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Neutral Citation Number: [2024] EWHC 3153 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY TRUSTS AND PROBATE LIST (CHANCERY DIVISION)

4th Floor, Westgate, 6 Grace Street, Leeds LS1 2RP Date: November 2024

Before :
Mr Recorder Adrian Jack
(sitting as a High Court Judge)

Claim No PT-2024-LDS-000015

BETWEEN

JASON SMITH WAITE
(as executor and beneficiary of the estate of Eileen Skilton deceased)
Claimant

and

(1) PETER SKILTON
(as executor and beneficiary of the estate of Eileen Skilton deceased)
(2) JUDITH ALLOWAY
(as executrix of the estate of Eileen Skilton deceased)
(3) ANDREW SAMUEL HORWICH
Defendants

Claim No PT-2023-LDS-000174

AND BETWEEN

ANDREW SAMUEL HORWICH
(as executor and representative of the other directors of Symes Bains Broomer Ltd) Claimant

and

(1) PETER SKILTON
(as executor and beneficiary of the estate of Eileen Skilton deceased)
(2) JASON SMITH WAITE
(as executor of the estate of Eileen Skilton deceased)

(3) JUDITH ALLOWAY
(as executrix of the estate of Eileen Skilton deceased)

Defendants

Mr Waite represented by **Sarah Harrison** of counsel, instructed by
Knights Professional Services Ltd
Mr Skilton in person
Ms Alloway in person
Mr Horwich represented by **Marisa Lloyd** of counsel, instructed by **Symes Bains Broomer Ltd**

Hearing: 25th and 26th September and 2nd October 2024
Judgment date: 9th December 2024

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Judgment

This judgment was handed down by the Judge remotely by circulation to the parties by email and release to The National Archives. The date and time for hand-down is deemed to be 12 noon on 9th December 2024.

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Mr Recorder Adrian Jack

1. On 17th December 2018 Eileen Skilton was gravely ill. She was not expected to live to Christmas. Her husband, Peter Skilton, telephoned Symes Bains Broomer Ltd, their solicitors. He spoke to Molly-Mae Lodge, a legal secretary with the firm. Anna O'Mara, who was then a senior associate solicitor at the firm, phoned him back. Ms Lodge and Ms O'Mara went to see Mrs Skilton the following day. There Ms O'Mara drafted a codicil to Mrs Skilton's existing will dated 18th December 1985. Mrs Skilton executed the codicil. Mrs Skilton died on 21st December 2018.

2. At issue before me in the rectification and construction action, PT-2024-LDS-000015, is whether the codicil accurately reflected the wishes of Mrs Skilton or whether it or the will stands to be rectified and what certain clauses of the codicil mean. It is common ground that Mrs Skilton had testamentary capacity at the time she executed the codicil.

3. The codicil appointed as her executors and trustees: Peter Skilton; Jason Smith Waite, her only child; Judith Alloway, her best friend; and the directors of Symes Bains Broomer Ltd. At issue in the removal action, PT-2023-LDS-000174, is whether some or all of the executors should be removed and whether Roythornes Trustees Ltd should be substituted for some or all of those executors removed. Andrew Horwich is a director of Symes Bains Broomer Ltd and is the nominal claimant in the removal action.

The background

4. Peter Skilton was born in 1937, the deceased in 1944. The deceased was married first to Edward Waite. There was one child of the union, Jason Smith Waite, who was born in 1971. The deceased and Mr Skilton met whilst both were working for British Steel. Mr Skilton had an engineering background. The deceased came from a longestablished farming family around Snitterby and Waddington in Lincolnshire. They commenced an affaire and eventually started to live together. In 1981 the deceased and Edward Waite divorced. Jason Waite did not live with his mother. Instead he spent most of his time at boarding school or with his grandparents. It is common ground that Mr Skilton and Jason Waite never got on with each other.

The 1985 will

5. On 18th December 1985 Mrs Skilton made a will in contemplation of marriage to Mr Skilton. After reciting her proposed marriage and appointing executors and trustees, the will continued:

> "3. I give to my son Jason Smith Waite all my clothing jewellery and other articles of personal use or ornament not otherwise specifically bequeathed.
>
> 4. I give to the said Peter Skilton all my personal chattels as defined by section 55(1)(x) of the Administration of Estates Act 1925 not otherwise specifically bequeathed.
>
> 5. I give to my said son Jason Smith Waite all my estate and interest (if any) in the freehold property being and situate at Waddingham in the County of Lincoln."

Para 6 then gave the trustees the power to call in the assets, pay her debts and then (c) "to hold the residue (hereinafter referred to as "my residuary estate") upon the trusts hereinafter declared." The will then provided:

> "7. My trustees shall hold my residuary estate upon trust as to both capital and income absolutely for such of them the said Peter Skilton and the said Jason Smith Waite (in this clause referred to as Beneficiaries) as shall be living at my death and shall reach the age of twenty-one years and if more than one in equal shares."

6. The will was prepared by Symes Bains Broomer. They kept the original of the will and remained her solicitors until she died.

7. Shortly after her marriage to Mr Skilton, Mrs Skilton's father gave her four pieces of land in Snitterby. Three pieces of the land were separated by roads; one was a little more distant. Despite not being fully contiguous the land was registered under one title number on 21st June 2007: see the second plan below. It is described at the Land Registry as "Manor House, School Lane, Snitterby, Gainsborough". However, the proper description of the different parts of the land is hotly disputed. The first plan

below shows the contentious parts of the land. I shall come back to the issues and my findings of fact in relation to this land.

8. After their marriage, both she and her husband stopped working for British Steel and moved to the area, but did not initially live at the big house known as Manor House, which was in a dilapidated condition. They initially lived in a bungalow purchased for them by Mrs Skilton's father, a farmer. They subsequently did up the Manor House and moved in. How the works to the Manor House were financed and what input Mr

Skilton had to the doing of the works to the building is in dispute. It remained their home until Mrs Skilton's passing and is still Mr Skilton's home. The land to the south and east of the Manor House, edged in pink on Plan 1, between School Lane and Moor Road, was used by Mrs Skilton to grow herbs and other plants commercially.

9. Mrs Skilton subsequently acquired other land in and around Snitterby and Waddington. This included houses which were let on shorthold assured tenancies. One of these was Ivy Cottage.

10. The acquisitions also included Fairville, a house and garden contiguous with part of the western boundary of the Manor House. Part of the wall separating Fairville from the Manor House was removed. The back of the backgarden of Fairville was then separated from the rest of the backgarden of Fairville: see the area in green on Plan 1 marked as "disputed garden". The disputed garden was accessed from Mrs Skilton's commercial garden, although it is in dispute whether it formed a part of it. Fairville, including the disputed garden, was put in the joint names of Mr and Mrs Skilton in 2005.

The codicil

11. On 18th December 2018 Mrs Skilton made a codicil to her 1985 will. Part is in type, part is handwritten. I have put the handwritten parts in italics and have omitted the various initiallings of changes. The underlinings and strike-throughs are as in the original.

> "CODICIL
>
> I, EILEEN *SKILTON NEE* WAITE of Manor House School Land S*n*itterby, Gainsborough DN21 4TS declare this to be the first codicil to my will dated the 18th December 1985 ("My Will")
>
> **ALTERATIONS**
>
> I ADD THE FOLLOWING CLAUSE to replace clause 2 of my Will
>
> 1. I APPOINT my husband **PETER SKILTON** and *my son JASON SMITH WAITE and my friend JUDITH ALLOWAY and the directors of Symes Bains Broomer, Scunthorpe* as my joint executors and Trustees
>
> I ADD THE FOLLOWING CLAUSE as if it was inserted between clause 2 and 3 of my Will

2. (a) IN THIS clause

(i) 'Dwelling' means a freehold or leasehold house bungalow maisonette flat or flatlet in the United Kingdom and any grounds belonging to it

(ii) 'my House' means my house known as Manor House School Lane S*n*itterby Gainsborough DS21 4TS together with its grounds *including Manor Yard* or other the Dwelling which I may own (or hold under a lease) as my principal residence at my death

(iii)'the Contents' means all my furniture furnishings and household effects

(iv) 'the Beneficiary' means my Husband **PETER SKILTON**

(v) 'the Trust Period' means the period between my death and the death of the Beneficiary

(b) IF THE Beneficiary survives me I GIVE my House and the Contents to my Trustees ON TRUST to sell it (subject always to sub-clause (c) below) and to pay any income from the property in which the proceeds are currently invested and any income from my House and the Contents until sale to the Beneficiary during the Trust Period

