Neutral Citation Number: [2019] EWHC 3344 (Ch)

Case No: HC-2017-001248

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

In the Estate of Mrs Maudlin Bascoe (deceased)

The Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 9th December 2019

Before :

DEPUTY MASTER LINWOOD

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Between :

(1) Mr Bradford Barnaby **(2) Mr Alphonso Constantine Wynter** **(as the personal representatives of the estate of Mrs Maudlin Bascoe deceased)**	**Claimants**
- and - **Ms Patricia Johnson** **(also known as Patricia Smith)**	**Defendant**

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Mr Toby Bishop (instructed by Hodders Law) for the Claimants

The Defendant in person

Hearing dates: 26th, 27th and 28th November 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Deputy Master Linwood:

1. Mrs Maudlin (also known as Madline) Bascoe ("Mrs Bascoe" or "mother" according to usage) died on 29th August 2015, a few days before what would have been her 97th birthday. She had worked as a seamstress after her arrival in London in the 1960s from her place of birth, Jamaica. One of her four children predeceased her; Gresford Alexander Williams, who died on 21st October 2004. One died after her; Beverley Smith, on 7th March 2017. Her surviving son is the First Claimant ("Mr Barnaby") who is also the co-executor and residuary beneficiary of her estate. Her surviving daughter, Patricia Johnson, also known many years ago as Patricia Smith ("Miss Johnson") is the Defendant.

2. Mr Barnaby has three children; Wayne, Suzette and Keniely. Miss Johnson has with her former husband Owen Kerr three children as well – Elaine, Chantelle and Christopher. Beverley Smith had one child, Robert Williamson. Gresford Williams had one child, Deniece Williams.

3. The Second Claimant ("Mr Wynter") was Mrs Bascoe's solicitor for some 17 years before she died. He is the co-executor and draftsman of her wills from 1988-2005. He takes a neutral position in these proceedings.

The Claim in Essence

4. This claim is brought to propound Mrs Bascoe's last will dated 27th April 2005 ("the 2005 Will"). Miss Johnson disputes the validity of the 2005 Will, whereunder she is to receive a pecuniary legacy of £100. She initially in her first Defence disputed the validity of her mother's previous will executed on 15th October 1992 by which she was to receive £10,000. However, at the hearing before Deputy Master Lloyd on 21st May 2019 Miss Johnson's counsel conceded the validity of the 1992 will. Paragraph 4 of the Order of Deputy Master Lloyd of 21st May 2019 provides "*The claim is to proceed on the basis that there is no challenge to the validity of the 1992 Will, …"*. Miss Johnson did not appeal neither that Order. Nor did she apply to withdraw that admission.

5. The issues I am to determine as to the 2005 Will, as set out by Deputy Master Lloyd in his said Order are:

    a) Testamentary capacity;

    b) Undue influence by Mr Barnaby;

    c) Forgery of Mrs Bascoe's signature;

    d) Want of knowledge and approval by Mrs Bascoe of the terms of the 2005 Will.

6. Below I summarise the witness and documentary evidence as to the various wills and the medical records. I then summarise the evidence of the 9 witnesses who were called. I next turn to the law, my findings of fact for each issue and my decision. First

however there is a discrete matter I should deal with, namely the participation of Miss Johnson in the trial. Mr Bishop submitted that Miss Johnson is currently in breach of the order of Deputy Master Henderson of 23rd October 2019 that she should file and serve in a witness statement evidence as to "*…any will or copy of a will or instructions for a will…"* failing which she be debarred from defending, subject to any order I may make.

7. Miss Johnson only filed evidence regarding an alleged will of 2013. Mr Bishop in his helpful skeleton has set out other breaches by her of Orders of this Court but states that Mr Barnaby does not oppose relief in circumstances where it appears this arose from her misunderstanding. In summary, there is no application for relief, and on the first limb of *Denton v TH White Ltd* [2014] EWCA Civ 906 this is a serious and significant breach. There is no explanation so I turn to all the circumstances, including those matters set out at CPR 3.9. Most importantly, as Mr Bishop submits, the Claimants have suffered no prejudice and have prepared for a defended trial.

8. On that basis I think it important to avoid at this very late stage any prospect of satellite litigation if I found Miss Johnson should not participate in the trial; to do so would in my judgment be contrary to the Overriding Objective. It would amount to unfairness to Miss Johnson if she was unable to address me on her challenges to the 2005 Will, those challenges being identified and crystallised at an early stage in these proceedings. At the end of Mr Bishop's opening I said that the trial would proceed and I would give my reasoning in this judgment.

The creation of the Wills

9. Mr Wynter's unchallenged evidence is that Mrs Bascoe first approached his firm, Hallmark Carter Atkinson Wynter, subsequently Hallmark Atkinson Wynter ("HAW") in 1988 to make a new will, to replace one made with another firm of solicitors. Both the latter will and that drawn up by him were he believes destroyed long ago. HAW were local to Mrs Bascoe, practising in Brixton from premises on Brixton Road. Mrs Bascoe at all times lived at 29 Lambert Road, Brixton Hill, which was a property owned by her.

10. In 1992 Mrs Bascoe instructed Mr Wynter to draft a new will, by which she left a number of pecuniary legacies to members of her family, including £10,000 to Miss Johnson. A Mr Peter Winn was appointed executor. Mr Wynter and Ms Fay Watson, receptionist at HAW, were the attesting witnesses on 15th October 1992.

11. An attendance note by a member of Mr Wynter's firm records that on 22nd January 2002 Mrs Bascoe called in to their offices to discuss her will and transfer of her above property into the names of herself and Gresford. Nothing more seems to have happened as to the will until on 8th July 2003 Mrs Bascoe met with Mr Wynter and asked him to redraft her will, by which Gresford was to receive £109,000, Bradford £75,000 and each of her daughters, Beverley Smith and Miss Johnson, £4,000.

12. Various attendance notes then set out how Mrs Bascoe changed her mind as to the pecuniary legacies which, one note records, were increased or restored for Beverley Smith and Miss Johnson to £10,000 each. This will appears never to have been executed. Clause 14 is headed "*EXPLANATORY NOTE"* and states "*I have deemed it prudent to place within my will a note explaining the disparity in the amounts that I*

have left to my children and in particular the pecuniary legacies to my daughters Beverley and Patricia. Both my daughters, Beverley and Patricia, have shown very little care and concern for me in my later years and in particular they have both been rude, unpleasant and in some instances physically violent and abusive towards me and have verbally expressed their lack of care and concern with such statements as 'you should be placed in a home and dead in there'. I therefore have no desire that they should benefit from my estate over and beyond the legacies I have made in this will."

13. The above reflects the note in HAW's undated Will Questionnaire form completed in manuscript by Mr Wynter. Then on 14th April 2005 Mr Wynter wrote to Mrs Bascoe following, as he put it, "*...numerous conversations with you and your son, Bradford, in relation to your affairs generally under the following headings:"*.

