Neutral Citation Number: [2024] EWHC 275 (Ch)

Claim No. PT-2023-000102

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

9 February 2024

Before :

Jonathan Hilliard KC sitting as Deputy Judge of the High Court

- -

Between :

KAREN LANE
(as Personal Representative of the Estate of DAVID LANE (deceased))

Claimant

-and-

(1) SUSAN DOROTHY LANE
(As Personal Representative of the Estate of MONICA LANE (deceased))
(2) DANIEL LANE
(3) GEORGIA LANE
(As Beneficiaries of the Estate of MONICA LANE (deceased))

Defendants

- -
- -

Daniel Burton (instructed by Greene & Greene Solicitors) for the Claimant
Mark Blackett-Ord (instructed by Barker Gotelee solicitors) for the First Defendant
Hearing dates: 14-15 December 2023

- -

APPROVED JUDGMENT

JONATHAN HILLIARD KC sitting as a Deputy Judge of the High Court:

Introduction

1. This case concerns a dispute over the effect of a will and the administration of an estate, specifically whether a gift under the will has adeemed and whether the executrix should be replaced by an independent solicitor.

2. The estate is that of Monica Lane (the **"Deceased"**), who died on 8 May 2019. She had three children, David, Susan and Peter, the last of whom predeceased her leaving two children, Daniel and Georgia. David died on 17 January 2021 and the claimant, Karen Lane, is David's widow and personal representative of his estate. Susan is the first defendant and Daniel and Georgia are the other defendants.

3. During her life, Monica and David formed a trading farming partnership, embodied in a 12 October 2002 partnership agreement (the **"Partnership Agreement"**). That agreement provided that the partnership would dissolve on among other things permanent incapacity of a partner.

4. By her last will, dated 23 February 2013 (the **"Will"**), Monica left David her "*share and interest*" in that partnership (the **"Gift"**), among other assets. She named Susan and David as her executors. She left other assets to Susan, Daniel and Georgia, and the three of them and David were named as the beneficiaries of the residuary estate.

5. Susan contends that Monica became permanently incapacitated shortly before her death, causing the dissolution of the partnership, in turn causing the Gift to fail by ademption on Monica's death and fall into residue.

6. Karen and Susan have a poor relationship. Against that backdrop, Karen seeks a declaration that the Gift has not adeemed (the **"Construction Claim"**), and the replacement of Susan as executrix by Lorna Spear of Birketts LLP, an independent solicitor (the **"Removal Claim"**), together with an ancillary order that Susan provide information and documents as outgoing executrix in the form of a witness statement, and a costs order against Susan. These claims are contested by Susan. Daniel and Georgia have been joined as to be bound, but have played no active part in the proceedings, save for expressing support for Susan remaining in office.

7. The Removal Claim was started as a Part 8 claim and has proceeded to a trial on the written evidence. Therefore, I am not asked to resolve any disputes of fact. It was originally listed for a final hearing before Deputy Master Arkush on 20 July 2023 with a time estimate of two hours. He ordered that it should have a time estimate of 2 days, to be heard by a High Court Judge. Since the claim was commenced, Susan has obtained a grant of probate, in January 2023. The value of the estate shown on the grant is just under £2.5m.

8. I have been ably assisted by both Counsel.

9. In my judgment, the Construction and Removal Claims succeed, for the reasons set out below.

The Construction Claim

The partnership and Will

10. Monica Lane was originally in partnership with her husband, Norman. The partnership was called N.J and M. Lane. Norman died on 13 September 2001 and passed his share and interest in the partnership to their son David through his will.

11. Monica and David started a new partnership under the same name. Under the Partnership Agreement entered into just over a year later, David was responsible for the general farming operations and Monica for administration and book-keeping. David was entitled to a £13,000 salary and all profits after payment of salary were to be divided, initially so that David received 40% and Monica 60% but this was amended so that David received 60% and Monica 40%. The partnership had no land of its own, but operated on Nether Hall Farm, which was held as tenants in common by Monica and David.

12. Monica prepared homemade wills in 2005 and 2013. Under the latter, Monica gave:

    (1) to David:

        (i) subject to two exceptions, her interest in the land at Nether Hall Farm (cl.(a)(i));

        (ii) the farmhouse, which was solely owned by Monica (cl.1(a)(i)); and

        (iii) "*[m]y share and interest in the trading partnership known as N.J and M. Lane*" (cl.1(a)(ii)) (the Gift);

        (iv) "*together with any Defra payments and entitlements*" (cl.1(a)(ii));

        (v) "*[m]y trading business at Colliers Farm…other than the car*" (cl.1(a)(ii)); and

        (vi) "*[a]ll single farm payments and entitlements from M.Lane business account*" (cl.1(a)(ii));

    (2) to Susan:

        (i) Monica's interest in two pieces of land at Nether Hall Farm;

        (ii) Monica's car; and

        (iii) a half share in Nether Hall bungalow (cl.(b));

    (3) to Daniel a quarter share in the bungalow, to be held on trust until he reaches 25 (which he has) (cl.(c)); and

    (4) to Georgia a quarter share in the bungalow, to be held on trust until she reaches 25 (which she has) (cl.(d)); and

    (5) the property in her possession at Colliers Farm and any held as tenants in common with Gary Elsden and P. Stevens (as to 1/2 for Monica and a ¼ for each of them) together with all rights of way to be divided as follows: "*my part of Spragg's Wood*

[which forms part of Collier Farm] to Daid [sic] Lane. The remainder to be divided on half share to David Lane and one half to Susan Lane" (cl.(e)).