(c) DURING the Trust Period my Trustees shall not (subject to the Beneficiary's reasonable compliance with the terms of (e) below) sell my House or the Contents except with the Beneficiary's written consent but they shall sell my House or the Contents at the Beneficiary's written request

(d) FOR SO long during the Trust Period as my House and the Contests respectively remain unsold my Trustees shall allow the Beneficiary to reside in my House and to have use of the Contents

(e) THE BENEFICIARY (whether or not currently residing in it) shall pay all outgoings in respect of my House [and keep it and the Contents in good repair and insured]

(f) ANY MONEY held by my Trustees under this clause may be invested in the acquisition of a Dwelling and in any other manner authorised by this Will in addition to all other powers for the investment of trust money (or partly in one way and partly in the other) and investments may at any time be transposed AND in deciding how to exercise these investment powers my Trustees shall have regard to the wishes of the Beneficiary

(g) THE TRUSTS powers and provisions in the foregoing sub-clauses shall apply in relation to any Dwelling acquired under the provisions of subclause (f) in the same way as they apply in relation to my House

(h) WHEN THE Trust Period ends my Trustees shall hold any property then the subject of this clause *for* ~~as an accretion to my residuary estate~~ *my Son Jason Smith Waite*

3. I ADD THE FOLLOWING CLAUSES:

(i) I GIFT Fairville and Ivy House to my Husband PETER SKILTON absolutely

(ii) ALL FURTHER land at Snitterby, Gainsborough to be gifted to my son JASON SMITH WAITE absolutely

(iii)THIS CLAUSE shall replace clause 3 of my Will. My jewellery is to gifted to JUDITH ALLOWAY, ~~SYLVIA~~ SOPHIE McAULAY, FREYA SKILTON and VICTORIA INNOCENT absolutely

In all other respects I confirm my will."

The codicil is then signed and witnessed by Ms O'Mara and Ms Lodge.

The issues

12. Ms Harrison, counsel for Mr Waite, helpfully prepared a list of issues, as follows:

1. [What is the true construction] of sub clause 2(a)(ii) of the codicil as to the meaning of the term "Manor Yard", that is whether it means Manor Farm Yard, Manor House Yard, Manor Crewyard or has some other meaning.

2. Whether sub clause 2(a)(ii) of the codicil should be rectified to read "my House means my house known as Manor House School Lane Snitterby Gainsborough DN21 4TS together with its grounds including Manor House Yard."

3. [What is the true construction] of sub clause 2(a)(ii) of the codicil as to the meaning of the term "its grounds" and whether it includes the garden land which was formerly part of the curtilage of the property known as Fairville.

4. [What is the true construction] of sub clause 3(ii) of the codicil as to whether the reference to "all further land at Snitterby" includes (i) 40.13 acres of land at the Forge, Cliff Road, Snitterby (ii) the Buildings at School Lane, Snitterby (iii) the Forge, Snitterby and (iv) Thorncroft Farmhouse, Snitterby.

5. Whether sub clause 3(ii) of the codicil should be rectified so that, the reference to "all further land at Snitterby" shall read : "I bequeath to my son Jason all further land at Snitterby which description includes the following properties (i) 40.13 acres of land at the Forge, Cliff Road, Snitterby (ii) the Buildings at School Lane, Snitterby (iii) the Forge, Snitterby (iv) Thorncroft Farmhouse, Snitterby".

6. [What is the true construction] of clause 5 of the will as to whether the reference to "all my estate and interest (if any) in the freehold property being and situate at Waddingham" means the freehold property owned by the Deceased at the time at which the will was made or the freehold property owned by her at her death, being the 57.03 acres of land at Waddingham known as Waddingham Field.

7 Whether clause 5 of the will should be rectified to delete clause 5 and to add a new clause 3(ii)(b) to the Codicil which shall read "I gift all my land at Waddingham to my son Jason Smith Waite absolutely."

8. Whether sub clauses 2(b) to (h) of the codicil should be rectified to read as follows

8.1 so sub clause 2(b) shall read "If the Beneficiary survives me I give my House and the Contents to my Trustees to be held upon trust to allow the Beneficiary to reside in my House and to have the use of the Contents during the Trust Period or for so long as he wishes, and, subject thereto, to my son Jason Smith Waite absolutely."

8.2 so clause 2(c) shall read "During the occupation of the Beneficiary, my Trustees shall not (subject to the Beneficiary's reasonable compliance with clause (d) below) sell my House or the Contents except with the Beneficiary's written consent."

8.3 so sub clause 2(d) shall be deleted

8.4 so sub clause 2(e) shall be renumbered as being sub clause 2(d)

8.5 so sub clauses 2(f), (g) and (h) shall be deleted.

9. Whether the will should be rectified to delete clause 4.

10. What directions, if any, should be made as to the extent of the chattels owned by the deceased at the time of her death and whether the same constitute personal chattels or otherwise.

11. What directions, if any, should be made in relation to the alleged misapplication of estate assets by [Mr Skilton].

12. Whether [Mr Waite, Mr Skilton, Ms Alloway] and the directors of Symes Bains Broomer should all be removed as executors of the deceased's estate and an independent administrator appointed to act in substitution for them, or, whether some only of the executors ought to be removed.

13. In the course of the trial, some of these issues went. The disputed part of the garden of Fairville remained in the Land Registry title of Fairville, so it went automatically to Mr Skilton by *jus accrescendi*. That part of issue 3 therefore went. The rest of issue 3 was

subsumed by issue 1, where the meaning of "Manor Yard" was the only issue left in contention.

14. The question originally raised by Mr Skilton which gave rise to issues 4 and 5 was whether "land" included the buildings on it. He said that he had been initially advised that it did not, but was subsequently advised the contrary. This latter advice was in my judgment correct: see *Re Portal and Lamb* (1885) 30 ChD 50. Mr Skilton ultimately did not argue the contrary. Accordingly, I can determine issue 4 as including the four identified titles. (If there had been an uncertainty, resort could have been had to evidence of the deceased's actual intention. Mrs O'Mara's attendance note, and her oral evidence show that the buildings were intended to pass. Only Ivy Cottage and Fairville were to go to Mr Skilton.) Issue 5 falls away, as there is no need for rectification in the light of the construction determined by issue 4.

15. Section 24 of the Wills Act 1837 provides that "every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect

as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will." There is nothing in clause 5 of the 1985 will to indicate the contrary, so the reference to "all my estate and interest (if any) in the freehold property being and situate at Waddingham" means the freehold property owned by her at her death. Accordingly issue 6 in my judgment should be resolved by a declaration that the 57.03 acres of land at Waddingham known as Waddingham Field passes under clause 5 of the will. In the event Mr Skilton did not argue to the contrary. Issue 7 (rectification) falls away.

The state of the Skiltons' marriage and financial contributions

16. There is a dispute between Mr Skilton and Mr Waite as the state of the Skiltons' marriage. Mr Waite says that it was very poor, whereas Mr Skilton says that he and his wife had a loving relationship. At the outset of the case, I ruled that this dispute was irrelevant to the issues of construction which I needed to determine. It was common ground that the codicil was very favourable to Mr Waite. All parties accepted that Mrs Skilton had testamentary capacity. No issues of undue influence were raised.

17. In these circumstances the state of the marriage was in my judgment of little relevance. Further, because the case was brought under CPR Part 8, there were no pleadings. The suggestion that the marriage was unhappy was wholly unparticularised in relation to the period leading up to the making of the codicil. The only detailed allegations postdated the making of the codicil, where it is clear that Mr Skilton reacted badly to his discovery of the terms of the codicil. He says this was a result of the enormous distress he was suffering as a result of his wife of 33 years lying upstairs near death. Whether that is right or not, post-execution events are irrelevant to either construction or rectification of the codicil.

18. There was also disagreement as to how much money Mr Skilton contributed to the acquisition and improvement of the matrimonial assets, for example how much money he contributed to the improvement works to the Manor House, so he and the deceased

could live there. Again, there were no proper pleadings or disclosure of documents which might help resolve these issues. Given the marginal relevance of this issue, it would have been disproportionate to permit a full investigation of these matters.

19. Accordingly I exercised my discretion under CPR 32.1 to exclude evidence as to the state of the marriage and the spouses' respective financial contributions to the matrimonial wealth.

The witnesses

20. I heard live evidence from five witnesses. The first was Jason Waite. He was an obviously very interested party and I treat his evidence with caution. I shall come back to what he said on contentious issues.

21. Mrs Alloway was an impressive witness. She did not appear to have taken sides as between Mr Waite and Mr Skilton. She was concerned to ensure that the wishes of the deceased, who had been her best friend, were observed. She was present when the deceased gave her instructions to Ms O'Mara. However, she is not a lawyer and I need to assess to what extent she is accurate on detailed legal matters. She made notes on

her computer very shortly after the events which the notes recount. I shall return to these, since they and Ms O'Mara's attendance note are the best near-contemporaneous evidence of what occurred when instructions were being given on 18th December 2018 for the codicil.

