Neutral Citation Number: [2021] EWHC 1379 (Ch)

Claim number: BL-2018-001821

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
BUSINESS LIST

His Honour Judge Gerald
Sitting as a judge of the High Court

23rd to 26th February; 1st to 5th and 8th March 2021
Judgment handed down: 12th May 2021 (perfected 19th May 2021).

B E T W E E N :-

(1) DAVID WALTER BIRD
(2) SHARON MONTGOMERY

Claimants

-and-

(1) LANTERN RECOVERY LLP
(2) LANTERN RECOVERY SPECIALISTS PLC
(3) LANTERN SERVICES (HOLDINGS) LIMITED
(4) RAYMOND MICHAEL COLEMAN
(5) LEE COLEMAN
(6) CRAIG COLEMANT

Defendants

JUDGMENT

Mr T.J.B. Dumont QC for the Claimants (instructed by Gosschalks LLP)
Mr Thomas Roe QC and Ms Clara Johnson for the Defendants (instructed by Duffield Harrison LLP)

JUDGMENT

Introduction

1. The Claimant solicitors of Crane & Staples are the executors of the estate of the late Sheila Jessie Coleman who died unexpectedly on 20th May 2015 aged 81 in Spain where she had lived since 2012 leaving her last will dated 13th October 2014 dealing with her English estate and her Spanish will dated 21st April 2015 for her Spanish estate. She was survived by her two children Lynn Engledew, then aged 62, and her two children Jos and Mac, then aged 40 and 37 respectively, and her son the Fourth Defendant ("Ray") then aged 58 and his three children Craig, the Sixth Defendant, Lee, the Fifth Defendant, and Ryan then aged 40, 38 and 33 respectively.

2. Mother survived her husband of 53 years Joseph Henry Coleman by just under ten years. He died on 25th October 2005 aged 75 also unexpectedly after a short illness. By his last will dated 31st March 2004 he left his one-third shares in the family businesses colloquially referred to as "Lantern" to Ray and a specific legacy of the prevailing £275,000 nil-rate band ("NRB") to Lynn, the residue being bequeathed to mother who, together with David Taylor, were appointed co-executors. By the time of father's death, Lynn and Ray's relationship was fraught, not having spoken to each other since 1999 when Lynn left the family business to set up her ow business having joined it in around 1986.

3. Because much of father's liquid assets were held jointly with mother so devolved to her by survivorship and the Lantern shares took priority over Lynn's gift, it then appeared that there was only sufficient to pay Lynn £20,000 of her bequest, leaving £255,000 unpaid. This caused great upset to Lynn, ultimately causing or contributing to her three-year estrangement from mother (September 2010 to September 2013) during which time there was no, or virtually no, contact with Lynn's family save for a meeting in the Salisbury Hotel in Hertford in November 2010 albeit that mother continued to send Christmas and birthday cards and cheques, which were not encashed, notwithstanding that at one point Lynn was cut out of her English will.

4. By her last English will, mother gifted her one-third shares in Lantern to Ray, her residuary estate passing to Lynn having gifted £5,000 to each of her five grandchildren. By her last Spanish will, she left her Spanish estate, principally the flat in Estepona which she had owned with father and had been used for many years for family holidays and where she had moved in 2012 to live with her new partner Norman White, to Lynn having by previous wills gifted it equally to Ray and Lynn.

5. In the last five years of mother's life, at a time when largely in Spain, estranged from Lynn leaving Ray to look after her English financial affairs having put him on her bank mandate shortly before leaving and to whom her mail was re-directed (December 2011), she sold her former matrimonial home Kingsdale for approximately £1.2 million, £1 million of which was loaned *via* Ray to Lantern, the other £220,000 being withdrawn by Ray using his mandate and paid into Lantern's bank account. Also in those last five years, mother is said to have waived £847,200 dividends from Lantern.

6. In October 2014, by which time she was reconciled with Lynn, mother instructed new solicitor Eileen Ismay to draw up her last will, telling her she was owed £1 million or thereabouts by Ray, or Lantern which she self-evidently expected what was left on her death would go to Lynn as residuary beneficiary, and had received no dividends. She made no mention of owing Ray or Lantern any money, and before issuance of these proceedings Ray had written confirming that mother owed nothing.

7. Instead of righting her conscience by "re-inheriting" her daughter by her last will, Ray's evidence is that mother was lying to her solicitors to appease and conceal from Lynn that she had gifted £543,500 of the £1 million loan to purchase a new home for his son Lee and had previously given £300,000 (borrowing £150,000 from himself) to purchase a new home for his other son Craig.

Contrary to what he had previously confirmed, it is pleaded that mother in fact died owing himself £627,000 so that once the various liabilities are set off against each other, she, or her estate, owes Ray and Lantern £94,700 as counterclaimed plus £95,600 rent repayment to Ray from Blanche Lane – striking, or strange, given that just before she died Ray, or Lantern, was about to transfer £350,000 for her to buy a new flat in Spain.

8. Where an albeit vital, spritely but elderly lady is said to have gifted such large amounts of money and waived equally large amounts of dividends to benefit one side of the family whose paterfamilias was looking after her affairs *in absentia* whilst for some of the time estranged from the other dis-benefitted side and is now said to be her major creditor, the court will naturally look with a jealous eye at what is said to have occurred, always bearing in mind that the estrangement might itself be the motivator of such munificence. All the more so where, despite allegations to the contrary, there is no evidence that mother at any stage received independent advice, or any professional advice, in relation to any of the transactions in issue.

9. The jealousness of the gaze is intensified by the absence of any evidence of discussion or advice that the £150,000 allegedly owed to Ray be deducted from the £1 million she lent; that the £722,600 (£627,000 plus £95,600) allegedly owed and now counterclaimed for be repaid out of her £847,200 dividends in a tax efficient or other way. In stark contrast, £855,050 dividends declared for and accreted to his children and ex-wife Corinne or their trust were used to pay off their loan accounts in a tax efficient way. There was, therefor, a striking asymmetry between the financial treatment of Ray's family and that afforded to mother, the business-founder and thirty-year owner, mostly in the last five years of her life aged 76 to 81 whilst abroad having entrusted her affairs to Ray.

10. This reveals the central illogic, or flaw, in the Defendants', or Ray's case. *If* what is now pleaded is true, mother gifted £300,000 for Craig, £543,500 for Lee and £847,200 for Ray's family indirectly *via* their Lantern shareholdings as she racked up £722,600 debts to Ray. Meanwhile, Ray, ostensibly looking after mother's financial affairs, orchestrated repayment of his children's loan accounts from the £855,050 dividends without like treatment for mother. Thus, on Ray's own pleaded case, the interests of his family were preferred to those of mother, she dying unaware that she owed her son any money. Had the £350,000 for the new flat been transferred to her that, on Ray's case, presumably would have been added to her indebtedness to Ray or Lantern.

11. The Claimants also claim that at the time of father's death, he (and mother) were entitled to equal ownership of land at Blanche Lane, which was treated as sold for £1 million after his death and credited to Ray's LRS loan account, and also £164,836 loaned to purchase earlier properties for Craig and Lee in 1997 and 2001 based upon documentation elicited during administration.

Central issues

12. The essential issues for determination are:

Father's estate

a. Was Blanche Lane owned beneficially three-ways or by Ray absolutely?

b. Was the £164,836 loaned to buy homes for Craig and Lee in 1997 and 2001 beneficially owned by father or by Ray absolutely?

Life-time loans or gifts by mother

c. Did mother lend £150,000 to buy Craig's new home in 2007; or gift £300,000, borrowing £150,000 from Ray: if so, should it be set aside by Ray's undue influence?

d. Did mother lend £1 million at 8.5% in 2012; did she gift £543,500 to buy Lee's new home: if so, should it be set aside by Ray's undue influence?

Mother's waiver of £847,200 dividends

e. Did mother's 22nd August 2011 waiver cover £113,400 dividends declared on 29th March 2011?

f. Did mother sign 7th September 2012 waiver of dividends declared on that day?

g. Did mother authorise Craig (or Ray) to sign 20thDecember 2013 waiver of £88,400 dividends declared on that day?

h. Should all or any of the valid waivers be set aside by Ray's undue influence?

Counterclaim

i. What, if any, sums are due on the counterclaims?

13. Notwithstanding the number of witnesses called by both sides and the volume of documents, the answers to these questions depend almost entirely upon the credibility of Ray because it was he who was principally involved in the transactions, Lynn knowing nothing or virtually nothing about any of them by reason of estrangement and non-involvement with Lantern affairs through whose bank accounts the money passed. Documentary evidence is of little assistance, because it is inconsistent, contradictory, sometimes incomprehensible and oft times demonstrably false, designed to satisfy HMRC for tax purposes but not reflecting *actualité*.

Summary conclusions

14. Mother lent £150,000 to the 1997 Settlement trustees and £1 million to Lantern at 8.5% which, together with the £220,000 taken from her RBS account, fall to be repaid (the Claimants confining their interest on the £300,000 part of the loan to 4.75%). The Claimants have failed to establish beneficial ownership in Blanche Lane or of the £164,836 loans.

15. There has been no waiver of the £113,400 dividend (the 22nd August 2011 waiver only covering dividends declared in FYE 31st March 2012) or the £88,400 dividend (the 20th December 2013 waiver being a forgery). All other waivers were signed by mother but fall to be set aside by undue influence.

16. The counterclaim is dismissed, it being conceded that £48,040 and £56,735 payments to mother be deducted from the interest payable by LRL and LRS respectively. Mother did not gift £300,000 for Craig, or borrow £150,000 from Ray for that purpose; nor did she gift £543,500 for Lee; or die owing Ray or Lantern any money.

Evidence, and witnesses

17. The evidence comprised voluminous documentation straddling some 28 lever-arch files going right back to the 1980s as well as live evidence given by ten witnesses for the Claimants and six from the Defendants over five and one-half days, the parties' handwriting experts not being called as broad agreement had been reached by them.

18. Much of the evidence is of no, little or only tangential relevance (such as ownership of Caxton Hill and how it formed part of the NRB discussions; Lynn's unsuccessful running of a garage back in the 1990s; whether she left LRS under a cloud; whether her new business competed with Lantern; various other properties purchased or possibly purchased by mother and also Lynn), so will not be referred to, the focus of this judgment being on matters of direct relevance to key issues and those witnesses who can assist.

19. Neither is reference made to various allegations concerning mother's knowledge and understanding of other transactions not directly in issue, save where necessary, and whether for example new accountants Barnes Roffe (who replaced the long-standing family accountants Brebners

Allen Trapp shortly after father's death and feature prominently in many of the transactions and accounting entries in issue) materially misled mother in relation to any of those other transactions, such as variation of father's will, as they do not directly relate to matters in issue, save to say that the fact of their not being challenged does not provide any support for the efficacy of those which are challenged.

20. For the Claimants, evidence was given by Lynn and her long-term partner Neil Lynch, her two children Jos and Mac, Jos's husband Chris Baker-Price, mother's nephew by marriage Robert Mills as well as her long-term friends Julia Stanger-France and Jacquie Millard as well as Chris Bevan, a tax adviser from Kilby Fox accountants engaged before father's death. And also by mother's solicitor Eileen Ismay who I found to be a careful, credible witness who took due care to conscientiously record mother's instructions in October 2014 and ensure that they accurately reflected mother's wishes.

21. Ray, his three sons and partner Emma Flack and ex-wife Corinne Coleman gave evidence for the Defendants as did his chief administrator Del Dervish, a disqualified company director who assured the court that he merely had the misfortune to be a director of a company which was trading whilst insolvent so was not personally culpable. For ease, the First, Second and Third Defendants are referred to as "LRL", "LRS" and "LSH" respectively.

Law – undue influence

22. In *Royal Bank of Scotland v Etridge* [2002] 2 A.C. 773, Lord Nicholls explained the law of undue influence thus:

> "*Burden of proof and presumptions*
>
> "13. Whether a transaction was brought about by the exercise of undue influence is a question of fact. Here, as elsewhere, the general principle is that he who asserts a wrong has been committed must prove it. The burden of proving an allegation of undue influence rests upon the person who claims to have been wronged. This is the general rule. The evidence required to discharge the burden of proof depends on the nature of the alleged undue influence, the personality of the parties, their relationship, the extent to which the transaction cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship, and all the circumstances of the case.
>
> "14. Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof. On proof of these two matters the stage is set for the court to infer that, in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence. In other words, proof of these two facts is prima facie evidence that the defendant abused the influence he acquired in the parties' relationship. He preferred his own interests. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn…
>
> "16. Generations of equity lawyers have conventionally described this situation as one in which a presumption of undue influence arises. This use of the term 'presumption' is descriptive of a shift in the evidential onus on a question of fact. When a plaintiff succeeds by this route he does so because he has succeeded in establishing a case of undue influence. The court has drawn appropriate inferences of fact upon a balanced consideration of the whole of the evidence at the end of a trial in which the burden of proof rested upon the plaintiff. The use, in the course of the trial, of the forensic tool of a shift in the evidential burden of proof should not be permitted to obscure the overall position. These cases are the equitable

counterpart of common law cases where the principle of *res ipsa loquitur* is invoked. There is a rebuttable evidential presumption of undue influence.

"17. The availability of this forensic tool in cases founded on abuse of influence arising from the parties' relationship has led to this type of case sometimes being labelled 'presumed undue influence'. This is by way of contrast with cases involving actual pressure or the like, which are labelled 'actual undue influence'…

"*Independent advice*

"20. Proof that the complainant received advice from a third party before entering into the impugned transaction is one of the matters a court takes into account when weighing all the evidence. The weight, or importance, to be attached to such advice depends on all the circumstances. In the normal course, advice from a solicitor or other outside adviser can be expected to bring home to a complainant a proper understanding of what he or she is about to do...

"*Manifest disadvantage*

"21. As already noted, there are two prerequisites to the evidential shift in the burden of proof from the complainant to the other party. First, that the complainant reposed trust and confidence in the other party, or the other party acquired ascendancy over the complainant. Second, that the transaction is not readily explicable by the relationship of the parties.

"22. Lindley LJ summarised this second prerequisite in the leading authority of *Allcard v Skinner,* 36 Ch D 145, where the donor parted with almost all her property. Lindley LJ pointed out that where a gift of a small amount is made to a person standing in a confidential relationship to the donor, some proof of the exercise of the influence of the donee must be given. The mere existence of the influence is not enough. He continued, at p 185:

> " 'But if the gift is so large as not to be reasonably accounted for on the ground of friendship, relationship, charity, or other ordinary motives on which ordinary men act, the burden is upon the donee to support the gift.'

"In *Bank of Montreal v Stuart* [1911] AC 120, 137 Lord Macnaghten used the phrase 'immoderate and irrational' to describe this concept…

"24. … So something more is needed before the law reverses the burden of proof, something which calls for an explanation. When that something more is present, the greater the disadvantage to the vulnerable person, the more cogent must be the explanation before the presumption will be regarded as rebutted…

"33. Inaccurate explanations of a proposed transaction are a different matter. So are cases where a husband, in whom a wife has reposed trust and confidence for the management of their financial affairs, prefers his interests to hers and makes a choice for both of them on that footing. Such a husband abuses the influence he has. He fails to discharge the obligation of candour and fairness he owes a wife who is looking to him to make the major financial decisions."

23. The touchstone is that there be a relationship of trust and confidence. That may arise in many guises and circumstances, and may vary from time to time depending upon those circumstances and pressures bearing on the impugned transaction at the time, but the court must be astute not to so find merely by reason, for example, of a large gift passing from an older parent to a child or grandchild: see *Re Brocklehurst* [1978] Ch 14 @ 36; or closeness or mutual trust between the parties: see *Thompson v Foy* [2009] EWHC 1076 (Ch) @ 103.

24. If there is such a relationship, it must be borne in mind that the doctrine is not intended to relieve a person from a transaction which appears "foolish or unnecessary or excessive" or even that the transaction was disadvantageous to the disponant and the other party probably realised it at the time: *Glanville v Glanville* [2002] 2 AC 1587 @ 47 and 48; and it is not enough that the transaction is unusual: *Turkey v Awadh* [2005] EWCA Civ 382. In approaching the second question:

> "What a trial judge ought to be doing is trying to exercise his common sense and assuming the necessary relationship to consider whether, given the circumstances and nature of the transaction, it says to the unbiased observer that absent explanation it must represent the beneficiary taking advantage of his position": Buxton LJ approving the formulation of the trial judge *Turkey v Awadh* (*supra*) at 22 and 23, where he went on to say @ 32:
>
> > " '…To determine whether a transaction is explicable in terms other than undue influence … it must be necessary to look at it in its context and to see what its general nature was and what it was trying to achieve for the parties' ".

25. If there is evidence of influence:

> "… the critical question is whether or not the persuasion or advice, in other words the influence, has invaded the free volition of the donor to accept or reject the persuasion or advice or withstand the influence. The donor may be led but she must not be driven and her will must be the offspring of her own volition, not a record of someone else's. There is no undue influence unless the donor if she were free and informed could say 'This is not my wish but I must do it'": *per* Woolf LJ in *Daniel v Drew* [2005] 2 P.&C.R. DG14 @ 36.

Generally, on the evidence

26. The general approach to signed documentation is that their authors or signatories are treated as intending to mean what they say, so that the starting off point is to take contemporaneous documentation at face value and given their natural meaning unless there is strong and clear evidence to the contrary. In *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), Legatt J. (as he then was) said at paragraph 22:

> "…the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

27. Those strictures are difficult to adhere to in this case as much of the documentation is inconsistent and contradictory, some (such as the LRS loan accounts) inconsistent with underlying documentation and those prepared for external consumption, such as tax returns. In some instances, the Defendants rely on the loan accounts as being accurate (*vide* the counterclaim); in others as being inaccurate (*e.g.* beneficial ownership of land at Blanche Lane *but* accurate for the related £95,600 rent repayment). In some, the Claimants rely upon the same loan accounts as being accurate (*vide* beneficial ownership of land at Blanche Lane); in others, as being inaccurate (*e.g.* the counterclaim).

Credibility

28. And so, much depends upon the credibility of Ray, an undoubtedly successful and effective businessman who was axiomatic in building up the family wealth having worked for Lantern since 10 and leaving school at 14, his parents treating him as equal partner and owner since his late teens as testimony to their high regard for and trust in him. He has a justifiable pride in what he has created, and it has always been accepted within the family – including Lynn – that ownership of Lantern would ultimately be his.

29. He was, however, an unsatisfactory, unreliable and dishonest witness whose evidence and case were akin to a rollercoaster of lies, contradictions and inconsistencies, oft times almost impossible to follow, but all designed to defeat the Claimants' case and protect and preserve those parts of his parents, particularly mother's, assets accreted to his family's wealth mostly during the last five years of mother's life but also shortly after father's death.

30. He is a man who expects what he says, and what he says documents mean, however unreal or outlandish, to be accepted without question. He keeps his powder dry, revealing as little as possible until he sees which way the wind is blowing or necessity dictates. He is powerful and unscrupulous, expecting others to do his bidding, to do what he wants them to do to preserve his family's wealth, the most striking example being getting his son Craig and employee Del Dervish to lie under oath to conceal his (Ray's) own dishonesty in forging mother's signature on the 20th December 2013 waiver. As far back as 1998, he bugged his divorcing wife Corinne's home phone enabling him to listen in to her conversations including those with her solicitors, retaining those transcripts which have been deployed to undermine Lynn some twenty years later, having threatened to use them in 2010.

31. Owing to the unreliability of much of the documentation, it is not even possible to accept his evidence if consistent with contemporaneous documentation. A prime example is the LRS loan accounts which plainly indicate that he and his parents equally owned the land at Blanche Lane, which he said did not reflect the truth because he owned it absolutely, but when it comes to the counterclaim, the LRS loan accounts are relied upon as being reliable and accurate, even though the counterclaim is patently three-fold fabricated, or exaggerated, his alleged £150,000 loan to mother being triple-counted – the debts having been confirmed by statement of truth, in the counterclaim, and under oath, in his witness statement, but withdrawn when pressed in cross-examination.

32. Lynn was not entirely satisfactory, struggling as she did to accept that back in 1998 she had attempted to bribe a Lantern employee and had double-crossed her brother when encouraging Corinne to "go for The Juglar" and attack Ray whilst pretending to Ray that she was acting as honest broker. But that was all of historic interest and of no materiality, not causing me to disbelieve the thrust of her evidence – which, as I have already said, was largely irrelevant because she was not involved in the key transactions.

33. The key points being that once reconciled with mother she was not interested in money despite her extreme upset at not getting her NRB inheritance, more concerned with enjoying a harmonious and joyful relationship with mother in her last years which, by all credible accounts, she did. I also accept her evidence that she left Lantern with father's blessing, because he recognised that there was no future for her to succeed in the business with her brother, and that neither he nor mother was concerned about the name of her (and her son's) new venture or that there was any competition between the two, so that was not material to later relations or decisions.

34. It follows that much of this judgment focuses on Ray and his credibility because at all material times he was the "main man", in control of Lantern and his family by dint of his majority shareholding, chairmanship and "founding" position within the business and by force of personality.

Dividends

35. Once a dividend is declared, it becomes enforceable as a debt against the relevant company unless waived by the entitled shareholder. At common law, that waiver may be before or after declaration, save that such waiver must be by deed in respect of LRS but, by reason of its articles, LSH dividends may be waived by signed notice in writing.

36. Under tax law, if waived after declaration, the entitled shareholder must pay income tax of 40% on the dividend as well as inheritance tax at 20% as an immediately chargeable event (section 15 Inheritance Tax Act 1984); if waived before declared, the entitled shareholder avoids having to pay any income or inheritance tax on the dividend the entirety of which forms or remains part of the cash and therefore assets of the company. Therefore, to be tax effective, any conversations with mother about *and* actual waiver must pre-date dividend declaration.

37. In total, seven dividends totalling £2,017,250 were declared for the five financial years ending 31st March 2015 of which mother was entitled to £847,200 all of which Ray says she waived on five occasions so leaving the money within the companies to indirectly benefit (or gift) the other shareholders (Ray, his children and ex-wife and a related trust) by share value enhancement or further dividend payments facilitation. £855,050 of those dividends were paid to Ray's children and ex-wife and the related trust, the £315,000 balance being waived by Craig, Lee and Ryan on the last declaration.

Was the land at Blanche Lane owned three-ways or by Ray absolutely?

Introduction

38. On 28th June 1985, land and building to the south-east of Blanche Lane, South Mimms, Potters Bar, Hertford, EN6 3PB, referred to within the family as "The Funny Farm", was purchased for £90,000 in the sole name of Ray and sold on 3rd April 2008, the entirety of the £1 million proceeds of sale being credited to Ray's LRS loan account (strictly speaking, it was transferred by Ray to LRS with its £1 million value credited to his loan account).

39. It is the Claimants' case that Ray held the property on trust for himself and his parents in equal shares, so that father's estate was entitled to one-third at the time of his death (and before) as was mother, the Claimants now claiming £666,666 representing two-thirds of the net proceeds of sale in right of mother's own beneficial interest and also of her entitlement as father's residuary beneficiary, legal title having been duly assigned by deed to the Claimants.

40. It is Ray's case that he was, and remained at point of sale, the sole and absolute beneficial owner, and he counterclaims for £95,649.92 representing his rental income allegedly loaned or mis-credited to his parents' LRS loan account.

The law

41. The general presumption is that equity follows the law, so that it is to be presumed that Ray held the property absolutely for himself and no-one else, the burden of rebutting that presumption and establishing that he held it on trust for himself and his parents in equal shares resting firmly upon the Claimants: generally, *Stack v Dowden* [2007] AC 432; and *Thompson v Hurst* [2012] EWCA Civ 1752.

42. The Claimants must prove that there was an agreement, arrangement or understanding about the respective beneficial shares in the property which mother and father relied upon to their detriment: *Lloyds Bank plc v Rosset* [1991] 1 AC 107 *per* Lord Bridge at 132. Whilst such must generally be established on acquisition, later conduct may be relevant to proving what was previously intended: *Supperstone v Hurst* [2005] BPIR 1231.

Generally

43. The sole pleaded and evidential basis to the Claimants' case is and rests upon the income from the land and associated expenses (rates, legal and agency fees) being credited and debited equally to and from father's, mother's and Ray's LRS loan accounts for seven or so years from 31st March 2000 until sale, being some fifteen years after purchase, there not being a super abundance of other documentary evidence generally or otherwise supportive of the Claimants' case.

44. This, it is said, is reflective of and consistent with the three of them being underlying equal one-third beneficial owners, £95,649.92 of the rental income credited to mother and father's loan accounts forming the evidential basis for Ray's counterclaim.

45. There is no assertion as to how it is said the land came to be owned by the three beneficially, whether it was by agreement or otherwise from the outset or later, and no detrimental reliance by father or mother is pleaded, a *sine qua non* of constructive trusts. The Claimants adduce no live evidence to support their case or counter the evidence of Ray, and did not call father's executor David Taylor who, for reasons to be explained, could perhaps have shed light on matters.

Conclusions

46. The Claimants have failed to adduce sufficient evidence to rebut the presumption that Ray owned the land at Blanche Lane absolutely. There is no credible evidence that Ray loaned £95,649.92 to his parents or that it was otherwise mis-credited to their loan accounts, that aspect of the counterclaim failing.

Reasons

47. The purchase was funded by a £90,000 medium-term loan from Barclays Bank plc taken out in Ray's sole name who used conveyancing solicitors Fremont & Co. It was serviced by monthly payments from the Lantern Service Station partnership between the three of them. It had been repaid by 16th March 1988, in part by a £25,000 counter-credit 6th August 1987, it seems, from partnership coffers.

48. It was Ray's evidence that it was purchased in his own name because it was his property, and his share of partnership takings were used to redeem the mortgage between 1985 and 1988, and that he communicated with solicitors regarding lettings and received the rental income because it was his property.

49. There are no partnership accounts or other documentation going back to the 1980s or early 1990s, but the following is supportive of his absolute ownership. Draft partners income tax computations for tax years 1994/95 to 1997/98 record Ray as receiving rental income of £25,500. These are appended to the "Year End Review" for "The Lantern Group" (comprising three partnerships and a limited company) for those three years. In year ending 30th June 1995, £25,000 Blanche Lane (and other) rental income is "treated as capital introduced", presumably by Ray as it is treated as his income.

50. Just under two years later, on 1st May 1999, the partnerships are wound up, incorporated and the LRS directors loan accounts created in which rental income and expenses are divided equally between the three erstwhile partners, now directors, right up until the financial year of father's death, 31st March 2006, where-after and until sale the income and expenses were credited and debited in two-ways equal shares until the final relevant accounts for the financial year ending 31st March 2008, the entirety of the proceeds being credited to Ray's loan account on 3rd April 2008. Why the apportionment shifts from three-way to two-way is unknown, the accountants presumably re-apportioning father's one-third share equally between mother and son. It is that which forms the basis

of the Claimants' evidential case, overlooking the prior documentary evidence which is more consistent with Ray being absolute owner.

51. At all material times father and Ray and no doubt, ostensibly, mother (who took a back seat when she ceased effective involvement in 1980) were professionally advised by accountants and conveyancing solicitors. Had the land been beneficially purchased and owned by the three of them, the income would have been recorded differently in the 1994/5 to 1996/7 accounts and computations and presumably purchased in their three names. Instead, it was purchased in Ray's sole name and he received the entirety of the income.

52. Why the treatment changed on incorporation is important, but unknown to Lynn who was unable to help, because she did not know. Mr Taylor, the executor and also accountant, was not called to give evidence, so shed no light on matters. Ray gave three explanations, none of which make any sense. First, he loaned two-thirds of the rental income to his parents to help bolster their loan accounts so they could draw down more: they had plenty of money on their loan accounts, so that made little sense, and the expenses were also shared equally. Secondly, that it was to build up those accounts as a precursor to buying Kingsdale: but that made little sense because the apportionments continued after Kingsdale's purchase (2002) until after father's death (2005) right up until sale (2008).

53. Thirdly, that it was to reduce his income tax liability by giving or lending his rental income to his parents who would then pay tax on their share: that did not work, as mother, father and Ray's tax Computation Reports for 2001/02 show that only Ray received any rental income from Blanche Lane that tax year, which is consistent with an 8th April 2003 letter from the accountants to father; father's 2002 IRC tax computation; and mother's 2005/06 and 2006/07 tax returns and her 2007/08 tax return computation disclosing no rental income or capital gain on sale.

54. Quite why the accounting treatment changed in 1999/00 now appears lost in the mist of time, and is in contradiction to the parental nil-rental income tax returns. As Ray's counsel submitted, the loan accounts appear unreliable in reflecting *actualité* of underlying ownership, and were more to massage the figures, for example, on 18th February 2003 the accountants confirmed Ray transferring his credit balance to clear parental loan account deficits. Most likely, as Ray intimated, it was left to the accountants to sort out as appropriate, albeit he felt constrained in cross-examination to make up explanations to explain what he in fact did not know or understand.

55. Despite Ray's general lack of honesty, the documentation upon which the Claimants rely are insufficient to rebut the presumption that the property was *when purchased* owned absolutely by Ray. Whilst they might indicate a *subsequent* agreement to alter the beneficial ownership, that is not pleaded, and neither is any detrimental reliance.

56. What flows from this is that LRS loan accounts, at any rate up to 31st March 2008, must be approached with extreme caution. Whilst they record Ray's ostensible rental income being split three-ways, there is no reasons to suppose that there was not some reason or agreement or understanding the reasons for which have, as above, been lost in the mist of time. That is insufficient to found the counterclaim for repayment of the £95,649.92. Contrary to Ray's evidence, he required mother to repay father's £73,000 terminal LRS loan account deficit from assets jointly held with father which, in part, caused insufficient to be available to pay Lynn's NRB legacy. Had there been any concern about the £95,649.92 at the time, it would then have been raised rather than by counterclaim some ten years after the event and when Ray has confirmed that mother died owing nothing.

Further evidential points

57. There are three other evidential points. First, the December 1998 transcripts of Ray bugging Corinne's home phone reveal that Lynn was sure Ray owned The Funny Farm, so Corinne for should

"go for The Jugular" and attack Ray's claim that it was owned three-ways. Whilst Ray accepted that he had told Lynn that, he said it was a lie, a double-bluff to see if it would be communicated to his solicitors *via* Corinne's. That made little sense as three-way ownership was consistent with the loan accounts referred to, so would be readily apparent on disclosure within financial relief proceedings. In my view, what Ray was actually saying was that he was using his sister to convince Corinne that he only owned one-third of the land at Blanche Lane to reduce her ancillary relief claim but got angry when he realised she was double-crossing him by telling Corinne that he owned the land absolutely.

58. Secondly, there was no suggestion during administration of father's estate or mother's life (*e.g.* to Eileen Ismay in October 2014) that either had any interest in this land. Mr Taylor was not only a professional executor, but had been the family's accountant for some years and was aware of the LRS loan accounts. He did not like Lynn not getting her NRB, at one stage almost quitting. He prepared accounts for father's estate (June 2007) and mother (January 2006). Yet he never suggests either had any interest in this land. Lynn says there was talk with mother about selling this land, yet no-one suggested anyone other than that Ray owned it, which is all the more striking given that so heated did matters get that mother took her own independent solicitors advice to resolve NRB payment, as did Mr Taylor.

59. Thirdly, in October 2006, so antagonistic was administration, that Mr Taylor communicated with Patrick Penny who had given certain tax advice in relation to father's last will, and was instrumental in drafting it. Nowhere is there any suggestion from either accountant, intimately immersed in parental finances at the time of taking last will instructions, that this land formed part of either parent's assets, which is significant as tax advice would have been given as father was partial to tax avoidance. Indeed, on 20th August 2007, mother wrote to Lynn explaining that it had never been intended to pay her the NRB other than by way of "an IOU or debt" for tax reasons. Whether that letter was accurate or not, drafted as it was by Mr Taylor, it reinforces the point that if no one who knew about the family assets at the time thought that this extremely valuable property was owned by mother or father, it is difficult to avoid the conclusion that it is was not.

Did the £164,836 loan fall within father's estate?

Introduction

60. On 13th October 1997, father and Ray created a discretionary settlement, appointing mother as third trustee, to benefit Ray's three sons ("the 1997 Settlement"). This has been used to purchase properties for each son, their respective properties now being vested in them absolutely. It was in part for tax avoidance.

61. On 27th December 1997, the trustees purchased 37 Bawtry Road, N20 as a new home for Craig, borrowing £142,063 apparently from father and Ray. On 2nd August 2001, they purchased 12 Cherry Hill, New Barnet, EN5 1AZ as a new home for Lee borrowing £187,610 apparently from father and Ray.

62. It is the Claimants' case that £164,836, being one-half of the total £329,673 loaned to the trustees, comprised an asset of father's estate and must now be repaid by Ray as the sole surviving trustee following 27th November 2018 demand, legal title having been vested in the Claimants.

63. It is Ray's case that he is entitled to the entirety of the loan, putting the Claimants to strict proof that father provided any of the loan monies.

The law

64. Upon father's and then mother's death, legal title to these two loans vested in the sole survivor Ray. This assumes, as both counsel seemed contend to do, that legal title to the loans had

vested in Ray and father, presumably because they had both contributed towards them, albeit that this was far from clear.

65. As with real property, beneficial ownership follows the law, so that, it is common ground, Ray is presumed to hold the benefit of the loan for himself absolutely unless the Claimants can rebut that presumption and establish that Ray holds and held each loan on trust for himself and father in equal shares, which would require agreement, arrangement or understanding coupled with detrimental reliance at time of loan: see generally *Whitlock v More* [2017] UKPC 44.

66. The Claimants' pleaded case is that the monies were loaned "jointly" by father and Ray, from which it would follow that Ray takes by survivorship absolutely. At trial end, they applied to amend their pleading to allege that each loan was funded by father and Ray in equal shares or by father, mother and Ray in equal shares, so that the lenders held the benefit of the loans on trust for father and Ray equally or for the three equally, without explicitly pleading the basis of the trust.

Generally

67. Putting to one side the formal position of whether demand for repayment has or should be treated as having been served on Ray as sole surviving trustee, it is the Claimants, not Ray, who bear the burden of rebutting the presumption that Ray is the absolute beneficial owner by survivorship.

Conclusion

68. Assuming for these purposes that mere proof of source of several funding of each of the two loans would suffice to establish a trust (which is doubtful), the Claimants have failed to adduce sufficient evidence to rebut the presumption, so that Ray takes by survivorship, from which it follows that application to amend is refused (as are the other applications to amend).

Reasons

69. Perhaps unsurprisingly, there is no documentary evidence as to who actually funded the £142,063 loan for the purchase of Craig's property or which bank account the monies came from back in December 1997 when, of course, the family partnership subsisted. Even if it is likely the partnerships' bank account was used, it is not known how the loan was treated in the partnership or other accounts *at the time.*

70. The position is slightly different regarding the £187,610 loan for the purchase of Lee's property in August 2001. There is a letter from Mr Taylor dated 17th May 2001 to the conveyancing solicitors regarding the purchase for Lee saying that the funding "will be advanced when Ray returns to the UK", which might give the impression that it is Ray, not father, who funded the loan, albeit that father is written to at the same time suggesting that maybe mother, father and Ray draw against their LRS loan accounts to fund it.

71. However, it appears that LRS's bank account was used, and the £187,610 was debited equally from each of mother, father and Ray's loan accounts for the financial year ended 31st March 2002 although whether that was by client instructions or accountants merely "tidying up" or "squaring the books" to reconcile them with the bank account absent client instructions is unclear.

72. Six or so years later, on 5th April 2008, when preparing the ten-yearly IHT returns (see further below), Patrick Penny emailed "assuming" that it was Ray who had provided funds for both loans. Confusingly, in a Schedule attached to accountants' 17th June 2008 letter to HMRC, the loans are described as being "from Ray and Joseph Coleman" consistent with equal contributions to the loan as *per* the enclosed IHT calculations and an earlier letter to HMRC of 24th April 2008.

73. Five or so months later, that was overtaken by mother and Ray, as 1997 Settlement trustees, signing Settlement minutes confirming that it was Ray, not father or indeed mother, who funded both loans, which was probably executed on 30th September 2008 when like minutes were executed for the purchase of Woodgate Avenue (see below) and later forwarded to HMRC. There is no pleaded allegation that those minutes be set aside by undue influence, even though apparently executed at the same time as the suspect LRS Loan Agreement referred to below.

74. As with the LRS loan accounts regarding Blanche Lane, these accounts have to be treated with caution, and may, or may not, have been intended to reflect *actualité* but either way, HMRC was told different things. Again, had Mr Taylor, or mother, thought that either loan formed part of father's estate, it is surprising that such was not mentioned during the administration to pay Lynn her NRB, especially as this time father's tax adviser and will-draftsman Patrick Penny was involved in preparing the 2008 IHT tax returns when the loans' funding and the estate's ability to pay the NRB were in issue. Again, neither did mother mention it to Eileen Ismay.

75. Ray's initial pleaded position was that the loans were paid by himself and father jointly but intended as a gift. That is contradicted by the documentary evidence referred to, and would be contrary to tax advice that the money be loaned, not gifted. In his witness statement, he accepts that the monies were jointly paid by father, but in cross-examination said that he lent the money, father providing nothing.

76. What can safely be said is that the actual accounting treatment and source of the loan *when made* is in part unknown (1997) and in part muddle (2001), save that the cash most likely came from partnership and LRS's bank accounts. It is likely matters were just sorted or "squared" by accountants without any discussion or agreement with family, matters being forced in September 2008 by looming first ten-year IHT return which would determine future tax-efficiency of the 1997 Settlement. But this is insufficient evidence to rebut the presumption that Ray is the absolute owner.

2007 to 2008

July 2007

77. On 27th July 2007, the trustees of the 1997 Settlement purchased 15 Woodgate Avenue, Northaw, Potters Bar, Hertford, EN6 4EW as a new home for Craig for £995,000. The total price including conveyancing and other costs was £1,037,956; £369,207 came from proceeds of sale of his previous home 37 Bawtry Road, the £668,249 balance from LRS's bank account.

78. Three days later, on 30th July 2007, a £150,000 cheque from mother was paid into LRS's bank account credited to mother's LRS loan account: at that stage, it was *not* debited as a payment to conveyancing (and company/family) solicitors RHY law, the accountant Ian Mason merely recording it as he saw fit, absent instructions.

79. It is the Claimants' case that this was a loan from mother which Ray agreed to repay on 9th October 2014. Strictly speaking, this would have been a loan to the 1997 Settlement trustees (mother and Ray), but Ray was left to sort that sort of detail out.

80. It is Ray's case that it was part of a £300,000 gift from mother for a new home for Craig, the other £150,000 being borrowed from himself and immediately gifted for Craig which was not repaid so is now counterclaimed for. Strictly speaking, of course, this would be a £300,000 gift to the 1997 Settlement trustees (mother and Ray), part funded by private loan from Ray to mother using money on LRS's bank account.

Question: did mother lend £150,000; or did she gift £300,000, borrowing £150,000 from Ray?

Conclusions

81. Mother loaned £150,000 to the 1997 Settlement trustees which Ray agreed to repay by Christmas on 9th October 2014. Nothing was borrowed from Ray; there was no gift of mother's own £150,000 ("first £150,000") or the £150,000 allegedly borrowed from Ray ("second £150,000").

Reasons

82. On 8th October 2014, mother told Eileen Ismay she had lent £160,000 for Craig to buy a new home upon which she said she had "received some interest but then payments stopped in 2012". In my judgment, this instruction to Eileen Ismay links directly back to the £150,000 cheque which it is common ground was used to purchase Woodgate Avenue for Craig, the £10,000 discrepancy being of no materiality.

83. There is no reason why mother would have made a mistake, or forgotten, that she had lent such a large amount of money, almost one-half of her liquid 2007 assets, to help out Craig when giving instructions to Eileen Ismay for her new will on 8th October 2014. Had she ever borrowed the second £150,000, Ray would have mentioned it when she asked for its repayment on 9th October 2014 (which, for reasons stated below, I accept she did), and also when mother agreed to lend Lantern £1 million in 2012 – it would have been natural to discuss and agree to deduct, or set it off, from that loan.

84. In July 2007 there must have been a conversation with Ray which resulted in mother handing her cheque to Ray to pay into Lantern's bank account. She required nothing in writing because she trusted him. Whilst, strictly speaking, the loan must have been to herself and Ray as trustees of the 1997 Settlement, she no doubt merely agreed with Ray to lend the money at interest for Craig's new home, leaving him (and/or the accountants) to sort out the details, just as she later did with the £700,000 and £300,000 Lantern loans (agreement with Ray to lend to Lantern, leaving it to Ray (or the accountants) to decide whether the actual borrower LRL or LRS), reflecting the trust and confidence she resided in Ray.

85. At this point in time, mother was concerned about her financial position. Ray had required she repay father's £73,000 LRS loan account deficit. She paid this from the £417,300 liquid assets she had jointly held with father leaving her with £344,300 liquid assets (see her January 2006 capital statement). According to Ray, he lent her £30,886.95 on or before 31st March 2007 to buy a new car which he now counterclaims for, so it would be somewhat absurd and irrational to borrow a further £150,000 from Ray to gift straight to the 1997 Settlement for his son having just gifted £150,000 cash, let alone borrowing that money from LRS at £7,875 annual interest (see below).

86. That is reinforced by mother, then 73, not being prepared to use her own money to pay Lynn her NRB. This was causing great anxiety and distress within the family, Ray's inheritance of father's Lantern shares then valued at £1.1 million (see father estate's June 2007 Major Assets Schedule). In early July 2007, mother refused to commute her pension to pay it, no doubt to preserve her income. Through August and September 2007 and much of 2008, complex arrangements were mooted to pay the legacy, none involving cash, in discussions with the accountants and much correspondence, yet none refer to the £300,000 gift or the £150,000 loan from Ray to gift for Craig.

87. As at July 2007, not only could mother not sensibly have afforded to gift her *own* £150,000 cash, she would not have done so because she was concerned about her financial position. She wanted to preserve her assets and her income, which is consistent with lending at interest to the 1997 Settlement *via* Ray. Both expressed concerns as to her financial position. On 20th August 2007 mother wrote to Lynn, adopting the accountants' draft, explaining why she was not funding the NRB legacy but was focused on preserving her financial security:

> "[Father's] and my first priority was always to make sure that we provided for each other for the rest of our lives, and we had always wanted the house [Kingsdale] and cash etc to be available for each other if one of us died. It is difficult to know what assets the survivor of us may have needed, particularly with the costs of care etc in the future. This was the most important part of what we wanted to do with our assets."

In his 24th August 2010 email to Lynn, Ray emphasised the point:

> "Dad's last wish was for Mum to be financially secure and looked after by her family".

88. Had mother gifted £150,000, let alone £300,000, for Craig, there would have been at least some form of "thank you" from Craig, but there was none: his evidence was, as his counsel put it, "sparse", there being no evidence that he was aware of or thanked his grandmother for her gift (it being immaterial that it was *via* the 1997 Settlement as Woodgate Avenue was always regarded as his property and has since been vested in him absolutely). To have so favoured one grandchild would have been against the grain of the evidence that the grandchildren were treated equally by both grandparents, *vide* mother bequeathing each £5,000.

89. Neither is there any documentary or other evidence to support Ray's case or evidence that *as at July 2007* mother had agreed to borrow £150,000 from him to immediately gift to his son or that the accountants were even aware of it. What there is, in direct contradiction and 14 months later, is a loan agreement dated 30th September 2008 by which LRS *not Ray* lends £150,000 to mother at exorbitant compound rates of interest (5.25%, I am told) (the "LRS Loan Agreement").

90. That was not a genuine document. As Ray readily accepted in cross-examination, it was never intended to be enforced. When taken to it, he was astonished, bending forward in surprise to take a closer look at the punitive rates of interest being charged mother by a loan from LRS when it was he who was claiming to have lent her the money, saying "we would never have implemented that rate of interest". If Ray says it would not have been enforced, there is no reason to suppose that mother ever thought it would be had she appreciated what she was signing, and in point of fact it has not been and is not being enforced as it is Ray who says he lent the money.

91. Once this Agreement falls away, so does any credible possibility that mother borrowed from Ray to gift to his son. That document, and all of the documentation leading up to it is nothing more than accountant-led paper-trail designed to "square the books" and present (false) ten-yearly IHT tax returns to HMRC in relation to the 1997 Settlement which did not reflect and was not intended to properly reflect how Woodgate Avenue was in fact funded and what had actually been agreed, namely, that mother loaned the first £150,000 to the 1997 Settlement at interest.

92. In a little more detail, as I have said, as at July 2007, there is no documentary evidence in the form of accountants' file notes or otherwise as to how the first £150,000 should be treated. In the absence of instructions, accountant Ian Mason made entries to deal with the payment of the cheque into LRS's bank account which was used to pay the 1997 Settlement trustees' obligations by crediting it to mother's loan account. Some five months later, in early December 2007 or thereabouts, according to the accountants' 14th December 2007 internal file note, there was a meeting at which

> "it was decided that [mother] will contribute £300,000 to the trust by way of a gift. The balance of the monies will be treated as a loan by Ray to the trust".

93. There is no evidence that mother was involved in or aware of this decision, or who made it and why, the implication being that it was part of the accountant-led tax-driven decisions. Patrick Penny was asked to prepare documentation recording mother's £300,000 gift ("which will have a credit of £150,000") and Ray's £368,249 or so loan. Ian Mason was asked to make "this allocation", presumably in the LRS loan accounts. This information was required to prepare LRS's 31st March 2008

accounts, and the 1997 Settlement's first ten-yearly IHT return. This all contradicts Ray's evidence that this had all been agreed back in July 2007.

94. Another four or so months later, by letter dated 21st April 2008, the accountants write to mother asking her to sign the enclosed 50-page IHT tax return "following your cash gift of £300,000 made to the [1997 Settlement] on 27 July 2007", which mother duly signed and returns and is forwarded to HMRC on 24th April 2008. Also enclosed are two other IHT returns which, it appears, included Ray's and father's settlor interests, presumably relating to their 1997 and 2001 loans to the 1997 Settlement. And there was a second letter also dated 21st April 2008 with another IHT return.

95. There is no evidence as to what, if any, discussions there had been with mother or otherwise in the intervening period or leading up to this letter or if she (more likely) just received it out of the blue. That there was a "cash" transfer or gift on 27th July 2007, as recorded in the IHT return, is false because there had been none, only the first £150,000 cheque, there having been no consideration as to the second £150,000 or its documentation or who would lend it or how it would be treated in the accounts. Thus, to describe by then 74-year old mother as having made a "*cash* gift of £300,000" was not true.

96. Mother was therefore signing a document which at that point (April 2008) was false, because she had not gifted £300,000 as she did not have it to gift, and no thought had been given as to how the second £150,000 would be funded. There is no evidence that mother was dishonest, or would knowingly sign false documents, from which, together with all of the other factors relating to this issue, I infer that she did not sign the 21st April 2008 letter as something which represented what had actually taken place (because it had not taken place) but simply signed what she was asked to sign, which is consistent with other documentation – including the LRS Loan Agreement and dividend waivers to which I will refer.

97. Around two months later, on 17th June 2008, the accountants wrote to HMRC explaining that mother had gifted £300,000 on 27th July 2007 to the 1997 Settlement and also that Ray and father had jointly made the £142,063 and £187,610 loans back in 1997 and 2001. What actually happened and how Lantern's "loan" (adopting the accountant's word) of £668,749 to the 1997 Settlement is set out in the 25th June 2008 accountants' internal file note which states, *inter alia*:

> "It was agreed at a meeting that [mother] will put £300,000 into the trust by way of gift and the remaining £368,749 will be settled into the trust by way of loan from Ray Coleman.
>
> "However, what actually happened was that [mother] paid £150k (posted to SJC loan account) in to the company and the company paid out £668,749 (posted to RMC loan account) to the trust.
>
> "Therefore, effectively we need to transfer [mother]s gift of £300k from Ray to Sheila via their loan accounts. This will have the effect of putting [mother] overdrawn by circa £150k (because the £300k gift less the £150k paid) and will substantially reduce Rays (*sic*) overdrawn loan account (but it will be overdrawn).
>
> "This transfer has been dated 27 July 2007, the date that LRS transferred the money to the trust.
>
> "… No further work is considered necessary."

98. Within the LRS loan account for FYE 31st March 2008, £668,749 was debited from Ray's loan account, £300,000 of which was then transferred to mother's loan account with £150,000 then being debited from mother's loan account and credited back to Ray (albeit that the actual figures do not precisely match) leaving Ray having "borrowed" £368,749 from LRS and "lent" mother £300,000, one-half being repaid by transferring the first £150,000 cheque from mother to Ray's loan account leaving

the second £150,000 as a "loan" to mother. This is all backdated in the accounts (most probably in June 2008 when the 31st March 2008 accounts were prepared) as having taken place on 27th July 2007, but was not true.

99. On 4th September 2008, the accountants sent a letter to mother for signature confirming she had gifted £300,000 cash on 27th July 2007 (untrue, as she had not) which had been debited from her loan account (also untrue, because it had not been) and a trustees' minute already signed by Ray confirming that he had loaned £368,749 on 2nd (not 27th) July 2007 "interest free and repayable on demand", the former being signed by mother on 30th September 2008, the latter signed by her on 3rd September 2008 and re-signed by her and signed by Ray on 30th September 2008 (there being two copies of that minute, one with an "x" for signature, one not).

100. On that date, 30th September 2008, the LRS Loan Agreement was executed by mother, Ray and it seems Craig, witnessed by Cathie Chapman, most probably by physical attendance at LRS's offices as was family practice and at the same time as the two minutes in respect of the £142,063 and £187,610 loans purportedly by Ray, not Ray and father. A busy day for mother, signing three minutes recording loans from Ray to the 1997 Settlement and her own letter confirming her £300,000 gift as well as the LRS Loan Agreement recording her borrowing £150,000 *from LRS* to gift for Craig.

101. There is no evidence that mother had any prior sight or knowledge of the LRS Loan Agreement or how it came to be in Cathie Chapman's office. It appears to have been accountant-generated to satisfy HMRC's 29th August 2008 request for documentary evidence of the 1997, 2001 and 2007 loans to the 1997 Settlement trustees (mother and Ray) and the £300,000 gift from mother, the IHT return sent on 24th April 2008 being insufficient. Given Ray's astonishment at its content in cross-examination, he plainly paid little heed to it – he now claiming that it was *he* not LRS who lent the money. No doubt mother would have been equally astonished had she understood what she was signing, apparently contracting to pay LRS annual interest of £7,875 to enable her to gift £150,000 for Craig.

102. Those five documents were sent to HMRC on 24th October 2008 asserting that mother had borrowed the £150,000 from LRS on 27th July 2007 (untrue) in support of her IHT return sent on 24th April 2008. This contradicts, or is inconsistent with, Ray's present claim and how the £300,000 "gift" was recorded in mother's LRS loan account (it was not debited from her loan account but *via* Ray's). Thus, not only was HMRC being provided with false or misleading documentation, the accountants retro-creating documentation, but both mother and Ray and possibly Craig put their signatures to the LRS Loan Agreement which was a fiction.

103. Pausing at 30th September 2008, whereas the 1997 Settlement trustees' minute records Ray's interest free loan of £368,749, there is none recording mother's gift. Whereas the LRS Loan Agreement records mother having borrowed £150,000 at 5.35% from LRS (to gift the £300,000 to the 1997 Settlement), there is nothing signed by mother to record her having borrowed £150,000 from Ray, and its terms have never been stated. As a matter of logic, if mother had already borrowed £150,000 from Ray, she would not have borrowed another £150,000 from LRS. If she had not already borrowed £150,000 from Ray, it must follow that it is only *after* 30th September 2008 that she borrowed that money from Ray to repay the LRS loan – but that is not Ray's case or evidence.

104. What the court, therefore, is being asked to do is disregard the apparently duly executed LRS Loan Agreement but uphold an unwritten agreement to borrow £150,000 from Ray on terms unstated some 14 months before it had even been thought up and at a time when the opposite was being falsely represented to HMRC. That makes no logical or other sense. There is no credible oral or other evidence that pre-death mother had been told or was otherwise aware that she (still) owed her son £150,000 despite there having being ample opportunity so to do.

105. It follows, in my judgment, that mother merely signed what she was asked to sign, and none of this is sufficient to contradict or cast doubt on her clear statement to Eileen Ismay on 8th October 2014 that she was owed £150,000 (or £160,000) which she had lent for Craig's new home at interest. The oddity here is that Ray was agreeing to pay mother interest on that £150,000 loan but the 1997 Settlement had no income with which to pay that interest: that merely reflects the casual way in which Ray would agree matters, and that in reality if interest was paid, it would come from LRS's bank account and squared in the books later.

106. Ray's counterclaim for repayment of the second £150,000 therefore fails. Matters do not, however, stop there. Ray then counterclaims for £185,500 loaned to his mother on 30th March 2008: that, in fact, represents the deficit showing on mother's LRS loan account at FYE 31st March 2008. How a deficit ostensibly owed by mother to LRS converts into money owed to Ray is unclear, but it matters not as that deficit already includes the second £150,000 (wrongly) debited from mother's LRS loan account so that here Ray is counterclaiming for the same amount of money twice. There is, however, for the sake of completeness, an undated loan agreement apparently signed by mother and Ray in 2009 whereby mother apparently borrows £185,500 from Ray at the same exorbitant compound rates of interest contained in the LRS Loan Agreement, both being in almost identical terms. No reliance is placed on this, so its significance is unclear, save that Ray accepted that it did not represent "new" money loaned by him to mother, and has never been enforced and is not being enforced by counterclaim. It therefore appears to be another accountant-generated document signed for purposes unknown, but not to be enforced and was not intended to represent what had actually been agreed with mother.

107. Again, however, matters do not stop there. The following year, FYE 31st March 2009, mother's LRS loan account deficit was cleared to zero by £245,648 being transferred from Ray's loan account to mother's (apparently acknowledged by mother signing a document dated 25th February 2010) which Ray is counterclaiming for as a loan. Taking the entries at face value, that includes the second £150,000 already included in the £185,500 balance, from which it follows that that same second £150,000 is being triple counted in the counterclaim, grossly inflating the claim from £150,000 to £450,000, all confirmed by statement of truth and under oath which, on any basis, was careless and false.

108. When cross-examined about these entries, Ray accepted he had triple counted, thereby contradicting and withdrawing what he had previously confirmed under oath and, fundamentally, demonstrating that he had lied about having discussed and agreed these loan account adjustments with mother – reinforcing rejection of his claim that mother had borrowed £150,000 from him to immediately gift to his son as being fiction. It equally follows that the 25th February 2010 "acknowledgement", not relied on in the pleading, is yet another accountant-generated document not intending to reflect what had actually been agreed with mother. Whilst the Defendants' counsel submitted that the loan accountant movements were part of some sort of tax planning, there was no evidence from any accountant as to what that was or that mother was aware of or agreed to it and, fundamentally, does not address the irrationality and incredibility of a 73-year-old lady borrowing £150,000 from Ray to immediately gift to his son which she could ill afford but still thinking, seven years later (October 2014), that she was still owed £150,000.

109. It is for those reasons that the counterclaim was earlier described as fabricated, the above being an illustration of Ray simply making up debts and conversations with mother to defeat the Claimants' case. As with the entries relating to the £543,500 for Lee's new home (see below), these accounting entries amount to nothing more than evidence as to how *internally* the funding shortfall relating to the second £150,000 was dealt with by LRS and then how the matter was falsely presented to HMRC for the 1997 Settlement, *not* what mother had agreed: in reality, LRS funded it, and there is no reason why mother, or her estate, should be held liable for it.

110. This naturally leaves a serious question mark over the reliability of the 30th September 2008 minutes of the 1997 Settlement trustees confirming Ray to be the lender, and the lurking doubt as to the source and nature of the £142,063 and £187,610 loans made back in 1997 and 2001. However, despite grave misgivings, that affords insufficient grounds to justify finding that the Claimants have rebutted the presumption that Ray was absolutely entitled to the benefit of those loans for reasons already stated.

2010 to 2015

September and November 2010 (and before)

111. Although the Claimants' various witnesses were cross-examined to the effect that mother's financial concerns were mis-stated or exaggerated, that she was concerned is the consistent theme of her reported comments to her friends and family as was Ray taking over or being in control of her finances. Even at father's funeral**,** mother had told her old friend Julia Stanger-France "that Ray had taken over everything", commenting that mother was "a very traditional and old-fashioned lady who had relied on Joe whilst he was alive to look after her. After Joe died, she relied on Raymond", none of which was challenged. Ray himself had said his 24th August 2010 email about the need to protect mother's financial security, and of her being "looked after by her family" (by himself). After mother dies, he wrote that "I have always taken care of my mother's entire needs and requirements, including financial" (10th August 2016 letter).

112. Probably during 2010 and subsequently when she started visiting regularly, but before moving to Estepona in early 2012, mother told her good friend, hairdresser and *confidante* Jacquie Millard that "I don't have any money, I'm supposed to be given dividends from the business but it's not been transferred over" because Ray "had told her that she wasn't entitled to anything from the business because she had left [in 2008, she retired as director], she wasn't working there and there wasn't enough money in the business to give her dividends": I accept this evidence.

113. In November 2010, shortly after the September 2010 estrangement, mother met her grandchildren by Lynn, Mac and Jos and her husband Chris, at the Salisbury Hotel in Hertford. She was shocked to be told she was entitled to dividends unless she had waived them, and said that Ray had told her she was not entitled to dividends as she did not work for the company and went on to say "there's nothing I can do about Raymond. He controls my money and I need to keep him sweet to get my money … that's just the way it is". I accept Jos, Mac and Chris's evidence.

114. Ray was aware of what had been said to mother. He claimed she was upset, but in my judgment it was he who did not like others talking to mother about her finances, about what she was entitled to, as that was his bailiwick, the non-payment of dividends hitting a raw nerve. At New Year, when unexpectedly bumping into Chris in a shopping mall, Ray threatened him: "You don't talk to my mother… if you want to talk to her you go through me… Got it? Now piss off": I accept Chris's evidence, and that it was said in a threatening tone.

115. Viewed from mother's perspective, and what Ray knew was her financial concern and also what he now says about her dividend entitlement (there was plenty of money for her to be paid her dividends if she wanted), this must be borne in mind as providing overall context when considering the evidence relating to the dividend waivers and also mother's alleged £543,500 gift for Lee's new home. The key point is that, as a matter of fact, a pillar of mother's wealth and potential income by dividend was her one-third Lantern shareholding, and presumably one of the reasons why she had retained ownership of most of them otherwise they might as well have been disposed of well before they in fact were, even during father's lifetime.

22nd August 2011 dividend waiver

116. On 16th August 2011, accountant Mark Ibbotson sent Ray minutes of LRS board meeting apparently held on 29th March 2011 (three months after the shopping mall incident) declaring interim dividends on Ordinary B Shares (mother, Craig, Ryan and Lee, not Ray as he held A shares) for FYE 31st March 2011 entitling Craig, Lee and Ryan to £31,500 each. Also enclosed was a LRS board minute apparently passed on 11th August 2011 declaring interim dividends for FYE 31st March 2012 entitling them to a further £5,500 each.

117. Associated dividend vouchers were enclosed for Ray, as the then sole director apparently present at each of the board meetings, to verify and, if correct, sign and return the minutes and get Craig, as company secretary, to sign the vouchers, each voucher respectively (mis)-recording that the dividends had been paid on 29th March 2011 and 11th August 2011 (they had not then been paid).

118. No vouchers were enclosed for mother's entitlement of £113,400 and £19,800 dividends for FYEs 31st March 2011 and 2012 because, according to Mark Ibbotson's letter:

> "…I understand that Sheila has waived her right to the dividend. I therefore enclose an appropriate dividend waiver form, please check the form and if you are happy that it is correct then please ask Sheila to sign and date where indicated and to have that signature witnessed.".

Read naturally, that would indicate that he had been told by Ray that mother had at some stage previously told Mark Ibbotson that mother had been told of her dividend entitlement but agreed to waive it (noting, the singular, not plural, dividend reference). It is Ray's evidence that he never spoke to mother about waiver, from which it must follow that Mark Ibbotson had been misled.

119. Only one dividend waiver form was enclosed which was signed by mother and witnessed by Ray's PA Cathie Chapman and dated 22nd August 2011 but not returned until the 23rd August 2011. It provides:

> "I, Sheila Coleman, of 3 Henderson Place, Epping Green, Little Berkhamsted, Hertfordshire, SG13 8GA, the registered holder of 9,000 ordinary B shares … hereby:-
>
> > "(i) waive all right to participate by reason of my said Ordinary B Shares in all dividends whether interim, final or otherwise declared by the company or the Directors thereof, and
> >
> > "(ii) release the Company such sum as would have been payable from time to time by way of dividend relative to my said Ordinary B Shares
>
> "This waiver and release are to apply to all dividends declared as aforesaid before such time as I revoke this waiver by notice in writing to the Company … *provided that such dividends shall be declared and become payable during the period to 31 March 2012*". (Emphasis supplied.)

<u>Question: does the 22nd August 2011 waiver cover the £113,400 dividend for FYE 31st March 2011?</u>

120. In my judgment, the proviso to the 22nd August 2011 waiver confines it to those dividends which are "declared and become payable during the period to 31 March 2012", so excludes the £113,400 dividend declared and payable in the previous period to 31 March 2011. That is plain from "period" being in the singular, so denoting that the waiver is only to apply to dividends declared and payable in that financial year, interim and final dividends usually being declared by reference to accounting periods or years, and that period being the one expressly identified.

121. As a matter of fact, taking the documentation at face value, mother's £113,400 entitlement was, as stated in the related board minute, "declared payable on 29 March 2011", which is repeated in and consistent with the associated tax vouchers recording the three sons' dividends as having been

paid on 29th March 2011. Equally, again taking the documentation at face value, mother's £19,800 (and £90,100) entitlements were, as *per* the related board minutes, "declared payable" on 11th August 2011 (and 26th March 2012), both in the "period to 31 March 2012" so waived by this waiver.

122. Read literally, as the Defendants' counsel submitted, "waive" in sub-paragraph (i) might be said to relate to future declarations in contra-distinction to sub-paragraph (ii) where "release" relates to past declarations, releasing dividends which "would have been payable" absent waiver. That is too literalistic and violates the clear intent of the proviso. Read naturally, these two sub-paragraphs are complimentary, on the one hand waiving right to participate in dividends declared, on the other releasing that which would have been payable had there been no waiver into the company's coffers. I reject the submission that "release" encompasses the £113,400 declared in the prior period.

123. Whilst it would appear that the 29th March 2011 and 11th August 2011 board minutes were signed by Ray at the same time, on or after 22nd August 2011, that, contrary to the Defendants' counsel's submission, is of no materiality. Either, the signed minutes were a true record of what had previously been declared at a board minute or they were not. If they were, then that is an end to it as they were merely recording that which had already been declared but not recorded in writing. If they were not, then they are a fiction, which has not been suggested. It is quite likely, given how other documentation has been created by the accountants, that these documents were part of "squaring the books" and then presented to HMRC as genuine and accurate documents when they were not (it being impossible, or extremely unlikely, that the dividends were actually *paid* on the stated dates), but that is insufficient to justify construing the waiver in any way other.

124. Mother therefore should have been but was not paid the £113,400 by LRS on 29th March 2011. Further, the 22nd August 2011 waiver could only be tax effective in respect of the dividend declared on the 26th March 2012 (see below), not the one declared 11th August 2011, because the waiver was not signed until 23rd or possibly 22nd August 2011, from which it would appear that HMRC was misled as to its tax-effectiveness.

125. It is more likely than not that mother attended Cathie Chapman's office and just signed what she was asked to sign without fully appreciating what she was doing. First, Ray now says he never discussed waivers with mother (contrary to what he appears to have told Mark Ibbotson), which would be consistent with mother having been told she was not entitled to any as she was not an employee (why waive something to which you are not entitled to). Secondly, had mother actually owed the second £150,000 allegedly borrowed from Ray, then that could (and perhaps should) have been repaid by dividend declaration, just as were the loan accounts of her grandchildren, Ray's sons.

<u>December 2011</u>

126. On 15th December 2011, mother completed the sale of her matrimonial home Kingsdale, 5 Henderson Place, Little Berkhamsted for £1.2 million, the net proceeds of £1,180,543.60 being credited to her RBS bank account. Kingsdale had been purchased by mother and father on 19th August 2002 which, as part of their tax planning, was settled by deed made on 27th November 2003 but collapsed by mother appointing herself as sole beneficiary on 12th November 2011 as she was entitled to, but nothing turns on that.

127. Notwithstanding continued estrangement, mother was conscious of Lynn's entitlement. She had kept in touch by continuing to send Christmas and birthday cards to Lynn with cheques (not encashed). Having initially cut her out of her will and her beneficial entitlement to Kingsdale under its settlement after initial estrangement (16th June 2011, by her 8th December 2011 will, four days before completion of Kingsdale's sale, mother partially reinstated her by leaving her residue to Lynn and Ray equally, self-evidently believing Lynn would get around one-half of its £1.2 million odd proceeds.

128. She wrote to Lynn in October 2011 to allay any fears and provide reassurance as to the ultimate destination of the Kingsdale proceeds:

> "Dear Lynn
>
> "Just a little note to say you will get your inheritance please believe that and don't worry. If its in my will there isn't anything any one can do. I have spoken to my solicitors and you are perfectly safe.
>
> "Take care Love Mum
>
> "Please try and keep well xxx."

Not only had mother taken solicitors' advice, she communicated that advice and reassurance to Lynn, it is to be inferred, because she knew of the lack of trust and high degree of suspicion between her children, but herself wanted professional advice that her intent was "cast iron" and could not be undone.

129. Also on 8th December 2011, mother wrote Lynn another note ensuring she got some jewellery and delivered some crockery of sentimental value and significance to Lynn. And then again, on 12th December, three days before completion and just after she had made her new will, she texted Lynn:

> "Morning Lynn. I am moving on Thursday. Havent bought any thing yet but am going away Next Tuesday to Dubia an them S Africa. Bt please don't wory about your inheritance every thing is tied up so u will get it. I have got some bits that I would likle you to have so I will get them dropped off love to u all have a good Xmas an a healthy. New year love mum x". (Typing errors reproduced.)

130. Whatever had happened previously, whatever Lynn's reasons for continued estrangement, and whether mother was justified in having previously cut her out of her will, and however hurt she was by filial rejection, mother was here righting her conscience to ensure Lynn got something, and knew she would get something, demonstrating that she was not actuated by upset at Lynn's estrangement, albeit that Lynn was not fully restored to her originally intended inheritance until her last will. That mother expected Ray to honour her wishes she made clear in her 21st October 2014 hand-written note to him, kept as it was with her last will for him to read after her death (cited below).

131. Mother, before moving to live with Norman White in Estepona, was also providing for management of her financial affairs during her lifetime. On 18th December 2011, she appointed Ray signatory on her RBS bank account mandate, directing all her mail go to his home address, leaving Ray to look after her financial affairs because she trusted her son and had confidence that he would properly look after her affairs. Ray was therefore in a powerful position, being in control of Lantern and its bank account and now with mandate over mother's and receipt of all her mail whilst overseas.

132. Mother plainly trusted, and had confidence in her son during her lifetime. There is no hint, or evidence, that at the time of selling Kingsdale mother understood, as Ray now claims, that she owed him £150,000; or that she had waived £133,200 dividends. Had she owed Ray the second £150,000, it would have been natural for Ray to ask (as he had regarding father's £73,000 LRS loan account deficit) for it (along with the alleged car loan) to be repaid out of the Kingsdale proceeds of sale: he did not.

<u>31st May 2012 letter enclosing unsigned waiver</u>

133. On 31st May 2012, following a recent meeting with Mark Ibbotson, the accountants' tax manager Tracy Cushion wrote to Ray in essentially the same terms as Mark Ibbotson's 16th August 2011 letter enclosing paperwork relating to a dividend declared at a 26th March 2012 board meeting, the enclosed minutes declaring dividends for FYE 31st March 2012 entitling the sons to £26,500 each

and £5,300 for Ray's ex-wife Corinne to whom mother had transferred 500 B shares. Associated dividend vouchers were again enclosed for Ray to check and Craig to sign and return.

134. Mother would have been entitled to £90,100 dividends. No voucher was enclosed because, according to Tracy Cushion:

> "…I understand that Sheila has waived her right to the dividend. I therefore enclose an appropriate dividend waiver form. Please check the form and if you are happy that it is correct then please ask Sheila to sign and date where indicated and to have that signature witnessed."

135. That waiver was not executed. However, this dividend was covered by the 22nd August 2011 waiver. There is no evidence that mother was aware of her entitlement to this £90,100 dividend, and Ray, as stated elsewhere, now says he did not discuss dividend waivers with her.

April/May and November 2012

136. Within a year of the Kingsdale sale and making her new will, and having ostensibly waived entitlement to £223,300 dividends, more than £1.2 million was withdrawn from mother's RBS bank account and paid into Lantern's bank account, £700,000 on 26th April, £300,000 on 30th May and £220,000 on 26th November 2012.

137. The first two were loaned by mother so were with her agreement, most probably effected by Ray using his mandate; the last was by cheque signed by Ray using his mandate and used to pay off LRS's £180,000 overdraft. It was left to Ray to determine which Lantern company was to borrow, £700,000 being "allocated" to and borrowed by LRL, £300,000 by LRS (see below).

7th September 2012 dividend waiver

138. On 12th November 2012, two weeks after Ray had withdrawn the £220,000 from his mother's bank account and following a recent meeting with Mark Ibbotson, Tracy Cushion wrote in identical terms to her 31st May 2012 letter to Ray sending paperwork relating to a dividend declared on 7th September 2012 for FYE 31st March 2013 entitling the sons to £32,500 each and £6,500 for Corinne. Associated dividend vouchers for Ray's confirmation and Craig's signing and return.

139. Mother was entitled to £110,500 dividend. No dividend voucher was enclosed for her because, as Tracy Cushion said in her letter to Ray, she understood that:

> "…Sheila has waived her right to the dividend. I therefore enclose an appropriate dividend waiver form. Please check the form and if you are happy that it is correct then please ask Sheila to sign and date where indicated and to have that signature witnessed."

140. The enclosed dividend voucher is in the following terms:

> "I, Sheila Coleman, c/of Lantern House … do hereby absolutely and irrevocably waive, in respect of 8500 of my … shares, all right and entitlement to the Interim dividend which is due to be declared by the directors of the company at the meeting of the board to be held on 7th September 2012
>
> "Signed as a deed by the said Sheila Jessie Coleman this 7th day of September … 2012…"

Question: did mother sign the 7th September 2012 waiver?

141. Although apparently signed on 7th September 2012 by mother and witnessed by Cathie Chapman, it could not have been signed on that date as mother was in Spain. Whilst the expert evidence is inconclusive, and states that ink on the two signatures was different, it is more likely than not that mother did sign it when in England on 16th November 2012 as the established routine was for

the dividend documents to be sent to Ray who would then provide them to his personal assistant Cathie Chapman to get signed, or she would open them without reference to him as his PA and get them signed, sorted and returned.

142. Whilst Cathie Chapman was not called to give evidence, and Ray was unable to assist, where someone has been regularly witnessing another's signature for a reasonable period of time, it is inherently unlikely, without good reason, for that person to then purport to witness someone else signing in mother's stead. No such reason has been suggested, and there are no surrounding circumstances which might lead to an opposite conclusion.

143. The fact that the waiver was self-evidently not signed on the 7th September 2012 is not of itself decisive as the actual date of signing is the operative date, and there is clear evidence of routine back- and mis-dating of documents for (mis-)presentation to HMRC to secure tax benefits by back-dating waivers to pre-date dividend declaration. There is some evidence that mother attended Lantern House on or around 16th November 2012, which would be consistent with the 12th November 2012 letter being sent to Ray in anticipation of mother visiting from Spain.

144. As with the other waivers, Ray now says that he did not discuss them with mother. If so, it must follow that mother was told to attend Cathie Chapman to sign some documents, and apparently signed what she was asked to sign as she had done on other occasions. It again follows if presented to HMRC on the footing that the waiver pre-dated the declaration, that was false, and tax benefits were secured which should not have been.

Question: should 22nd August 2011 or 7th September 2012 waivers be set aside by *non est factum*?

145. The Claimants claim that the 22nd August 2011 and 2nd September 2012 waivers should be set aside by *non est factum*. In my judgment, this doctrine is not engaged as mother had the opportunity, should she have so wished, to read these waivers but appears to have chosen not to. It is therefore not considered further.

October 2012 and February 2013

146. On 23rd February 2013, a new property – Windyridge – was purchased for Lee by the 1997 Settlement for £865,000, £901,503 including costs. £422,721 came from the sale of his previous property 12 Cherry Hill, the £543,657 balance apparently coming from mother's £700,000 loan, the £64,875 deposit and £478,782 completion monies being debited from LRS's account on 10th October 2012 and 23rd February 2013 respectively.

147. It is Ray's case that mother gifted £543,657 to the 1997 Settlement out of the £700,000 she had loaned to Lantern. In other words, that mother had agreed to forgive that much of the loan owing her from Lantern and then gift it to the 1997 Settlement, the same LRS bank account being used throughout.

148. It is convenient for that issue to be determined after consideration of the 20th December 2013 waiver, albeit that the alleged gift preceded that waiver.

September 2013

149. In September 2013, Lynn and mother are reconciled instigated, according to Emma Flack, Ray's present partner, by mother texting Lynn that she was in hospital in Madrid having surgery. Thereafter, the relationship went from strength to strength, Jacquie Millard saying that mother was happy to be back in touch as she had missed her.

20th December 2013 dividend waiver

150. On 18th December 2013, Tracy Cushion wrote to Ray in slightly different terms from her previous two letters. She had noticed that Craig, Lee and Ryan's LRS loan accounts were in deficit so that if they were to be repaid by dividend must be done before 31st December 2013 to be tax effective, there being no reference to any meeting between Ray and Mark Ibbotson as previously.

151. Tracy Cushion therefore enclosed paperwork for an anticipated board meeting with associated dividend vouchers for others and waiver for mother. In contrast to previously, where Tracy Cushion was responding to a decision made at a meeting between Ray and Mark Ibbotson, she was here advising how to regularise Craig, Lee and Ryan's overdrawn loan accounts tax efficiently by declaring £26,000 for each of them and £5,200 Corinne for FYE 31st March 2014. There was no such suggestion relating to mother, even though it is Ray's case that she owed substantial sums. As before, it was for Ray to review and return the documents duly signed.

152. Regarding mother's £88,400 dividend entitlement, Tracy Cushion said to Ray:

> "The dividend was declared on the B ordinary shares and usually Sheila waives her right to a dividend. I have assumed she will wish to do the same for this dividend and I therefore enclose an appropriate dividend waiver form. Please check the form and if you are happy that it is correct then please ask Sheila to sign and date where indicated and to have that signature witnessed."

The dividend had not, of course, been then declared but no doubt Tracy Cushion assumed it would be.

153. Unlike the previous letters, Ray was here being explicitly asked to speak with mother, consistent with Mark Ibbotson's letters, it appearing that the accountants understood that Ray would discuss matters with his mother. The enclosed waiver is in exactly the same terms as the immediately preceding one, save that it refers to an *un*dated December 2013 board meeting and the actual execution date is left blank, whereas the two previous ones had pre-typed the respective execution dates (26th March and 7th September 2012).

154. Taken at face value, the waiver was signed on 20th December 2013 ("20" being handwritten) by "S.J. Coleman" whose signature was witnessed by Del Dervish, Cathie Chapman's replacement, and then presented to HMRC on the basis that mother had signed her waiver before declaration to secure the tax benefits.

155. Mother did not sign the waiver on 20th December 2013 because she was in Spain. It is now accepted, following expert handwriting evidence, that mother did not sign this waiver at all. The Defendants, having originally said she did sign it and was witnessed by Del Dervish, now accept that she did not sign it but allege that it was signed by signed with her authority, the Claimants alleging that it was signed by Ray without her authority, so was forged.

<u>Question: did mother authorise Craig (or Ray) to sign the 20th December 2013 waiver?</u>

Conclusion

156. The 20th December 2013 waiver was forged by Ray who signed it without mother's authority, not Craig. Ray has lied as has Craig and Del Dervish who falsely presented it to HMRC knowing that it was not valid. Further, mother was unaware of the dividend being declared and had no means of knowing that it had been declared because, in contra-distinction to the previous waivers, did not attend to sign what she was presented with so did not even have the opportunity, should she have wished, of reading what she was being asked to sign.

Reasons

157. The Defendants pleaded case and witness evidence have gone through a sea-change. Having specifically asserted that it was mother who signed the waiver on 20th December 2013 witnessed by Del Dervish, it is now accepted that she did not and could not have done so because she was on that day in Spain. From which it follows that Del Dervish could not have witnessed *mother* signing it, let alone on that day. The Defendants now state that it was signed by Craig by mother's authority, so Del Dervish was witnessing Craig signing mother's name. This is untrue, for the following specific reasons.

158. Despite having no recollection of having written this signature, Craig said in cross-examination he was "100% confident" it was his signature. By slip of tongue at outset of his evidence, he said he first saw this waiver when shown it in January 2021, just before making his second witness statement when he first claimed to having himself written mother's signature – even though he had known from the outset of proceedings that its authenticity was in issue.

159. To get mother's authority, Craig would have to have spoken with her in Spain on or before the 20th December – presumably on the 19th, the day after the letter was sent to Del Dervish by Tracy Cushion. He would have to have explained to his grandmother that he needed her authority to sign the waiver to her £88,400 dividend, which was needed in urgency before the end of the calendar year. He would have to have had a prior conversation with Del Dervish, or his father. In cross-examination, he had no specific or clear recollection of calling mother or discussing it with her or anyone else. That is all the more remarkable as he said he had never previously asked grandmother for permission or authority to write her signature, so this would have stuck in his mind.

160. The Defendants' handwriting expert Michael Handy is inconclusive as to whether it was Craig who signed "S.J. Coleman". His unchallenged evidence was that the letter "o" on mother's signature was clockwise, whereas on Craig's handwriting samples he writes that letter anti-clockwise. In cross-examination, Craig had no explanation for how or why his handwriting would change direction. Had it been he who appended the signature with mother's authority, it would have been natural to write with his usual direction of flow, and not change direction when writing the letter "o".

161. In my judgment, Craig was lying, doing his father's bidding to lie about signing with mother's authority to cover up his father's and Del Dervish's dishonesty. When cross-examined, Ray denied that he had signed his mother's signature, saying that "there is no evidence whatsoever that that signature is anything like mine when you compare it to my son's", then relying on his son's admission of having signed it. Instead of simply denying that he had signed it and did not know who had because he was not present, he relied upon the (last minute) admission by his son.

162. The Claimants' expert Ellen Radley's unchallenged evidence was that if, as was the case

> "this signature could only have been written by Sheila Coleman or Raymond Coleman [there being no other contenders], I am of the opinion that there is very strong evidence to support the proposition that this was written by Raymond Coleman": paragraph 151 of her 30th November 2020 report.

Furthermore, she went on, having found mother's signature to be in the style of Ray's, equally significantly, she found the imprint of the signature on the waiver on an unidentified document upon which the waiver was resting when signed, which is consistent with Ray having two documents to sign on or about 20th December 2013, the board minutes and also mother's waiver, mother's apparently being on top of the others, and signed first, as was required for tax reasons (waiver must ante-date dividend declaration), whilst resting on the others.

163. Having lied in the witness box, Ray had also lied in his witness statement which he confirmed under oath without specific correction or qualification to his assertion that the waiver was signed by mother on the 20th December 2013. Astonishingly, in cross-examination he went so far as to say that

even when he made his witness statement dated 26th August 2020 he knew that it was untrue, at which point he went bright red. Further, whilst it is his pleaded case that whenever a dividend waiver needed signing, it was he, Ray, who telephoned his mother to discuss the matter, in cross-examination he initially said that he "never asked mother to sign any dividend waiver" but then rowed back somewhat saying it was Craig or himself or both of them. In my judgment, the truth was, as Ray initially said and accepted, he never discussed this (or any other – see below) waiver with mother.

164. The fact of Ray lying about this is, in my judgment central to the whole dividends issue. Had Ray, or Craig or anyone else, spoken to mother on 19th or 20th December 2013 about the waiver, they would have had to explain why and what her signature was required for. Had that happened, it in my judgment is plain that she would have been shocked to the core, as she had received no dividends because she had been told she was not entitled as she was not an employee. A little more fully, whereas previously, it is inferred, she had just signed what she was asked to sign when visiting Cathie Chapman, this time it would have to have been explained to her, and if it was not, she would have asked. With relations restored with Lynn and given mother's general financial concerns expressed to Jacquie Millard and others, she would have phoned Lynn hot foot.

165. Mother was therefore, I infer and find, consciously and deliberately, not asked for fear of what it might unravel, Ray never having discussed waivers with her previously (contrary to what the accountants had understood), mother having just signed what Cathie Chapman asked her to. Consistent with the previous waivers, this was accountant-driven tax planning with no consultation with mother and no consideration of her position or entitlement. Ray prevailed upon his son and his employee to lie.

166. Del Dervish's position is even more striking, and dishonest, than that of Craig. Had he witnessed Craig signing on grandmother's behalf and had the conversations he should have had on receipt of the 18th December letter to deal with the problem of mother being out of the country but having to sign the waiver before calendar year-end, he would have remembered. Yet he makes no mention of it in his witness statement. In cross-examination he was unable to recall whether he had actually seen Craig sign in mother's name or more likely was just handed a ready-signed document.

167. Back on 22nd December 2016, HMRC wrote to Del Dervish asking him to provide

> "written statement confirming your presence at the signing of the deed on 20/12/13 and that it was actually Mrs Coleman who signed it" because "there is some uncertainty as to whether the signature on the deed … is actually Mrs Coleman's, as it does not match her signature on the other 3 deeds she signed".

To which he replied on 25th January 2017 that

> "…I hereby confirm unequivocally that the deeds of Waiver dated 20/12/13 and 24/09/14 in respect of dividends pertaining to Lantern … were signed by the late Mrs Sheila Jessie Coleman in my presence and accordingly witnessed by me
>
> "In conclusion, I would assure you that any document signed by the last Mrs Coleman, bearing my signature as witness was actually signed by her, as described above and despite the variation in the signatures, there is no uncertainty whatsoever about this".

168. In cross-examination, he was unable to accept he had lied to HMRC, even though he quite obviously had, shrugging it off as an honest mistake responding to HMRC without first fact-checking as all other signatures had been properly witnessed on the stated dates. That also was untrue, because the only other material document he could attest to was the 24th September 2014 waiver which (see below) was signed by mother on 26th January 2015. Despite not being asked about that waiver, Del Dervish was dealing with it to close HMRC off from further enquiry, knowing as he then did that the

December 2013 waiver was forged and the September 2014 one was not signed until later. All have lied under oath to cover up for Ray, and avoid LRS having to pay the Claimants £88,400 and face the adverse tax consequences.

Question: did mother lend £1 million at 8.5%, gifting £543,500 to buy Lee's new home?

Sub-question: when was the 24th September 2014 waiver signed?

Conclusions

169. Ray agreed to borrow £1 million from mother at 8.5% to help repay Lantern borrowing, as he had told mother and she told Eileen Ismay on 8th October 2014, which on 9th October 2014, he agreed to repay by Christmas 2014 but did not do. Mother left it to Ray to decide which Lantern company would borrow, Ray allocating £700,000 to LRL and £300,000 to LRS, and required no written confirmation, because she trusted her son and, as with the mandate granted him in December 2011 and given that he was in control of Lantern, had confidence that he would properly look after her money and return it when requested.

170. The Claimants' confine their 8.5% interest claim to the larger loan, claiming 4.75% on the smaller loan. Mother did not gift the £543,500 for Lee's new home. Neither did she know that Ray had taken £220,000 from her bank account to pay off LRS's £180,000 overdraft.

171. Contrary to Ray and the Defendants' case, the 24th September 2014 dividend waiver was not signed until 26th January 2015 when mother also signed stock transfers life-time gifting her remaining Lantern shares, without understanding or properly understanding what she had signed.

172. These issues dovetail, so are dealt with together, the former triggering the latter. The first question is dealt with after the 20th December 2013 waiver issue because its forgery is relevant to properly understanding these questions.

Reasons

173. On 8th October 2014, mother instructed Eileen Ismay that she had agreed with Ray (*i.e.* Lantern) to lend him £800,000 on the basis that he would pay her 8.5% interest, Ray saying it would be better than the company borrowing from the bank, and that she had received some interest. There is no dispute that mother in fact lent £1 million, so her reference to £800,000 was in error. She would not have handed the money over had she not trusted her son, and expected that he would return it when requested. He had been looking after her, Lantern and 1997 Settlement financial affairs for many years.

174. The reason Ray gave to mother for the loan is consistent with Lantern accounts which record that certainly the £700,000 was used to pay off LRL's LIBOR bank loan. In now denying this, and denying that there was any equivalent bank borrowing, Ray was lying, this being an example of how even on mundane matters Ray is compelled to lie if he thinks it helps his case. Whether 8.5% was akin to LIBOR-based lending is unknown as LRL has not disclosed its facility letter. That mother wanted a good return is consistent with her expressing to Eileen Ismay and various others (such as Jacquie Millard) her concerns about money, that she had received no dividends from Lantern so at least wanted some money from Lantern and, of course, that she had previously loaned £150,000 *via* Ray at interest to the 1997 Settlement for Craig's new home back in 2007.

175. Ray's acceptance that mother had lent £1 million is inconsistent with, and contradicts, his counterclaim that at that point in time she still owed £150,000 from 2007. Had that been true, it would have been natural, when the loans were discussed, to agree that she first repay it, or set off the £150,000 against the £1 million or £700,000. Likewise, the other sums he now counterclaims mother

then owed him – specifically, the £30,886.95 for her new car (March 2007), the £185,500 and £245,648 (falsely) said to have been lent in 2008 and 2009. Those sums total some £612,034, from which it would follow that if Ray were right (which he is not) there would have been insufficient to gift £543,657 for Lee's new home.

176. So far as interest is concerned, LRL's and Ray's position is confused, at any rate in relation to the £700,000 loan. On the one hand, any agreement to pay interest is expressly denied, but asserted that it was nonetheless credited to mother's loan account, which Ray amplifies in his witness statement to the effect that £45,040 (or £48,040) was credited to her loan account. However, the accountants, in their 5th February 2016 letter, say the opposite, and the ledgers show £48,040 as having been debited from, not credited to, her loan account, and that £48,040 forms part of LPL's counterclaim (it represents her monthly allowance, being deducted from her loan).

177. That mother demanded repayment on 9th October 2014 is consistent with the contemporaneous communications between Lynn and mother, who was staying with Ray at the time waiting to attend Mac's 40th Birthday Party on 11th October, and with what mother said to others at the time and later told Eileen Ismay on 13th October 2014 when she returned to sign her new will.

178. Before leaving Estepona, mother confided in Jacquie Millard that she was very worried about what had happened to the £1 million she had loaned Ray from her house sale. She knew she would "have to stand my ground when I see him" but was concerned about confronting him as she "was worried that he'd lose his temper". She said on another occasion that she thought Ray "has an illness to make more money. He's got more than he ever could possibly need in his life and I don't know how to help him". At around this time, she had told Jos that "I need to see the solicitors, I've got to sort stuff out"; and Chris said mother had told him he had loaned Ray £1 million but "I don't know what to do about Raymond, I just want my money back".

179. On Thursday 2nd October 2014, six days before visiting Eileen Ismay, mother emailed Peter Schoon (a friend of Norman White who had offered to help out to see if he could do some digging into the Lantern companies, whom neither Lynn nor Ray trusted), thanking him for some information he had sent across on the Lantern companies:

> "…you can imagine how I feel, you trust your children. Im not sure what im going to do., I just want my money which seems might be a problem. I thought I signed all the right documents at time of passing money over. Thank you for all time not sure what I will do with the [company] information who to go too he is my son. My DAUGHTER Also has to have her heritance really im at a los as to what to do. Idoo thank you for all your effort an appreciate what you have done". (Typing errors reproduced here and elsewhere.)

180. Having told Eileen Ismay about the loans, later on that Wednesday 8th, and on the 9th and early on the 10th October, there are text message exchanges between Lynn (at her home) and mother (staying with Ray) in which mother says she will not mention things until the following day, the 9th; both mother and daughter express fear at how Ray will respond; but are surprised that all goes well, mother texting at 08:10 hours on Friday 10th "Have a good day [alls] well so far fingers crossed". After another text from Lynn, mother responds at 08:14 on the 10th saying "All seems to (*sic*) good so strange". What mother is here saying is: "I have asked Ray for the money back, he has agreed to repay it all, all went well – fingers crossed that he pays it back and all continues to go well".

181. On that same day, 10th October, in response to an email from Eileen Ismay, at 10:02 hours, Lynn replies:

> "Thank you for asking for update on Mum's progress with my brother. She approached him yesterday, & to everyones absolute amazement he has agreed tom comply with her wishes to

return her 800k and 170k odd K. I believe he has not 'kicked off' because he is realising that for the first time he doesn't have the control over her that he has had all his life, as he did both my parents, and therefore has to tread a little more carefully, aware she could just leave her shares in 'his' business to the cats home or even worse…me! However, she doesn't physically have the funds at this stage, she has given him until Christmas so we'll wait & see..."

That comment about the shares turned out to be prescient.

182. Two days later, on Monday 13th October, having been sent the letters of instruction to Lynn's home address on 9th October, mother visits Eileen Ismay to sign her new will, who records that:

> "Mrs Coleman reported to me that her son had agreed to repay the money she is owed by Christmas and is going to see her son again later today. She said this was welcome news as she was fearing difficulties securing repayment. She said she did not mention to him any point about the business and the company."

183. Two days previously, on Saturday 11th October, mother had attended Mac's 40th Birthday Party. Julia Stanger-France said mother was very emotional and worried, and was losing sleep over whether she would get the house money back and that "that's why I'm here, I'm trying to sort out all of that sort of stuff but Ray is making it hard for me". Mother unexpectedly told her nephew by marriage Robert Mills that she had come back to try and get Ray to repay money she had lent him – "he owes me over £700,000". So staggered was Robert that he "nearly fell out of my wheelchair", responding "crikey, no wonder you've come back". There is no reason to doubt any of their evidence.

184. Having returned home to Estepona and made her last will on the 13th, mother wrote a handwritten note to Ray dated 21st October:

> "My Darling Ray,
>
> "Please try and understand my reason for changing my will (my decision). Lynn had nothing whatsoever to do with it, but you have so much, of which you have worked very hard for, you will never be able to spend it, but have a good try and please enjoy what you have worked for.
>
> "I think my shares don't sound much but it is a little something from Dad as well. Im sure he will agree with me. Hope Craig Lee & Ryan never fall out so you don't experience the heart ache: Please lead a happy healthy life and remember I love you with all my heart for ever
>
> "Mum (Ma) xxxx xxxx x
>
> "PS No more heard feeling toward Lynn. Please love ya xx".

185. Although mother left this letter with her will, not sending it to Ray at the time but leaving it for him to read after her passing, it provides a powerful insight into her thoughts and concerns, having returned to Estepona and had the opportunity to reflect. Whilst not uncommon for letters to be left to be read with a will, the language used is consistent with mother being apprehensive and fearful of Ray and his reaction – "please try and understand" as if Ray would not understand, and almost protective of Lynn, as if anticipating an attack on her – "my decision" "Lynn had nothing whatsoever to do with it". During this trial, Ray has suggested that it was Lynn who put mother up to making the will (it has not been challenged); that mother was lying to Eileen Ismay (see below); in heavy cross-examination of her, that Lynn was behind this claim as funder (of no materiality, but solely to traduce her integrity in the eyes of the court by implying Lynn was just after the money, still harbouring a grievance from not getting her NRB and more generally, and deflect attention from his own conduct); and has fabricated claims to avoid liability. Conscious of her children's inability to work together, and perhaps mindful of Ray's likely reaction, mother appointed executors independent of Ray to administer her estate's affairs.

186. The letter reveals, and is consistent with mother not knowing that less than a month previously (24th September 2014) she was entitled to £425,000 dividends, or that she had waived £422,200 dividends since August 2011, otherwise she would not have said "my shares don't sound much": Lantern was a cash-cow, generating £847,200 dividends for her (not to mention the £855,050 for Ray's children and ex-wife and their trust) which Ray said she knew all about and, in cross-examination, that she could have had had she wanted as there was plenty of money to pay them. Indeed, in the financial year of her death but after she died, £5,165,955 dividends were declared.

187. Had she known or been aware of any of that, or that she could have received the money had she wanted (Ray in cross-examination: "there was never any problem with money"), mother would not have told Eileen Ismay on 8th October 2014 that she had received no dividends from Lantern because it would not have been an issue as she had chosen and was choosing to waiver her entitlement. Neither would she have been in the slightest bit concerned about not being repaid her £1 million, as there was plenty of money. Neither would she have expressed her concerns to others about being short of money for her medical bills or asked Peter Schoon to do some digging (it was she, not Lynn, who asked him). Equally, this is all inconsistent with any notion that mother did not expect to be repaid her money in full, contradicting her having gifted £300,000 for Craig or £543,657 for Lee.

188. There is no documentary or other evidence that mother gifted, or even knew she was said to have gifted £543,500 for Lee's new home. All there is is a footnote buried in Ray's "current account" with LRL, that the £700,000 was to pay off the LIBOR loan and £543,657 was used to pay for Windyridge. The author of this note is unknown, and has not given evidence, so the source of those instructions (if any) is unknown. These entries shed no light on what mother agreed because once the money was loaned to Lantern it was up to Lantern (or Ray) to decide how to use it. The entries merely evidence how the money was used by Lantern, *not* that mother *gifted* that money to the 1997 Settlement to buy a property for Lee and had agreed to *partially forgive* Lantern's debt to her. Further, as with the so-called gift for Craig, there is no evidence that Lee was aware of his grandmother's largesse, or that he had thanked her, his evidence being, as his counsel put it, "sparse". Neither is the then estrangement from Lynn any explanation for this gift because, notwithstanding Lynn's behaviour, mother took septs to ensure that Lynn would get some inheritance by making her new December 2011 will and taking legal advice, as already stated.

189. That Ray used mother's money without her knowledge or consent for Lee's new home is consistent with his drawing the £220,000 cheque which cleared Lantern's overdraft. His position on this was inconsistent and contradictory, veering from it being a gift *to* being to pay off loans mother owed him *to* being credited to mother's loan account, none of which were consistent with the underlying accounting documentation (such as there was). That contrasted with what mother had told Lynn, that she purchased a new flat in Ray's development in Mutton Lane, Potters Bar for £220,000 which Lynn visited with her mother in October 2014. The conclusion I reach is that this money was used for a purpose which mother did not know or consent to and in so doing Ray misused the mandate, only accepting it should be repaid in his counterclaim. It is striking that this money was taken in November 2012 to pay off Lantern's £180,000 overdraft, mid-way between payment of the deposit (October 2012) and the completion monies (February 2013) at a time when Ray was looking after his mother's affairs whilst she was in Estepona, still estranged from Lynn.

190. In cross-examination, Ray's answers were twofold. First, that mother was lying to Eileen Ismay to conceal from Lynn that she had gifted the Kingsdale proceeds away so as to avoid the risk of another estrangement and being cut off from her grandchildren Jos and Mac. Secondly, that she simply did not and would not have demanded repayment on the 9th October 2014 because she then knew that she was not owed any money at all. Here, Ray was simply making up answers, lying to justify his position and explain away uncomfortable evidence. The clear picture which emerged was of a mother, as she reached the end of her life, trying to right her conscience, sort out her affairs, but being increasingly

anxious as to whether she had misplaced trust in her son who whilst naturally loving and trusting she was apprehensive about broaching matters with him. There is nothing inconsistent with what she told others at the time, both before and at Mac's 40th Birthday Party, and also being the life and soul of that party, putting on a brave face for her grandson whilst confiding in others.

191. Had any of what Ray now says been true, the simple and natural answer to mother demanding repayment on 9th October 2014 would have been: "mum, don't you remember you gave most of it away – in fact, around £550,000 – for Lee's new house and you still owe me £150,000 from when you gave Craig £300,000 back in 2007 for his new house and also £30,000 for your new car in 2007 also various other bits and pieces so you aren't owed anything". He would also have made mention of the £220,000, and said words to the effect of course that would be sorted and returned. But he could say none of that, because it was untrue and might shake mother's trust and confidence in him and reveal that he had forged her signature on the 20th December 2013 dividend waiver and unravel all of the other dividends she had been entitled to but (unwittingly) waived and also, if what Lynn says is correct, that her £220,000 was not being used to buy a new flat in Ray's development in Potters Bar.

Subsequently, including the 24th September 2014 dividend waivers

192. Instead, Ray got spooked. As Lynn had anticipated in her email, he was galvanised into action to ensure that he secured the remaining Lantern shares held by mother for his family. Whether he knew mother had instructed her own solicitors or knew she had made a new will is unclear, but he instructed Del Dervish to find out how mother's shares could be safely transferred without later being "unpicked". That was discussed on 12th December 2014 (attendance note not disclosed) at a meeting between Del Dervish and the accountant Steve Wood, who wrote a follow up email on 12th January 2015 explaining the options. On 13th January, another accountant Simon Liggins wrote to Del Dervish that Tracy Cushion would be sending the dividend paperwork under cover of her 9th January letter.

193. In her 9th January letter to Del Dervish, Tracy Cushion enclosed documentation relating to LSH dividends apparently declared at the 24th September 2014 board meeting which Del Dervish was asked to review and if accurate get Ray and Craig to sign, she apparently having been told that "dividends are to be paid to Craig, Ryan, Lee and Corinne". There was no mention of mother, but the enclosed documentation made clear that Tracy Cushion had been told or assumed that mother had waived her dividends.

> "The dividends were declared on the B ordinary shares and I understand that the shareholders waived their rights to one or both of the dividends. I therefore enclose appropriate dividend waiver forms. Please check the forms and if you are happy that they are correct then please ask each shareholder to sign where indicated and to have that signature witnessed."

Thus, it seems, it is Del Dervish not Ray who was to speak to mother and the other shareholders. There is no, or no credible, evidence that he did.

194. The 24th September 2014 board minutes expressly mention waivers, whereas the previous ones had not. After recording the presence of all four directors (Ray and his three sons) and recording the sons' interest, it provides:

> "It was noted that Messrs Craig, Ryan and Lee Coleman and Mrs SJ Coleman had waived their entitlement to the dividend to be declared in the sum of £42,00 per Ordinary B share. It was further noted that Mrs S.J. Coleman had also waived her entitlement to the dividend to be declared in the sum of £8.00 per Ordinary B share…
>
> "IT WAS RESOLVED

"THAT an interim dividend of £42.00 per Ordinary B £1 share in respect of the year ended 31st March 2015, be and is hereby declared payable on 24th September 2014 to those shareholders registered at close of business on 24th September 2014

"IT WAS RESOLVED

"THAT an interim dividend of £8.00 per Ordinary B £1 share in respect of the year ended 31st March 2015, be and is hereby declared payable on 24th September 2014 to those shareholders registered at close of business on 24th September 2014".

195. Ray's sons therefore waived their respective £105,000 entitlements (at £42 per share) but retained their £20,000 entitlement (at £8 per share). Corinne retained her full entitlement of £25,000. Mother was entitled to £425,000, being £357,000 at £42 and £68,000 at £8 but was to waive the lot.

196. Enclosed are deeds of waiver, two for mother to sign. It was the Defendants' original position that this was signed by her and witnessed by Del Dervish on 24th September 2014, necessary to be tax-efficient. That was untrue, because mother was in Estepona. She could of course have signed it in October 2014 when staying with Ray, but did not, it only being after the October events that Ray took the steps he did. Ultimately, the Defendants, and Del Dervish, accepted that mother had in fact not signed them until 26th January 2015 at Lantern's offices from which it follows, as with most of the other waivers, that HMRC was misled as to the actual date of signing.

197. On Friday 23rd January, Tracy Cushion emailed Del Dervish a deed of retirement and appointment of trustees for a trust to whom mother's remaining shares would be transferred and a stock transfer form for those shares which Steve Wood had emailed Tracy Cushion earlier, and which mother signed on the 26th January along with the waivers as well as a letter appointing Del Dervish to manage her insurance and/or tax affairs. This was all to carry out the advice as to how to make the stock transfer unpickable.

198. It forms no part of the Defendants' pleaded case that Del Dervish explained anything to mother as he had been asked to do by Tracy Chapman in her 9th January letter. That would have been rather odd from mother's perspective as there is no evidence that she had previously met him. Neither does it form any part of Del Dervish's witness statement. That is in contrast with what he wrote to HMRC in his 25th January 2017 letter (already part cited concerning the 20th December 2013 waiver) which, unsolicited, deals with the September 2014 waiver. In addition to the untruthfulness already referred to, Del Dervish said to HMRC:

"To be very clear, I was entrusted by the late Mrs Coleman with a great deal of significant information and I am quite familiar with the 'Coleman' family dynamics, including the characteristics of the various parties involved.

"Over time, I have witnessed a number of documents at the request of the deceased and in doing so before signing any such document, I have always ensured and asked questions to satisfy myself that I had acted entirely appropriately, including testing her understanding of the transaction and checking for capacity and undue influence.

"Because I was very wary that there may well be issues in any transactions involving the late Mrs Coleman, I took great care to satisfy myself that she understood the nature and consequences of what she was signing, because she may well have been vulnerable to undue influence by a relative or other person."

199. All that was a tissue of lies designed and intended, as I have already said, to close off HMRC enquiry. Had any of it been true, it would have formed a central part of Del Dervish's evidence, but was not even mentioned in his witness statement. He could not have given any advice in relation to the 20th December 2013 waiver because it was a forgery, and in evidence he said it was Craig not he

who spoke with mother on that occasion. Neither could he have given any advice regarding the 24th September 2014 waiver *on that date* because mother was in Spain.

200. It would have been strange for an effective stranger to explain any of this to mother, and even stranger given that it was Del Dervish who had acted as Ray's accomplice in forging the 20th December 2013 waiver. In cross-examination, Del Dervish said he was not concerned about undue influence (despite saying so in the letter) but said he had made sure mother did understand what she was signing, although apparently he did *not* tell her she was entitled to be paid the dividends if she wanted, and did not say that if she did not agree to waiver then she would not get the dividends (the opposite of the pleaded case). All of this is equally unreal and untruthful, particularly as it appears that Craig was apparently present throughout the signing session. Neither do I accept Del Dervish's evidence that he spoke to mother about the share transfers in December 2014.

201. Ray denies all of this, specifically that he had any knowledge that mother was going to gift the rest of her shares until the 27th January 2015, *after* 26th January 2015, even though she had stayed with him and had supper the night before and Ray himself signed a board minute dated the 26th January 2015 approving mother's stock transfer, or that he had any discussions with Del Dervish about them. It is inconceivable that Del Dervish would have taken the steps he did, instructing the accountants as he did, without Ray's specific instructions. When cross-examined about Ray's denial, Del Dervish looked as if his breath had been taken away, left speechless and astonished, although not actually saying anything.

202. Ray was lying to try and distance himself from what had happened. He had lied to his mother about repaying her loans by Christmas on 9th October 2014 to buy time, to take pre-emptive action to secure her remaining Lantern shares for his family and also get Del Dervish appointed to take over mother's insurance and tax affairs and give him authority to obtain information relating to them.

203. It is equally plain that mother did not know or understand what she was signing. When later picked up at the Lantern offices by Lynn, she said she had signed lots of documents but did not know what she had signed. As before, she attended to sign what she was asked to sign: there is no rational or other reason why she would have life-time gifted her remaining Lantern shares just a few months after leaving them to Ray in her last will as had always been her testamentary intent. Neither is there any, or any credible, evidence that it had been made clear to her that not only was she gifting her remaining Lantern shares which she had owned for several decades and entitle, and would *continue* to entitle her to dividend income so providing her with financial security and allaying her financial concerns, including about her medical bills, but she was also waiving her dividend entitlements.

204. If all that had occurred at the Lantern offices on 26th January 2015 was above board, there is no reason why Ray would not have told Eileen Ismay when he attended her office for will reading on 25th August 2015 that mother had gifted her shares back in January. No explanation has been forthcoming: it is to be inferred that Ray withheld that information to keep his powder dry for fear of the gift being "unpicked". Whilst not directly relevant (the Claimants do not seek its set aside, accepting that the shares were always to go to Ray), it reflects upon Ray's personality and his credibility, upon his Machiavellian, strategic mindset.

Undue influence

Introduction

205. The Claimants contend that all duly signed dividend waivers (so excluding the 20th December 2013 one) were procured by Ray exercising undue influence over mother as were the purported £300,000 gift for Craig's new home and the £543,500 gift for Lee's new home. There is no allegation that the 30th September 2008 minutes of the 1997 Settlement trustees (signed by mother and also

Ray) relating to the 1997 and 2001 loans for Craig and Lee's original homes were procured by undue influence.

Did mother reside trust and confidence in Ray?

206. Whilst fraud unravels all, Ray's forgery of mother's signature on the 20th December 2013 waiver, strictly speaking, is confined to it. However, once established, and the other fraudster, Del Dervish, has been involved in execution of the 24th September 2014 waivers in circumstances already stated, the court, even without its pre-disposition to jealously scrutinize the instant transactions, will take little persuasion that undue influence has pervaded the transactions in issue, particularly against the backdrop of inconsistencies and contradictions already referred to and referred to below. This is so because, in my judgment, the forgery could and would only have occurred by taking place in the context or climate of mother trusting and having confidence in her son, taking him at his word, and would not have been necessary had mother been informedly aligned.

207. Notwithstanding submissions to the contrary, Ray has always accepted and emphasised the trust and confidence mother resided in him to look after her financial affairs, and how protective he was of her, warning off anyone who encroached. In August 2010, he emailed Lynn about father's wish for mother to be "looked after by her family", by which he meant himself. At New Year 2011 when he unexpectedly bumped into Chris in the shopping mall, having learned that Chris and others had met up with mother at the Salisbury Hotel the previous November 2010 and told her about her dividend entitlement, he warned off Chris, telling him to "piss off" and only to make contact through him.

208. In 2011, when mother moved to Estepona, she added him to her RBS mandate, designated his home address for all purposes and entrusted her safe code to him containing £30,000 cash. After mother died, Ray wrote to the Claimants' solicitors: "As you are well aware I have always taken care of my mother's entire needs and requirements, including financial" (10th August and 20th October 2016). By Del Dervish, Ray told HMRC "for many years [Ray] had solely taken care of his mother and her affairs and ensured she did not want for anything" (8th August 2017). Then again, a year later, Ray emailed that he had for "many years [been] administering my mother's affairs and caring for her in every possible way" (21st September 2018).

209. Had none of this been so, and had not others regarded Ray as being responsible for mother's financial affairs, the dividend waivers would not have been sent to Ray for *him* to talk through with mother and in the context of the accountants having, it appears, already been told by Ray that mother had agreed to waiver. Rather, the accountants (or someone properly independent of Lantern and Ray) would have written directly to mother and talked her through them to ensure she understood and agreed with what was proposed.

210. Consistently, in cross-examination Ray emphasised that his mother wanted for nothing, and even if she wanted to have all the money she had (allegedly) gifted his children back, all she needed to do was ask. Whilst that was no more than false pride, evidenced by his failure to repay her money when asked and the steps he took to secure his inheritance once mother had demanded her money back, he inadvertently demonstrated that he well knew and understood that his mother relied upon him in respect of her financial affairs. Shortly before her death, it was he who she had to ask for £350,000 to be paid to her for her new flat in Estepona because it was he who was in control (that money being in Lantern's bank account).

211. Both parents having treated Ray as their equal partner from his teens onwards and given his pivotal position within Lantern and family finances, it is unremarkable and unsurprising that mother continued to reside trust and confidence after her husband died when, Julia Stanger-France said, mother being an old-fashioned lady, Ray took over where father left off. Had mother not implicitly trusted and had confidence in him, she would not have paid £150,000 and then £1 million to Lantern's

bank account without written record, controlled as the companies were by Ray, having to badger Ray, just before she died, for her £350,000 to buy her new flat in Estepona or put Ray on her bank mandate. From what she told friends and family, she plainly felt beholden to Ray, if not a little scared or fearful at crossing him (*vide* the October 2014 texts and keeping the 21st October 2014 letter left with her will). Had she not implicitly trusted her son, she would not have signed the LRS Loan Agreement which even Ray accepts was not to be enforced.

212. None of this is altered by mother remaining an independent and vibrant lady who took the bold step of moving to Estepona to start a new life aged 76 and all that that entailed, or by the fact that she had previously shown a penchant for tax avoidance schemes and, certainly in relation to the NRB, took her own independent advice and was not prepared to use her own funds to pay Lynn's NRB. That she loaned the £150,000 at interest and the £1 million at 8.5% interest to some extent demonstrates that she retained her independence in those relatively straight-forward matters, but, in reality, reveal her reliance on what Ray told her, helping Lantern out to repay its LIBOR borrowing whilst helping her out also to maximise her income and get something from Lantern given that she had been told that she was not entitled to dividends as she was not an employee. If the 8.5% was high, it reveals a certain disconnect from actual rates, enhancing reliance on what Ray told her and his agreement to pay it.

213. Neither is any of this altered by mother being told in November 2010 that she was entitled to be paid dividends: that she did not press the point is further evidence, or indication, that she implicitly trusted Ray, relying and taking at face value his (inaccurate) explanation as to why she was not entitled to dividends, as well as regarding herself as being financially beholden to Ray as she had told those friends and family whose evidence I have already referred to and accept. As is not uncommon, at certain times there was a duality in mother's approach, on the one hand making clear to Lynn back in December 2011, even though estranged, that she was taking steps to make sure Lynn's inheritance was "safe", whilst at the same time continuing to trust and place her confidence in Ray by handing over more power to him by putting him on her bank mandate and having her mail directed to him (there then being no alternative as she remained estranged from Lynn). But none of that is inconsistent with then, and continuing to reside trust and confidence in Ray.

214. Neither is it altered by mother beginning to, as it were, put her head above the parapet in October 2014 and put her financial house in order in righting her conscience with regard to Lynn and also more generally. This was, in my judgment, an 81-year-old lady beginning to challenge the person who she had so long trusted but was evidently beginning to get concerns about. The rapprochement with Lynn may well have brought her concerns into sharp focus and given her the strength to take Ray on, but there is no evidence, or no credible evidence, that Lynn was instigating or acting in any way improperly in regard to mother's actions as mother made clear by her own, independent communications to Ray. What would have happened had mother not died unexpectedly will never be known, but the impression is that she was girding herself to strike a more independent line, involving Peter Schoon and trying unsuccessfully to get Ray removed from her bank mandate in January 2015. As it is, mother appointed executors independent of Ray to administer her estate after her death.

Are any of the dividend waivers readily explicable by the parties' relationship?

Sub question: what did mother know and understand, and generally?

215. That Ray forged one of the waivers is, in my judgment, pivotal, because once a (trusted) son forges a waiver without, self-evidently, his mother knowing about it, it is plain that he did not, as he should have, tell her about her £88,400 dividend or get her consent to waiving it. On this and each of the other occasions, the conversation should have been *before* dividend declaration otherwise mother would be saddled with income and inheritance tax liabilities, and should have clearly explained to her that she was entitled to the dividend if she wanted it and, *if* it was the case, she should have been told

that the dividend could be used to pay off any outstanding loan account deficits (as with Ray's children) and if she wanted to waive the dividends then she would lose the right to those dividends forever and that, *if* her loan account was then in deficit, she would have to repay that from her own resources.

216. If a son forges one waiver, it is more likely than not that mother was never properly told about the other ones otherwise a simple explanatory phone call to mother in Estepona asking for consent to sign on her behalf was all that was required and would have been made back in December 2013, and would have come as no surprise to mother having already (allegedly) happily waived £333,800 dividends, rather than forging her signature. I have already held that mother did not know or understand what she was signing on the 26th January 2015 before Del Dervish. That leaves the ones witnessed by Cathie Chapman. Although she gave no evidence, as already held, the routine was that mother would attend her offices and sign what was put in front of her, as with the LRS Loan Agreement.

217. The Defendants' pleaded case is that mother was told about *each* of the dividend payments but agreed to waive them, fully understanding the reasons why. The identity of the person having those discussions is unpleaded, but it should have been Ray because it was he to whom the relevant letters were sent following meetings with the accountant at which they apparently had been (mis)led to believe that mother had consented. The Part 18 Reply makes clear that if mother was not present when dividends were discussed at annual meetings, *Ray* would discuss them with his mother over the telephone, the impression from his witness statement being that it was he and no-one else who discussed things with mother. However, in cross-examination, he was clear that "I have never asked my mother to sign any dividend waiver" and that he "was not involved in having them signed", the accountants sending them to his personal assistant Cathie Chapman whose job it was to get them signed until she left in 2014, before Del Dervish took over. As already held, at no stage did Ray discuss waiver with mother.

218. There is therefore no evidence that anyone ever explained to mother her entitlement. Neither is there any evidence that she actually read what she was signing although, as indicated at the outset of this judgment, the general approach is that the author or signatory of signed documents is treated as intending what they sign. Even if there was evidence that she read what she was signing or that she should be treated as having read it, she would have done so on a false footing, accepting and relying upon the inaccurate explanation by Ray that she was not entitled to the dividends as she was not employed by Lantern (so there was no skin off her nose to sign away what she was not entitled to). This would cover each of the waivers witnessed by Cathie Chapman and also the ones by Dev Dervish. It matters not that Ray was not or might not have been present when they witnessed mother signing as they were acting for and on behalf of Ray, mother attending at his behest.

219. That no-one ever explained mother's entitlement and her options accurately of itself tends to indicate that the waivers in issue were unduly preferring Ray's family, otherwise mother would have been told and openly asked. Further, the pleaded reason for her agreeing to waive do not stand up. Those pleaded reasons, broadly consistent with Ray's witness statement, are that dividends:

> "were declared solely for the purposes firstly of clearing the loan accounts of … Craig, Ryan and Lee and secondly for remunerating them in the most tax efficient way for their full-time work for the family business" and that "had she not agreed to waive her dividend entitlement, the dividends would not have been declared by the companies".

220. Later on, the point is reinforced:

> "21.4 … Her agreement to waiver her entitlement was motivated by a wish to benefit and remunerate her grandsons in a tax efficient way, on the understanding that the dividend

declarations would not otherwise have been made" (pre-supposing pre-declaration discussion, which on the evidence did not take place).

Within that is an implicit threat, removing "the free volition of the donor to accept or reject the persuasion or advice or withstand the influence" of the influencer (Wolf LJ in *Daniel v Drew* (*supra*) @ 36). In other words, it is pleaded, "if you do not agree to this proposal there will be no dividend so you will get nothing anyway – so you might as well agree".

221. That, however, was in stark contrast to Ray's clear evidence that had mother wanted her dividends, she could have had them because there was always plenty of money in the companies to pay them. Thus, even if, which is not the case, there was evidence that mother had been told and agreed to waive her dividend on the pleaded basis, this would have been a false decision based on a false premise that she in effect had no choice, when according to Ray she *did* have a choice and could have received the money, so violating her ability to make a "free and informed" decision (*per* Wolf LJ in *Daniel v Drew* (*supra*) @ 36). Given the resultant financial disparity between Ray's family and mother's regarding the dividends, that of itself would be sufficient to raise the presumption of undue influence.

222. Whilst the pleaded explanation focuses upon Ray's children and the tax efficiency of declaring dividends to pay off their loan accounts in remuneration, there is no pleaded case in relation to the £42,000 dividends paid to his ex-wife Corinne or the £387,050 paid to the RM Coleman Family Trust (as class C shareholders) created on 17th September 2007 (nor was there any explanation as to why the final waivers were so large). Although Del Dervish sought to explain some of these in his witness statement, as he accepted in cross-examination, he was unable to give first-hand explanation as to why the dividends were declared for Ray's ex-wife and the trust.

223. Little was said about them in submissions, but it is difficult to understand how they fit in with the pleaded explanation. If *not* to remunerate and repay the loan accounts tax efficiently, it is difficult to see why mother did not receive her dividends, so underlining the extent to which Ray and his family's interests were being preferred to those of mother. Although the trust held different classes of shares carrying (I was told) different voting rights providing some sort of (unpleaded) explanation or justification for the disparity, that is specious as in reality no decisions would have been made without Ray's say-so and without accountants' advice, it being immaterial that mother was one of the creators of the 2007 Trust.

224. This again turns the spotlight on to the counterclaimed debts. If mother's loan account was in deficit in any dividend year, it could have been cleared by dividend declaration. Yet consideration of their repayment by dividend declaration forms no part of the pleaded case and did not feature in contemporaneous accountants' letters and advice, it just being assumed she would waive her dividends (*assumed* because she had not been asked by the accountants who relied upon what they had apparently been told by Ray). In cross-examination, however, Ray made clear that had mother wanted dividends to be paid she could have received them and been appointed a consultant to make it tax-efficient (this is a slightly different point from the previous one, which is mother actually being *paid* the dividend, as distinct from non-cash accounting entries to clear loan accounts and square the books).

225. It therefor follows that on Ray's evidence, there is no reason why, as with his sons, mother's loan account could not have been cleared (tax-efficiently or otherwise), instead of being left, as pleaded, with huge liabilities to repay alleged loans. That said, Ray's answer was disingenuous, and purely hypothetical, because mother was not given that option as Ray did not talk to her about it, except to tell her she was not entitled to dividends as she was not an employee, and the pleaded case is that had she not agreed to waiver she would not have got her dividends. It will be recalled, after the November 2010 conversations at Salisbury Hotel and the shopping mall incident at New Year 2011, it

appears that dividend conversations were closed off, mother presumably continuing to believe she was not entitled as she was not an employee. Further, there were no loans to pay off, save perhaps for the £48,040 and £56,735 debited from her loan accounts which the Claimants have agreed to give credit for (see below) which could usefully have been cleared by dividend declarations in the relevant years.

226. Thus, whilst Ray implicitly accepts that each of the dividend waivers call for explanation by reason of providing the pleaded explanation (otherwise no explanation would be required), that explanation does not stand scrutiny. By accepting in oral testimony that mother could have been paid the dividends if she wanted, tax efficiently or otherwise, Ray implicitly accepted or acknowledged that she had been taken advantage of as she had not been told so at the time, thereby preventing her from making an informed decision of her own volition at the time and in so doing failing to discharge the obligation of candour and fairness he owed his mother (by analogy, *Etridge* paragraph 33 (*supra*)), so taking advantage of his position. The pleaded case, and the contradictory and inconsistent oral testimony, serve to underline that Ray and his family's interests were being preferred to those of mother, with no or no proper thought being given to her.

227. It follows that the sheer size and repetition of the dividend waivers, whether viewed individually or cumulatively, plainly call for explanation. They are so large that they cannot be reasonably accounted for on the pleaded or other grounds. There being no, or no credible, explanation, it is to be presumed, or it would say to the unbiased observer, that each must represent Ray taking advantage of his position (Buxton LJ in *Turkey v Awadh* (*supra*)) so fall to be set aside. The position is not altered if the counterclaimed debts are removed from the equation, as this merely serves to highlight the financial disparity and call for explanation.

228. Strictly speaking, each of the dividend waivers should be considered separately and in their then prevailing context, not just of the waivers themselves but more generally and to see what each transaction's "general nature was and what it was trying to achieve for the parties" (*Turkey v Awadh* @ 32 (*supra*)). However, the waivers in issue cannot sensibly be considered in isolation from the others, not just because they were all part of the same tax planning exercise to at least in part remunerate Ray's sons. If that were done, consideration of the first and second waivers would immediately run into the fact that first £113,400 dividend had not but should have been paid, then up against forgery of the third waiver (£88,400) and then the troubling circumstances surrounding the final £425,000 waivers and that almost all, by reason of false back-dating, result in mother having income and inheritance tax liabilities without receipt of dividend so leaving her with tax debts she could not afford.

229. This leads directly to the parallel world of Lantern's books and records and Ray's evidence, divorced as it was from the reality of what had been agreed with, understood by and told to mother. From 2007 onwards, mother was owed £150,000; yet that was "reversed" in Lantern books and recorded as a loan from Ray (or Lantern) *to* mother, explained by Ray as part of a larger £300,000 gift for his son. From 2012 onwards, mother was owed £1 million by Lantern; yet Lantern's books record that £543,500 of it was spent, articulated by Ray as a gift for another of his sons. Although estranged from Lynn for three years (2010 to 2013), mother only disinherited her for six months (June to December 2011), intending Lynn to share in her bounty both before and after, so removing estrangement as a motivator for making the alleged gifts to Ray's sons in 2007 and 2012 and also for most of the dividend waivers.

230. From 2007 and then 2012 onwards, mother was entitled to substantial contractual interest income from those loans (more than £85,000 *p.a.*); yet Lantern's books record none as having been paid, deducting her monthly "allowance" and various medical bills from her loan accounts so that she was effectively "spending" what she had loaned to the tune of at least £48,040 and £56,735 (see

below), not including deductions from her loan accounts to pay Ray's children's and ex-wife health insurance and other unrelated expenses so further reducing reduce liability to her and the size of her assets and estate. In 2012, mother understood £220,000 was to buy a new flat; yet Lantern's bank account records it being used to pay off its overdraft, Ray only accepting by counterclaim that it should be repaid.

231. Although wanting her Lantern shares to go to Ray (or his family), that did not mean mother did not want the dividends. She did. From November 2010 onwards, if not before, she complained to others about not receiving dividends; yet Ray inaccurately and misleadingly told her she was not entitled as she was not an employee which she evidently accepted and did not challenge because she trusted him and was financially beholden to him. From March 2011 onwards, mother was entitled to £847,200 dividends; yet Lantern's books treat all as having been waived before being declared whereas the first one for £113,400 was not waived at all, the fifth one for £88,400 was forged by its chairman Ray, and only one of the others was waived before declaration (£90,100) resulting in mother remaining liable to income and inheritance tax on £757,100 dividends declared but receiving no dividends to pay them.

232. The reality, therefore is that mother was entitled to (re)payment of £2,217,200, made up of the £1,150,000 loans, the £220,000 misappropriation as well as the £847,200 dividends plus interest on those loans, putting the deductions agreed by the Claimants (see below) to one side. That is in striking contrast to the parallel world of Lantern and Ray, in which mother had gifted the bulk of her estate, £1,690,700, directly or indirectly *via* their Lantern holdings, to Ray and his family and their trust whilst remaining liable to repay Ray £150,000 she had borrowed to gift to his son, stripping out the triple-counting, agreed deductions and ignoring the £95,600 counterclaimed by Ray for Blanche Lane rent repayment. (The £1,690,700 is made up of the £300,000 and the £543,500 as well as the £847,200 waivers.)

233. When viewed in this light, the cogency of the explanation required to rebut the presumption of undue influence is heightened, the presumption strengthened (*Etridge* @ 24 (*supra*)). When considered in the round, coupled with the pleaded explanation for the dividend waivers and also the £300,000 and £543,500 "gifts" ("sensible tax planning"), it is apparent that what Ray (*via* Lantern) was trying to achieve was the tax efficient accretion or absorption of mother's wealth and entitlement to that of his family. However, there is no, or no credible, evidence that that is what mother was trying to achieve. Quite the opposite: she wanted to receive dividends and her contractual interest and have her loans repaid, and, bar a six-month period in 2011, she wanted Lynn to benefit from her residuary estate. Had all been above board and mother aligned with Ray's objective, he would not have forged her signature on the £88,400 waiver and not taken the steps he did after the 9th October 2014 loan repayment demand.

234. Regarding the £300,000 and £543,500 "gifts", although the pleaded explanation is "sensible tax planning", the actual result is that they are gifted for Ray's children leaving mother with a £150,000 liability to repay Ray. Had they been upheld, they would nonetheless fall to be set aside because, in my judgment, they would firmly cross the boundary from "foolish or unnecessary or excessive" to one which must represent Ray taking advantage of his position, both made at times when Lynn was not cut out of mother's will and she still wanted to inherit her.

235. As already stated, mother received no independent or even accountancy or tax advice in relation to any of the transactions in issue. Had such advice been engaged at the time, the parallel world, as I have described it, would have emerged along with the forgery. As would the fact that the majority of the waivers were not tax-effective, so leaving mother with large tax liabilities without receiving the dividends to pay them. Appropriate advice would then, no doubt, have been given to put mother into an informed position to make a decision which, of course, would not of itself have

meant it was free of undue influence. As already stated, Ray regarded managing mother's financial affairs as his bailiwick upon which others trespassed at their peril although, had she survived, given what I have said above, it is possible that mother might have started taking independent advice.

236. Whilst Ray's forgery of the 20th December 2013 waiver and the circumstances surrounding the signing of the 24th September 2014 waivers might be said to shift the case towards actual fraud, the proper analysis is that this was part of a continuum in which in relation to the prior waivers it is to be presumed that Ray abused his mother's trust whether by getting her to sign documents without properly understanding them or on the faith of his inaccurate and misleading explanation at the time, but he then overreached even that position by actually forging a document (which was unlikely to be revealed owing to mother's trusting him) and then triggering his pre-emptive chain reaction to mother's 9th October 2014 loan repayment demand resulting in her signing the waivers (and stock transfer) on 26th January 2015.

237. Finally, and for the sake of completion, in my judgment, Ray's inaccurate and misleading explanation to mother as to why she was not entitled to be paid dividends falls one step short of actual misrepresentation sufficient to engage *non est factum*. Rather, where a misleading and inaccurate explanation is given in the context of a relationship of trust and confidence such that mother merely signed what she was asked to sign, whether she did not read them (as I have found) or did or should be treated as having read them (as I have not found), she did so on the basis of that explanation raising the presumption of undue influence so that all fall to be set aside. I therefore dismiss the Claimants' application to amend their pleading in that regard.

Counterclaim

238. The mere fact that internal Lantern loan accounts appear or might appear to show money owing from mother to LRL or LRS and possibly Ray does not mean that there was any loan or other agreement with mother to the effect that she, or her estate, should now repay them. The various accounting entries amount to no more than evidence as to how Lantern *internally* squared the books, or how Ray chose to arrange financial matters for reasons best known to himself, and not otherwise.

239. The £30,886.95 counterclaimed for mother's car in March 2007 was paid for by LRS and registered as a company car, the company since selling it and deducting the proceeds of sale from the original amount. At no stage did mother agree to borrow that sum from Ray or know that it may have been so recorded in the loan accounts. As already held, the bulk of the counterclaim has been triple-counted, Ray having lied about conversations with mother agreeing to the £185,500 and £245,648 loan account adjustments.

240. There is no, or no credible, evidence of how any of the other sums counterclaimed by Ray are made up or how and when mother agreed to them or was even aware of them at the time of her death, all evidence by Ray in relation to them being rejected. This is consistent with Ray writing in his 10th August 2016 letter to Eileen Ismay that "My mother had no liabilities, of this I am certain", one year after the will reading. More explicitly, in his 20th October 2016 letter:

> "The grant of probate dated 23 June 2016, in respect of my late mother's estate states that here estate liabilities amounting to £318,351. I Have always taken care of my mother's every need and I know for a fact that she did not have any liabilities".

241. That said, the Claimants, taking a pragmatic approach, accept that £48,040 (counterclaimed by LRL) and £56,735 be deducted from the respective contractual interest payable by LRL and LRS which entries had been treated *internally* in Lantern's books as deductions from mother's LRL and LRS loan accounts, and notwithstanding that the latter sum had not been "verified" (*i.e.* proved by admissible evidence) by LRS. The logic being that mother should have been being paid interest on

those loans; unbeknownst to her, the money she received from Lantern or paid on her behalf (principally fixed monthly sums, hospital bills) were treated *internally* as drawings on, or repayment of, her loans; so she should give credit for those sums she has received and deducted from interest she should have been being paid by those companies.

242. That, of course, is in contrast to Ray saying he was looking after mother financially, paying her hospital bills and suchlike, the truth being that so far as Lantern was concerned she was receiving her own money back, in other words, she was "spending" that which she had loaned Lantern, which must have been by approval and instigation of Ray. The Claimants confined their agreed deductions to those which had in fact been received by or benefitted mother, those benefitting others being excluded, such as payment of the 1997 Settlement's accountants' bills or Ray's children's and ex-wife's medical insurance premiums, the evidence to justify those deductions ("mother agreed to pay their premiums") being made up. Those deductions reflect the consistent theme, namely, that the loan accounts were mere internal book-squaring, unrelated to actual liability or agreement of mother to bear those costs or deductions.

Discretionary statutory interest on unpaid dividends

243. The Claimants claim interest on the unpaid dividends from the date declared, being the same date when all other dividends are recorded in the vouchers as having been paid, until payment under section 35A Supreme Court Act 1981. The Defendants recognise there is such a discretion but submit that it should not be exercised as interest is prohibited by the Articles of Association, so engaging section 35A(4) that "interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs", as to which see Blair J. in *Starbev GP Limited v Interbrew Central European Holdings BV* [2014] EWHC 2863 @ 46.

244. *Starbev* is directed at circumstances where there is express provision that interest on a debt "already runs" *i.e.* is payable, whether by statute (*e.g.* unpaid tax), contract or otherwise. It is not directed at situations where interest does *not* run, for example, where a contract expressly provides that no interest is payable. Here, LRS's Articles of Association provide that "No dividend or other moneys payable in respect of shares shall bear interest against the company…", in contra-distinction to LRH's Articles which provide that "The company may not pay interest on any dividend … payable in respect of a share…". The latter prohibits the company from paying interest of its own volition, and is not intended to oust the jurisdiction of the court. The former is slightly different, prohibiting the shareholder from claiming interest.

245. However, neither provide for interest to "run", so *Starbev* and section 35A(4) are not engaged, but these provisions are nonetheless to be taken into account when considering whether or not to exercise the discretion as they are what the parties have contractually agreed. They are, in my judgment intended to apply to the routine situation of dividends being declared but not paid immediately by the company, and are intended to be applicable to all shareholders so that all are treated equally and fairly. They are not intended to apply to a situation where, for example, an unpaid shareholder has issued proceedings for (summary) judgment, when statutory interest would be applied as a matter of course.

246. This is not a non-routine situation as all other shareholders have long-since been paid but mother has not been. If the court were to refuse to exercise its discretion, it would be tantamount to condoning the reason why mother has not been paid when she should have been, namely, the undue influence (and fraud) of Ray (and Craig), and perpetuating the preferring of Ray's family to mother by not compensating her for not having been paid, during which time LRS and LRH have had free use of her money, now some £847,200.

247. Further and in any event, the circumstances of this case are exceptional to justify the award of interest as sought by the Claimants. Specifically, and without derogating from the totality of this judgment relating to waiver, mother was never properly aware of her entitlement to interest, so was not in a position to demand and sue for unpaid dividends. The first dividend was never waived so should have been paid, but was not. The £88,400 was not paid by fraud of Ray and Dev Dervish, now supported by Craig. The £425,000 dividends were waived in circumstances one step short of fraud. The earlier dividend waivers were tainted by the accountants being led to believe by Ray that mother had consented to waiver when she had not, and also by mother simply attending to sign what she was asked by Ray to sign by and in front of his PA.

248. Ray was, and remains, in practical control and directly or indirectly through his wrongly preferred family shareholdings would benefit by absence of compensating mother, or her estate, for wrongly being kept out of their money, which interest will go some way towards compensating the estate for any HMRC interest chargeable for late payment of income or other tax due on those dividends which liability has been brought about by the conduct of Ray and company officers or employees causing non-payment as well as falsification of information provided to HMRC.