(6) All shared property held as tenants in common was to "*be offered to the other legatees before being offered to anyone else*" (cl.(f)).

(7) The nil-rate band was split between Susan, Daniel and Georgia in equal shares with "*any additional tax liability to be met half share David Lane half share Susan Lane*" (cl.4, which should probably be cl.(g)).

(8) A third of the residuary estate was given to David, one third to Susan, and a sixth to each of Georgia and Daniel. Susan's evidence is that she has varied the destination of that part of the residue that would pass to her if the Gift adeemed, so as to pass it to Daniel and Georgia instead.

13. The gifts to David of her half share in the land at Nether Hall Farm and of the farmhouse are the most valuable gifts in the Will, so David is by far the primary beneficiary under the Will. The probate valuation provided in March 2020 put the value of Monica's interests in the land at Nether Hall Farm, Nether Hall Farmhouse, and the farmyard and farm buildings at just under £1.4m. In contrast, the value of the bungalow was £200,000 and the value of Monica's interest in part of Spragg's Wood just over £30,000.

14. The Partnership did not comprise land, but rather machinery and a capital account. The probate valuation conducted in 2019 put its total value at just over £220,000. Mr Burton explained in submission that the Defra payments and entitlements referred to in cl.1(a)(ii) were payable to Monica and David as the people farming the land, and this was not challenged by Mr Blackett-Ord.

Karen's arguments

15. I am asked to proceed for the purposes of the Construction Claim on the assumption that Monica did become permanently incapacitated before her death, but Karen does not admit that she did. I am content to proceed on this basis.

16. Mr Burton, instructed by Karen, runs two arguments. His primary argument is that even if the partnership entered dissolution before Monica's death, she still had a "share and interest" in it at the date of her death, so the Gift does not adeem. Rather Monica's 40% share in the partnership passed to David.

17. If, contrary to Mr Burton's primary argument, dissolution of the partnership before Monica's death without a replacement partnership would cause the Gift to adeem, then Mr Burton argues as a fallback that the partnership was replaced by a new partnership between Monica- acting through her LPA attorney Susan- and David, because Susan and David proceeded on the basis that the partnership was continuing. Therefore, he argues that Monica had a share and interest in the partnership at her death through this route if his primary argument fails.

Relevant legal principles

18. The relevant principles of interpretation of the Will and the doctrine of ademption were common ground before me.

19. The general principles of interpretation applying to a will are the same as those applying to a contract: *Marley v Rawlings* [2015] AC 129 at [22]. As explained at [19] of *Marley*, "*[w]hen interpreting a contract, the court is concerned to find the intention of the party or parties, and it does this by identifying the meaning of the relevant words, (a) in the light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but (b) ignoring subjective evidence of any party's intentions. In this connection, see Prenn at 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen [1976] 1 WLR 989, per Lord Wilberforce, Bank of Credit and Commerce International SA v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30*".

20. A specific gift fails for ademption if its subject matter has ceased to exist as part of the testator's property at the date of his death, or its nature has fundamentally changed: Theobald on Wills (19th ed, 2021) at [41-001], citing *Jenkins v Jones* (1866) 2 L.R. 2 Eq. 323. A specific gift is adeemed if at the testator's death the subject matter of the gift has been destroyed or converted into something else by the act of the testator or by duly constituted authority: Theobald at [41-001], citing *Re Slater* [1907] 1 Ch 665 (CA). If the property "*changed in name or form only,…yet [is] substantially the same thing*", then there is no ademption: *Slater* at 672.

21. The doctrines of interpretation and ademption fit together in the following way. One needs first to interpret the gift to determine what its subject matter is. Then the doctrine of ademption requires one to ask whether the subject matter of the gift has ceased to exist as the testator's property or its nature has fundamentally changed.

"Share and interest"

22. A helpful place to start is to examine whether a "share and interest" in a partnership has a natural and ordinary meaning, and if so what it is.

23. The ultimate question is what is meant as a matter of construction by the phrase used *in this will*. However, "shares" and "interests" are terms sometimes used in partnership case-law and textbook discussion, so it is sensible to begin by explaining how they are so used.

24. The starting point for partnership law purposes is that a partner has a bundle of rights in respect of a partnership.

25. As Lindley & Banks on Partnership (20th ed, 2022) puts it at [19-01], which of these rights one marks out as forming part of a partner's "*share*" depends on what context one is using that term in. I bear that firmly in mind.

26. Where one is focusing on the partner's economic rights, it is common to talk of a person having a "share" in a partnership to reflect, or at least to include, his entitlement to a proportion of the net proceeds of sale of the assets after meeting all liabilities. As Lord Lindley observed:

> "*What is meant by a share of a partner is his proportion of the partnership assets after they have all been realised and converted into money, and all the*

> *liabilities have been paid and discharged. This it is, and this only, which on the death of a partner passes to his representatives, or to a legatee of his share; which under the old law was considered as bona notabilia; which on his bankruptcy passes to his trustee.*" (Lindley & Banks at [19-08]; see to similar effect the end of [19-16]).

27. Lord Reed stated in *Duncan v The MFV Marigold PD145* (2006) 35 SLT 975 (OH) at [51] that the share of a partner had long been understood to have this meaning and went on to summarise that "*the amount due in respect of the outgoing or deceased partner's share is therefore an amount which (unless otherwise agreed) is ascertained by a realisation of the assets and the payment of partnership debts: in order words, by a winding up*". The formulation of Lord Lindley was described as the "*classic definition*" by the Court of Appeal in *Sandhu v Gill* [2006] Ch 456 at [19].

