

[2024] EWHC 1335 (KB)

Ref. E00HV099; CF066/2023CA

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

2 Park Street
Cardiff

Before THE HONOURABLE MR JUSTICE GRIFFITHS

IN THE MATTER OF

AMELIA MIGGIANO (Claimant)

-v-

ISLWYN EVANS (Defendant)

**THE CLAIMANT appeared in person
THE DEFENDANT was not present and not represented**

**JUDGMENT
2 MAY 2024**

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

MR JUSTICE GRIFFITHS:

1. This is an application for permission to appeal the decision of His Honour Judge Jarman KC to dismiss the claimant's claim after a trial in Haverford West. By order of Freedman J, for reasons set out in the order, there has been no determination of the application for permission to appeal on the papers. This oral hearing is, therefore, the first and final consideration of whether permission to appeal should be granted.

2. Mrs Miggiano has appeared today before me in person. She has been assisted by her adopted son Antony Farrell or Antony Caputo, Caputo being Mrs Miggiano's former name. I have therefore heard oral submissions both from Mrs Miggiano and from Mr Farrell and I am grateful to both of them. I also have, as Freedman J did not, a transcript of the reasoned ex tempore judgment of Judge Jarman and also a full transcript of the trial itself. I have no appeal bundle but Freedman J allowed the application to proceed on the basis of the trial bundles and I have gone through all the trial bundles.

3. I have also got the notice of appeal from Mrs Miggiano and the grounds of appeal which are attached to it and run to 13 paragraphs. I also have the skeleton argument of the appellant and an additional skeleton argument which is said to be a supplement to the original skeleton. I have read all of those documents in full and considered them in addition to the oral submissions which have been made. Finally, Mrs Miggiano's other son, Claude, prepared a written document addressed to Tony Farrell, or Antony Farrell, to assist Mr Farrell in putting additional points to me. Those points were put to me and I was also given the document itself which I have read in full.

4. By Civil Procedure Rule 52.7 permission to appeal may be given only where the court considers that the appeal would have a real prospect of success or there is some other compelling reason for the appeal to be heard. Mr Claude Miggiano has rightly recognised that I have to decide whether the original trial was fair, I am not deciding the merits of the claim at this stage. I also have to consider whether the judge made any error on the face of the judgment, whether of reasoning or of law. What I am not permitted to do, for reasons I am going to explain, is to rehear evidence myself to see if I take a different view of it from the trial judge.

5. This is explained in the case of *Volpi v Volpi* [2022] EWCA Civ 464, paragraph 2, which refers to appeals on pure questions of fact and says:

“The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it but the following principles are well-settled:

i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."

6. The point was also considered in the case of *Henderson v Foxworth Investments Limited* in the Supreme Court [2014] UKSC 41. At paragraph 67 Lord Reed said:

"...in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

7. Finally, I refer to the well known *dictum* of Lewison LJ in *Fage UK Limited v Chobani Limited* [2014] EWCA Civ 5 at paragraph 114:

"Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them."

8. He later said:

"The trial is not a dress rehearsal. It is the first and last night of the show."

9. The case presented at trial to His Honour Judge Jarman, as I can see from the transcript of the hearing and of the judgment and the claim form and particulars of claim in the trial bundle, was that a transfer of property known as Bella Vista, Llantood, Cardigan, dated 3 January 2006 from Mrs Miggiano to her son Andrew does not bear her real signature and that the signature which it appears to bear was not in fact affixed by her. See paragraph 10 of the judgment, see also the brief details of claim on the claim form which accuses the claimant's son of "submitting a fraudulent document" and the particulars of claim attached to the claim form which say, amongst other things: "The claimant is absolutely certain that she did not knowingly sign this document nor would she knowingly have ever signed such a document. The claimant is further absolutely certain that she has never signed any document in the presence of [Maria Mustad] nor did she visit any solicitor's office in 2006. The claimant believes that her signature was either forged and the forged document was

dishonestly supplied to the Land Registry or, alternatively, that Andrew had obtained her signature by deceit.”