14. Under the heading "*Your Will*" he said this " *Although I have tried to take instructions from you on more than one occasion as to your wishes, your instructions are far from clear and if you require, I will again attempt to take clear instructions from you with a view to updating your will so that it accords with your wishes"*.

15. Mr Wynter also said he had prepared a fresh Enduring Power of Attorney in favour of Mr Barnaby which he would go through with her when he attended her at her home. He concluded by saying he looked forward to meeting with her *"...on Tuesday."*

16. There are no attendance notes in evidence as to the drafting of the 2005 Will in, it appears, April 2005. The differences compared to the draft 2003 will include Mr Barnaby replacing Gresford Williams as executor, the removal of a long specific legacy clause and some alterations in both amounts and individuals who were to receive pecuniary legacies. Ms Johnson's legacy was to be £100 and that of Beverley Smith, £500. Subject thereto, all Mrs Bascoe's assets were bequeathed to Mr Barnaby.

17. The "*EXPLANATORY NOTE"* at paragraph [12] above appears in exactly the same terms at Clause 12. The attestation clause is in the usual form. The will was executed on 27th April 2005. Ms Jayne Middleton-Albooye, solicitor, and Ms Fay Watson, receptionist, witnessed Mrs Bascoe's signature in circumstances I will set out in detail below.

18. Mr Robert Williamson, the son of Beverley Smith and grandson of Mrs Bascoe, said in an undated witness statement delivered to the Claimant's solicitors on 16th October 2019 that "*Minal of Ziades Solicitors"* (sic) gave him a will dated 2013 and that after Mrs Bascoe died she and Mr Wynter demanded its return. That must be a reference to Ms Manal Fouad of Ziadies Solicitors, who had ceased trading in 2015.

19. Fortunately the file maintained by Ms Fouad whilst she was at Ziadies was located and is in evidence – although it does not appear to have been before her when she made her witness statement. In essence, Mrs Bascoe did see Ms Fouad in 2012 to make a new will but it did not proceed either then or in 2013 as Ms Fouad obtained medical evidence that Mrs Bascoe did not have capacity, as I set out in more detail below. Further, there is no evidence on the file of any drafts being produced.

The medical records

20. I now turn to the medical records in evidence with regard to Miss Johnson's allegation that her mother lacked capacity when she made the 2005 Will – para.2 of her first Defence. Further, in her first witness statement dated 10th August 2017 she alleged that her mother had suffered from dementia "*...since about 2001."* She also disputed that the records in evidence are actually those of her mother as the date of birth – stated to be 4th November 1918 – is constantly wrong.

21. Mrs Bascoe registered with her GP practice on 8th May 1996, but there are some handwritten records going back to 1985. The typed or computer based records start on 5th December 1997 and appear comprehensive and unbroken. I have no doubt that these are the medical records of Mrs Bascoe as:

    i) Her address of 29 Lambert Rd is constant throughout the records;

    ii) The notes refer to "*daughter Patricia Johnson"* and with especial frequency to "*grandson Robbie"* and "*Robert Williamson, grandson…"*

    iii) There is a copy of her passport in the records with her proper date of birth stated.

    i) Her date of death is accurately set out in a fax from the nursing home where she died to which is attached a certificate of death from a doctor.

22. There is much more factual evidence I could recount to show these records can only be those of Mrs Bascoe so that Miss Johnson's allegation is fanciful and wholly unwarranted. As to capacity, the notes record that on 4th September 2008 Mrs Bascoe was discharged from in-patient care, the discharge letter mentioning confusion. This was after she had collapsed and was taken to hospital on 15th August 2008 – a Urinary Tract Infection was diagnosed.

23. Then on 5th September 2008 the notes record "*…family said long standing onfusion…"* (sic). The next entry in that respect refers on 6th November 2008 to a letter received from Lambeth Social Services "*…re: early onset of Dementia."* Mrs Bascoe was then 90 years old.

24. Next, a social worker is recorded on 17th November 2008 as stating that Mrs Bascoe needed to be referred for assessment of dementia. That was followed by a reference to a letter from Mental Health for Older Adults ("MHOA") re: *"probable vascular cognitive impairment"*. The summary records of her "Significant Past" then refer to Vascular Dementia on 4th February 2009.

25. A detailed explanation of Mrs Bascoe's mental health appears in a letter from Dr Funnel, Consultant Psychiatrist at MHOA to Dr Patel, Mrs Bascoe's GP, dated 20th May 2011, written following a request from him for an opinion as to whether she had capacity to donate a Lasting Power of Attorney. She says "*Our records on Mrs Bascoe go back to August 2008, when she was seen by a liaison psychiatry nurse…*[who] *indicates that family members gave a collateral history of having concerns about a decline in Mrs Bascoe's cognition for approximately the previous 6 months, although there were some inconsistencies in the timeline they gave regarding this."*

26. Dr Funnel refers to Mrs Bascoe being seen by her predecessor, Dr Price, in January 2009 who said "*…the family had reported a deterioration in Mrs Bascoe's memory over the past year, particularly in the past few months."* Dr Funnel then recounted what she had been told in some detail regarding the family dynamics especially concerning Mr Barnaby and the family's concerns that he was abusing her Power of Attorney by removing funds from her bank accounts. Mrs Bascoe told Dr Funnel that she did not want Mr Barnaby looking after her finances, she wanted that stopped and "*…this one here…"* (Mr Robert Williamson) to be her attorney.

27. Dr Funnel said that "*I felt she had capacity to revoke this power of attorney. In terms of taking out a new lasting power of attorney, this is a slightly more complex decision and I explained to Robert* [Williamson] *that I would like to see her again without him being present and with the actual…forms…so I can explain…before concluding whether she definitely retains capacity, or not, to donate another lasting power of attorney."*

28. Ms Fouad had concerns as to whether Mrs Bascoe had capacity to make a will. She wrote a comprehensive letter to Dr Funnel dated 23rd April 2012 requesting a report as to whether Mrs Bascoe on the balance of probabilities did or did not have testamentary capacity. Dr Funnel saw Mrs Bascoe on 17th May 2012 and reported by letter of 23rd May 2012. As to whether Mrs Bascoe could validly donate a new Lasting Power of Attorney she felt it was borderline and had therefore interviewed her on two further occasions. On those occasions she "*…was satisfied that she did still retain the capacity to do this in June 2011."*

29. As to testamentary capacity Dr Funnel said "*…I felt she was unable to fully understand the relevant information with regards to making a will and that she was unable to retain the relevant information even when this was given to her…I felt she lacked capacity to make a will in all the aspects involved with doing so, namely the nature of a will, the effects of making a will, the extent of her estate and the possible claims of others."*

30. To summarise the notes and reports record;

    i) The family felt confusion went back to early in 2008;

    ii) The diagnosis of vascular dementia was made by February 2009;

    iii) Mrs Bascoe had capacity as of June 2011 to make a Lasting Power of Attorney;

    iv) She did not have capacity to make a will as at April 2012.