28. Similarly, one commonly refers to a partner having an "*interest*" in a partnership. Prior to dissolution, that has been described as an indefinite and fluctuating interest consisting of the right to a proportion of the surplus after the realisation of the assets and payment of the debts and liabilities of the partnership: Lindley & Banks at [19-12] to [19-14]. At [19-13] to [19-14], Lindley & Banks relies on the decision of the Supreme Court of Western Australia in *Rojoda Pty Ltd v Commissioner of State Revenue* (2018) 368 ALR 734 at [107]-[110]. At [108], Murphy JA explained that "*[a] partner's interest in a partnership, while the partnership is being carried on, or is in the course of being wound up, is an equitable chose in action. The chose in action is a right to a proportion of the surplus after the realisation of the assets and payment of the debts and liabilities of the partnership*". The same analysis was taken on appeal: [2020] HCA 7 at [21], and the description of Lord Lindley set out above described as "*a famous description that encapsulated the equitable principles*": [34].

29. The foregoing are ways of describing some of the economic rights of a person who enters into partnership. In some structures, the content of these rights is simple, such as the rights of a beneficiary under a fixed trust. In other cases, it is slightly less straightforward to describe, such as the economic rights of a beneficiary or object of a discretionary trust, one aspect of which might describe as the right to be considered for distribution of benefits. A partner's economic rights in a partnership are if anything slightly more difficult still to capture, as the discussion in the High Court of Australia in *Rojoda* at [27]-[35] of the judgment helpfully brings out. Hence descriptions of the sort above to try to capture at least some of these economic rights.

30. I refer to these as economic rights because there are other rights that individuals can have in structures or collectives, like rights to information, or- where they are in charge of running the structure- rights of management. Of course, those are also concerned with the structure running smoothly so as to generate money. However, the rights we are concerned with here are those that focus on what the person in question is entitled to receive financially from the arrangement.

31. As can be seen from the above, "*share*" and "*interest*" are two ways of describing similar aspects of these rights. One typically uses the language of someone's "share" when describing the size of the proportion that a member is entitled to, because one uses it when an individual has a stake of less than 100%, as one seeks from the extract from Lindley & Banks [19-08] above, and interest is commonly used as a general description of the chose in action that the partner has, as one sees from the extract from

Rojoda above. The word "*interest*" can connote the *proprietary* interest that the person has in relation to the partnership assets at a particular point, but I consider that it is common to use the category "*share and interest*" in a broader sense.

32. The definitions above focus their attention on what the partner will receive at the end of the partnership. As Lindley & Banks explains, if one is using "*share*" to capture more exhaustively all of a partner's rights, those rights will also include all rights- whether economic or otherwise- that they have under the partnership agreement and under the general law while they are a continuing partner: [19-01]. Obvious examples of such economic rights would be a right to draw a particular salary under the partnership agreement or the right to share in profits, both of which the partnership agreement provided for here. However, the point remains that such a description of a share *includes* what the partner is entitled to receive on dissolution.

33. In order to evaluate what rights a departing partner has from the point of dissolution, whether one calls them a partner or ex-partner, one must deal with what dissolution is. Unlike for a company, dissolution does not mark the moment of extinction. Instead the partnership must be wound up, and the remaining partners are vested with continuing authority by section 38 of the Partnership Act 1890 in respect of the partnership assets to allow them to "*wind up the affairs of the partnership*". Where there is a leaving partner, it is the remaining partners who will be vested with such authority, and where they all determine to end it without any one of them leaving the others behind, all of them will be vested with such authority and collectively wind up the partnership.

34. Therefore, it is the winding up process that produces the final cash sum that the departing partner is entitled to.

35. In my judgment, one can still speak of someone having a share or interest in a partnership while the winding up process is on foot. The share or interest is realised through the winding-up process which process produces, absent agreement to the contrary, a cash sum. Rather than a share of or interest in a partnership disappearing on dissolution, it crystallises, because dissolution marks the time from which it must be turned into a cash sum through the winding up process.

36. Mr Blackett-Ord contended that section 43 of the Partnership Act converts the share into a debt at the point of dissolution, such that no share or interest remains from the point of dissolution on. That section provides:

> "***Retiring or deceased partner's share to be a debt***
>
> *Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death*".

37. While that section has given rise to debate about whether it applies to a case of general dissolution, I do not need to decide that point for present purposes because it was common ground before me that it does and I am content to proceed on that basis.

38. I reject Mr Blackett-Ord's submission. I consider that it is natural to describe the departing partner as having a share and interest while the winding up of the partnership

is being conducted. Whether the particular will in the present case is describing the position in this way is a matter for the following section, given the importance of the context in which the phrase is being used. My reasons for rejecting Mr Blackett-Ord's submission as are follows.

39. First, as set out above, a share or interest includes what a partner ultimately gets out of a partnership, and is sometimes used to mean simply what the partner is entitled to get out of the partnership. The partner will receive that through the winding up process on dissolution, so viewed from that perspective it would make little sense if the share or interest disappeared at the moment of dissolution.

40. Second, I do not consider that the purpose of s.43 is to destroy the share or interest at the point of dissolution and turn it into a debt. Its purpose is subtly different. As Lord Reed explained in *Duncan*, an objective of the provision is to ensure that claims by an outgoing partner, or the representatives of a deceased partner, were subject to the limitation period under English law applicable to ordinary debts, with time running from the date of dissolution, and to make clear that the remaining partners are not trustees for the departing partner: [52]. As Lord Reed explained in that paragraph, the section gave statutory effect to the decision of the House of Lords in *Knox v Gye* (1871-72) LR 5 HL 656, in which Lord Westbury stated (at p.675) "*In deciding this case, it must be recollected that the representative of a deceased partner has no specific interest in, or claim upon, any particular part of the partnership estate. The whole property therein accrues to the surviving partner, and he is the owner thereof both in law and in equity. The right of the deceased partner's representative consists in having an account of the property, of its collection and application, and in receiving that portion of the clear balance that accrues to the deceased's share and interest in the partnership*". The final words make clear that it is natural to refer to the deceased's "*share and interest in the partnership*". Indeed, as I have explained above, Lord Reed endorsed at [51] in the context of his discussion of s.43 Lord Lindley's explanation of what the share of a partner means.