22. Ms O'Mara attended Court pursuant to a witness summons. The background to this is this. Ms O'Mara was a senior associate solicitor with Symes Bains Broomer when she drafted the codicil. She subsequently moved to Sills & Betteridge, where she became a partner. Symes Baines Broomer had been Mr Skilton's solicitors, as well as his wife's, but when the codicil became contentious Ms O'Mara told him (perfectly correctly) that Symes Baines Broomer could not continue to advise him. Mr Skilton sought advice from Sills & Betteridge. When Ms O'Mara was approached to give evidence in this matter, she consulted the other partners at Sills & Betteridge. They took the view that, because of the potential conflict of interest, it was not appropriate that she coöperate with Symes Baines Broomer in the making of a witness statement. That is not an approach which, in my judgment, all solicitors would have taken, but it is a defensible position. In my judgment, Ms O'Mara acted properly in refusing voluntarily to give a witness statement and no inferences should be drawn against her by her refusal.

23. In accordance with the Court's directions, Symes Baines Broomer served a witness summary, which set out the evidence which the firm anticipated Ms O'Mara would give. For obvious reasons, it was not in Ms O'Mara's own words, as would have been required if she had made a witness statement: see CPR PD 32 para 19.1. On the morning of the second day of the trial, when Ms O'Mara was due to be called, there were discussions outside Court between Ms Lloyd, who appeared for Symes Bains Broomer, and Ms O'Mara. This resulted in a change to the witness summary. After referring in the witness summary to her attendance note (to which I shall come), Ms O'Mara

explained that she had prepared a draft codicil at her office. The witness summary then continued (I use the same conventions as to italics etc as with the codicil):

> "10. I took the draft Codicil with me, based on some of the points that I had been told that Mrs Skilton wanted to discuss with me. This was prepared, typed and printed at the office before I attended the property.
>
> 11. After receiving instruction from Mrs Skilton, I amended the draft Codicil by hand.
>
> 12. ~~I read the contents of the Codicil to Mrs Skilton.~~
>
> 13. I went through each ~~amendment~~ *alteration* with Mrs Skilton *and explained each alteration* to make sure it was fully understood by her. Mrs Skilton initialled each amendment. Each amendment was then initially by me and Miss Lodge.
>
> 14. I ensured Mrs Skilton understood the Codicil before she signed the same. Mrs Skilton signed the Codicil on the last page and then on the preceding page.
>
> Miss Lodge and I signed each page."

24. When Ms O'Mara was called, I was invited to treat the witness summary with the amendments as Ms O'Mara's evidence. Ms Harrison for Mr Waite was agreeable to this and neither Mr Skilton nor Ms Alloway objected. With hindsight, this was regrettable. It would have been fairer to Ms O'Mara to have her give her evidence "old style", rather than by way of last-minute amendments to a witness summary which was not in her words.

25. It became almost immediately clear when she started her evidence that what Ms O'Mara meant by "alteration" and "amendment" was not what some readers, including myself, would have assumed, namely that these were references to the handwritten parts of the codicil. Ms O'Mara explained that what she meant by "alteration" and "amendment" were all the changes effected by the codicil, including the printed parts. She pointed out that the heading at the start of the document, immediately following the name of Mrs Skilton and her declaration of testamentary intent was "ALTERATIONS". What she intended to say was that all of the terms of the codicil were explained to Mrs Skilton and approved by her.

26. I can say at once that Ms O'Mara was an obviously honest witness. She was an experienced solicitor and had no axe to grind. I accept her explanation of what she intended by the changed wording of the witness summary. Nonetheless, as she fairly conceded herself, she had in the intervening years dealt with a very great number of wills and codicils. Her evidence in relation to this particular codicil and its making was largely reliant on the attendance note she made on her return to the office after the execution of the codicil. Her independent memory of the day was limited. I therefore need to take a holistic view of all the evidence on the contentious issues in this case.

27. Ms Lodge (now Mrs Taylor) gave evidence. By the time of the trial, she had qualified as a solicitor and was a patently honest witness. However, her independent memory of the events of 18th December 2018 was also limited. At para 17 of her witness statement, she said in the most general terms: "It was evident to me that Mrs Skilton was clear in her understanding of the Will and Codicil and the provisions contained in it, and she was very engaged at all times throughout the meeting." She was less good on matters of detail and did not have the advantage of having prepared a contemporaneous attendance note.

28. Mr Skilton was a poor witness. He agreed that he telephoned Symes Bains Broomer and spoke to Ms Lodge and then had a later conversation with Ms O'Mara. He said that he did not know that his wife had already made a will. He denied that he gave Ms O'Mara any instructions as to what to put in the codicil. He denied that his wife had told him what she wanted put in any codicil or will. I do not accept his evidence on this. Ms O'Mara's attendance note of 17th December 2018 records Mr Skilton saying that his wife "wishes to change her will", thus contradicting his assertion that he did not know she had made a will, although it is not in dispute that he did not know the contents of it. The attendance note does not record any instructions as to the content of any new will or codicil, but there must have been some, because Ms O'Mara prepared the printed parts of the codicil as executed the following day. She could not have done that without at least *some* instructions. The instructions can only have come from him.

29. On other aspects of Mr Skilton's evidence, I exercise great caution. He, like his stepson, is an interested party.

The 18th December 2018

30. On 18th December 2018 Ms O'Mara and Ms Lodge arrived at the Manor House together. They spoke briefly to Mr Skilton and went upstairs to Mrs Skilton's bedroom. In the bedroom with Mrs Skilton was the local vicar, the Rev Colwell, and the Skiltons' gardener, Sue. Ms O'Mara spoke briefly with Mrs Skilton to establish that she did wish to change her 1985 will. The vicar had been taking brief instructions as to what changes Mrs Skilton wanted to her will. Ms O'Mara and Ms Lodge then went downstairs. Mr Waite and Ms Alloway arrived as Ms O'Mara was speaking to Mr Skilton. Mr Waite and Ms Alloway went upstairs almost immediately. The vicar then came downstairs and Mr Skilton went up to see his wife. As he did that the gardener also came downstairs. Shortly afterwards Mr Skilton and Mr Waite came downstairs. Ms O'Mara and Ms Lodge then went back upstairs accompanied by Mr Waite.

31. Upstairs there were now Mrs Skilton, Ms O'Mara, Ms Lodge, Ms Alloway and Mr Waite. Mr Waite was asked to step out, but Mrs Skilton confirmed that she wanted Ms Alloway to stay. Ms O'Mara then started to take Mrs Skilton's instructions. I shall not set them all out, as most are not in dispute. Ms O'Mara was concerned to establish that Mrs Skilton had sufficient capacity to make a will. In the light of the urgency of drafting the will, it was not possible to have a doctor in attendance. Ms O'Mara therefore set out at reasonable length in her attendance note examples of Mrs Skilton showing sufficient understanding to make a valid codicil. Among these examples she noted:

> "Mrs Skilton was keen that her husband stayed in the property during his lifetime, and even used the words 'Life Interest Trust in favour of (her) husband' and 'the ultimate beneficiary being (her) son."

32. After taking Mrs Skilton's instructions, Ms O'Mara and Ms Lodge stepped outside and sat down at a desk on the landing to add the handwritten additions to the draft printed codicil set out above. Ms O'Mara's attendance note then records her going "back into the room and [going] through each amendment with Mrs Skilton, who initialled each amendment." The codicil was then executed.

33. Ms Alloway's note of the events of 18th December 2018 reads as follows (with some paragraphs run together):

> "10.30 approx …Jason arrived at Vicarage in an upset state. Peter had arranged for solicitor to come to Eileen for her to amend her Will. Jason was concerned about how his mother was being manipulated and coerced and asked if I would go over to the Manor.
>
> I drove over to the Manor. I arrived to find Peter, Anna O'Mara (solicitor) and Molly from Symes Bains Broomer) in kitchen. They asked me to accompany them to Eileen's bedside, which I did.
>
> The Rev Cathy Colwell was sat alongside Eileen's bed. Sue (Eileen's gardener) was also present at this time. I asked Sue to leave as the solicitor had business to attend to. The solicitor asked the Rev to leave also.
>
> Eileen wished the following to be included in a Codicil to her will: Jason receives all the agricultural land, and cottages known as Blacksmiths and Thorncroft and the Manor farm house, buildings and land and Peter to live at Manor house until he dies, or live that as long as he wishes but then it becomes Jason's. Peter to have Ivy Cottage and Fairville outright.
>
> All jewellery to go to Jason, with the wish that Judith Alloway, Sophie McAulay (and Eileen made a point of spelling the surname here…) and Peter's daughters Victoria Innocent and Freya Skilton may choose a piece each.
>
> Everything else I own to be shared equally between Jason and Peter 50/50. Jason, Peter, Judith & solicitor as Executors of Will.
>
> Anna and Molly went on the landing area to write up the notes. I stayed with Eileen. She said to me 'Peter will be angry with what I have done. I know that. But… I have to do the right thing by my parents. It is Jason's rightful inheritance. There is enough for both of them (meaning Peter and Jason). Please don't let them argue about it all, Jude.
>
> Eileen was tired. I sat and held her hand.

> Anna and Molly eventually returned and had written up Eileen's notes. Eileen was able to sign each sheet with her usual signature. I did not read the document. Eileen did not read the document."

34. In her second witness statement, which was made after she had had sight of Ms O'Mara's attendance note of 18th December 2018, Ms Alloway expanded a little on what occurred when Ms O'Mara and Ms Lodge returned from the landing:

> "I am not sure what the solicitor means when she said that she 'went through' the document and explained what each 'alteration' would mean. I do not recall each and every clause in the codicil being read to Eileen and explained to her, and indeed I am quite sure that the codicil was not read out in full, line by line. Had this been done, I expect that Eileen would have pointed out errors including in relation to jewellery and the right for the Manor House to be sold. I certainly would have pointed out the errors as well… I would also have pointed out that the right to sell Manor House was not Eileen's wish. I do recall that there was a general conversation about some of the key points of the codicil, but there was no discussion about each and every provision of it."

The vicar's notes

35. Whilst Rev Colwell was with Mrs Skilton, she started to take notes of the provisions which Mrs Skilton wanted to make in her codicil. The vicar passed the notes, which consisted of one page, to Ms O'Mara prior to Ms O'Mara taking instructions from Mrs Skilton and Ms O'Mara added to them, with entries in her handwriting both at the bottom and the top of the page.

36. The main contention in relation to these notes was in relation to Mrs Skilton's jewellery. Initially Mrs Skilton indicated that she wanted to give one piece of jewellery to each of four women, including her two step-daughters and Ms Alloway. The codicil, however, provides for the four women to receive all of her jewellery. There is no claim by anyone to rectify the codicil to limit the bequest of jewellery, so this is not an issue which is before me for determination. (The 42 items of jewellery have been valued at £5,790, so it is understandable that no one wanted to incur costs litigating this matter.) Instead there was extensive cross-examination about the change from one piece to a quarter each in order to support the argument that the codicil in general did not match Mrs Skilton's true wishes.

37. The evidence about how the change in relation to the jewellery came to be made is unclear. Ms O'Mara had no recollection. There were other, much more substantial, changes in Mrs Skilton's instructions between her talking to Rev Colwell and then to Ms O'Mara. The middle paragraph of the vicar's notes document reads:

> "*Income from the properties Blacksmith & Thorncroft & ~~Fairville~~ to ~~Peter~~ ↑Jason, and ↑entire Ivy House ~~entire~~. To be split when Peter dies between the children."*

38. Blacksmith Cottage was also known as the Forge. The whole of this paragraph of the vicar's notes was ultimately crossed through.

39. In my judgment the question whether Mrs Skilton intended to leave one piece of jewellery or a quarter of her jewellery to the four women on the facts of this case does not assist in determining whether the rectifications sought under issue 8 (changing the life interest into a right of residence and omitting the power given to Mr Skilton to direct a sale of the Manor House) should be made or not. Issue 8 cannot be determined by a blanket approach as to the extent to which the codicil accurately reproduced the deceased's wishes. The evidence as to Mrs Skilton's wishes regarding the jewellery is too uncertain to be of material assistance.

Rectification: the law

40. Ms Harrison in my judgment accurately sets out the law as to rectification of wills and codicils in her closing skeleton:

> "32. The Court has power to rectify a Will under section 20 of the Administration of Justice Act 1982. The section provides that the Court may order that a Will be rectified where it is satisfied that the Will fails to carry out the testator's instructions in consequence of
> (a) a clerical error, or,
> (b) a failure to understand the testator's instructions.
>
> 33. *'Clerical error'* means an error made in the process of recording the intended words of the testator in the drafting of their Will, that is an inadvertent error in drafting or transcribing the intended words of the testator where the instructions have been understood (see *Wordingham v Royal Exchange* [1992] Ch 412). It does not matter whether it is a clerical error made by the testator or his solicitor or a typist (see *Re Williams* [1985] 1 WLR 905). In *Marley v Rawlings* it was held that the correct meaning of this term was a wide one which would cover a mistake arising out of clerical work of a routine nature such as the preparation, filing, sending or organising the filing of a document. It could cover the wholescale re-writing of a Will.
>
> 34. In *Re Segelman* [1996] Ch 171, a clerical error was made when the draftsman inserted a proviso to clause 11(a) on his own initiative which he failed to appreciate was inappropriate in light of other wording included in schedule 2 of the Will. The testator did not notice this. Rectification was ordered on the basis that the jurisdiction was not limited to errors in transcribing the intended words but extended to where the relevant provision had been introduced or not deleted in circumstances where the draftsman had not appreciated its effect or significance. The failure to delete the offending provision was a clerical error.
>
> 35. Subsection (b) applied in *Sprackling v Sprackling* [2008] EWHC 2696 where the draftsman had misunderstood the testator's instructions that they wanted to leave part of a farm to the beneficiary and not the whole farm."

Issue 8: the life interest in the Manor House and the power of sale

41. I turn then to my conclusions in relation to issue 8. This comprises the two elements: first whether the deceased's intended to give her husband a life interest in the Manor House or a right of residence and second whether she intended to give him a power of sale.

42. As regards the first element, Mr Waite said that, in conversations before 18th December 2018, his mother had only discussed a right of residence at the Manor House and that a power of sale was never discussed at all. Ms Alloway's evidence I have set out above. Against this, one has the evidence in Ms O'Mara's attendance note of 18th December that Mrs Skilton referred expressly to a 'Life Interest Trust in favour of (her) husband' and 'the ultimate beneficiary being (her) son.' Ms Lodge did not have any reliable recollection on this issue.

43. Ms Harrison in her closing skeleton argued:

> "41. In the first instance, it is submitted that the evidence is clear that the Deceased's intention was only that [her husband] should be able to live in Manor House and that she considered that he would be able to afford to do so until his death given she had left him two properties outright to supplement his resources. In that regard
>
> 41.1 although [Ms O'Mara] claimed that the Deceased used the term "*life interest trust*", she confirmed that she could not recall giving any advice to the Deceased as to what this meant as opposed to a right to reside. [Ms O'Mara's] evidence and that of Ms Lodge was that the instructions which the Deceased actually gave were that [Mr Skelton] was to be able to remain in Manor House for life or as long as he wanted. [Ms O'Mara] had only brought a precedent with her creating a life interest so she used that.
>
> 41.2 [Mr Skelton] himself gave evidence that all the Deceased ever mentioned to him was that he would be able to stay in the Manor House. He had previously stated to [Symes Baines Broomer] that "*before my wife died we discussed the issue of her legacy and an agreement made between us that I would continue to live at Manor House and that it would pass to Jason on my own death*."
>
> 41.3 [Ms Alloway] confirmed in her statement and recorded in her notes made on 18/12/18 that the Deceased wanted [her husband] to be able to live in the Manor House for life or as long as he wanted.
>
> 41.4 whether a life interest trust or a right to reside had been created, the inheritance tax effect would have been the same. Both would have conferred an immediate post death interest on [Mr Skelton] attracting the spouse exemption.

44. In my judgment the extract from Ms O'Mara's attendance note, which I have set out, is powerful evidence that Mrs Skilton did intend to give her husband a life interest. If Mrs Skilton used the expression "life interest trust", that in my judgment is good evidence that she knew at least in broad terms what it meant. Also of significance is the fact that Ms O'Mara included the passage in her attendance note not to show what Mrs Skilton's intentions were but to show that she had testamentary capacity. Her knowledge of what a life interest helped, she thought, to show this.

45. By contrast, Ms Alloway was not a lawyer and was not making her notes to assist her if the matter ever came to court. Reading her written notes on their own would suggest that not only was the codicil not read to Mrs Skilton but that no explanation of the terms of codicil was given to her by Mrs O'Mara. Yet in her second witness statement, she said: "I do not recall each and every clause in the codicil being read to Eileen and explained to her, and indeed I am quite sure that the codicil was not read out in full, line by line." This implies that there was some explanation given, even if Ms Alloway did not think it was a very full explanation.

