrument is relative to the particular transaction which it is to effect. In the case of a will the degree required is always high. In the case of a contract, a deed made for consideration or a gift *inter vivos*, whether by deed or otherwise, the degree required varies with the circumstances of the transaction. Thus, at one extreme, if the subject matter and value of a gift are trivial in relation to the donor’s assets a low degree of understanding will suffice. But, at the other extreme, if its effect is to dispose of the donor’s only asset of value and thus, for practical purposes, to pre-empt the devolution of his estate under his will or on his intestacy, then the degree of understanding required is as high as that required for a will, and the donor must understand the claims of all potential donees and the extent of the property to be disposed of.”

(f) Discussion

80. It is accepted by Ms Challenger that neither Mrs Ramji nor Lauren fall into any recognised category of relationship where influence is presumed. However, as Lord Nicholls said in *Etridge* at [19]:

“But there is nothing unusual or strange in a wife, from motives of affection or for other reasons, conferring substantial financial benefits on her husband. Although there is no presumption, the court will nevertheless note, as a matter of fact, the opportunities for abuse which flow from a wife's confidence in her husband. The court will take this into account with all the other evidence in the case. Where there is evidence that a husband has taken unfair advantage of his influence over his wife, or her confidence in him, ‘it is not difficult for the wife to establish her title to relief’: see *In re Lloyds Bank Ltd, Bomze v Bomze* [1931] 1 Ch 289, at p 302, per Maugham J.”

81. In her second statement, Mrs Ramji says this:

“My late husband and I gifted to Lauren a third of No.51 Ravensbourne Park as she had been there for us and helped us a lot during the preceding years. Both Lauren and Kerry Runacre have been our support system and it was my late husband’s intention to reward them. Lauren has never received any rental income from No.51 Ravensbourne Park Crescent.”

82. In her oral evidence, Mrs Ramji explained that Lauren had moved in to 4 MR at Mr Ramji's suggestion, as she had been living in a very small flat and that she had always helped them out, even before she moved into 4 MR:
- “If I wanted anything done in the house, Lauren would do it. She would mend things, she was very practical. She helped me with personal things for myself. ... It depended what we needed doing. Personal things like hairwashing and my nails and such, and helping my husband with what he wanted doing ... like mending his glasses.”
83. Mrs Ramji was asked how much time Lauren was spending with them. She said it was “different days at different times, it was quite a lot of time, some days hours – it all depends.” I thought this was rather vague, as was her answer to the question whether they were dependent on Lauren (“in lots of things, yes”).
84. Mrs Ramji said at first that Lauren had not been paying rent for 4 MR, but later she said that Lauren paid rent from her maternity money. She said that she had remembered that over the lunchtime adjournment.
85. She said how by 2016 Mr Ramji had become less quick thinking than before, but denied that he was frail. Whilst she accepted he had become dependent on others for a number of things around the house, and was less mobile, she said how they still went on holidays together. It was put to her that Mr Ramji was capable of being manipulated or influenced by others, and her reply was:
- “I think so. He went along with it without thinking. He did not have a suspicious nature.”
86. Mrs Ramji said that the decision to make the transfer was a joint one. She said:
- “Lauren was always there to help us. We chose the one [grandchild] we thought was the younger one and we wanted to help her as she had helped us.”
87. Mrs Ramji was then asked about a series of payments made to the grandchildren. She sent her daughter a cheque for £5,000 in May 2017, a cheque to Kerry for £5,000 in September 2017 and a cheque to Shelby for £2,000 in February 2016, with a further £40,000 to Shelby in November 2018. These were all payments from the joint account. Mrs Ramji accepted that she made these payments, except for the £40,000 transfer which she said she did not understand. A further £100,000 was transferred to Lynn. Mrs Ramji said that Mr Ramji knew about the payments, and denied that he closed the account when he found out.
88. This shows, in my view, that Mrs Ramji was indeed in control of the finances, and I do not accept that she was unaware of the transfer of the £40,000, nor that Mr Ramji knew about these payments. In my view it was these payments that did indeed cause Mr Ramji to close the account, which in turn led Mrs Ramji to commence the divorce proceedings, which to my mind are inexplicable on any other basis. I cannot understand why Mrs Ramji would otherwise commence divorce proceedings – based upon Mr Ramji's unreasonable behaviour – if it was not so Mrs Ramji could obtain a financial order so as to pass money on to her children and grandchildren. There was no

independent evidence of any advice Mrs Ramji was said to have obtained in relation to the reasons for the divorce proceedings. Mr and Mrs Ramji were happily married for over 40 years. There was no reason for a divorce. In my judgment, Mrs Ramji was quick to reassure Mr Ramji that everything was okay between them, which she did to ensure that he did not try and take his own advice about it.

