Case No: PT-2022-000353
Neutral Citation Number: [2023] EWHC 3143 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Thursday, 9 March 2023

BEFORE:

CHIEF MASTER SHUMAN

BETWEEN:

ANDREW FRASER

Claimant

- and -

ABBEY KING KHAWAJA

Defendant

MR O HILTON (instructed by Wedlake Bell LLP) appeared on behalf of the Claimant
The Defendant did not attend and was not represented

JUDGMENT
(Approved)

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

THE CHIEF MASTER:

1. This is a claim brought by Andrew Fraser ("the claimant"), who is a partner in Fraser & Fraser, and an attorney for Andrew Vallendar. Andrew is one of four surviving family members of Gerald Thomas Reading ("the deceased"), who died on 6 February

2021. The other traced family members are David Osborne, Craig Oseland and Phillip Oseland. I shall refer to the family members by their first names.

2. The surviving family members are all cousins, albeit of different degrees. I am satisfied on the evidence before me, that they are only people entitled on an intestacy to share in the deceased's estate. Andrew, David and Craig have entered into fee arrangements with Fraser & Fraser. In addition, Andrew has executed a limited power of attorney in favour of the claimant for the purposes of dealing with all issues relating to the deceased's estate, including collecting in any unclaimed assets and, if necessary, obtaining letters of administration.

3. At a previous hearing, it was determined that the claimant was sufficiently interested in the deceased's estate for the purposes of CPR 57.7, both as creditor of and an agent for the potential intestate beneficiaries.

4. The claimant asks the court to pronounce against the purported will of the deceased dated 8 July 2016 ("the will"). In addition he seeks an order revoking the limited grant made in favour of the defendant, Mr Abbey King Khawaja, and that letters of administration be granted to the claimant.

5. I will go on to look at the terms of the will in more detail but I note that the will appoints no executor and leaves the entirety of the deceased's estate to a William Joseph ("Mr Joseph"), described as the deceased's friend with an address Mohalla FC, Kachi Adabi, Pakistan. No trace of him has been found. The defendant is said to be the attorney of Mr Joseph.

6. The defendant provided to the Probate District Registry a signed form, a PA11, which is a form used when a person is appointed by an executor or beneficiary to act as their representative. The donor is said to be Mr Joseph, with the same address given in Pakistan. The donee is the defendant, whose address, at that time, was given as 16 Courtyard House, Lensbury Avenue, SW6 2TR. The power of attorney is dated 8 September 2021. Section 7 of the form has the standard wording that the attorney is appointed "for the purposes of obtaining Letters of Administration with will annexed

of the estate of the said deceased to be granted to them for my use and benefit and until further representation be granted."

7. The defendant completed a PA1P form, which is the application form used to obtain a grant of probate where the deceased left a will. The will itself was sent to Leeds District Probate Registry, which is the hub for testamentary documents and then sent to the High Court for safekeeping, so I have before me what is alleged to be the purported last will of the deceased, an email from the defendant to the Cardiff District Probate Registry dated 10 December 2021 that has been printed out, the Power of Attorney which appears to be the original, the PA1P application form which again appears to be the original and what appears to be a copy of the grant of probate in favour of the defendant.

8. The probate application form records that the applicant is the defendant and at page 18 records that the value for the purposes of Form IHT205, so that is the relevant value of the estate for inheritance tax purposes, is £305,000. The significance of that is that no inheritance tax on the face of this document is due and abbreviated accounts or documents can be filed with the probate registry.

9. At page 19 there is a legal statement which records that:

> "The undersigned confirms that the last will and any codicils referred to in this application is the last will and Testament of the person who has died. The undersigned confirms to collect the whole estate, to keep full details and inventory of the estate, to keep a full account of how the estate has been distributed."

10. It says as well that the person who signed this understands that:

> "The application will be rejected if the information is not provided if asked and, criminal proceedings for fraud may be brought against the undersigned if it is found that the evidence provided is deliberately untruthful or dishonest."

11. The person who signed that form, is Abbey King Khawaja, there is a printed name, a signature and it is dated 9 December 2021. As a result of those documents, a grant

was made in favour of the defendant dated 22 December 2021 and I see from the copy in front of me that it was extracted personally.