The Witnesses

31. I set out my comments as to the witnesses in the order in which they appeared. Mr Barnaby, Mr Wynter, Ms Middleton-Albooye and Ms Fouad were called by the Claimants. Ms Watson made a statement but could not appear due to illness as I set out below.

Ms Jayne Claire Middleton-Albooye

32. Her sole statement was short and to the point; she is a solicitor and in 2005 was employed by HAW. From time to time she was asked to witness signatures on documents for clients of the firm. She could not recall witnessing the execution of Mrs Bascoe's 2005 Will on 27th April 2005 but confirmed the signature appeared to be hers and she had no reason to think otherwise.

33. Miss Johnson put to her in cross-examination that she was shocked as to how Ms Middleton-Alboye could have created this will in 2005 as in 2009 she told her that the other siblings should be there if a will is made. Ms Middleton-Albooye asked Miss Johnson if she was saying she met her, Ms Middleton-Albooye at HAW in 2009? Miss Johnson confirmed she was as she went there and spoke to her and Mr Wynter. Ms Middleton-Albooye said in 2009 she was not at HAW, as she left there in 2005 to work at the London Borough of Enfield, where she still is.

34. Miss Johnson then said the Jayne she knew and spoke to was not her, as she was a black lady and she had got her confused. Miss Johnson then asked why her mother's name is stated to be Maudlin on the 2005 Will but the signature is Madline and why the date had been changed and initialled? Ms Middleton-Albooye replied that she had no recollection as to those two matters as the attestation was some 14 years ago. She was asked if she read the 2005 Will to Mrs Bascoe; she replied she would have just witnessed it.

35. In re-examination Ms Middleton-Albooye was asked if she had ever signed an attestation clause when the will had not been signed; the answer was no. She explained what she understood her role to be and was then asked if she had any reason to doubt it was her signature? Her answer was that it is her signature; she was unequivocal.

36. Ms Middleton-Albooye gave her evidence in a clear and straightforward manner. She is independent of the parties and the firm of HAW. She readily said when she could not recall matters. I have no hesitation in accepting all she said.

Ms Manal Fouad

37. Ms Fouad made one statement dated 13th November 2019 in this matter. She says she was admitted as a solicitor in 2007 and that from about 2008-2015 she was employed at Ziadies Solicitors in their private client department. In 2015 Ziadies ceased trading and she was offered employment by Hodders Law, which is not connected with or a successor practice to Ziadies.

38. She made her statement to address the evidence of Mr Robert Williamson who, in his undated statement that I refer to in [18] above, said his grandmother, Mrs Bascoe, made a will in 2013. Ms Fouad recalled Mrs Bascoe visiting their offices (which were at 516 Brixton Road) from time to time, and also Mr Williamson visiting on at least one occasion. Ms Fouad recalls she was asked by the senior partner, Mrs Abeyewardene to contact Mrs Bascoe about making a will, but that she could not "*…recall the date or even the year but I assume it was in or about 2012*."

39. Ms Fouad then describes visiting Ms Bascoe at her home, forming the view she did not have capacity and arranging for a medical practitioner to visit her, who confirmed Mrs Bascoe did not have capacity. She said at no time did Mrs Bascoe execute a will drawn up by her and as far as she could recall she did not even prepare a draft will.

40. She referred to steps being taken to obtain Ziadies' file. When Miss Johnson put to her that that she, accompanied by Mr Wynter, met with Mr Williamson a few days after Ms Bascoe died and demanded that he hand over the "2013 will", she denied it categorically. She repeated she has no knowledge of a 2013 will and did not recall any such a meeting. She also says she was not present when Mr Wynter made any such demand either.

41. In cross examination Miss Johnson put to Ms Fouad that she had had been asked to draft a Power of Attorney which Ms Fouad denied. Dr Funnel does record in her letter of 20th May 2011 that she understood Ms Fouad acted for Mrs Bascoe and her family in the drawing up of a deed of revocation. In re-examination Mr Bishop specifically put the allegations regarding the alleged 2013 will to Ms Fouad who said she knew nothing about it and did not recall the meeting with Mr Williamson.

42. I have no hesitation in accepting all Ms Fouad's evidence as to the instructions she was given and what she did in 2012 for Mrs Bascoe and the alleged 2013 will. She answered questions in a direct and transparent manner. She has no partisan interest in this claim. In particular, her evidence is wholly supported by the file of contemporaneous documents she created, to which it appears she had no access when she made her statement. Her recall of events just over 7 years ago is excellent as the file shows it was opened on 23rd April 2012, the only matter being the preparation of a will – there is no reference to a Power of Attorney - and that Ms Fouad instructed Dr Funnel after a long meeting with Mrs Bascoe at her home on 20th April 2012.

43. The file closes with Ms Fouad's letter to Mrs Bascoe of 13th August 2012 in which she says unfortunately she does not have capacity to execute a will. There is no record by way of an attendance note to indicate a draft will was ever prepared, nor are any drafts present on the file. Further, no draft will is mentioned on the narrative of the bill sent to Mrs Bascoe.

44. I would also commend the file as an exemplar of a properly maintained solicitor's will file. It is easy to follow and the attendance notes are dated, detailed, timed and indicate who the author is. The manuscript note of the important meeting to take Mrs Bascoe's instructions has been retained. The instructions to Dr Funnel are comprehensive. The file has a clear beginning and end as it starts with a formal file opening sheet and concludes with a "best practice" file closing letter to Mrs Bascoe and disposal instructions. A file such as this should help avoid some of the disputes which arise in probate and suchlike claims or, as here, give the court confidence in the evidence and professional abilities of the witness concerned.

Mr Alphonso Wynter

45. Mr Wynter had made three statements, the first dated 8th August 2017, being the formal statement regarding wills of which he is aware and the second being his evidence in this claim exactly two years later. In the latter he explains he was admitted as a solicitor in 1984 and practised at Hallmark Carter Atkinson Wynter,

subsequently HAW. He says that that firm no longer exists and that he has been a consultant solicitor with Hodders Law since 2015.

46. In evidence in chief he further explained that HAW ceased trading in 2006 when it amalgamated with another Brixton firm, Wainwright and Cummins, and that in 2010 he went to Ziades as a consultant solicitor. Ziades ceased trading in June 2015 whereupon he went to Hodders Law where he still is. His third statement is dated 11th November 2019 made in reply to the statements of Mr Williamson and Miss Johnson's statement of 23rd October 2019.