89. In September 2016, Kerry posted a Facebook message which read:

“Hi looking for some help please my grandparents have a house which is a business (letting rooms x5) and they live in the flat downstairs. My grandparents are trying to seek help in finding out the best way to leave the property to family without leaving a huge (inheritance) tax bill of 40%. They know about the 7 year will [*sic*] but are afraid that they won't see the 7 years out. Any advice would be amazing please they have contacted several solicitors who do not seem to be much help but are very happy to receive a huge cheque for their ‘help’! they are not looking for free advice but the advice of someone who can give them the help lastly thank you so much in advance”

90. It was put to Mrs Ramji that this shows that her side of the family was trying to bring about the transfer. Mrs Ramji denied it. In my view, the Facebook message does indeed show that there was some wider discussion, on Mrs Ramji’s side of the family, about tax advice in connection with what is clearly a reference to 51 RPC.

91. Lauren gave evidence about what she did to help Mr and Mrs Ramji. In her witness statement, she says:

“5. As my grandparents were getting old, they would call on me for any errand they could not do or felt was too strenuous. At this point, I was aware that my grandfather had lost contact with his biological children due to a family feud. I know that he was hurt about it and that they did not speak to him or visit him for over 20 years. All my grandfather had was us, his wife’s children and grandchildren.

6. My grandfather would often call me to the house just to sit and keep him company. We would talk about everything under the sun and he would advise me on problems I was going through at the time. We would laugh, eat, and just spend a happy time together. This close relationship and the support I was providing to my grandparents led them to decide to gift me a third of No. 51 Ravensbourne Park Crescent in 2016.

7. Prior to doing this, they discussed it with the other family members who were bothered to be in their lives at the time. They wanted to ensure the plans they had for family members inheritance was being put into place. I can categorically state that, I never received any financial gain from being a part owner of my grandparents’ home. I never received any rents or did I even make it my business to enquire who was renting and how much was being paid.”

92. In the same statement, Lauren went on to say how her grandparents had wanted to help her and her young son by providing them with a stable home as they were in temporary

housing, and how she wanted to show her gratitude by continuing to provide them with “support and security by always being around to ensure they had no worries or concerns”.

93. Applying the principles I have set out above, this evidence all seems a long way short of justifying why Mr and Mrs Ramji would give a share of their home to Lauren, and it also struck me during the course of her evidence that Lauren had not said anything about whether she had had any discussions with her grandparents about all of this. I asked her whether there had been any such discussions, and Lauren gave quite a lengthy answer.
94. She said that the transfer had been discussed with her on one occasion. She had been on one of her regular visits to 51 RPC and was in the kitchen with her grandparents. They told her (she did not say which of them said it) that they had an idea, they wanted to “put her down” as a one-third owner of 51 RPC. Lauren told me she had a couple of questions, notably what did that mean for her? She said she was overwhelmed. Her grandparents said (again, she did not say which one) that they wanted to gift it to her and she need not have any involvement in the running of the house and nothing would change. They said they wanted to gift it to her, so that when they were both dead Lauren “would not be left with implications of tax or any debt.” Lauren told me that she did not really understand any of this, but she got the gist that this was about inheritance tax.
95. It is remarkable, in my view, that none of this was in Lauren’s statement. Lauren assured the court, in answer to Ms Challenger’s questions, that it was true, and said that it should have been in her statement. She also said that in the context of the present litigation, she had discussed it further with Mrs Ramji, who had said that they did it because they were close to Lauren and it was in thanks for the help she had given. Lauren said that she did not ask her grandparents at the time why they were doing this, although “I think I did say ‘Wow’”.
96. In my judgment, none of this was in Lauren’s statement because it is not true. I do not accept that this conversation took place, and in my view Lauren was not telling the truth about it. Had it been true, it was such important evidence that it would have been in the statement.
97. I also do not accept as true Lauren’s oral evidence that had her grandfather asked, during his lifetime, if Lauren would transfer her share back, she would have done so.
98. I note that in early 2020, the Office of the Public Guardian investigated concerns about the management of Mr Ramji’s property and financial affairs, but after it was concluded that Mr Rami had capacity to make decisions, no further action was taken.
99. I now turn to the evidence of Mr Harvey. He was introduced to Mrs Ramji by Devika in 2016. He qualified as a solicitor in 2007 and specialises in wills and probate, and as such confirmed that he was familiar with the concept of undue influence. Mr Harvey produced a detailed note on 19 March 2019 of meetings he had with Mr Ramji and others. The note was not shown to anyone during Mr Ramji’s lifetime, but was disclosed in the course of the present litigation.