41. Third, it is an oversimplification to reduce the rights of the departing partner to a debt. s.43 does not go that far. Rather it states that the amount due in respect of his share shall be a debt. A departing partner has right to have the continuing partners account and to have the winding up conducted properly by the remaining partners to come up the figure that he is entitled to receive. Therefore, a departing partner retains a bundle of rights. Further, as Lord Reed explained in *Duncan* at [51], the debt is not a fixed debt at the point of dissolution, rather it is "*ascertainable through the process of winding up*", so it is a debt whose amount is produced by the winding up. Indeed, as Mr Blackett-Ord explained in submissions, the amount that the departing partner receives on winding-up may take into account the use by the continuing partners during winding-up of the departing partner's share of the partnership assets. That is one of the options provided for in s.42(1) of the Act.

42. Fourth and tied to the third point, Mr Blackett-Ord accepted that where all partners agree to bring the partnership to an end, so that there is no single departing partner, all partners have rights under s.43. To avoid the odd conclusion that none of the partners would have any share or interest in the partnership on dissolution, he contended that in that situation it was the fact that they had rights under s.38 to run the winding up that gave them an interest and distinguished their situation from that of the departing partner. However, in my judgment having the conduct of the winding up is not

something that is decisive in whether someone has a share or interest, at the very least when one is looking at the content of the partner's economic rights. One is looking for those purposes at what the partner will be entitled to get out of the partnership when the winding up process has been brought to a conclusion and their ancillary rights such as a right to account. That is a different matter from who is running the winding up. Whether Monica had a share in the partnership at her death does not turn on whether the partnership entered dissolution through an agreement to bring the partnership to an end or through her incapacity.

43. Fifth, as Lord Reed explains earlier in his judgment in *Duncan* when dealing with s.38, that is an example of the partnership continuing post-dissolution in a particular respect: [36]. In my judgment, it is once that winding up has been completed and the partners paid out that the partnership is in substance at a complete end for all purposes: see Lindley & Banks at [24-04]. Once that has happened, the partner no longer has any rights and his share has been turned into cash.

Construction of the Gift

44. The Will is a testamentary instrument seeking to transmit property to the next generation.

45. A testator can pass rights in respect of a partnership by will: Lindley at [26-72]. When he does so, the executor and beneficiaries will not step into his shoes as partner in an ongoing partnership. Rather his death will itself trigger dissolution of the partnership and- absent agreement to the contrary- the winding up process. Therefore, all the estate ever receives is the realised share in the partnership.

46. In my judgment, the construction of the Gift is straightforward here.

47. It is clear from the Will that Monica wished to divide up her assets between her children, with the gloss that in Peter's case his early death meant that she wished to pass those assets to his children instead. She wished her son to have the whole of the partnership of which she was in 40:60 partnership with him.

48. If she had died before she became incapacitated, this would have passed to David the sum that was produced for him through the winding up process, which would have been treated by s.43 as a debt from the point of death, rather than a right to continue to participate in the partnership. That is all that Monica could ever pass to David in respect of the partnership.

49. Therefore, in my judgment the reference in the Gift to the "*share and interest"* means passing on the rights to what will be received through the winding up. Accordingly, Monica still had a share at the date of her death because there was no completed winding up of the partnership and Monica had not yet been paid out. It is only when she had been paid out in full that she would cease to have a share and interest for these purposes. In practice Monica would no doubt expect David's share here to have been taken in specie by David so that he had the whole of the partnership assets and could continue as a sole trader.

50. I cannot detect any intention to draw a distinction between her economic rights that existed before dissolution of the partnership and those economic rights that existed on

dissolution. On the contrary, the natural reading of the Gift is that Monica wanted the value of her rights in the partnership to be passed to her son so that he would have the entirety of the benefit of it.

51. This is very far away from the classic case where a will refers to one asset, say a house, that is sold before death and thereby turned into another asset, namely cash. Here, the share and interest in the partnership is always, as the definitions set out above show, includes the right to receive the product of the winding up process.

52. Indeed, all the above reflects the position taken in Lindley & Banks at [26-79] that "*a specific bequest of a partnership share will be adeemed if the testator, after making his will, leaves the firm* ***and is paid out the value of that share***" (emphasis added), a position taken without the benefit of case-law authority but a position set out nonetheless in a respected text.

53. Mr Blackett-Ord prayed in aid *Re Beard* (1868) Vol LVIII NS 629. In that case, a partner had money owing to him at the date of his death in the form of a balance on a loan account. The question was whether the gift in his will passing his share and interest in the partnership assets included the debt due to him. North J held that it did not. Mr Blackett-Ord suggested that it followed that a debt owed under s.43 did not pass as a share or interest in the partnership. In my judgment, that does not follow. The reasoning of North J was that the phrase did "*not refer to a debt due from the partnership to him as an outsider*" (at 630; underlining added). In contrast, North J went on, "*[t]he words "share and interest in the partnership" seem to me therefore to be addressed to his share and interest in the clear net proceeds remaining after all the liability of the partnership are cleared of".* In my judgment, that supports my reasoning rather than telling against the proposition that the departing partner can have a share or interest in the partnership during winding up of the partnership because it suggests that the shares and interest is what you get at the end of the partnership following wind up.