12. The claimant seeks to challenge the authenticity of the will. The defendant is unquestionably the appropriate party to the claim. He was also appointed under an order of Deputy Master Scher dated 5 September 2022 to represent the interests of the beneficiary of the deceased's estate. At paragraph 4 of the order it is recorded that:

> "The defendant is appointed pursuant to CPR 19.7 to represent Mr Joseph and all those who claim through him, without prejudice to the claimant's contention that Mr Joseph does not exist."

It specifically records:

> "The defendant has liberty to apply on notice by 4 pm on 26 September 2022 to set aside or vary paragraph 4 of this order, such application must be accompanied by written evidence from the defendant. The court expects that such evidence will include full details of every possibly method of contacting Mr Joseph and the efforts which the defendant himself has made to contact Mr Joseph."

13. The defendant has made no application to vary, set aside or discharge that order, or indeed make any application to be removed as a party to these proceedings and yet he is endeavouring to abdicate his office by filing a notice of revocation with the probate registry. He notified the court in an email dated 2 February 2023 that "the grant was revoked one year ago". When asked for evidence to support this, none has been forthcoming. He has not filed an acknowledgement of service in these proceedings and thas aken no active steps, although he has not been silent.

14. This case was ordered to be listed for trial on written evidence. The evidence I have before me is a witness statement of testamentary documents dated 21 April 2022 made by the claimant, a statement of the claimant dated 10 November 2022 which is an extremely full statement. Some of the evidence refers to hearsay conversations and statements, but nevertheless demonstrates an assiduous enquiry to uncover some of the background to this probate claim.

15. There is also a witness statement of the defendant dated 1 September 2022, that says:

> "I am writing to the honourable court to confirm that I have withdrawn from the above matter many months ago. I have written to the probate office in Cardiff to remove my name as an administrator and to confirm the same in writing. I have already explained my position to Wedlake Bell ..."

Wedlake Bell are the solicitors for the claimant:

> "… by emails to their offices that I have nothing whatsoever to do with the estate of the deceased, Gerald Reading. I cannot assist the claimant any further."

Then bringing matters up to date, there was then a further statement filed by the defendant on 27 February 2023. He says that:

> "[He] stopped acting for the beneficiary, William Joseph since last February 2022 as his attorney executor in this matter. I have informed both Land Registries in Cardiff and Gloucester of this situation and to remove my name and address from all letters of administration with will dated 22 December 2021."

The relevance of that is that this is a sizeable estate worth, it is estimated approximately £780,000 and clearly not the amount recorded in the PAP1. The principal asset of the estate is the deceased's property.

16. After the defendant had obtained a grant in his favour, he then had the title to the property registered in his name and attempted to sell the property.

17. He says curiously in the witness statement at paragraph 5:

> "The beneficiary has also informed the probate office to revoke the grant issued in my name on his behalf."

18. There is no evidence before me from the probate office or from any of the assiduous enquiries that both the claimant and his instructing solicitors have made to find any evidence that Mr Joseph has taken these acts.

19. I have been taken through the correspondence in this matter between the claimant's solicitors and the defendant. The defendant has made allegations that he is being harassed by the claimant's solicitors. I consider that to be utterly without foundation. The claimant's solicitors have acted properly throughout this case. They have made reasonable enquiries of the only person, as it appears, that has any information about the alleged beneficiary to the deceased's estate. Their actions have been proper and I also note in their correspondence that they have urged the defendant to take legal advice and he has, for whatever reason, elected not to do that.

20. Turning first then to the law in this matter, the claimant's position is that the signature of the deceased on this will is a forgery and so the first question is one of essential validity: does the will satisfy section 9 of the wills Act 1837? Section 9 says in relation to signing and attestation of wills:

> "9(1) No will shall be valid unless -
>
> (a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and
>
> (b) it appears that the testator intended by his signature to give effect to the will; and
>
> (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
>
> (d) each witness either—
>
> (i) attests and signs the will; or
>
> (ii) acknowledges his signature,
>
> in the presence of the testator (but not necessarily in the presence of any other witness) …"

20. There is no specific form of attestation, but those are the requirements of the Wills Act 1837.

21. Mr Hilton, counsel for the claimant, in an extremely thorough analysis, both of the factual background to this case and the law, has referred me to some discussions about how the evidential burden works in a case where it is alleged that the signature of the deceased is forged. If a will on the face of it appears regular, there is a presumption, but it is no more than that, that it has been duly executed and complies with section 9 of the Wills Act. If a party who disputes the validity of that will adduces sufficient evidence, then the presumption will be displaced and the burden will rest on those who are seeking to propound or rely on that will to adduce evidence to satisfy the court that section 9 of the Wills Act has been satisfied.