100. Mr Harvey gave oral evidence about the meetings he wrote about in his note, and based upon that note and his oral evidence, I can set out my further findings of fact. I have not mentioned below a number of the things Mr Harvey has set out in his note, but that is because I do not think I need to for the purposes of this judgment; I see no reason not to accept Mr Harvey's note as an accurate record of what happened, and I do so.
101. In July 2018, Mr Harvey received instructions to advise Mr Ramji on estate planning, having been introduced to him by Devika who was an existing client of the firm. At the time, Devika was estranged from her father, who had some time before cut ties with his former wife and his six children, but he was now having some form of gentle reconciliation with the children and grandchildren. Mr Harvey recorded in his note, "It was my understanding from July 2018 that Mr Ramji was under a lot of pressure from his wife and her family and was not freely able to give instructions and had to communicate through his daughter Lynn-Marie only." Eventually, there was a meeting at Lynn-Marie's house, and when Mr Harvey arrived he immediately realised it would be what he described as "a challenging meeting". He recalls that Mr Ramji was "surrounded" by Lynn-Marie, her daughter Nicole, Chandra and Devika, and he realised that it would be difficult to have a private meeting with Mr Ramji. Lynn-Marie said that Mr Ramji wanted to transfer 2 MR and that 4 MR was occupied against his wishes by Lauren, and that none of them could understand why Lauren was on the title to 51 RPC. Mr Harvey said that he needed to speak with Mr Ramji privately, and would need to see his will. Devika then said she wanted to see the will too, but Lynn-Marie said she could not. Mr Harvey asked them all to leave, which they did, and he was then alone with Mr Ramji. Mr Harvey looked first at the will, which left everything to Lynn-Marie. Mr Harvey asked Mr Ramji if he knew about the terms of this will, and his note records: "I was concerned that he did not enter into this will freely and it did not reflect his instructions." Mr Ramji told Mr Harvey that he wanted to leave his estate to Lynn-Marie, Devika and Chandra, and Mr Harvey explained that the will did not do that. Lynn-Marie kept interrupting the meeting, and Mr Harvey was concerned that she might be exerting what he referred to in his note as undue influence over Mr Ramji. There was a bit of shouting from Lynn-Marie who told everyone in no uncertain terms to leave. Chandra also spoke aggressively to Mr Ramji. Arrangements were then made for the meeting to reconvene at 51 RPC, and it did so. In Devika's presence (none of the others were there), Mr Harvey asked Mr Ramji a number of what I might describe as standard questions to assess his mental capacity, as a result of which Mr Harvey recorded,

"Mr Ramji seemed entirely lucid to me and expressed frustration that his step-granddaughter Lauren was occupying his property no.4 Montacute Road and wanted us to take action on this. He also said that he wanted to give instructions on his will. I was satisfied that he had mental capacity".

Mr Harvey then had a private discussion with Mr Ramji, who gave details of what he owned in terms of property and money (Mr Harvey recorded, "as he was old he was happy for other people to help him with his money"). Mr Harvey suggested that Lynn-Marie should be replaced as his LPA property and financial attorney, and noted that Mr Ramji "wanted Lynn to work with Devika together as he appreciates that there was now a risk that Lynn might act against his best interests and was trying to control him". Mr Ramji was then asked about his family history, which Mr Ramji outlined.

102. Mr Harvey recorded:

“He also expressed concern that his wife Nicky had started to act against his interests and that she was the one who instigated his step-granddaughter Lauren appearing on the title deeds to 52 Ravensbourne Park Crescent and that it was done under the advice of an accountant for tax reasons, and he thinks that the accountant was James. He says he did not really know what he was signing. If possible he wanted Lauren taken off the title or for the three legal owners to declare that it was held beneficially for Nicky and Mr Ramji equally.”

103. There was a discussion about what should happen to 51 RPC after he died, and Mr Ramji explained that he wanted his wife to have a life interest, and that he wanted his son William’s children to have his interest in it. Mr Harvey also suggested severing the joint tenancy in 51 RPC, and Mr Ramji “also reiterated that he wanted help evicting Lauren and I said that we had a Consultant Solicitor who was a litigator and might be able to help.” Mr Harvey appreciated that this was all quite urgent, and he left to draft a will, coming back later that early evening with a colleague, when they again saw Mr Ramji and the colleague conducted “a mini-mental capacity assessment”. Mr Ramji was able to recall clearly what his instructions had been earlier in the day, and Mr Harvey took him through the new draft will line by line. Mr Ramji raised a number of queries about it as they did so. The will was then signed and witnessed. They then dealt with the LPA. Mr Ramji expressed some concern about what would happen if his wife died before him, and whether he would be kicked out of his home. He expressed his fear that his wife would leave everything to her children.
104. Mr Harvey later dealt with the severing of the joint tenancy, in the early summer of 2019.
105. He also arranged for Mr Ramji to be examined by Dr Hugh Series, a consultant psychiatrist specialising in the elderly, who produced a report on 22 June 2019, having examined Mr Ramji on 13 May 2019. In that report, Dr Series concluded that Mr Ramji had testamentary capacity at that time.
106. In cross-examination, Mr Harvey accepted that there was no letter written to Lauren in relation to 51 RPC, and he explained that they were in the process of taking counsel’s advice, then there was a delay because of COVID, and then Mr Ramji died. I detected a slight sense of unease on the part of Mr Harvey, because I rather suspect he now feels he ought to have acted a bit more quickly in that regard, but I do not think it is right to criticise him in this judgment.
107. Mr Harvey also described the situation, as he saw it, as one where Mr Ramji was almost being held hostage by the step-children and could not “escape” to give him proper instructions. He thought that Lynn-Marie had pre-determined things and that she thought he was there to “rubber-stamp” a transfer, but that he would not preside over a sham.
108. Mr Harvey said that Mr Ramji felt a bit under threat from his wife, and was very vulnerable, and that it was as if he was having his strings pulled. He accepted that this was his impression, rather than what Mr Ramji said. Mr Harvey also said that it was his impression all along that Mrs Ramji wanted to pass all Mr Ramji’s wealth to her side of the family, and confirmed that this is what Mr Ramji had told him (as he had recorded in his note).

109. Asked about what he had discussed with Mr Ramji about the signing of the 2016 Transfer, Mr Harvey said that Mr Ramji could not give a clear answer about why it was signed, other than he had signed it, and that there were apparently tax reasons for it.
110. Mr Harvey said that he thought Lauren and Mr Ramji had a bad relationship as Lauren had “trashed” 4 MR. He expressed considerable surprise when told that in her evidence Lauren had said that had Mr Ramji asked, she would have given back her share.
111. When asked about the section of the note which I have set out at paragraph 102 above (Mr Ramji’s concerns about the circumstances of the 2016 Transfer), Mr Harvey said that he got no sense of Mr Ramji having been pressured by anyone now to change his mind over having transferred the share to Lauren or that he regretted having made the transfer in 2016; Mr Harvey’s overall impression was that Mr Ramji simply could not understand how that transfer had happened.
112. Mr Harvey was a careful, compelling and truthful witness. I accept his evidence, and in doing so I also accept that his understanding about Mr Ramji’s concerns over the 2016 Transfer were more than “seller’s remorse”, they reflected Mr Ramji genuinely not having known what had happened in 2016. I reject the suggestion that this was because Mr Ramji had known at the time what he was doing but had now changed his mind. I also bear in mind that nothing Lauren did for her grandparents, which whilst helpful was fairly minor in nature, could possibly have justified the 2016 Transfer of a one-third share in the property to her alone (ignoring all of the other children and grandchildren).