47. Mr Wynter acted for Mrs Bascoe for at least 17 years. Besides the drafting of the wills as I set out at paragraphs [9-17] above he also acted on transfers of her property and preparation of an Enduring Power of Attorney over the period 2002 – 2005. He sets out how Mrs Bascoe from 1988 when he first met her "*displayed some antipathy towards both the Defendant and…Beverley. This was also apparent to me on subsequent occasions when I met her…she said the Defendant was "facety"(which I understand to be patois for disrespectful) and out of order".*

48. Mr Wynter suggested to Mrs Bascoe that the reasons for her testamentary intentions should be explained and so the "Explanatory Note" I set out at paragraph [12] was included in the draft 2003 will and the 2005 Will. As to taking instructions for the 2005 Will Mr Wynter states that he saw Mrs Bascoe both at his office and then at her home. Mr Wynter says that whilst Mr Barnaby accompanied his mother to his offices he spoke to her at length and alone to ascertain her wishes. When he saw her at her home Mr Wynter says Mr Barnaby was not there.

49. Mr Wynter states that there was no question in his mind that Mrs Bascoe was unduly influenced by Mr Barnaby or anyone else. Likewise he had no doubt as to her mental capacity to make and execute the 2005 Will, and if there had been the slightest doubt he would have arranged for a medical examination. He confirmed that he recalled reading the 2005 Will out to Mrs Bascoe and then left her to execute it in front of Ms Middleton-Albooye and Ms Watson, the latter being certainly known to Mrs Bascoe. He concluded his statement by saying he "*…could think of no circumstances at all in which either would have witnessed a signature unless it was made by the testatrix freely and in their presence".*

50. In his third statement Mr Wynter said he had no knowledge of a will after the 2005 Will – he was not asked to draw one up. He denied any knowledge of the "2013 will" which he accordingly could not have demanded the return of either jointly with Ms Fouad or himself alone. He denies after Mrs Bascoe's death asking Mr Williamson or anyone else to return any will or copy will in a meeting, in writing or by telephone.

51. Miss Johnson questioned Mr Wynter about all aspects of the making of the 2005 Will and its execution. She then started a line of questions about matters involving the family but not him outside the issues I must determine so I stopped this inappropriate line of questioning. This was repeated by Miss Johnson with other witnesses on numerous occasions. Mr Wynter was referred to a copy of a Power of Attorney of Mrs Bascoe which was certified as a true copy of the original in or about September 2008 by someone at the offices of Wainwright and Cummins of 30a, Acre Lane, Brixton, which is relevant when I turn to the evidence of Mr Owen Kerr.

52. Miss Johnson also questioned Mr Wynter as to his knowledge of her mother's dementia; he said she had capacity in 2005 as otherwise he could not have taken instructions. Miss Johnson then said that after the 2005 Will was executed her mother went to see him in a very distraught state the next day; Mr Wynter said that did not happen. Likewise she put to him that in May 2013 he gave Mr Williamson a will; again that was denied, Mr Wynter saying that the last time he saw Mrs Bascoe was in or about 2007.

53. In re-examination Mr Wynter was asked about Mrs Bascoe's capacity in 2005; he replied she was clear and consistent in her instructions and there was no reason to suspect she lacked capacity. He added he had probably met with her about 15 times over the years. The instructions for the 2005 Will came only from Mrs Bascoe. He was not present when she signed the 2005 Will as he left her with Ms Middleton-Albooye and Ms Watson for them to attest.

54. Mr Wynter gave his evidence in a clear, calm and assured manner. He was thoughtful and answered with precision. I find he was a truthful witness. As to the conflict between what he wrote to Mrs Bascoe as to difficulties in taking instructions – paragraphs [13 and 14] above – and her being clear and consistent, I find he was ensuring her testamentary wishes were clear – especially as his file records Mrs Bascoe varying her pecuniary legacies both as to recipient and quantum on several occasions.

Mr Bradford Barnaby

55. Mr Barnaby made two statements; the first on 5th July 2017 as to wills of which he was aware and the second on 13th May 2019. The latter is a short statement of just 7 paragraphs. In it he confirms his mother was also known as Madline and that after his brother Gresford died his mother told him she would make a new will. He refers to her saying she was transferring her property at 29 Lambert Road to them both and granting him an Enduring Power of Attorney.

56. He continues by stating he remembered accompanying his mother to the solicitors office but she saw the solicitors alone and he was not present when it was executed. He denied Miss Johnson's allegation that their mother lacked capacity in 2005, saying whilst frail and a little deaf, he believed she knew exactly what she was doing at that time. He says he brought no pressure to bear on her to make the 2005 Will and played no part in drawing it up or its execution.

57. The enmity between Miss Johnson and Mr Barnaby was plain during their exchanges as Miss Johnson cross examined him. Miss Johnson put to Mr Barnaby several times that Mrs Bascoe had dementia in 2003 which he denied. She said to him that there was a will in 2013, which said "*…to my darling son I leave all my assets to you"* and then referred to her and her sister being "*...johncrow"* (which she explains is a carcass eater in Jamaican slang). He replied he knew nothing about a 2013 will.

58. A substantial amount of Miss Johnson's questions turned in to statements and I had to ask her several times to keep to the issues regarding the 2005 Will. Several times Miss Johnson put to Mr Barnaby that he forced Mrs Bascoe to make the 2005 Will which he consistently denied, saying that Mrs Bascoe knew what she was doing and was not influenced by him.

59. Mr Barnaby was not open and transparent in the way he gave his evidence, but that may be explained by the personal and substantial enmity that was apparent between him and Miss Johnson. Her somewhat aggressive questioning covered quite a few years and various family incidents that are not relevant to the issues I must decide. On balance, he was certain in what he said and I accept his evidence as to the issues I am to determine.

Ms Fay Watson

60. Ms Watson did not attend to give oral evidence; her daughter emailed the court to say she was in hospital on the first day of trial and then when she returned home was not in a fit state to give evidence even from home by Skype or otherwise. I was told Hodders had issued a witness summons for her attendance prior to the trial.

61. Ms Watson made one statement dated 9th August 2019 in which she said she worked as receptionist at HAW for about 16 years until October 2005 or 2006, and that she is currently not working. She said she witnessed a large number of wills over the years. She recalled Mrs Bascoe as she came into the offices a few times over the years and that "*…she was a nice lady. We used to chat about things, including our shared Caribbean heritage".*

62. She also said that whilst she did not recall witnessing the 1992 will she did recall witnessing a later one with Ms Middleton-Albooye as she remembered chatting to Mrs Bascoe that day. Ms Watson confirmed that on the copy of the 2005 Will shown to and exhibited by her the signature is hers and that Mrs Bascoe did not say or do anything which would have meant Ms Watson to think she did not know where she was or that she was executing a will.

63. I have to consider what weight I should attach to this evidence. Miss Johnson in her closing submissions – but this was not in the evidence - asks for it to be struck out on the ground that Ms Watson let her know she never saw Mrs Bascoe making a will. There is no evidence before me of that but she undermined her own submission by then alleging the will was made at Acre Lane, SW2.

64. Mr Bishop submits that he does not need this evidence to prove his case, but that Miss Johnson admits the 1992 will which was witnessed by Ms Watson, as I have set out at [4] above. Mr Bishop submits and I accept Ms Watson is clearly telling the truth when she says that she knew Mrs Bascoe for some 16 years. I also note that comparing Ms Watson's attestation in 1992 the similarities with that of 2005 make it inherently likely she did witness the 2005 Will.