22. The fact that there is an allegation of forgery does not alter how the evidential burden switches between the parties, but where there is forgery, one will need cogent evidence commensurate with the nature of the allegation to be adduced. I consider that *Face v Cunningham* [2020] EWHC 3119 (Ch), a decision of HHJ Hodge KC sitting as a Deputy High Court Judge, represents the correct approach to the evidential burden in will cases where there is an allegation of forgery.

23. I also note that the evidential burden and how it switches in will cases, is because of the unique nature of will cases in court. The only person that can say whether their will is genuine or not is dead and so the court has a supervisory role in relation to wills.

24. Mr Hilton also puts an alternative ground to challenge the validity of the will. So that if I am not satisfied that the claimant has discharged the burden in relation to essential validity, that I can go on to consider knowledge and approval. There is a useful summary of the test to be applied in *Theobold on Wills* (19th Ed.) paragraph 4-042 which says (and I consider that this does reflect the correct analysis of the law):

> "In the current editor's view, the requirement of knowledge and approval is that a requirement the testator understands and approve the actual effect of the will being executed. It is not enough that the testator merely knows what the words contained in the will say. This is made clear in at least Court of Appeal authorities."

25. The section goes on to refer to *Hoff & Ors v Atherton* [2004] EWCA Civ 1554, then *Gill v Woodall* [2010] EWCA Civ 1430. At paragraph 4-047 there is a useful analysis

of how the proof and the evidential burden works in relation to knowledge and approval and it says this:

> "However, in the ordinary case, an evidential presumption of knowledge and approval arises from proof of the will being duly executed by a testator with testamentary capacity which may themselves have been presumed from the will appearing to have been duly executed on its face and from the will being rational on its face. Hence, the will is admitted to probate in common form without requiring any evidence of substantial validity. In a case where knowledge and approval is disputed, however, there have been mixed views expressed as to whether due execution of the will raises a presumption of knowledge and approval and even when the proof that the will was read out to or by the testator prior to execution raises a presumption."

26. There is then a further reference to *Gill v Woodall* [2010] EWCA Civ 1430 before another useful analysis of how the evintial burden is applied to partciaulr facts of a case. An example is given, in *King v King & King* [2014] EWHC 2827 (Ch) which was an appeal that was dismissed from a decision of Master Teverson granting summary judgment in favour of those propounding the validity of the will. The issue in that case at appeal turned wholly on knowledge and approval in circumstances where the deceased was, at best, partially sighted.

27. Finally in terms of the law, it has been raised by the defendant in correspondence that he can simply step away from his role as administrator of this estate. *Williams, Mortimer and Sunnucks, Executors, Administrators and Probate* (21st Ed.), paragraph 6-50 says this:

> "Renunciations is a formal act in writing by which a person having a right to probate or administrative waives and abandons that right. Any person may renounce other than an executor who has taken a grant or has intermeddled. To be effective, a renunciation must be absolute and not conditional, although renunciation takes effect with the signature of the renunciant or his attorney, it may be withdrawn at any time up to the time that it is filed at court. Renunciation by an executor binds his personal representative."

Then later at paragraph 6-58:

> "An executor cannot renounce after taking a grant of probate or after he has intermeddled in his deceased's estate. In such a case, a renunciation will not be accepted and will be declared invalid. An executor cannot, for example, exonerate himself from liability in respect of the assets which he has received by renouncing and putting the administration in the hands of a co-executor. He must either wholly renounce or, if he acts to a certain extent as an executor and takes upon himself that character, he can only be discharged by administering the estates himself or by putting the administration in the hands of the court."

28. The significance of this is that there is no evidence from the defendant that the beneficiary, if he does exist, has agreed to the defendant resigning from his position. There is no evidence that anyone else has stepped up to take that position. It is not open to the defendant to simply assert that he has renounced his position. He has taken active and positive steps in reliance on a power of attorney to obtain a grant in his favour and moreover then to market the property of the deceased.

29. Turning to the case that was presented before me, Mr Hilton has encapsulated that as follows. His primary submission is that the will does not comply with section 9 of the Wills Act. The signature is not that of the deceased. In support of that he relies on the expert report of Ms Radley. She has provided a report for the purposes of these proceedings, dated 13 May 2022. She is an expert in examining the authenticity of documents and writing on documents and her Curriculum Vitae sets out her detailed experience in this area. She is an expert that has provided reports to the court in a number of cases.