10. The alternative case, that the document had been signed by Mrs Miggiano but only as a result of deceit, was withdrawn at the beginning of the trial. The issue for the judge, therefore, was whether the signature on the document dated 2006 was Mrs Miggiano’s signature or not. The claimant was Mrs Miggiano herself. The first defendant was Islwyn Evans. He was sued as the executor of the estate of Andrew Miggiano, Andrew Miggiano having died before the commencement of proceedings. Originally Maria Mustad was the second defendant and the Chief Land Registrar of Her Majesty’s Land Registry was the third defendant but by the time of the trial Islwyn Evans as the executor of the estate of Andrew Miggiano was the only remaining defendant.

11. Mrs Miggiano gave evidence at the trial and her evidence was that the signature was not hers. She was represented by counsel who tendered the evidence in support of the claimant’s case and cross-examined witnesses from the other side; he also made oral submissions to the judge. The other witness for the claimant was her other son Claude, she called no other witnesses in support of her case. For the defence Islwyn Evans gave evidence and Maria Mustad also gave evidence. She was a solicitor whose name was on the questioned document as having witnessed Mrs Miggiano’s signature.

12. There was also a single expert whose report was put in at trial pursuant to an order by a district judge which has not been appealed. I have read that report. It is a report of 11 pages plus annexed documents, it is from Paul Craddock Dip H.W, forensic handwriting examiner. It is titled in the action Amelia Miggiano v Evans and it is dated 6 June 2023 and entitled Report for the Consideration of the Court in the hearing of the above matter. After giving and explaining his findings about the questioned signature which I will come to in a moment, Mr Craddock declares, as he was required to as an expert witness, that he understood that it was his duty to help the court and that this duty overrode any obligation to the party who had instructed him and that he would comply with that duty as well as with the requirements of Civil Procedure Rules Part 35, the relevant Practise Direction and the Guidance for the Instruction of Experts in Civil Claims 2014.

13. The judge decided that the claimant’s signature on the questioned document was genuine, with the result that a property had been validly transferred to Andrew Miggiano and was lawful and effective to place that property in his sole name; the property was called Bella Vista. The judgment explains that conclusion as follows. Bella Vista had originally belonged solely to Mrs Miggiano’s late husband and his Will dated 1996 already envisaged

that Bella Vista should go to Andrew alone and that another property would go to his brother Claude alone. Therefore the questioned transfer of 3 January 2006 was consistent with the intention in that Will although it seems that transfers executed before he died meant that the whole interest was no longer his to dispose of in that way by Will.

14. Mrs Mustad, the solicitor who gave evidence, was, as the judgment indicated, shown by correspondence in 2004 to have understood after visits to her by Mrs Miggiano and her still living husband Mr Miggiano that at that time they wanted to give Bella Vista to Andrew outright, which is what the later disputed transfer effected, and to give the other property Croft Bungalow to the other son, Claude, outright. She, however, advised that tax advice be taken and it was taken, in fact from the defendant's firm, the defendant himself giving evidence. This seemed to suggest that the property should, for tax reasons, not pass directly to Andrew but should be transferred into more than one name to reduce liability to tax by claiming two exemptions. Those intermediate transfers were executed prior to Mr Miggiano's death but, as the judge summarised the defence case in paragraph 15 of the judgment, the disputed transfer after his death brought about the end point which Mr Miggiano, and to Mrs Mustad's recollection Mrs Miggiano, had wanted all along. That also to some extent supported the authenticity of the transfer.

15. The evidence of the single expert in the field of handwriting fairly puts points both in favour of and contrary to the authenticity of the disputed signature on the disputed transfer. However, the expert evidence, as summarised by the judge, did conclude on balance that it was probably genuine and, having read the report myself, I can see that the judgment correctly and fairly summarised it. The way it is put in the judgment is in a passage of some length between paragraphs 15 and 21 of the judgment which say as follows.

“In light of Mrs Miggiano's claim that the signature on the transfer dated 3 January 2006 was not hers, expert evidence on handwriting was obtained and there are a number of specimen signatures which the expert examined.

16. He found that the questioned signature of Mrs Miggiano on the transfer had been written with a poor line quality clearly visible in the lack of smoothness in the writing line. The overall design of the questioned signature gives the appearance of being the result of being written by a person suffering from a reduction of writing ability, possibly due to frailty, resulting in a reduction of motor skills and/or medical condition. He noted that two known signatures written in 2004 also show a reduction in writing ability as do later known signatures but that the lack of writing ability does not increase with time.

17. He went on to find that the questioned signature shows a pictorial resemblance with the known signatures. Where there differences most of

those fall within the range of variation likely to be found in a wider range of known signatures.”