46. I also bear in mind that for non-lawyers the legal mechanics by which someone like Mr Skilton is given a right to live in a property for life may not be self-evident. Mr Waite's evidence that his mother intended that her husband would have the right to live at the Manor House does not prove that she did not intend him to have a life interest. It is consistent with giving him a life interest. Ms Alloway's evidence can be viewed in the same way: she picked up on Mr Skilton being given a right to live at the Manor House for life, but without appreciating the legal device used to give effect to that.

47. On balance of probabilities I find that Mrs Skilton did intend to give her husband a life interest in the Manor House. Ms O'Mara was a witness of truth. She had no reason in her attendance note of 18th December to misstate what Mrs Skilton had told her about wanting to give a life interest. It was common ground that Mrs Skilton had during her professional life a close attention to detail. If she used an expression like a "life interest trust", I can properly — and do — infer that she knew at least in broad terms what that was. Accordingly the rectification claim in respect of the life interest fails.

48. As regards the second element, the giving of a power of sale to Mr Skilton, this needs to be considered separately. I accept Mr Waite's evidence that his mother discussed Mr Skilton residing at the Manor House after her death but did not say that he would have a power of sale. If she had mentioned a power of sale, that would have been something to which Mr Waite would have been strongly opposed. He would have raised the matter with his mother.

49. Mr Skilton himself in his letter at page 954 of the bundle said as regards his discussions with his wife: "I do remember a conversation in which I emphasised that I did not want to be gifted any farmland and I understood she would probably leave all the rental properties in Snitterby to me. There was no mention of me being allowed to sell the Manor house and I understood she wanted it to be Jason's inheritance. I did not expect the provision for the sale of the Manor in her codicil wishes." In his closing submissions, Mr Skilton says: "I expected both Thorncroft Farmhouse and The Forge to be left to me. I believe that the right to sell the Manor house was substituted for these

benefits." This is in my judgment speculative and is asserted without any adequate evidential basis.

50. The evidence of Ms O'Mara as to whether she discussed the power of sale is much less strong than her evidence in relation to the life interest. I note that the relevant clause in the codicil reads: "DURING the Trust Period my Trustees shall not (subject to the Beneficiary's reasonable compliance with the terms of (e) below) sell my House or the Contents except with the Beneficiary's written consent but they shall sell my House or the Contents at the Beneficiary's written request." It can be seen that the power of sale is buried at the back of the clause, where the risk of the provision being overlooked is greater than if it were at the front. Further, this clause is very likely to have been part of the firm's standard precedent, which Ms O'Mara simply cut and pasted at her office before she saw Mrs Skilton. Ms O'Mara had never met Mrs Skilton previously and may not have realised the potential significance of giving a right to sell as between Mr Skilton and Mr Waite.

51. By contrast, Ms Alloway gave evidence that she would have noticed if a power of sale had been mentioned during the discussions between the deceased and Ms O'Mara and picked up on it. In my judgment, she is convincing on this. Further, Mrs Skilton was clear that her reason for making the codicil was in order to ensure that the property which she inherited from her parents went to her son. She appreciated that this meant cutting her husband out of much of the financial benefit of her estate. Giving an unrestricted power of sale to her husband potentially allowed the Manor House to pass outside the family.

52. Now it is true that giving Mr Skilton a power of sale would not necessarily mean that the Manor House passed out of her family. It would have been open to Mr Waite to buy the Manor House and then arrange an annuity charged on the property so as to satisfy Mr Skilton's entitlement to the income from the proceeds of sale. There is no evidence, however, that anyone thought of any such thing. There may also have been difficulties if Mr Skilton had wanted the proceeds of sale to be invested in another house for himself. Giving Mr Skilton a power of sale meant the risk of the Manor House being sold outside the family and being lost to her son. Mrs Skilton, I find on balance of probabilities, would not have wished that.

53. In my judgment, the insertion of a power of sale into the codicil was a clerical error caused by Ms O'Mara cut and pasting the firm's precedent without instructions from the deceased. Accordingly, I shall order that the codicil be rectified by the deletion in

its clause 2(d) of the words "but they shall sell my House or the Contents at the Beneficiary's written request".

54. The effect is that the trustees' power of sale under the will and codicil (as rectified) is that given by the Trusts of Land and Appointment of Trustees Act 1996 ("TOLATA").

Issue 1: the meaning of "Manor Yard"

55. Turning to issue 1, the meaning of "Manor Yard", I consider first the proper approach to be taken to the construction of a will or other testamentary disposition. In *Marley v Rawlings* [2014] UKSC 2, [2015] AC 129, Lord Neuberger, giving the judgment of the Supreme Court, held:

> "19. When interpreting a contract, the court is concerned to find the intention of the party or parties, and it does this by identifying the meaning of the relevant words, (a) in the light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but (b) ignoring subjective evidence of any party's intentions…
>
> 20. When it comes to interpreting wills, it seems to me that the approach should be the same. Whether the document in question is a commercial contract or a will, the aim is to identify the intention of the party or parties to the document by interpreting the words used in their documentary, factual and commercial context. As Lord Hoffmann said in *Kirin-Amgen Inc v Hoechst Marion Roussel Ltd* [2004] UKHL 46, [2005] 1 All ER 667, para 64, 'No one has ever made an acontextual statement. There is always some context to any utterance, however meagre.' To the same effect, Sir Thomas Bingham MR said in *Arbuthnott v Fagan* [1995] CLC 1396, that '[c]ourts will never construe words in a vacuum'.
>
> 21. Of course, a contract is agreed between a number of parties, whereas a will is made by a single party. However, that distinction is an unconvincing reason for adopting a different approach in principle to interpretation of wills: it is merely one of the contextual circumstances which has to be borne in mind when interpreting the document concerned...
>
> 23. In my view, at least subject to any statutory provision to the contrary, the approach to the interpretation of contracts as set out in the cases discussed in para 19 above is therefore just as appropriate for wills as it is for other unilateral documents. This may well not be a particularly revolutionary conclusion in the light of the currently understood approach to the interpretation of wills… Indeed, the well known suggestion of James LJ in *Boyes v Cook* (1880) 14 ChD 53, 56, that, when interpreting a will, the court should 'place [itself] in [the testator's] arm-chair', is consistent with the approach of interpretation by reference to the factual context.
>
> 24. However, there is now a highly relevant statutory provision relating to the interpretation of wills, namely section 21 of the 1982 Act ('section 21').
>
> Section 21 is headed 'Interpretation of wills – general rules as to evidence', and is in the following terms:
>
> '(1) This section applies to a will –

> (a) in so far as any part of it is meaningless;
>
> (b) in so far as the language used in any part of it is ambiguous on the face of it;
>
> (c) in so far as evidence, other than evidence of the testator's intention, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.
>
> (2) In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation.'
>
> 25. In my view, section 21(1) confirms that a will should be interpreted in the same way as a contract, a notice or a patent, namely as summarised in para 19 above. In particular, section 21(1)(c) shows that 'evidence' is admissible when construing a will, and that that includes the 'surrounding circumstances'. However, section 21(2) goes rather further. It indicates that, if one or more of the three requirements set out in section 21(1) is satisfied, then direct evidence of the testator's intention is admissible, in order to interpret the will in question.
>
> 26. Accordingly, as I see it, save where section 21(1) applies, a will is to be interpreted in the same way as any other document, but, in addition, in relation to a will, or a provision in a will, to which section 21(1) applies, it is possible to assist its interpretation by reference to evidence of the testator's actual intention (eg by reference to what he told the drafter of the will, or another person, or by what was in any notes he made or earlier drafts of the will which he may have approved or caused to be prepared)."

56. As to the facts, it is convenient to start with Plan 2, which shows the four parcels of land which constitute the registered title. The parcels range in size. The smallest to the West is irrelevant for current purposes. The next smallest contains the Manor House. This parcel is surrounded on the North and East by School Lane and on the South by Moor Road. (To the West, it will be recalled, is Fairville.) On the other side of School Lane is the next larger parcel. Immediately to the North and North-East of the Manor House on the other side of School Lane in this parcel is Manor Farm Yard, which includes on its West side Crew Yard. The rest of this parcel is field. The largest parcel which lies on the South side of Moor Road is irrelevant for current purposes.

57. Turning to Plan 1, the evidence of Mr Waite is that, although Crew Yard was sometimes referred to formally as "Manor Crew Yard", on the whole the more informal "Crew Yard" was used. Crew Yard itself had been used for a livery business. The remainder of the Manor Farm Yard had a number of farm outhouses on it. Manor Farm Yard was the means of access to the fields beyond.

58. Mr Skilton did not challenge Mr Waite's evidence on the naming of the yards in his cross-examination of him. Instead in his closing submissions he asserts that Mr Waite "invents several terms for the Manor Yard that are new to me… I believe the statement

'including the Manor yard' inserted into Clause 2.11 of the codicil does NOT refer to part of the Manor Garden, but to all sub yards, north of school lane, suggested by Jason and given various confusing names and incorrect colour references of the map 'Manor house yard' 'Manor farm yard' and 'Manor farm crew yard' I am bewildered by the suggestion that it could be interpreted as the claimant suggests." Having not challenged Mr Waite's evidence on the naming of the various yards, it is not in my judgment right to allow him to challenge the evidence in his closing submissions.

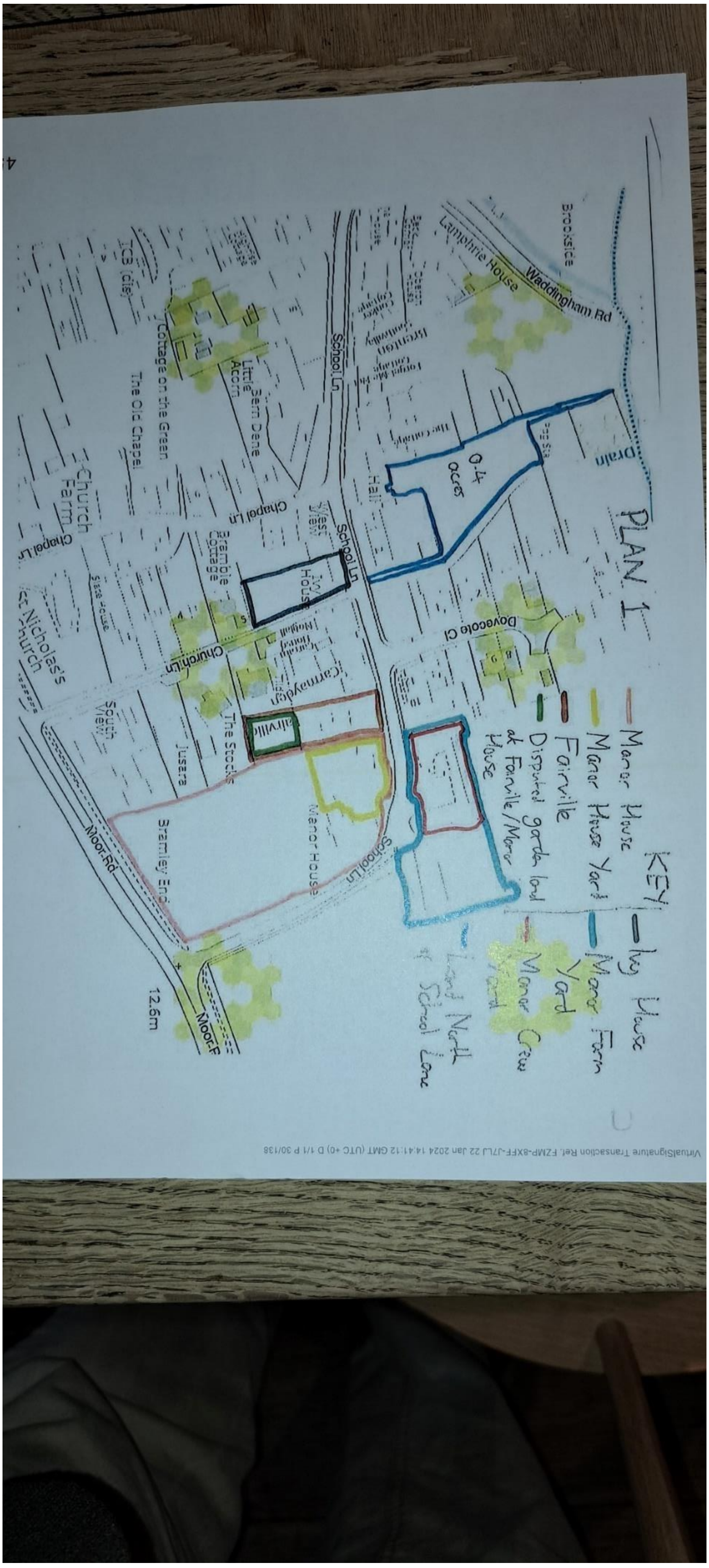
59. Mr Skilton was an artist and used one of the buildings for storing and displaying his work. At the time of his wife's death he was winding down his art business and moving the remaining works from Manor Farm Yard to a Wendy house on Manor House Yard, near the Manor House. The other buildings on Manor Farm Yard were used for farming-related storage. In cross-examination by Ms Harrison, Mr Skilton accepted that Mr Waite needed to cross the Manor Farm Yard for access to the fields beyond and that it was not likely the deceased intended to cut off her son's access to his fields.

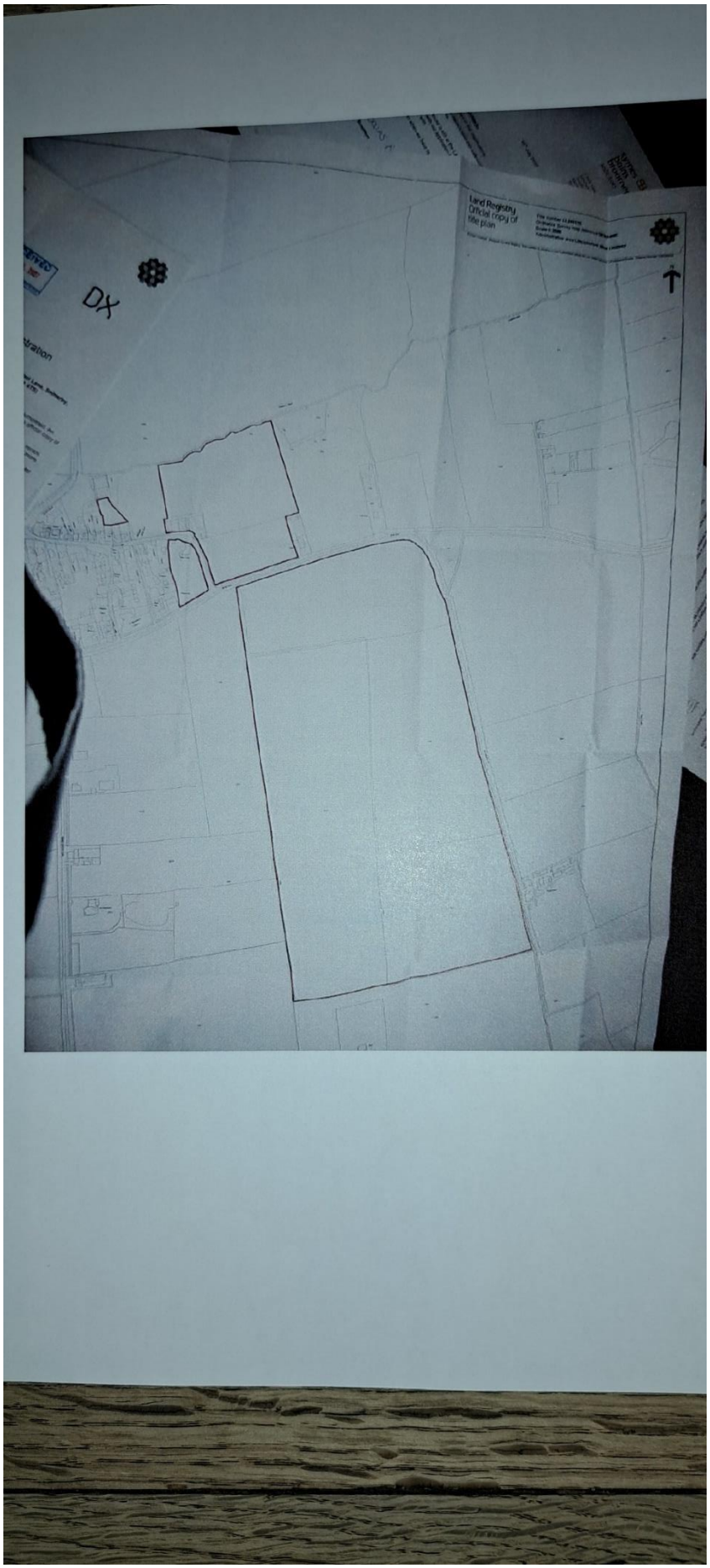
60. I stand back and have to consider what the ordinary meaning of the words "Manor Yard" is in accordance with paragraph [19] of *Marley v Rawlings*. The relevant clause says: "'my House' means my house known as Manor House… together with its grounds including Manor Yard." Two facts are of particular importance in my judgment. First, this is a definition of "the House", it is not a definition of the farm. Second, Manor Yard is part of the grounds of Manor House. I find as a fact that the land North of School Lane was not part of the grounds of the Manor House: it was part of the farming and equine business. That is sufficient to determine that Manor Yard means Manor House Yard.

61. This conclusion is reinforced by the need to access the fields by way of Manor House Yard. Mrs Skilton would be unlikely to want her son to be beholden to her husband for access to the fields, given their mutual animosity.

62. The phrase, when read in this way, is not ambiguous, so that the gateway given by section 21(1)(b) of the 1982 Act is not opened. However, if I am wrong in this and I have to apply section 21(2), I need to consider what "extrinsic evidence, including evidence of the testator's intention" might show. Here the evidence in my judgment is all one way. Mrs Skilton wanted to give the farming assets to her son. The Manor Farm Yard, including the Crew Yard, was all part of the farm. Her husband's use of the land for his art business was being wound down. Access over Manor Farm Yard was the existing means of access to the fields beyond. Thus, even there was a relevant ambiguity as to the meaning of Manor Yard, these considerations would reinforce my view that Manor Yard refers to the Manor House Yard, not to land north of School Lane.

63. Accordingly I will make a declaration that "Manor Yard" in the codicil refers to "Manor House Yard", which is shown edged yellow on Plan 1. Issue 2 falls away.


PLAN 1
KEY
Ivy House
Manor Farm
Manor House
Manor House Yard
Fairville
0.4 acres
Drain
Waddingham Rd
School Ln
Chapel Ln
Church Ln
Dovecote Cl
Moor Rd
Manor House
Bramley End
The Old Chapel
Church Farm
St Nicholas's Church
12.6m


Land Registry
Official copy of
title plan
DX

Issue 9: the personal chattels

64. Under issue 9, I am asked to rectify clause 4 of the 1985 will by deleting it. This clause, it will be recalled, provided: "I give to the said Peter Skilton all my personal chattels as defined by section 55(1)(x) of the Administration of Estates Act 1925 not otherwise specifically bequeathed." The argument on behalf of Mr Waite is that unless clause 4 was deleted:

> "all of the Deceased's personalty (except the contents held within the Manor House trust) would fall into residue. The evidence is to the effect that the Deceased wanted all of the remainder of her estate, after she had made specific bequests of her land and buildings and jewellery, to pass to [her son and her husband]. There was no discussion about personal chattels as against business assets between [Ms O'Mara] and the Deceased. [Ms O'Mara] overlooked clause 4 of the Will and made a clerical error by failing to provide for the deletion of that provision in the Will once she knew the Deceased's instructions. This was evident when it was put to her that there was a tension between clause 4 of the Will and the definition of contents in the Codicil. She clearly had overlooked the point."

65. What Ms O'Mara's attendance note says on this issue is that the deceased "said that she was happy for the residue to be split between Peter and Jason as in her original Will. [Ms O'Mara] explained that 'residue' meant everything that was left in the estate after the specific land and items referred to had been gifted. Mrs Skilton confirmed that she understood." (My underlining.)

66. There are two "items referred to" in the 1985 will. Clause 3 gave all her "clothing jewellery and other articles of personal use or ornament" to her son. This clause was superseded in part by the bequest in the codicil of the jewellery to the four women but otherwise was potentially still operable. Clause 4 gave all her "personal chattels as defined by section 55(1)(x) of the Administration of Estates Act 1925" to her husband. (A new section 55(1)(x) was substituted in 2014 by the Inheritance and Trustees' Powers Act 2014, but nothing turns on the changes.) This clause is partly superseded by the trust of "the Contents" in the codicil, but again the gift of personal chattels was otherwise operable. Neither of these changes in the codicil renders either clause 3 or clause 4 of the will redundant, even if they are in part superseded.

67. In my note of Ms O'Mara's cross-examination, in answer to Ms Harrison's questions she said that she did not recall clause 4 of the will, but said that the deceased did not want all her personal chattels to fall into the residue. She was taken to page 264 of the bundle with the definition of "the Contents". She said she was not too sure how this related to clause 4 of the will. She could only go on the terms of the attendance note. Ms Alloway was not able to give much useful evidence on this, although she did not think the word "chattel" was used.

68. In my judgment the case for rectification of clause 4 is not made out. The attendance note is consistent with clauses 3 and 4 of the will standing, with only those chattel items

not disposed of by those clauses (or by the codicil) falling into the residue. There is a dispute as to whether the word "chattels" was used in Ms O'Mara's discussions with the deceased. I do not consider that I must determine this; the attendance note is in my judgment sufficient evidence to show that Mrs Skilton was happy with her private movable property not going into the residue.

69. Accordingly, I refuse to rectify clause 4 of the will by deleting it.,

Issue 12: removal or replacement of the executors

70. It is convenient to deal with this issue before turning to issues 10 and 11 (alleged conversion of estate assets by Mr Skilton). The power to replace executors is now given by section 50(1) of the Administration of Justice Act 1985, which provides:

> "Where an application relating to the estate of a deceased person is made to the High Court under this subsection by or on behalf of a personal representative of the deceased or a beneficiary of the estate, the court may in its discretion—
>
> (a) appoint a person (in this section called a substituted personal representative or representatives of the deceased or any of them; or
>
> (b) if there are two or more existing personal representatives of the deceased, terminate the appointment of one of those persons."

71. The principles on which the Court will act are conveniently set out by Chief Master Marsh (as he then was) in *Harris v Earwicker* [2015] EWHC 1915 (Ch) at [9]:

> "The relevant principles for the purposes of this application may be summarised in the following way:
>
> i.. It is unnecessary for the court to find wrongdoing or fault on the part of the personal representatives. The guiding principle is whether the administration of the estate is being carried out properly. Put another way, when looking at the welfare of the beneficiaries, is it in their best interests to replace one or more of the personal representatives?
>
> ii. If there is wrongdoing or fault and it is material such as to endanger the estate the court is very likely to exercise its powers under section 50. If, however, there may be some proper criticism of the personal representatives, but it is minor and will not affect the administration the estate or its assets, it may well not be necessary to exercise the power.
>
> iii. The wishes of the testator, as reflected in the will, concerning the identity of the personal representatives is a factor to take into account.
>
> iv. The wishes of the beneficiaries may also be relevant. I would add, however, that the beneficiaries, or some of them, have no right to demand replacement and the court has to make a balanced judgment

> taking a broad view about what is in the interests of the beneficiaries as a whole. This is particularly important where, as here, there are competing points of view.
>
> v. The court needs to consider whether, in the absence of significant wrongdoing or fault, it has become impossible or difficult for the personal representatives to complete the administration of the estate or administer the will trusts. The court must review what has been done to administer the estate and what remains to be done. A breakdown of the relationship between some or all of the beneficiaries and the personal representatives will not without more justify their replacement. If, however, the breakdown of relations makes the task of the personal representatives difficult or impossible, replacement may be the only option.
>
> iv. The additional cost of replacing some or all of the personal representatives, particularly where it is proposed to appoint professional persons, is a material consideration. The size of estate and the scope and cost of the work which will be needed will have to be considered."

72. The claim for replacement of the executors and trustees of the will is brought by Mr Horwich as representative of Symes Bains Broomer Ltd. They wish to be replaced as executor and trustee. There is in any event a potential conflict of interest, because Mr Waite at least wishes to consider whether any claim in negligence might lie against the firm arising out of Ms O'Mara's drafting of the codicil. He also criticises them for delay in the administration of the estate, although the delay seems in part at least due to the animosity between him and his stepfather. All the parties are agreed that this part of the claim should be allowed.

73. Symes Bains Broomer have identified Roythornes Trustees Ltd, the trust corporation of Roythornes Solicitors, as being willing to be appointed as substitute personal representative of the deceased's estate. There is no issue as to their ability to act.

74. Mr Skilton's position is that he is happy to resign as an executor and trustee, on condition that Mr Waite does too. He supports Roythornes' appointment as sole personal representative.

75. Ms Alloway wishes to remain as an executrix. She was the deceased's best friend, who felt that she was an appropriate person to reflect her wishes. She is neutral as to the appointment of Roythornes.

76. Mr Waite wishes to remain as executor. He opposes the appointment of Roythornes. Ms Harrison submits that he and Ms Alloway:

> "should be allowed to remain as executors without a professional administrator being appointed to act either with them or in their place for the following reasons

> 52.1 although the value of the Deceased's estate is over £4m, it has no ready cash to pay the remuneration of a professional administrator. Appointing such an administrator will involve expense which the estate cannot afford. Appointing such an administrator tends to be more expensive in practice than simply appointing a solicitor to act in relation to the administration of an estate. If more disputes break out, such an administrator would feel compelled to seek directions from the Court at further expense to the estate.
>
> 52.2 [Mr Waite] is the main beneficiary of the estate and he ought to be involved in decisions which affect his inheritance. He is the person running the farming business and the letting business.
>
> 52.3 the evidence is that the Deceased was very keen for [Ms Alloway] to act as she was her best friend. There is no evidence at all that [she] has done anything wrong. The only criticism [Symes Bains Broomer] appear to make of her is that she ought to be removed as she has been of the view that the issues with the Codicil needed to be resolved.
>
> 52.4 if any claims need to be brought on behalf of the estate, in practice, [Mr Waite] would need to finance them as the main beneficiary, so it makes more sense for him to remain an executor and pursue them directly.
>
> 52.5 under the statutory order of application of assets, if residue is exhausted by payment of administration expenses, all of the specifically bequeathed property would fall to be sold to meet those costs. [Mr Waite] ought to be directly involved in decisions as to whether or how any farmland was disposed of.
>
> 52.6 [Mr Waite and Ms Alloway] can work together well and they understand and respect the Deceased's wishes."

77. This is to overlook the main objection to Mr Waite continuing as an executor and trustee. Under the terms of the codicil, as rectified by me, Mr Skilton no longer has a power of sale of the Manor House. Instead the trustees of the estate will have a discretion under TOLATA to order a sale. Mr Skilton is in his late 80's. There is a real possibility that at some point he will either need to move into a smaller property or go into a nursing home. The financing of such a change might ultimately involve either the sale of the Manor House or Mr Waite, for example, buying an annuity for Mr Skilton in exchange for the latter's agreeing to the reversion falling in early. This would give rise to a large — and in the light of their mutual animosity very real — conflict of interest.

78. Turning to the points raised on Mr Waite's behalf. I agree that appointing Roythornes would cost more than having Mr Waite and Ms Alloway alone as executors. However, the deceased's view was that it was appropriate to have at least one professional executor. She knew of course of the animosity between her son and her husband, and it was the subject of discussion with Ms O'Mara. In my judgment it is likely that she

wanted a professional executor precisely because of this problem. Even if that is not right, there is little alternative to the appointment of a professional if Mr Waite is removed as an executor. No one suggested that Ms Alloway should remain as a sole executrix and in my judgment that would be inappropriate.

79. Mr Waite is the main beneficiary, but no doubt Roythornes would consult with him on issues of importance. Mrs Skilton did want Ms Alloway as an executrix, but again this seems to be related to her knowledge of the bad feeling between her son and her husband. Ms Alloway would have been a neutral person standing between the two. Roythornes would of course be able to consult Ms Alloway about any issues as to the deceased's wishes and feelings.

80. As to the financing of any claims, Mr Waite would need to be involved whether he continued as an executor or not.

81. Going through Chief Master Marsh's checklist, (i) the administration of the estate has been lamentable. Nearly six years after the deceased's death, apart from obtaining some valuations, little has been done. (ii) There are criticisms to be made of Symes Bains Broomer and Ms Harrison has set them out at length (although I have not needed to reproduce them). These are not in my judgment so serious as of themselves to justify removal of the firm. However, since the firm wishes to be removed in any event, this does not need to be considered further. (iii) The deceased wanted all four executors to administer her estate. Sadly, largely due to the bad feeling between Mr Skilton and Mr Waite, this has proved unworkable. The animosity between the two men is such that they refuse even to be in the same room with each other. This prevented the valuers DDM Agriculture from carrying out its valuation, since Mr Skilton and Mr Waite would not agree who would be present at the valuation.

82. (iv) I have set out the respective views of Mr Skilton and Mr Waite. Their views are diametrically opposed and I need to determine myself what course should be adopted. (v) I find as a fact that "it has become impossible or difficult for the personal representatives to complete the administration of the estate" and that something needs to be done to rectify the problem. (vi) Although cost is a consideration, the deceased always intended there to be at least one professional executor, so the appointment of Roythornes would be consistent with her wishes.

83. Standing back and looking at all matters in the round, in my judgment it is inappropriate for Mr Waite to continue as an executor. The conflict of interest between him and Mr Skilton is such that he could not be expected to deal in a fair manner with any issue of exercising the TOLATA discretion in connection with the Manor House.

84. If he is replaced by Roythornes, there is no need for Ms Alloway to continue as an executrix. Her purpose as a neutral personal representative would be superseded, if neither Mr Waite nor Mr Skilton were executors. Her continuing as an executrix would add to the expense of the administration, because Roythornes would need to act jointly with her. I emphasis that no criticism is raised against Ms Alloway at all. However, overall it is in my judgment in the best interests of the estate that Roythornes be appointed as sole personal representative.

85. Accordingly, I shall direct that Roythornes be appointed as sole personal representative and trustee of the estate of the deceased in substitution for the executors named by the deceased.

Issues 10 and 11: the personal chattels and Mr Skilton's alleged conversion of assets

86. The issues as to what constitutes personal chattels and Mr Skilton's alleged conversion of estate assets are not matters which were addressed in any detail. I am thus not in a position to give any useful determination. For example, Mrs Skilton had cars which she used at least in part in her farming business. Mr Skilton's case is that as she bought new cars she gave the old cars to him. His primary case was that these cars, when passed to him, became owned by him, but his secondary case is that even if the cars

were owned by his wife, they were in truth private chattels, not business assets. There was no discovery of relevant documents (for example, Mrs Skilton's business accounts and tax returns) and there was only minimal evidence given in relation to these matters. I decline to make any declarations as to what may or may not have constituted personal chattels of the deceased.

87. There was no dispute that Mr Skilton had taken some assets which had belonged to his wife and had disposed of them. Mr Skilton accepted as well that following his wife's death he had taken some money from her bank account. He said that, when his wife was released from hospital so as to be able to return home, he installed a stair lift so she could get upstairs to her bedroom. After her death he took the cost of the stair lift from her account. I cannot determine whether that was wrongful or not. There is no pleaded issue as to that. The precise nature of the assets of which he had disposed was not in evidence. In particular there may be argument as to whether they were personal or business chattels.. I cannot make any findings.

88. However, by his actions Mr Skilton would appear to have been acting as an executor or at least as an executor *de son tort*. In my judgment, he is under a duty to account for estate assets which he has taken or disposed of. Since the potential ordering of an account is within the scope of the matters before me, I shall order that Mr Skilton give an account of his dealings with the assets of the deceased's estate. I shall hear argument on the precise wording of the order for an account. It will then be for Roythornes to decide whether to serve a notice of surcharge and falsification. The matter would then need to be listed before a district judge for directions as to how the issues on the account should be determined.

Determination of the issues

89. Accordingly, I determine the issues as follows:

1. In sub clause 2(a)(ii) of the Codicil the term "Manor Yard" means Manor House Yard shown edged yellow on Plan 1.

2. This drops away.

3. The grounds included Manor House Yard as defined under issue 1 above. Peter Skilton, as the survivor of his wife, which whom he held a joint tenancy of Fairville, is the sole registered proprietor and sole beneficial owner of the garden land which was formerly part of the curtilage of the property known as Fairville.

4. Under sub clause 3(ii) of the Codicil "all further land at Snitterby" includes (i) 40.13 acres of land at the Forge, Cliff Road, Snitterby (ii) the Buildings at School Lane, Snitterby (iii) the Forge, Snitterby and (iv) Thorncroft Farmhouse, Snitterby.

5. This drops away.

6. Under clause 5 of the will the reference to "all my estate and interest (if any) in the freehold property being and situate at Waddingham" means the freehold property owned by the deceased at the time at which the Will was made or the freehold property owned by her at her death, being the 57.03 acres of land at Waddingham known as Waddingham Field.

7. This drops away.

8. I order that the codicil be rectified by the deletion in clause 2(d) of the words "but they shall sell my House or the Contents at the Beneficiary's written request". Rectification of the codicil is otherwise refused.

9. The will should not be rectified to delete clause 4.

10. and 11. I shall order that Peter Skilton do account to the estate for the assets which he had taken from the estate.

12. I order that Jason Smith Waite, Peter Skilton, Judith Alloway, Andrew Samuel Horwich and the directors of Symes Bains Broomer Ltd all be removed as executors and trustees of the deceased's estate and that Roythornes Trustees Ltd be appointed to act in substitution for them.

Consequential matters

90. I shall give directions for submissions on costs and as to whether Symes Bains Broomer Ltd should be added as a party for the purpose of costs.