30. She was asked to consider whether the signature of the deceased on the will is an original signature, whether it was penned by the deceased, whether the signature of the witnesses to the purported will are original signatures. She had, as one would expect, a number of documents to compare in terms of analysing the signatures on the will. She had 23 samples of handwriting, one in particular was near contemporaneous with the will.

31. In a very thorough analysis of the documents in question from paragraph 10 onwards of her report, she has set out how she has examined the document and her conclusion is that:

> "There is very strong evidence to support the proposition that Mr Reading did not write the signature in his name on the will but that it is a simulation of his genuine signature style by another individual."

32. She noted a number and variety of significant differences between the questioned signature and the known signatures of Mr Reading, both in respect of constructional features and the mode of execution. Quite properly, she has also considered the alternative proposition that the differences observed between the questioned signature and the known signatures are due to Mr Reading writing the questioned signature on the will in an accidentally modified style, perhaps as a result of unusual writing circumstances. She says that due to the number and nature of the differences observed, she considers this possibility to be highly unlikely. So I am satisfied that there is very strong evidence set out in this expert's report that the signature on the will is not that of the deceased.

33. But this case goes further than that and Mr Hilton has set out five features or additional matters in this case that I can and should take into account.

34. (1) Existence of the will. It is right to say at the outset that Mr Fraser has conducted detailed investigations, firstly identifying who the potential beneficiaries of the estate are and then subsequent investigations focusing on the authenticity of the will. What has been uncovered is that the deceased graduated from Christchurch Oxford in the 1950s. He went on to become a teacher and then a headmaster of Cranbrook School, which was an independent school in Ilford and he worked there from 1976 until his retirement in 2001.

35. When he retired, he remained in Ilford and he became a trustee of Sue's House, a cancer charity. It is clear from the Facebook page that I have seen, that he was a much-respected trustee and there was a warm tribute to him on the Facebook page. It would appear that he was responsible for the charity's legal and regulatory requirements and its day to day running, so he played an active role in the charity.

36. The significance of this is that when the will came to be made in 2016, he had been based, worked and his life centred in Ilford until in or about 2020 when he moved to the family home in Buckingham. So at the time in 2016 when this will is said to have

been made, he was living in Ilford. The significance of that is that the will records his address as being in Buckingham, not in Ilford.

37. From the enquiries that the claimant and his solicitors have been able to uncover the property The Firs, Main Street, Tingewick, Buckingham, Bucks, MK18 4NL which is the property that it is said that the deceased was residing at or his address at the time that he made the will, was his parents' home in Buckingham. On their respective deaths it passed to the deceased's brother and when he died, it passed to the deceased. The brother appears to have died about 2008. Someone simply looking at paper records would not know this family background.

38. As I have already indicated, the deceased lived in Ilford until 2020. During his lifetime he retained Lorimers Solicitors. They appear to have dealt with both the probate in relation to his late father, his late mother and his late brother's estate, and also an issue with a lodger at the Buckingham property.

39. The significance of that is that frequently when somebody is involved with probate and instructs a solicitor, if they then decide to make a will they often (although not exclusively) will go on to instruct that solicitor to prepare their will. So they are often a first line of enquiry when no will is known to exist or if there is a question of validity hanging over a will. When the deceased died, and sadly he died in hospital during the Covid pandemic, his estate was initially dealt with by Milton Keynes Council Environmental Health Department and in fact they organised the funeral, and they obtained access to the property. It was then a friend of the deceased's, a Clair Horsman, who referred the matter to Fraser & Fraser with a view to locating his heirs. So Fraser & Fraser have been able to carry out searches of those documents, and indeed the claimant himself has carried out searches personally. They have been able to ascertain the previous involvement of Lorimers Solicitors and they were contacted. They confirmed that they have no record of a will having been made by them in relation to the deceased, and that they hold no other will.

40. Fraser & Fraser went further and contacted a number of solicitors within the locality of the property and none said that they had any record of a will being made by them in respect of the deceased.