54. In my judgment, the result I have reached accords with common sense, which is a further reason in support of it. It would be surprising and unfortunate if Monica's incapacity had the effect of turning part of her provision for one branch- David's- into residue and thereby upsetting the proportional split between the branches that she had in mind.

55. Further, for the reasons set out in the last section, it is also consistent with how the phrase "*share and interest*" is commonly used in partnership law, because such usage commonly includes what the partner will receive on exiting the partnership.

56. I reject the argument in the Defendant's skeleton that the provision in the partnership agreement for automatic dissolution on among other things permanent incapacity means that the partnership business would not survive for any long period of time, but be dissolved so that its value could be distributed amongst the wider family. The partnership agreement says nothing about what should be done with the value of the partnership in the event of its dissolution, and in my judgment the evident purpose of the provision for the Gift in the Will is that the whole of the partnership between her and David will pass to him on her death, rather than be distributed amongst the wider family.

57. Therefore, in conclusion I consider that Monica had a share and/or interest in the partnership at the date of her death within the meaning of the Will so that it does not adeem, because even if she was permanently incapacitated before her death, she still had a right to be paid out following the winding up of the partnership.

58. Any changes in the nature of the share at the moment of dissolution do not change it substantially or fundamentally, because the core economic rights to receive a sum produced by the winding up remain, as they would on death. Therefore, even if the property referred to in the Gift has changed in some respect, in my judgment it is not a sufficient change to engage the doctrine of ademption.

Fallback argument

59. Given my conclusion on the primary argument, I do not need to deal with this.

Removal

The legal test

60. s.50 of the Administration of Justice Act 1985 gives the Court the power in its discretion to appoint a person to act as personal representative in place of the existing personal representative. In the same way that the supervisory jurisdiction of the Court in relation to trusts is exercised to further the interests of the trust in question as a whole, so the touchstone under s.50 of the Administration of Justice Act is what is in the interests of the beneficiaries of the estate as a whole. Those principles were set out in *Letterstedt v Broers* (1884) 9 AC 371 (PC) in the trust context and in *Thomas & Agnes Carvell Foundation v Carvell* [2008] Ch 395 Lewison J (as he then was) accepted that the same principles applied under s.50.

61. While the cases helpfully summarise the key criteria to which the Court should have regard, there is- as Chief Master Marsh emphasised in his 2020 annual lecture to the Association of Contentious Trust and Probate Specialists- a danger that lists of criteria obscure the essential simplicity of the test in this area.

62. The Court is not, and this is important in the present case, being asked to find for one party or the other. It is examining what it considers is in the interests of the beneficiaries as a whole to decide whether and how to exercise its s.50 powers.

63. It was submitted orally by Mr Blackett-Ord by reference to [44] of *Carvell* that it was necessary to show misconduct that endangered the trust property. That is not the case. To take one example, even without misconduct, one can reach a point applying the general touchstone where the breakdown of the relationship between the executor and beneficiary means that the due administration of the estate is unlikely to be achieved expeditiously and the personal representative should be removed. If, for whatever reason, it has become impossible or difficult for the administration to be completed by an existing personal representative, then an order for their removal will usually follow: Williams, Mortimer & Sunnucks on Executors, Administrators and Probate (22nd ed, 2023) at [53-20], in a passage quoted with approval in *Re Steel, Angus v Emmott* [2010] WTLR 531 at [108]. Of course, as stated in *Carvell* at [47] by reference to *Letterstedt*, friction or hostility is on its own not enough. Rather one must enquire as to what effect if any it is having on the administration of the estate. As Williams puts it, the overriding

consideration is whether the administration of the estate is being properly carried out or, putting it another way, the welfare of the beneficiaries. Therefore, to take an example, acts or omissions that evidence a want of proper capacity to execute their duties may justify removal.

64. Both parties proceeded on the basis that the claim fell to be dealt with on the written evidence as directed by Deputy Master Arkush, which reflects the normal position set out in the Chancery Guide. The parties accepted that this meant that I should not make disputed findings of fact, save where the factual position was so clear cut that it could be determined without oral evidence. It was common ground that if I reached the conclusion that a professional executor was appropriate, that Ms Spear was a well-qualified choice, although Mr Blackett-Ord drew attention to the cost of introducing a professional executor such as her and submitted that this would not be appropriate.

The relevant background

65. I can summarise the relevant facts shortly. I shall start with the dialogues between Karen and Susan, and then turn to the composition of the estate. In the evidence before me, each of Karen and Susan cast the other as having acted improperly. Karen alleges that Susan has acted wrongfully and in bad faith in a significant number of respects in relation to the administration of Monica's estate and in matters related to it, and Susan alleges that Karen has undertaken a course of conduct designed to undermine every effort of Susan to administer the estate. However, as set out above it was common ground before me that I should not make findings of fact on these disputed factual points, at least unless it was clear what the true position was without needing to have oral evidence.

66. The relationship between David and Susan had deteriorated in the lead up to Monica's death, and this continued after her death, reflecting itself in some forceful correspondence between their respective solicitors in 2020, largely concerned with the validity of the Will.

67. On being informed of the 2013 will, Susan was suspicious of how it had come about, because it made David by far the principal beneficiary.