65. Mr Bishop also referred me to the Civil Evidence Act 1995 and the considerations at s.4 relevant to the weighing of hearsay evidence such as this. There is a list of factors to which I should have regard at s.4(2) which I apply below:

    a) It would have been possible to have produced Ms Watson at court but for the hospitalisation;

    b) The statement was not contemporaneous;

    c) There was no multiple hearsay;

d) Ms Watson had no motive to conceal or misrepresent matters;

e) There is no suggestion it is an edited account or made for another purpose;

f) The circumstances are not such as to suggest an attempt to prevent proper evaluation of its weight.

66. In my judgement I should attach some considerable weight to this statement for these reasons:

i) It accords with the evidence of Ms Middleton-Albooye and Mr Wynter which I accepted without reservation;

ii) The act of attesting the signature of Mrs Bascoe is inherently likely in view of her unchallenged attestation of the 1998 will and personal acquaintance with Mrs Bascoe;

iii) I very much doubt Ms Watson's evidence could be undermined by Miss Johnson in cross-examination;

iv) The factors under s.4(2) above generally lend weight to this evidence.

67. In summary I accept Mr Bishop's submission that he does not need this evidence to prove his case but I find I can attach some considerable weight to it especially as the key point is inherently likely in all the circumstances namely she witnessed a person known to her namely Mrs Bascoe executing the 2005 Will and then attested to that.

68. I now turn to the evidence tendered by Miss Johnson. Her witnesses, in the order in which they were heard, were Mr Owen Kerr, Mr Eric Brown, herself, Mr Robert Williamson and Ms Fay Gayle.

Mr Owen Kerr

69. Mr Kerr made one statement dated 2nd October 2016, just over 6 months before these proceedings were issued. He says that on the morning of 28th April 2005 (the day after the 2005 Will was executed) he received a telephone call from Mrs Bascoe asking him to come to her house urgently. He left his house in Vauxhall and cycled over to Brixton. Mrs Bascoe opened the door and said "*Bradford is trying to thief the house and come lets go, I am going to see Mr Wynter."*

70. Mr Kerr asked where they were going and Mrs Bascoe replied Acre Lane – the solicitors office. She did not know the number but Mr Kerr found the offices of Andrew Wainwright and Cummings. They went in and the receptionist confirmed Mr Wynter worked there. Then, Mr Kerr recounts, a black man and a white woman came out of an office. The woman asked Mrs Bascoe to come with her to an office which she did and the man introduced himself to Mr Kerr as Mr Wynter. Apparently then Mr Wynter made a threat to Mr Kerr which intimidated him so he left. He returned a little later.

71. Miss Johnson asked in evidence in chief if Mr Kerr went to see Mr Wynter on 28th April 2005. Mr Kerr replied he did not then know Mr Wynter but if the question was did he go to the solicitors with Mrs Bascoe then the answer was yes.

72. In cross examination Mr Kerr explained how he was once married to Miss Johnson, and he would always help out Mrs Bascoe if he could – for example he rewired her property and if he could not fix something for her he would find someone who could.

73. Mr Bishop asked if he made any written record at the time of the visit on 28th April 2005? He said no but volunteered he thought the visit was after 2005 and probably around 2007 as that was when he was given the tenancy of his flat, in the winter time. He was asked about Mrs Bascoe's relationship with Miss Johnson and Mr Kerr said there were disputes, the relationship was up and down – they were a dysfunctional family.

74. I found Mr Kerr was an honest witness with a poor memory – which he admitted. He was thoughtful and did his best to assist the court.

Mr Eric Brown

75. Mr Brown made a statement dated 14th August 2017 in which he said "*Approximately one year ago the son of the deceased discussed the purchase of 29 Lambert Road."* In oral evidence he explained he was the minister for the next-door church which was interested in purchasing No. 29 as an extension of the church's ministry. He said he understood there was a dispute over the sale so the matter went no further.

76. No questions were put to Mr Brown. I have no reason to doubt anything he said but none of it was relevant to the issues.

Miss Patricia Johnson

77. Miss Johnson has made 5 witness statements, two on 10th August 2017, 11th September 2017, 14th January 2018 and 28th October 2019. In cross examination she maintained that the medical records in evidence were not those of her mother despite being taken by Mr Bishop to various documents within those records which indicated that they were her records.

78. Then Miss Johnson said Mrs Bascoe had dementia from 2001 or 2003. When Mr Bishop took her to the relevant records I have mentioned in paragraphs [22] to [30] above she said she didn't understand why the records did not show dementia in 2001. As to the fall recorded in the notes as 9th August 2008 she steadfastly maintained that was the wrong year and it was 2009, notwithstanding the weight of documentary evidence against her version of events.

79. Then Mr Bishop put to her the allegation in para. 8 of her statement of 10th August 2017 namely that "*I believe that the Deceased signature was forged on the will, as it does not look like her signature on her passport."* Miss Johnson was asked if she had any evidence for that allegation and she just referred to the old passport signature. She confirmed she had no training in handwriting analysis.

80. Then Mr Bishop put to Miss Johnson the next paragraph of her statement: "*I believe my brother forced the Deceased to make him sole beneficiary of the Will. The Deceased told me this, when I visited her on the evening of 27th April 2005. The Deceased told me my brother threatened and forced her to go to the solicitor to make and sign a new will...".*

81. Miss Johnson maintained this account, doing what appeared to me to be an impression of her mother physically curled up saying those things in a strong Jamaican accent. Mr Bishop put to her that she had never written down any of this as he put it "colourful presentation" notwithstanding the passage of over 14 years and 5 witness statements by her. Miss Johnson was I find embellishing her evidence as to this incident.

82. Then Mr Bishop put to Miss Johnson that in 2005 she knew nothing of the 2005 Will. She replied "*We knew nothing about a will".* Mr Bishop said that admission was 'devastating' to her evidence – because she could not have had the conversation on 27th April 2005 as she had alleged. Miss Johnson said she did not see the 2005 Will but she knew one had been prepared in 2005 but she did not see it until 2018.

83. Mr Bishop then put to Miss Johnson that she got the date of 27th April 2005 from seeing the 2005 Will – she had no other recollection of it. Miss Johnson accepted that. She was then asked that if events were as she described on the evening of the 27th April 2005 she would have done something more to help her mother? She said she went to see Mr Wynter – in 2011.

84. Then Mr Bishop asked why if she considered her mother had dementia in 2005 when the 2005 Will was created did she consider that 6 years later her mother had capacity to grant a Power of Attorney in 2011? No proper answer was given.

85. I found Miss Johnson to be evasive and a wholly unreliable historian. She would be vehemently certain of something but often wrong, as appears above. She exaggerated and invented evidence and at times contradicted herself. I cannot accept much of what she says unless it is supported by other witnesses whose accounts I do accept or else contemporaneous documents.

Mr Robert Williamson

86. I have already set out his evidence regarding what he calls the 2013 will, how he came he says to be given it by Ms Fouad, and returned it two weeks after Mrs Bascoe died. He explained in cross examination how he was heavily involved in caring for Mrs Bascoe. He then spoke at length as to how his uncle, Mr Barnaby, had abused Mrs Bascoe both physically and financially, by depleting her bank accounts, saying he had "*...to get it out..."* (meaning his evidence).

87. As to the 2013 will it was put to him that Ms Fouad had said she had not given him a will and she did not ask for it back. His reply was "*It's a lie. A blatant blatant lie."* When asked why she would lie he replied she was *"in cahoots with Mr Wynter"*. He also said that he appreciated and understood that according to Miss Johnson the 2013 will still described his aunt in unpleasant terms and gave everything to Mr Barnaby – so it was not in their interests to make up the 2013 will as the main beneficiary was as provided in the 2005 Will. Again Mr Williamson said he understood that. His

evidence was almost throughout heated and emotional, and Mr Barnaby was sitting at the back of the court.

88. He was then asked could he be mistaken as to whether the document he believed he saw was a will? He replied he was certain it was – it said last will and testament. He added he tried to understand it and there were various discrepancies. He returned it as he thought it was part of the probate process.

89. In summary I found Mr Williamson to be trying to assist the court in an honest manner but overall his evidence was highly charged, emotional and consequently inaccurate as a result.

Ms Faye Gayle

90. Ms Gayle made one witness statement dated 8th August 2017. She attended to give evidence but Mr Bishop did not want to cross-examine her. I consider her written evidence regarding the disputes within the family to be of no relevance in assisting me to determine the issues so I need not consider that aspect further, but she does refer to Miss Johnson and a Power of Attorney in 2012 to which I will refer below.

THE LAW AND MY FINDINGS OF FACT

Testamentary Capacity

91. Mr Justice Briggs as he then was *In re Key* [2010] 1 WLR at 2020 set out the burden of proof:

> *"97. The burden of proof in relation to testamentary capacity is subject to the following rules.*
>
> *(i) While the burden starts with the propounder of a will to establish capacity, where the will is duly executed and appears rational on its face, then the court will presume capacity.*
> *(ii) In such a case the evidential burden then shifts to the objector to raise a real doubt about capacity.*
> *(iii) If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity none the less*."

92. Mr Bishop also referred me to the well known passage in *Banks v Goodfellow* (1870) LR5 QB549 at p.565: "*It is essential to the exercise of such 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 he 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 sense of right, or prevent the exercise of his natural faculties – 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."*

93. In *Sherrington v Sherrington and Others* [2005] EWCA Civ 326 Lord Justice Peter Gibson at para. 40 quoted Lord Penzance in *Wright v Rodgers* (1869) LR 1 PD 678 at p. 682 *"The Court ought to have in all cases the strongest evidence before it believes*

that a will, with a perfect attestation clause, and signed by the testator, was not duly executed, otherwise the greatest uncertainty would prevail on the proving of wills. The presumption of law is largely in favour of the due execution of a will, and in that light a perfect attestation clause is a most important element of proof."

94. Then at [41] Lord Justice Peter Gibson said*: "Evidence that the witnesses have no recollection of having witnessed the deceased sign will not be enough to rebut the presumption. Positive evidence that the witness did not see the testator sign may not be enough to rebut the presumption unless it has "the strongest evidence" in Lord Penzance's words….In general, if a witness has the capacity to understand, he should be taken to have done what the attestation clause and the signatures of the testator and the witnesses indicated, viz. that the testator has signed in their presence and they have signed in his presence."*

95. The 2005 Will was duly executed with an attestation clause. The evidence of Ms Middleton-Albooye, a qualified solicitor, is clear; whilst she cannot recall the event of the attestation she considers the signature is hers and that she had never witnessed a will if the testator or testatrix had not signed it. There is no reason for me not to accept her evidence which I wholly accept. Her lack of recall of the physical signing does not displace the presumption; *Sherrington* at [41].

96. Likewise the evidence of Ms Watson supports due execution; she remembered Mrs Bascoe and had known her for some 16 years and as at [64] above I find it inherently likely she had witnessed Mrs Bascoe sign the 1992 will.

97. The 2005 Will is rational on its face and there is nothing to suggest otherwise, so there is a presumption of capacity in favour of Mr Barnaby and Mr Wynter. Further, *Williams, Mortimer & Sunnucks – Executors, Administrators and Probate, 21st Edition at para 10.26* states *"Slight evidence of mental incapacity will not disturb this presumption".*

98. The burden therefore shifts to Miss Johnson to displace the presumption. She stated in her first Defence that her mother *"…was not in a fit mental state to sign the will of her free will…".* Miss Johnson also stated in her first witness statement that her mother "*… suffered from dementia since about 2001. She was under the doctor for this and was officially diagnosed in 2008."*

99. However contemporaneous documentary evidence undermines these allegations. First, Ms Faye Gayle referred to Miss Johnson applying for a "POA" which appears to be a reference to the Lasting Power of Attorney ("LPA") Mrs Bascoe made in favour of Mr Williamson in which Miss Johnson with her sister were to be the two persons notified, and Dr Funnel witnessed Mrs Bascoe's signature on 4th July 2011. I note that Mrs Bascoe signed as "*Madline*". Miss Johnson refers to this in her second statement at para. 6 as *"…the POA 2012…".*

100. As I set out at [28] above Dr Funnel said Mrs Bascoe still had capacity to donate the LPA in June 2011. Whilst there is a considerable difference in the giving of instructions for the creation of a will and donating an LPA, and mental capacity is to be assessed by reference to the task in question, the point remains that Miss Johnson must have considered her mother had sufficient capacity in July 2011 to donate the LPA.

101. But Miss Johnson's attack on her mother's capacity as of 2005 is wholly undermined by the medical records which are a) comprehensive in their scope, detail and extent b) show the actual diagnosis of dementia was in 2008 and c) that the family referred to confusion as from about early 2008 – see [25-26] above. The family referred to above appear to be Miss Johnson and Mr Williamson. It logically follows that neither of them appear to be concerned about Mrs Bascoe's mental capacity about some 2-3 years before – although as I will turn to below neither of them were aware of the fact that the 2005 Will was made in 2005. That would accord with no action as to concerns about confusion being raised earlier with Mrs Bascoe's GP.

102. I have rejected Miss Johnson's attack on the medical records before the court not being those of her mother as being fanciful and wholly unwarranted. She also says the 2005 Will was not valid for several reasons relating to the attestation clause. First, she criticises the alteration to the date by which the figure '8' in '28th' in type has been altered in manuscript to '7'. I think there is nothing untoward in what appears to be a correction of a typographical error, especially as the front sheet of the 2005 Will states the date is "27th April 2005". That alteration has two initials next to it which appear to be 'M' and 'B' i.e. Mrs Bascoe. Miss Johnson's complaint in this respect does not in any way displace the presumption of due execution.

103. Miss Johnson's second complaint that the signature cannot be that of her mother as in the typed will and in her passport she is referred to as "Maudlin" but the manuscript signature says "Madline", and that this "*…is not a name my mother ever used."* I find that her first name regularly varied. For example in her medical records from 1985 – 2015 she is referred to as "Madeline". Mr Barnaby in his first statement dated 13th May 2019 at para. 3 states he is her son and that she is "*also known as Madline…".* Mr Wynter in his first statement dated 8th August 2019 says likewise.

104. In addition, in the LPA dated 4th July 2011 Mrs Bascoe's first name is "Maudline" but that day she signed as "Madline", before Dr Funnel. These differences were also noted on Ziadies' file as a "Post-It" handwritten note on an attendance note dated 23rd April 2012 refers to three different spellings of her first name. I therefore find that a) these differences of the spelling of her first name were commonplace and b) Miss Johnson's complaint is baseless and cannot in any sense amount to a challenge to the 2005 Will.

105. Further, at para. 1 of her Defence Miss Johnson states that the 2005 Will is not valid as her mother was not *"…buried according to the wishes expressed in the will."* I am aware of no authority which provides that a will be rendered invalid if the testatrix is not buried according to her wishes; indeed the reverse; the executors have charge of that decision. I therefore dismiss that claim.

106. In summary, as the presumption of capacity has arisen – *In re Key* and *Sherrington* - the burden is on Miss Johnson to displace it. She has adduced no credible evidence to cast doubt upon the testamentary capacity of her mother in 2005. She has not put before the court any expert evidence as would usually be expected in such a claim of lack of testamentary capacity.

107. If I am wrong as to that, I find that either a) the comprehensive medical records or b) the evidence of Mr Wynter (a solicitor long experienced in the making of wills, who had known Mrs Bascoe as an established client for about 17 years before the will was

prepared and executed) that he was certain she did have capacity – see [49] and [53] above – to be sufficient to show Mrs Bascoe did have capacity to make the 2005 Will. When taken together, in the absence of any expert or counter evidence, there can be no other conclusion other than Mrs Bascoe had testamentary capacity.

Undue Influence by Mr Barnaby

108. Mr Bishop referred me to *Williams Mortimer and Sunnucks* again, at para. 10-56 which sets out a summary of the principles to which I should have regard:

"Undue influence in probate has been defined in a number of cases, but perhaps the best short definition is that of Sir J.P. Wilde in **Hall v Hall***: "Pressure of whatever character… if so exercised as to overpower the volition without convincing the judgment." Lewison J. in* **Re Edwards (deceased)** *provided a short summary of the law of undue influence in probate at [47] of his judgement, which provides a useful checklist for practitioners:*

i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;

ii) Whether undue influence has procured the execution of a will is therefore a question of fact;

iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;

iv) In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud.

v) Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;

vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A "drip drip" approach may be highly effective in sapping the will;

vii) There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is "fraudulent calumny". The basic idea is that if A poisons the testator's mind against B, who would otherwise

be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside;

viii) The essence of fraudulent calumny is that the person alleged to have been poisoning the testator's mind must either know that the aspersions are false or not care whether they are true or false. In my judgment if a person believes that he is telling the truth about a potential beneficiary then even if what he tells the testator is objectively untrue, the will is not liable to be set aside on that ground alone;

ix) The question is not whether the court considers that the testator's testamentary disposition is fair because, subject to statutory powers of intervention, a testator may dispose of his estate as he wishes. The question, in the end, is whether in making his dispositions, the testator has acted as a free agent."

109. Miss Johnson in her Defence at para. 3 states "*Bradford Barnaby forced my mother to sign the will at the office of Mr Wynter."* She adduces no direct evidence of that or particulars of that allegation save she alleges there was an incident on 9th August 2009 in which Mr Barnaby harmed his mother (denied by Mr Barnaby) and that Miss Johnson then called an ambulance at his request. She relies upon that incident as evidence of Mr Barnaby controlling their mother.

110. I find that highly improbable in view of a) the lack of any independent record whether on Mrs Bascoe's medical records or by the police and b) no further action being taken by the family. Further, I consider that one incident over 4 years after the will was executed cannot amount to evidence of undue influence, even if there was sufficient evidence for me to find on the balance of probabilities that incident took place, which I cannot.

111. Miss Johnson also relies upon the evidence of her former husband, Mr Kerr. His witness statement alleges that the day after she executed the 2005 Will namely on 28th April 2005 Mrs Bascoe called him to come and collect her so they could rush to see Mr Wynter at an office in Acre Lane, Brixton, to stop Mr Barnaby "*thieving"* her house. There are two crucial factual errors in this allegation:

i) Mr Kerr in cross examination admitted that the date namely 28th April 2005 must be wrong and that the visit was more likely to be at some point in 2007, and accepted his memory is not good.

ii) Mr Wynter was not then at the offices of Wainwright & Cummins in 2005 – he was practising from his firm's offices at 379/381 Brixton Road where the 2005 Will was executed – see [46] above. The former's offices were in Acre Lane as shown by the document they certified in or about September 2008 – see [51] above.

112. Further, there is no contemporaneous document recording this visit. Mr Kerr, although he tried to assist the court, was wrong on the crucial date. It appears on the balance of probabilities that he did not arrive at that date by himself; it must have been suggested to him, and the only person in my judgment who is likely to have done that is Miss Johnson.

113. In summary, the only point I accept from Mr Kerr's evidence is that Mrs Bascoe called him possibly somewhat concerned at some time in 2007 and asked him to go with her and see Mr Wynter, who by then was at the offices of Wainwright & Cummins. That in my judgment does not go to any of the issues I am to determine.

114. Miss Johnson's evidence in para. 9 of her second statement of 2nd August 2017 is: "*I believe my brother forced the Deceased to make him sole beneficiary of the Will. The Deceased told me this, when I visited her on the evening of the 27th April 2005. The Deceased told me my brother threatened and forced her to go to the solicitor to make and sign a new will…".*

115. Mr Barnaby denies this. He says his mother knew exactly what she was doing at the time and had strong views about the conduct of his sisters. He says he did not bring any pressure to bear on his mother to make the 2005 Will and that he played no part in drawing it up or its execution. That was confirmed by Mr Wynter.

116. Miss Johnson's evidence does not bear examination for these reasons:

i) In cross examination she admitted that "*…the only time we knew of the 2005 Will was in 2015…";*

ii) She admitted that she had no recollection of the date 27th April 2005 but that she took it from the 2005 Will;

iii) She had no actual recollection of the events she alleged regarding her mother and she only actually saw the 2005 Will "*…late last year".*

117. Importantly, had there been any basis for her claim of undue influence by her brother, she could have done something at the time – she did not. Neither did she record her concerns. Further, Mrs Bascoe had capacity for several more years – another six for the LPA.

118. I find Miss Johnson's account in para 9 of her statement that I set out at [114] above was therefore wholly untrue. Not only did she make that statement over two years ago and failed to correct it during these proceedings but she confirmed its truth when she gave her oral evidence. Accordingly there is no evidence whatsoever to amount to undue influence.

Forgery of Mrs Bascoe's signature

119. As I have set out at [114] above Miss Johnson in her second statement said that Mr Barnaby had forced their mother to sign the 2005 Will. This is also alleged at para. 3 of the First Defence: "*Bradford Barnaby forced my mother to sign the will at the office of Mr Wynter."* But Miss Johnson contradicted herself in the same witness statement in the preceding para. 8 where she states: "*I believe that the Deceased signature was forged on the Will, as it does not look like her signature on her last passport".*

120. The 2005 Will was drafted by Mr Wynter, a solicitor who knew Mrs Bascoe as a long established client of his firm. His evidence is that he read out the 2005 Will to her before she was seen by two members of staff to complete the attestation. Her

signature was witnessed by a receptionist, Ms Watson, who recalls the event and also Ms Middleton-Albooye, who confirmed it is her signature and she would not have signed without seeing the testatrix sign. As I have indicated above I accept their evidence.

121. Therefore, leaving aside her contradictory position as to forgery, if Miss Johnson is correct, all three of those witnesses are party to this alleged fraud. Miss Johnson was given the opportunity by Orders of Master Price dated 11th January 2018 and Deputy Master Lloyd of 21st May 2019 to serve expert evidence to support her allegations. Unsurprisingly she did not avail herself of that opportunity.

122. I dismiss without reservation the allegation of forgery. There is no basis for it and it should never have been made.

Want of knowledge and approval by Mrs Bascoe of the terms of the 2005 Will

123. Mr Bishop referred me to *Gill v Woodall and others* [2011] EWCA Civ 1430. The second paragraph of the headnote says "*…in relation to the question of knowledge and approval, the fact that a will had been properly executed after being prepared by a solicitor and read over to the testatrix raised a very strong presumption that it represented the testatrix's intentions at the moment she had executed the will; that the presumption was reinforced by policy considerations in support of the fundamental principle of testamentary freedom and the evidential difficulties presented by the fact that the testatrix could not be directly examined…"*

124. I was also taken to paras. 14 to 16 and 23 in *Gill.* The latter can be summarised that it is preferable to ask the single question; did the testatrix understand (a) what was in the will when she signed it and (b) what the effect would be. Miss Johnson has not pleaded a lack of knowledge and approval but I understand this was introduced at the request of counsel who appeared for her pro-bono on 21st May 2019 before Deputy Master Lloyd; hence the list of issues he prescribed that I mention in [5] above.

125. However, as will be apparent from my findings of fact neither Miss Johnson nor any of her witnesses were present at the time instructions were given by Mrs Bascoe to Mr Wynter for the creation of the 2005 Will and so there is no evidence of fact before me.

126. I find that the strong presumption arises as I accept Mr Wynter's evidence that Mrs Bascoe gave him instructions for the 2005 Will alone. Once it was drafted and ready for execution he read it out to her. She then the same day signed it in his offices but with a different solicitor and the receptionist as witnesses who themselves signed after she did. The evidence of all three of them is clear and compelling. There is also as I have found above no proper challenge to Mrs Bascoe's testamentary capacity.

127. There is no evidence from Miss Johnson that would reverse the burden but, as Mr Bishop submits, even if there were, the Claimants have proved Mrs Bascoe's knowledge and approval of the 2005 Will through the evidence of those three witnesses. I agree. I therefore dismiss this challenge.

The "2013 will"

128. I now turn to this curious allegation. In her first Defence Miss Johnson says "*4. I have seen a further will dated 2013.*

5. Initially Mr Winter (sic) *produced an unsigned copy of this will."*

129. This 2013 will was not mentioned in her first four witness statements but in her fifth she refers to Mr Williamson being given a will dated 2013 by "*Minal"* (which must be Ms Fouad) and then says in para 2:

"*He showed me the will in May 2013. I noticed there was no indication in the will where Maudlin was to be buried. It stated that my late sister and I were worthless and we were 'johncrow' (which means in Jamaica a carcas eater)…my nephew returned the will to the solicitors at their insistence.*

3.The will is not in my possession and has never been in my possession.

4. I have no knowledge of the whereabouts of the will at this time. I believe it must still be with the solicitors who took it back from my nephew Robert Williamson in 2013."

130. Mr Williamson as I have set out above maintains this account save there is a substantial difference with the evidence of Miss Johnson; she stated it was taken back in 2013 whereas he says it was around September 2015. Mr Williamson was insistent that he had seen this 2013 will as I have recounted in [87-88] above.

131. I cannot accept that there was a will either in draft or executed that was made in or about 2013 for these reasons:

i) I accept the evidence of Ms Fouad that no such will was made by her.

ii) The file of Ziades confirms instructions were taken from April 2012 until it was determined that Mrs Bascoe did not have capacity as confirmed by Ms Fouad in her letter to Mrs Bascoe of 13th August 2012, but no will is present in draft form nor is the drafting of it mentioned on that well kept file.

iii) Miss Johnson, having she says seen the 2013 will, says Mr Barnaby is the residuary – and majority – beneficiary. But in Ms Fouad's notes of her instructions from Mrs Bascoe the prime beneficiary was to be Mr Williamson – albeit she was found not to have capacity at that time.

iv) I do not accept that as Mr Williamson says there were demands made by Ms Fouad and Mr Wynter for the return of this will which he complied with and that accordingly they or at least one of them is in possession of this 2013 will. I find that no such demands were made and no will was handed over as I prefer their evidence to that of Miss Johnson and Mr Williamson.

v) There is no reference to "*johncrow"* in Ms Fouad's comprehensive file notes. It would have stood off the page had such a phrase been used.

Conclusion

132. The 2005 Will is rational and was read over by Mr Wynter to Mrs Bascoe who had testamentary capacity at the time. It was properly executed and the evidence of Mr Wynter, Miss Middleton-Albooye and Ms Watson cannot be impugned. Accordingly the strong presumptions in favour of validity are present.

133. Miss Johnson has come nowhere near establishing the basis for any proper challenge; there is no documentary evidence which supports her and in particular nothing from independent third parties especially in contemporaneous documentary form. Her evidence has been contradictory, self-serving and deliberately misleading. That of her witnesses does not assist her in any respect. I have no hesitation in finding for the Claimants.

134. Finally, I wish to acknowledge the helpful and most fair approach taken by Mr Bishop to Miss Johnson during this trial. He certainly assisted in making the process easier for Miss Johnson in what were not, in view of the extremely charged emotions present in this family dispute, the easiest of circumstances.