41. (2) The terms of the will, both on its face and to placed in context. The will, at first superficial glance, appears to be potentially a valid will. It records, "This is the last will and testament of me, Gerald Thomas Reading", and then gives his Buckingham address. However, the deceased was living in a flat in Ilford, indeed he had been living in Ilford for decades. His driving licence gave his address as Ilford. It was only in 2020 that he moved to Buckingham. There are a number of typographical and other errors, both in the language, the grammar and formatting of the will that are surprising given the deceased's education and work background. I do not think that he will have accepted the will in this state.

42. The will also suggests at the end that it has been professionally drawn. There is a signature which appears to be A.B. Underneath that is a stamp of Mr A Boss, LLB Hons, Solicitor, under that dated 08.07.2016. It purports to be from a solicitor of East London Solicitors, 27 Wakefield Street, Eastham, London E6 1NG, and then there is a telephone and a fax number given on that. There is no solicitor of that name on the Rolls or a firm of that name at the time of the purported will. The claimant's evidence, paragraph 50, sets out enquiries made by Fraser& Fraser and his solicitors with the Solicitors Regulatory Authority,

> "They confirmed that a sole practitioner was once operating from 27 Wakefield Street under the same business name [East London Solicitors], however they ceased trading on 27 February 2006 (some 10 years before the alleged Will). The Sra further confirmed that at the time it ceased trading the sole practitioner was listed as 'Anirban Bose', who was admitted to the roll of solicitros for England and Wales on 15 Janaury 2002, but that he had not held a practicing certificate since 15 November 2006."

43. Certainly the will does not look like it was drawn by a solicitor. Clauses 1 and 2 specifically exclude foreign assets and foreign wills, although there is no evidence in this case that the deceased had any foreign assets or a foreign will. Clauses 1 and 2 are internally inconsistent with clause 3. Clauses 1 and 2 say, "They relate to my estate in England Wales but no further", and clause 3 goes on to say, "I give, devise and bequeath all of my real and personal estate whatsoever and wheresoever, after payment of my just debts, funeral and testamentary expenses". That is a simple error that I would not expect to have been made.

44. Clause 3 gives the entire estate to the person said to be called William Joseph, and yet clause 4 goes on to specifically give him the devise of the Buckingham property. That says in relation to the Buckingham property, "Secured thereon by way of a mortgage or otherwise at my death absolutely". There was no mortgage in relation to that property, so again another error.

45. Clause 4 of the will is not completed. There is then a gap in the clauses. There is no clause 5 to 12 and then it resumes at clauses 13 and 14 which are in a different format. Clause 13 specifically refers to an executor but the will itself appoints no executor. Clause 14 is a curious clause. It says, "The statutory equitable rules of appointment", one assumes that must be apportionment, "shall not apply." That, insofar as one can understand what that clause means, is superfluous. One only has to look at *Williams, Mortimer and Sunnucks* on that at paragraphs 39, 77 and 75-01.

46. Then one turns over the page and again it is also curious that the signature page is a separate page. It has the names of two attesting witnesses. It is unusual, I accept Mr Hilton's submission in relation to this, that the addresses of the witnesses are printed onto this document. The witnesses are said to be a Shuja Hakeem of 17a Oak Lane, Bradford BD9 4PU, and then another witness, Naveed Ahmed Janjua of 48 Abbots Road, London E6 1LF.

47. Even if one looks at the face of this will and also putting it in its correct context, this will does not appear to be the will of the deceased.

48. (3) Lack of evidence of the existence of the beneficiary. This by its nature has to be circumstantial because the claimant is working in the unknown, where the defendant has provided no information. There has clearly been quite significant detective work. I note that there are hearsay statements and I have to be careful as to the weight to be attached to them, but when it is said that Mr Joseph is an enigma, I think that is a fair assessment. There is no evidence before me of any association between the deceased and a Mr Joseph, whether as a friend as described in the will, or as a cousin, as described by the defendant in correspondence, or otherwise. There is also no evidence of any connection between the deceased and Pakistan and that, of course, is the address that is given in the will for Mr Joseph.

49. The next point forms yet another part of this jigsaw in this case that makes me deeply concerned about the circumstances as to how the grant of probate was obtained by the defendant. Mr Hilton submits that the address on the will for the beneficiary is possibly odd, when viewed in context, and enquiries have been made in Pakistan. I am told that Mohalla simply means an area of a town or community, Kachi Adabi translates into Urdu as a slum area. So a relevant town or city is not named. I am told that a search reveals several places in Pakistan that it could be. There is one reference to a former Christian College in Lahore and private investigators were instructed in Pakistan to investigate. What they have found is that there are a number of people, it is not uncommon to have an Anglicised name, called William Joseph. There are a number of people in Pakistan with that name, but what their investigations have revealed is that they have not found a William Joseph that meets the description in the will.