68. This led to the following actions on both sides. Susan through her solicitors set out concerns that the Will might be invalid for a number of reasons, and lodged a caveat. This included incapacity, despite the fact that Susan had proceeded prior to Monica's death on the basis of a LPA signed a number of years after 2015 by Monica, and therefore Susan had proceeded on the basis that Monica had sufficient capacity for that LPA to be valid. I find it difficult to see the logic behind an incapacity allegation in respect of the 2013 will in such circumstances. There was also an allegation of undue influence against David, which Karen said that David found extremely wounding. These allegations were not pursued after David's death. On David's side, he refused through his solicitors to provide an original of the will so that it could be considered by a handwriting expert, which was not a helpful stance to take.

69. A probate valuation was conducted by Peter Crichton in early 2020 and signed in March 2020.

70. I infer that a IHT 400 form, estimating the inheritance tax payable on the estate, was submitted to the Revenue at some stage during this period, as it should be submitted within a year of death and it appears that sums were paid towards the IHT bill by May 2021. However, as I shall come onto below, the IHT 400 was not produced before me.

71. There were two other disputes being conducted through the 2020 correspondence that are relevant for present purposes. The first is that Susan took the position that the Gift had adeemed, whereas Karen contended that this was not the case. The second was whether business property relief or agricultural relief from inheritance tax should be applied for in respect of Monica's estate. Susan took the position that it was not available, whereas Karen disputed this. Susan's solicitors also mentioned that they had advised her that if the Will was valid, questions would arise in respect of its interpretation, particularly in relation to the inheritance tax liability and where it would fall.

72. David fell ill during 2020 and died in January 2021.

73. Following his death, Karen contended through her solicitor's correspondence that Susan should not take a grant of probate because of a conflict of interest through her challenges to the 2013 will.

74. Karen sought to have herself appointed personal representative and took a number of steps to deal with elements of the estate. She accepts now that she should not have done so, although it is common ground before me that she did not do so for her personal gain. She contends that she did so in order to seek to have the estate administered, for example by seeking to have some of the national savings certificates encashed and used to pay part of the IHT bill to HMRC in May 2021. There was also a continued refusal on her part to provide an original of the Will for the purposes of Susan obtaining probate.

75. The solicitor correspondence continued through summer and autumn 2021. Karen accused Susan of failing to respond to letters sent between June 2020 and April 2021, and Susan made counter-allegations in her response. Karen accused Susan of taking improper steps to interfere with her use of certain of the properties and assets, and Susan in response accused Karen of interfering with the administration of the estate.

76. By their 12 October 2021 letter, Karen's solicitors suggested among other things that if Susan objected to Karen becoming a personal representative, the sensible solution was to appoint a local solicitor as independent executor rather than Susan, or alternatively that there be two independent executors, one from Susan's solicitors and one from Karen's. A Court application was threatened, but the possibility of mediation was floated, and Susan's solicitors suggested in response that a mediation would be appropriate. That mediation took place in May 2022, but it was unsuccessful.

77. In October 2022, Karen's solicitors wrote a detailed letter of claim setting out the Construction Claim and Removal Claim, and asking in some detail for clarity about what if any agricultural property relief (**"APR"**) or business property relief (**"BPR"**) had been claimed in relation to the inheritance tax due. There was no response to that at the time, and I have not seen any evidence of a response to the questions about APR or BPR since.

78. In January 2023, Susan obtained probate. She did not inform Karen of this at the time but mentioned it in her March 2023 witness statement.

The estate

79. No comprehensive details were put before me by Susan of the precise current state of the estate. I asked a number of questions but Susan and her representatives were unable to assist and there was no up to date detailed breakdown of the estate's position in the evidence before me. Pulling together the references in the evidence, the details I have are as follows:

(1) The value placed on the estate in the grant of probate is just under £2.5m.

(2) The expert valuation of the real property interests in March 2020 was c.£1.8m, to which one must add c.£450,000 of cash in bank, national savings certificate, AIM portfolios and similar assets, the value of the partnership interest which was put at c.£60,000, and seemingly also share certificates of around £150,000, which takes one roughly to the £2.5m set out above.

(3) Susan explains in her evidence that £327,000 odd of the £388,7000 odd IHT due has been paid. There is around £60,000 still to be paid on the basis of that calculation. IHT on land can be paid in yearly instalments, hence the amount presently remaining outstanding. That £327,000 has been paid from the residuary estate.

(4) In August 2023, Susan's solicitors wrote saying that she was running out of liquid assets to pay the IHT and therefore asked for Karen to provide a number of share certificates for shares in Monica's estate worth around £150,000 in total. I understand these have been provided. It appears that the IHT bill has been met in the first instance out of the assets in the residuary estate.

80. It appears to me that:

(1) the £450,000 originally in Monica's bank accounts has been used up, or all but used up, on the £327,000 IHT and other payments.

(2) there is around £150,000 of liquid assets plus possibly a little left of the bank accounts; and

(3) There is around £60,000 of IHT left to pay.

81. The August 2022 IHT 301 forms exhibited to Susan's evidence, which are forms whereby HMRC sets out the IHT to be paid, include a value for the properties which is c.£1.1m lower than the valuation obtained in 2020. Therefore, it appears that some form of relief has been claimed. However, there is nothing in evidence as to the detail of this, such as what form of relief or what precise assets this is in respect of, and Susan and her representatives were unable to assist me with this at the hearing.

The stance of the parties

82. Karen makes three general arguments for Susan's replacement, namely that (a) that her relationship with Susan has broken down completely and irretrievably, that Susan bears

her significant animosity, and that this has all impeded the past administration of the estate and will continue to impede its future administration, (b) that Susan is in a position of conflict of interest by virtue of the interest of her and her branch in the estate, and (c) that Susan has delayed significantly in obtaining probate and in the administration of the estate. A number of more specific allegations are made, which I consider fall most readily under arguments (a) and (c) above, such as (i) a repeated failure to engage with the points that Karen's solicitors have made on ademption of the Gift, (ii) refusal to engage with Karen in relation to APR and BPR, and (iii) that there are a number of administration issues that have not been dealt with yet, could lead to disputes between Susan and Karen and will in any event take far longer to deal with than they should if Susan remains in post.

83. Susan resists this, and is supported in this by Georgia and Daniel, both of which have stated in letters to the Court that they support Susan remaining as executrix. In outline, Mr Blackett-Ord submitted that the administration of the estate is largely completed, that it has been conducted significantly in practice by Susan's solicitors who can be trusted to do so, that any future disputes can be brought back to Court if necessary and will need to be irrespective of who the executor is, and that the problems in the estate had been caused by Karen's actions. Susan also states that had Karen not brought the present proceedings, Susan would have sought the Court directions on whether the Gift adeemed.

Evaluation

84. As set out above, the prism through which I evaluate whether to remove Susan and replace her with a professional administratrix is that of the interests of the beneficiaries as a whole.

85. I have a number of serious concerns about how the estate administration has proceeded to date in Susan's hands. There are a number of steps that should have been taken which have not. I have explained above that there are a number of steps that Karen has taken in the past that she should not have, but the focus for the purposes of removal must be on Susan because she is the executrix.

86. First, Court directions should have been sought by Susan as the personal representative some time ago if she took a different view on whether the Gift adeemed. It was clear from 2020 there was a serious dispute over this which impeded administration of the estate. While Susan states that she would have sought directions herself had Karen not done so, the fact remains that it was Karen who had to bring it to Court nearly 3 years after the dispute emerged in 2020. While the sums at stake only form a relatively small proportion of the total value of the estate, the issue needed resolving to bring clarity to whether David (and after his death, his estate) would become sole owner of the former partnership assets. It was submitted on Susan's behalf that Susan might have wished to focus on getting probate first and that she would not have standing before that point, but in my judgment she could have brought the matter to Court before then, whether as personal representative or (like Karen) as a beneficiary.

87. Second, there was no response to the detailed letter of claim. An executrix should have responded to such a letter. Similarly, there was no response that I have seen to the detailed exposition of Karen's arguments on ademption in the March 2022 letter from her solicitors.

88. Third, the letter of claim suggests that no explanation had been provided by Susan to Karen of whether APR and BPR was being claimed, or in respect of which assets. No evidence was submitted to contradict this, no evidence was provided of Susan or her solicitors explaining the position since that point, and no explanation was provided to me at the hearing. The extract from the IHT 301 exhibited to her evidence does not answer this. I infer from the figures in it that some relief has been claimed, but beyond that it is not possible to tell. Susan is on notice that Karen considers APR and BPR an important issue, and one can understand that given the potential financial impact of that. For example, that issue was raised in detail in the October 2022 letter of claim and in Karen's evidence. Whatever Susan considers on advice to be the correct approach should have been communicated to Karen and there should have been clarity before me as to what reliefs had been claimed and on what basis. I was also concerned that Susan and her representatives were unable to assist me on the point at the hearing.

89. Fourth, I would have expected to have been provided with an up-to-date account of the estate and its assets by Susan, but none was provided. Mr Blackett-Ord explained on instructions that Susan left the administration largely to her solicitors, but whatever the cause I would have expected an executrix with her lawyers dealing with the administration of the estate to be able to explain what the current state of the estate is, particularly faced with an action for her removal on the grounds that the estate was not being administered properly and in circumstances where Karen had stated in her evidence that no adequate estate accounts had been provided and that Susan should explain precisely the assets and liabilities of the estate.

90. Fifth, as Karen contends, there are a number of potential challenges and flashpoints ahead. I remind myself that it has taken over three years- admittedly in part because of David's death in the interim- to resolve the ademption issue from it first being raised. I would expect it to be quicker in the future given the focusing of minds that the Court process will bring, but I can nevertheless see difficulties ahead in the administration given what has passed to date.

91. The potential issues are as follows:

(1) The interpretation of the sentence in cl.4 of the Will that "*any additional Tax liability to be met half share David Lane half share Susan Lane*". Mr Burton submitted that the meaning of this was not clear, and I did not take Mr Blackett-Ord to demur from this. On the contrary, Susan's solicitors had identified this as an issue in their 18 February 2020 letter. Neither party was willing to venture a particular construction before me, and no proposals or position have been set out in this regard by Susan as executrix. On this, and a number of other future flashpoints, Mr Blackett-Ord pointed out that Karen had not made any proposals of her own. However, in my judgment the responsibility for doing so is that of the executrix, having taken appropriate advice.

One possible meaning of the wording above is that the tax on all gifts is to be paid half by David and half by Susan, another that all tax is to be split between them. In any case, the IHT has been paid out of residue. Therefore, if- for example- the correct construction of cl.4 is that David's estate is liable for half of a part or all of the IHT, David's estate will be liable to reimburse other residuary beneficiaries- Georgia and Daniel- whose part of the residuary estate has been used to meet the tax. That will in turn give rise to a question of where that money will come from,

whether any property would need to be sold to meet it and if so which one. Similarly Susan may be liable to reimburse the other residuary beneficiaries.

In my judgment, it is concerning that three years on, there is no evidence before me of thought having been given to this by the executrix or her representatives. I think this could be a tricky issue to deal with, because no common construction of the wording used has yet been arrived at and this could if Susan and David do not have separate assets to deal with any balancing payments necessitate the charging or sale of properties.

(2) Karen submits that there could be a dispute in identifying the part of Spragg's Wood that is to pass to David's estate under cl.(E) of the Will, and that disputes could arise over how the division of the remainder is to be effected between David and Susan, specifically what property should be given to each to satisfy this division and how the executrix should decide this. I do not have any visibility as to whether there is any lack of certainty over the identification of the relevant part of Spragg's Wood. However, I can see that a dispute could arise over how the division of the remaining property should be effected, although the sums in question are relatively small, as set out above.

(3) Given that the IHT 301 implies that significant relief has been sought, I hope that a dispute over claiming BPR and APR can be avoided. However, given the lack of clarity over what precise has been taken to BPR and APR, there remains the possibility of a future dispute over this.

92. Sixth, it is accepted that one of the reasons why obtaining the grant was delayed was Susan's concerns expressed in correspondence over 2020 as to the validity of the 2013 will. I can understand why she may have wished to probe that issue given that David was the principal beneficiary, but my reading is that this has contributed to the souring of relations with David and Karen, and I have explained above that I find it difficult to understand the basis on which a capacity challenge fitted with Susan having conducted herself under a LPA executed after the date of the 2013 will.

93. I should mention finally that Karen expressed a concern in her evidence that Susan might seek to sell Nether Hall Farm, and Mr Burton submitted orally that this was a serious concern. Mr Blackett-Ord took instructions on this and explained that Susan had no intention of doing this.

94. Mr Blackett-Ord submitted that the above issues would be dealt with by the professionals advising Susan and that if Court guidance was needed on matters of estate administration, it would be needed irrespective of whether an independent professional executor was appointed.

95. However, in my judgment something needs to be done to ensure that the administration of the estate is conducted properly. The above matters taken cumulatively give serious concern as to the future administration of the estate in circumstances where I consider the past administration has been lacking in a number of respects. No proposals have been put to deal with any of the remaining matters since Monica's death by Susan and none were put in evidence, in skeletons or in submission at the hearing.

96. Four years have passed since Monica's death. There are a number of reasons why this has happened, including the intervening death of David, and matters were not helped by the failure to provide the original of the Will to Susan. However, the administration of the estate has been unsatisfactory in a number of respects during this period and I am sceptical from what I have seen so far that the remainder of the administration will be carried out promptly in a satisfactory manner.

97. Further, Susan- if she remains as executrix- will need to take a number of decisions in the future in circumstances where Karen and Susan have a difficult relationship and my impression from what I have seen is that each has a strong distrust of the other.

98. It is critical that the future administration of the estate does not proceed in the same way. I can see two ways forward. The first is to replace Susan with Ms Spear. The second would be to stand over the application to see whether the administration improves.

99. Mr Blackett-Ord ably put the case for dismissal of the application, stating that he would recommend that proposals be made on any outstanding points in say a month, and that liberty to apply could be inserted into any order I make to allow Susan to have a quick and inexpensive route to return to Court for guidance in the future if needed. I have taken that carefully into account in considering the second of the two options above.

100. In a case where there was a greater pool of liquid assets, I would have no hesitation in ordering the appointment of an independent professional administrator. Here the liquid funds are more limited. Further the other two residuary beneficiaries- Daniel and Georgia- support Susan, and I have taken their views carefully into account.

101. However, having reflected carefully, my clear view is that the beneficiaries would be better served by the appointment of an independent professional administrator:

(1) I have serious concerns about the administration of the estate for the reasons above and consider that it has not been administered as it should in a number of respects.

(2) There has been continual friction in the administration of the estate in the respects I have set out given the relations between Susan and Karen, and I think it is better to grasp the nettle and bring in someone who will certainly be able to deal efficiently with estate administration, rather than prolong the problems of the estate.

(3) In the long run, sticking with a set-up that is causing problems will likely incur the greater cost.

(4) If, as Mr Blackett-Ord submits, it turns out that the remaining issues are far less controversial than has been submitted on Karen's behalf, then the added cost should be modest, as a solicitor should be able to read into the matter quickly, as I have. However, if on the other had the matters are controversial, then having a professional leading the issue who is neutral will in my judgment significantly assist in resolving these problems. I do think that the likelihood of finding proposals that are acceptable without the need for further Court involvement is enhanced if they come from a specialist independent administrator.

(5) Further, given that Susan has been leaving the administration of the estate significantly to her solicitors in practice, there will be further legal fees incurred in the future whether or not Susan is replaced as executrix.

(6) If the IHT has been dealt with acceptably, and I note that the Revenue do not appear to have any difficulty with the position put forward by Susan, then I would hope that little cost would be occasioned in the new executrix considering this.

(7) While Susan, Daniel and Georgia are against this course of action, I consider this is outweighed by my concerns about the administration, and I take into account in this regard that David is the principal beneficiary of the estate and has a third interest in the residuary estate as part of that.

102. Given the limited liquid funds in the estate, I encourage the beneficiaries to cooperate with the new administrator and consider carefully any proposals she makes in order to minimise the costs to the estate.

103. I consider standing the matter over an unsatisfactory alternative, because it is not guaranteed to resolve the difficulties, there is no obvious particular date to stand it over to, it could well occasion further significant legal costs arguing over the removal position at the end of that period, and neither side suggested standing over as their primary position.

104. I would expect an ongoing administrator to take care to seek to make any necessary proposals to deal with the above points as soon as possible, no doubt after discussing with the family members.

105. The parties should seek to agree an order reflecting the above and dealing with the ancillary matters that should accompany the replacement of the executrix. Karen's stance on this is set out in her skeleton and accompanying draft order.