(g) *Conclusion on these issues*

113. Applying the principles I have set out, and on the basis of my factual findings, these are my conclusions:
 - (1) The relationship between Mr and Mrs Ramji was one of trust and confidence, in which Mr Ramji was vulnerable and relied on Mrs Ramji.
 - (2) The 2016 Transfer was the idea of Mrs Ramji, possibly in conjunction with Lauren.
 - (3) The Transfer is a transaction which calls for an explanation, as it gave away one-third of Mr Ramji’s share in his matrimonial home for no objectively good reason.
 - (4) No proper explanation was given to Mr Ramji about it.
 - (5) It was a transaction which was not justified by the small amount of assistance being given by Lauren. Whilst I accept that Lauren gave some assistance to Mr and Mrs Ramji, it did not possibly justify, objectively, her being gifted a share in the property.
 - (6) There was no objective reason why Mr Ramji would have wanted to benefit Lauren over the other children or grandchildren.

- (7) The motive behind the 2016 Transfer appears to have been at least in part because it was the start of Mrs Ramji wanting to transfer property to her side of the family at a time when Mr Ramji's physical health was starting to decline.
- (8) The divorce proceedings were also part of this. There was no real basis for alleging unreasonable behaviour. Mrs Ramji gave Mr Ramji assurances that it would make no difference to their relationship. This was clearly nonsense and was designed to placate his concerns. I suspect that Mr Adegboye was giving advice about the Transfer and the divorce proceedings. The Facebook message to my mind shows that others were also aware of what was being planned.
- (9) Lauren did not have the conversation she said she had done with Mr and Mrs Ramji.
- (10) Both Lauren and Mrs Ramji have given untrue evidence about all of this.
- (11) The Transfer was signed by Mr Ramji, who had capacity at the time. Mr Ramji's signature was witnessed by Mr Adegboye.
- (12) Mr Ramji's signature was procured by the undue influence of Mrs Ramji, who took advantage of her husband's dependency on her in financial matters and in terms of his reliance on her in doing day-to-day tasks to persuade him, improperly, to sign it.
- (13) I conclude on the balance of probabilities that Mr Ramji did have capacity at the time of the Transfer.
- (14) I have little doubt that had Mr Ramji obtained independent advice, he would not have signed the Transfer.
- (15) Further, I have no doubt that Mr Ramji would not have signed the Transfer had he not been pressed to do so by Mrs Ramji. I also think that Lauren was involved in pressurising Mr Ramji to make the Transfer.
- (16) The Transfer is not something Mr Ramji would have done without such influence, which (applying the principles I have set out above) was undue.
- (17) The relationship between Mr and Mrs Ramji gave rise to a presumption of undue influence, which has not been rebutted by Mrs Ramji and/or Lauren.
- (18) Even if I am wrong about undue influence, I have no doubt that applying the test in *Re Beaney*, Mr Ramji did not have the necessary high degree of understanding required and thus lacked the requisite capacity. This is not, I stress, the same as his lacking capacity under the 2005 Act; I expect that he did have such capacity. But I am certain that Mr Ramji did not understand the details, and that by the Transfer he was benefitting Lauren to the detriment of the other grandchildren, and for no apparent genuine objective reason. I accept what Mr Harvey says he was told by Mr Ramji in this regard. In my judgment Mr Ramji was not capable of understanding the nature and effect of the Transfer, and he did not have that understanding as a matter of fact, even had its general effect been explained to him.

114. It follows that in my judgment the Transfer must be set aside.

Conclusion on preliminary issues

115. The answer to the preliminary issues is therefore:

- (1) 2 Montacute Road was at the date of his death owned by Mr Ramji alone, both legally and beneficially. The Claimant had no interest in 2 MR and her claim in this regard fails.
- (2) 51 Ravensbourne Park Crescent – the Transfer was procured by undue influence and is set aside. 51 RPC remained owned legally and beneficially by Mr and Mrs Ramji as tenants in common in equal shares at the date of Mr Ramji's death.

116. Counsel are invited to draw up an order to reflect this decision.

117. It is very much to be hoped that the parties can settle the remaining aspects of this claim if they can. I encourage them to take advantage of everything that alternative dispute resolution has to offer, and particularly to give serious consideration to mediation.

(End of judgment)