50. It is not the role of the claimant in this case to expend significant sums of money trying to identify the beneficiary in this case. I am satisfied on the evidence before me that there is no beneficiary called William Joseph. He may well be a fictitious character.

51. (4) Lack of evidence of the existence of the attesting witnesses. I am told and I accept that the claimant has been unable to find any trace of Shuja Hakeem who is the first attesting witness said to be residing in Bradford. They have, however, found a trace of a Naveed Janjua, but not at the address given in the will, instead at 521 Romford Road, which is curiously the address of KM Legal.

52. KM Legal is a firm that was mentioned by the defendant and to put that in context, the claimant only became aware of the grant of probate when they applied to register the defendant's death in respect of the Buckingham property. At that stage it appears that the defendant had marketed the property for sale at a price of £600,000, notwithstanding his statement that the estate in total was worth no more than £305,000. He appears to have marketed the sell the property in January 2022. That can only have been as a result of the actions of the defendant who had the benefit of the grant.

53. Quite properly, as the defendant had registered his title to the property under the grant, he received notice that the claimants had made an application to the Land Registry and

that prompted an email to the claimant's solicitors of 24 January 2021. Copied into that email are two individuals associated with unregulated practices, one is Francis Anim. He is believed to have been a litigation paralegal at the non-SRA regulated firm carrying on under the name KM Legal and his email address has KM Legal within it.

54. So I go then back to Naveed Janjua because his address seems to be consistent with that of KM Legal and this then links back to the defendant. Again this is a hearsay statement and I do consider the weight to be attached to that, but a telephone call was made to that firm. Mr Malik, who is the sole practitioner of the firm, acknowledged that he knew Naveed Janjua, refused to provide any details about the same and terminated the telephone call.

55. So, there is no evidence that the witnesses said to have attested this will actually exist. It is possible that a Naveed Janjua does exist, but they have not provided a witness statement or been involved in this case and it is not through want of trying by the claimant trying to ascertain their whereabouts.

56. (5) Conduct of the defendant. In order to obtain the grant, the defendant relied on a power of attorney said to be granted to him. I have gone through that document at the outset of this judgment and I will reiterate that the probate application form makes it very clear the consequences of making a false statement in relation to the application. The form clearly states that the value of this estate is £305,000. The application is dated 9 December 2021, so at that stage, in order for the defendant to have completed that application, he signed his signature in the belief that was the correct value of the estate. So therefore, it seems somewhat incongruous that he is attempting to market the property for the price of £600,000 in January 2022. The property has been marketed on a website as a four bedroom detached house for sale, at an asking price of £600,000. I do consider on the evidence that the only person who would have been able to give instructions to market that property was the defendant, the person who had the benefit of the grant.

57. At the early stages of this case, the defendant said that he would obtain and send a copy of the will to the claimant's solicitors. In an attendance note made by Charlotte Pollard, who is the solicitor at the claimant's solicitor firm, she records

receiving a call from the defendant on 25 January 2022 at 11 am, so that is a month after he filed his application for a grant. It says,

> "CP notes that it is a letter of administration with the will annexed. That being so because the will did not appoint any executors. And requests a copy of the will from [the defendant] and he says that he will request this from the solicitors."

58. It rather begs the question what solicitors is he referring to. Then in an email of 26 January 2022 timed at 8.26, which clearly was a follow-up from the telephone call, he says:

> "Dear Charlotte, following our telephone conversation yesterday, please arrange to send me a copy of your application to the Land Registry on 23 December 2021. I have requested the law firm for copy of the will."

59. There is then an attendance note of a further telephone conversation on 1 February 2022 again made by Charlotte Pollard, it says:

> "Telephone call in from [the defendant] at 11.30 on 1 February 2022.
>
> Further to receiving emails previously requesting a copy of the will, he confirms he is finding our attitude obstructive in that we haven't sent him a copy of the AP1 as requested."

She confirms that she is taking instructions on this:

> "… but he also has not sent us a copy of the will as requested. He confirms he is named on the grant and is merely trying to administer the estate correctly and needs to see who this interested party in the property is."