16. He then sets out the similarities.

“18. He went on to find that the questioned signature lacks fluidity and therefore appears to be written with a more constant pressure than would be expected to be found in a genuine signature written by a person with no reduction in writing ability. However, under magnification it is clear that there are areas of what would usually be considered natural variable pressure. If the questioned signature is not genuine the only possibilities he finds are tracing and freehand simulation. If the questioned signature was a result of freehand simulation he would not expect to see the degree of pictorial consistency shared with the known signatures.

19. Tracing could, however, account for the pictorial consistency. Therefore there are two possibilities, namely that it has been traced or that it is a genuine example of Mrs Miggiano’s signature.

20. He then went on to observe that there was an extra stroke in the letter “A” and that would detract from there being a forgery. There are some clear areas of lower and variable pressure with some tapered endings. The method of construction in the last character is the same as original items, it is unlikely that that method of construction would be known to the person attempting to simulate the signature because it is only visible under magnification. He therefore considered it less likely that the questioned signature is as a result of tracing. The existing evidence, therefore, indicates that it is more likely than not the questioned signature is a genuine example of Mrs Miggiano’s signature.

21. It was his opinion, therefore, that there is moderate evidence to show that she was responsible for that signature.”

17. So that is in full what the judge said correctly summarising what the expert had said about the evidence on the question of whether the signature was genuine or not.

18. The judgment notes, the judge having received evidence from her, that Mrs Mustad could not actually recall the occasion when the disputed signature was witnessed by her but she did recognise her own signature as witness to the document and she was emphatic that she had never purported to witness a signature which was already on the document when it was brought into her. She was also emphatic that in this case she only ever witnessed signatures in her own offices not at the client’s home or homes.

19. In paragraph 30 of the judgment His Honour Judge Jarman KC said:

“She agreed that she did not remember anything in particular about witnessing the signature on the disputed transfer. She repeated that she signs and witnesses hundreds of signatures but it was put to her that she might have done so when the signatory was not there. She was emphatic about her answers in response to that question. She said she had never

signed a document when the signatory was not there. She was not presented with a signature already on it and she was a hundred per cent sure of that.”

20. Having read the transcript of the trial and therefore of her cross-examination, I am able to see that this was a correct statement of her evidence.

21. There was no suggestion that Mrs Mustad’s signature was not genuine when she was cross-examined. I know that, having read the transcript. Therefore her evidence as a whole tended to undermine the case of forgery, that because the expert suggested that if the signature was not Mrs Miggiano’s genuine signature it may have been traced and that could not have been done in front of Mrs Mustad without her being aware of it. The judge expressed his conclusion on the evidence against the claimant’s case in paragraph 32 of the judgment saying as follows.

“Dealing with all that evidence, in my judgement the claimant has not succeeded in persuading me on the balance of probabilities that the signature was not hers. The combination of the contemporaneous documentation, the Will in 1996 expressing the views, the letters of June and July 2004, the handwriting evidence and the evidence of Mr Evans and Ms Mustad taken together in my judgement makes it clear that on the balance of probabilities Mrs Miggiano did sign the 2006 transfer, something which she has now sadly forgotten, and so the claim is dismissed.”

22. Turning to the arguments addressed to me in support of the appeal. No complaint is made about the conduct of the trial by the judge; on the contrary, paragraph 12 of the grounds of appeal says: “The claimant has no complaints to make regarding the judge and his conduct of the case. Judge Jarman has, at each part of the proceedings where he was involved, acted with the highest degree of integrity.”

23. There is a complaint about the quality of the representation provided by the claimant’s barrister. I have read the whole transcript and it is clear that all the witnesses were able to give their evidence. The claimant’s case was put to the defence witnesses in cross-examination and the judge had a thorough knowledge of the papers, the evidence and the issues. He gave a robust judgment fairly identifying and examining the points available to both sides before reaching a conclusion based upon evaluation of the evidence which was open to him on that evidence. I do not see any basis for arguing, having looked at the documents filed with the court and the transcript and considering the points made to me and the strength or otherwise of the material that might be relied upon to support them, that criticism of the claimant’s barrister could form the basis of an arguable appeal.

24. Paragraphs 8 and 9 of the grounds of appeal criticise a failure to ask defence witnesses whether the claimant was present when they signed as witnesses to her signature. However,

it is clear from Mrs Mustad's evidence on the transcript and as summarised by the judge in the judgment that she did not claim to recall her being present although she was sure that she would not have witnessed a signature that was not affixed in front of her from which it followed that she must have been. So this point was explored.

25. It is suggested in paragraph 9 of the grounds of appeal that the claimant's barrister was asked to obtain at least one stated case for the trial but did not do so. However, this case was about a dispute of fact and even now no case has been cited with a legal proposition which would or should have turned the case in the claimant's favour.

26. It is said in paragraph 9 of the grounds of appeal that the claimant's barrister did not object to the one defence witness being present throughout the proceedings whereas the claimant's one witness was not allowed to sit in the courtroom until after he had given his evidence. I have considered this point. The claimant's only witness apart from herself was her other son Claude. I can see on the transcript that he was allowed to be in court but that he had indicated he preferred not to be there until he gave his evidence. See page 25 and page 26 of the transcript. That was a matter for him and in any event did not affect the fairness of the trial nor does it seem to have made any difference to his evidence which was clearly, so far as it went, supportive of the claimant's case that Bella Vista did not belong to Andrew alone at any point. His evidence was not, however, directly on the point about whether Mrs Miggiano affixed a signature in the presence of the solicitor Mrs Mustad to the disputed document.

27. The letter from Claude Miggiano containing additional submissions which was used by Mr Antony Farrell to supplement the other documents and oral submissions and which I have read in full makes a number of other points. It says that the bundle was supplied by the defendant rather than the claimant because the claimant was, at the point the bundles were prepared, a litigant in person and he says that relevant documents were missing from the bundle. However, it was a matter for Mrs Miggiano, who gave evidence, and her counsel who represented her to put what they wished before the judge and it does not seem that anything was not put before him which should have been considered and might have tipped the balance. No particular document has been referred to in that respect except a Will which was in fact referred to in the trial and in the judgment.

28. Mr Claude Miggiano also says that Mrs Miggiano's barrister was instructed not to talk to the other side but he ignored that. That is not something which goes to the validity of the judge's decision or the fairness of the trial. It is usual and usually appropriate for barristers to talk to each other so that the trial can proceed efficiently and fairly. It is hard to see what talk

could have taken place that would have been inappropriate given the nature of the dispute in this case and the nature of the evidence in the case. The remainder of the letter reasserts the case which the judge rejected about the signature not being valid and puts forward some circumstantial evidence such as that Mrs Miggiano would never have agreed to give her house away so even if it was her real signature it would be some kind of fraud and the absence of formal documentation of family transactions from the files of the family solicitors after Andrew died.

29. These are not sufficient, even if they are relevant at all, to undermine the decision of the judge given for the reasons he articulated. The claim that even if there had been a real signature there must have been some kind of fraud had been abandoned before the trial began and it is not possible, therefore, to revive it on appeal.

30. Addressing me and supplemented by points made by Antony Farrell, Mrs Miggiano has emphasised the costs and the expenses invested in this case. She says that there has been no investigation as to where her savings have disappeared and she is very very clear in telling me that she never signed the paper, she was never in the office to sign the paper in front of Maria Mustad and that hearing them, that is the defence witnesses, say that she was there and did sign it in front of her was hearing a big lie and she questioned why they would tell such lies. However, it was for the judge to decide on the balance of probabilities based on the evidence as a whole whether it had been shown that the signature was probably genuine or not and he decided it was probably genuine giving a number of reasons firmly rooted in the evidence for that conclusion.

31. The cases I have referred to demonstrate that appeal courts do not reopen those questions from the beginning, rather they look at the decision of the judge and whether there is anything wrong with that. Mrs Miggiano emphasises, and I have no doubt it is true, that she has worked hard all her life. She is a woman now of 100 years in age who came to this country after the Second World War in the 1950s and working hard before and after her marriage to Mr Miggiano who she met in this country and during a life primarily based in Wales has earned money, built properties, including Bella Vista, the property which is the subject of the disputed transfer, and Croft Bungalow, the other property which went to Claude, and it has been a great shock and trouble to her that after her son Andrew died she found that she was being told that the legal position was that everything she thought she had had gone. I was told about four policies of insurance in substantial sums, £40,000, £52,000, £39,000 and another one in a sum not precisely recalled, all of which had been found to have no money in them.

32. She told me that she had thought her son Andrew had been honest with her and that she loved him because he was her son but, faced with the claims based on the disputed transfer of 2006, she feels that she has been cheated and the court has been lied to and the conclusion it reached that she did sign the document in the solicitor's office in the presence of Maria Mustad was wrong and should be overturned. I have no doubt of the sincerity and honesty of what Mrs Miggiano has said to me and it is a very sad story, whatever view one takes of it. The judge himself, as I have quoted did not suggest that Mrs Miggiano was not telling the truth. He thought that her recollection was wrong and that the evidence he referred to suggested that she had signed the document but had forgotten about it and that in doing so she was achieving something which at that time she wished to happen and which her husband had wished to happen, both when he made his Will in the 1990s and when solicitors were consulted in 2004 or thereabouts, as referred to in the correspondence from Mrs Mustad to Mr and Mrs Miggiano at that time.

33. The claimant's skeleton arguments supplementing her grounds of appeal I have read carefully and in full. They take the form of a narrative account, not all of it directed to the disputed signature. While they maintain the claimant's case that the signature was not Mrs Miggiano's, they do not demonstrate that the judge was wrong to reach the conclusion that he did on the evidence applying the test for an appeal propounded in the authorities I have cited.

34. Mrs Miggiano disagrees with the judge's conclusion. I understand that and I hear that but she has not, in her documents or today, been able to show that the conclusion he reached was not one open to him on the evidence. She has not been able to show that it would be arguable that the reasoning of Judge Jarman or his evaluation of the evidence was defective in such a way as to provide a real prospect of success if permission to appeal were to be granted. It is more that she and her family hope that if a different court looked at this again they would take a different view, but that is not how an appeal would progress for the reasons explained in the authorities I have cited. The claimant makes allegations of dishonesty and collusion between witnesses, parties and barristers, but her main argument for that is that she says her signature was in fact not genuine so the argument is somewhat circular.

35. On consideration of the transcript of the trial and the approved transcript of Judge Jarman's reasons for reaching the conclusion he did in paragraph 32, I cannot see that the proposed appeal has a real prospect of success. His conclusion was supported by the inherent probabilities established by the Will and later the consultation with Mrs Mustad before Mr Miggiano died. It was also supported by the expert, although only on the balance of

probabilities, with quite detailed reasoning based on examination. It was a conclusion, therefore, by the judge firmly rooted in the evidence and open to him on the evidence. It was not in any sense irrational or unsupported. It followed a summary of the evidence which was fair and even handed. It was a conclusion that he, as the trial judge who heard and saw the witnesses, was particularly well placed to reach. Insofar as it was based on the Will and the correspondence it was based also on documents which had not been challenged before the trial, although Claude did unexpectedly deny the terms of his father's Will which Mrs Miggiano did not, and he continues to do so in the written document which I have read today. The expert evidence was fair, stating points on both sides, but it was on balance against Mrs Miggiano's case. The judge's conclusion was therefore supported by and consistent with the expert evidence, although it was rooted in the evidence as a whole and only partly based on the expert evidence.

36. All in all this is a judgment which there is no real prospect of overturning on appeal. The appeal would not have a real prospect of success and no other compelling reason has been shown for the appeal to be heard. It follows that the requirements of Civil Procedure Rule 52.6 have not been satisfied and I am not able to and do not grant permission to appeal.

37. In conclusion, I want to say this. First of all, I repeat my respect and gratitude for the way in which Mrs Miggiano has advanced her case, herself and through members of her family and the documents lodged in support of it. She has put the points very well and it is only the fundamental weakness of the proposed appeal which has meant that she has not succeeded.

38. Secondly, I have decided that the appeal, if it were to go forward, would fail and if it did go forward, which it cannot because it does not have a real prospect of success, and failed Mrs Miggiano would likely face extra costs, including the other side's costs of the appeal which it is usual for the loser in an appeal to have to pay. Therefore, although it may not seem like this, it is actually better for Mrs Miggiano that I, having carefully considered the case in detail, have seen and decided that it would fail if it went further and have stopped it going further by doing my duty and refusing permission to appeal than if I had let it go on, perhaps out of a misplaced sense of kindness and sympathy but without applying the law, which I have to do, because if I had taken that course it would only have cost her more grief and more money.

39. Thank you both very much indeed.