60. Charlotte Pollard asks him if he knew the deceased and he explains "He was a good friend of Gerry". I pause at that point, the evidence before me is that the deceased was not referred to as "Gerry" by anyone. He said, "and he worked in the same charity as him." When he was questioned as to what charity it was, he confirmed that was the London Children's Charity, which is very vague and again there is no evidence that the deceased worked in a charity of that name. "He said he had known the deceased for

some 20 years." She asked of the connection with the beneficiary as the defendant is not the beneficiary and he confirmed that "The beneficiary is a close relative of the deceased." When Charlotte Pollard questioned that and asked how close, he confirmed "Second cousin or something of the sort."

61. I am satisfied on the evidence before me that the defendant was not being truthful in that conversation with Ms Pollard. I am satisfied he was not a friend of the deceased. He was certainly not a friend of his for some 20 years. I am satisfied that the William Joseph referred to in this will is not a relative of the deceased. He is not a second cousin or something of the sort. Had he been, I am satisfied that Fraser & Fraser would have uncovered that by their detailed enquiries about the genealogy of the deceased.

62. What is curious is that if the defendant was a close friend of the deceased, of "Gerry" as he describes him, he has provided no information in this case about the deceased. He has taken out a grant. He was provided with a letter of claim setting out the claimant's belief about the authenticity of this will and he has not provided any details to identify William Joseph, to provide any information about him, to provide any information as to how this will came into being. I find that a curious feature of this case if the defendant had been truthful when he filed the probate application at the district registry.

63. The defendant has never answered the letter before claim. All that has happened when the claimant intimated this claim is that he has attempted to revoke his office. He has said he does not wish to be part of the contentious probate proceedings and he has decided not to act for the beneficiary any longer. As Mr Hilton quite properly submits, it is not up to the defendant simply to wash his hands of this matter. If he had acknowledged that the will and the grant upon which it was based are not true documents, this case would have had a very different path. There is no evidence or reliable evidence before me that the defendant has given notice of this renunciation of the agency, as he purports to have done, and that that has been accepted by Mr Joseph. A fact that is stark in this case is the absolute silence from the person said to be Mr Joseph, a person who it is said stands to inherit a gross estate in the sum of over £700,000.

64. As I said at the outset, the defendant has taken no steps to vary the order of Deputy Master Scher appointing him in a representative capacity on behalf of the beneficiary. He has taken no steps to have himself removed as a party in this case. What is interesting is that all of the information in this case, all of the background, the full detail, is theoretically in the control and power of the defendant. Given the assertions made by him in the correspondence, he has information or access to information which will shed some light on the circumstances surrounding the making of this will, whether Mr Joseph exists, but he has not provided any of that information to the claimant.

65. Yet, in his application to the probate registry to obtain the grant, he has confirmed that this is the deceased's last valid will. The most that it can be said that he has done is to provide a telephone number for Mr Joseph. That telephone number does not work. He has in the correspondence said that he would make contact with the beneficiary through a mutual friend, nothing further has been provided. To compound matters as well, when the claimant came to serve an order and documents on the defendant, it was returned as "not known at this address". He had not notified the claimant he had changed his address. He was found though, and I am satisfied he has been served with the relevant court documents, the court orders, that he has had notice of the trial yesterday and that he has elected not to attend court or to engage in these proceedings.

66. He also in correspondence has suggested that he is in disagreement with the beneficiary. That was only a relatively recent assertion. That would beg the question that he is in contact with Mr Joseph, if that is true.

67. I am satisfied for the reasons that I have set out that the will does not comply with section 9 of the Wills Act and is invalid. The signature on the will is not that of the deceased and on the evidence before me I am satisfied that that document is not a genuine will. I consider on the evidence before me that that has been drafted as an attempt to commit a fraud and obtain the deceased's estate by deception, and I will be referring this matter to the police for investigation.

68. Finally as a postscript and to assist with trials of this type going forward, I received an enquiry before this trial to question whether it was necessary for counsel or anyone to attend, because it was a trial on written evidence. I simply want to clarify this. This

claim is listed and was heard as a trial. In probate claims, the court has a supervisory jurisdiction and must be satisfied that such an order as sought should be made. It is therefore incumbent on the party seeking an order to establish on the evidence that such an order should be made. The trial takes place in open court. The only difference with this a trial on the written evidence is that the parties do not call oral evidence and I set that out to assist anyone for the future.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk