In The Supreme Court of Bermuda

PROBATE JURISDICTION

2016 No. 282

IN THE MATTER OF THE ESTATE OF MR MARK BRIAN AUSTIN HENDRICKSON (DECEASED)

BETWEEN:

BEVERLEY JANATTA HENDRICKSON

Plaintiff

and

JUDY OLYMPIA HENDRICKSON
KAREN ANDREA SONIA NWAOBI
SHAYLA HASSELL

Defendants

JUDGMENT

(Validity of Will – Testamentary Capacity – Undue Influence)

Appearances: **Plaintiff, in Person assisted by McKenzie Friend, Mr E. Patrick Hamlett**
Mr Craig Rothwell, Cox Hallett Wilkinson Limited, for the Defendants

Date of Hearing: **25-27 May 2026**
Date of Judgment: **29 October 2026**

Judgment of Robinson, AJ

Introduction

1. By Specially Endorsed Writ of Summons issued on 25 July 2016 and amended on 3 October 2017 and 30 September 2021 (**Re-Amended Writ**), the Plaintiff challenges the validity of the last will and testament of the late Mark Brian Austin Hendrickson (**Mr Hendrickson**) which was executed on 29 January 2013 (**Will**).

2. The Plaintiff is the widow of Mr Hendrickson having been married in 2002. The First and Second Defendants are sisters of Mr Hendrickson and are the named executors in the Will. The Third Defendant is Mr Hendrickson's daughter from a previous relationship and is one of the beneficiaries under the Will.

3. The first pleaded ground of challenge to the validity of the Will is set out in paragraph 3 of the Re-Amended Writ. It is alleged that Mr Hendrickson was not at the time the Will was executed of sound mind, memory and understanding. Thus Mr Hendrickson's testamentary capacity is challenged.

4. The second pleaded ground of challenge to the validity of the Will is set out in paragraphs 7-11 of the Re-Amended Writ of Summons. These are that the Defendants made use of Mr Hendrickson's lack of mental capacity to force him to make the Will contrary to his own wishes and further or in the alternative, that the Defendants caused Mr Hendrickson to execute the Will under duress.

5. The final claim pleaded in the Re-Amended Writ of Summons is one of adverse possession. This claim is in respect of certain portions of the property situated at 29 Dundonald Street and 21 Princess Street, Hamilton. This claim includes the apartment in which the Plaintiff resided with Mr Hendrickson and in which the Plaintiff still resides.

6. For the reasons set out below, I find that the challenge to Mr Hendrickson's Will fails both in respect of the claim of lack of testamentary capacity and also in respect of the alternative claims of undue influence and duress. I also find that the claim of adverse possession fails. I therefore dismiss the claim in its entirety.

The Pleadings

7. With regard to the claim of lack of testamentary capacity, the Re-Amended Writ pleads that at the time Mr Hendrickson executed the Will, he was 57 years old and that he was suffering from "an acute mental disorder". It is pleaded that Mr Hendrickson's mental state was so defective and untrustworthy that he could often not be left alone and required "around the clock care and supervision". It is further pleaded that Mr Hendrickson was a frequent patient at the Mid-Atlantic Wellness Institute (**MAWI**) including around the time that the Will was executed. It is pleaded that Mr Hendrickson suffered from a "chemical imbalance" of the brain.

8. It is pleaded by the Plaintiff that Mr Hendrickson was, at the time the Will was executed, in such a condition of mind and memory as to be unable to understand the nature of the act and its effect or the extent of the property of which he was disposing, or to comprehend or appreciate the claims to which he ought to have given effect. Certain particulars are given of what are pleaded as Mr Hendrickson's "erratic behaviour" such as running into the street screaming and climbing on top of the marital home and shouting obscenities.

9. With respect to the claim of undue influence, it is pleaded that Mr Hendrickson did not "enjoy a full and satisfactory relationship with either his sisters or his daughter". It is further pleaded that the Defendants did not spend much time with Mr Hendrickson and that Mr Hendrickson felt the stresses of his illness too overwhelming to bear.

10. It is pleaded that all three of the Defendants in effect took advantage of Mr Hendrickson's lack of mental capacity to force him to make a will contrary to his wishes. Particulars are then given of this pleading which are somewhat confusing. It is pleaded that the First Defendant came from her country of residence to Bermuda on 6 January 2013. It is then pleaded that the Defendants:

> "…b) Began taking the deceased on frequent day trips;
> c) Failed to disclose to the Plaintiff where they were going;
> d) Failed to disclose to the Plaintiff what they were doing;
> e) Secretly discussed drawing up a will with the deceased;
> f) Visited lawyer's offices to discuss drawing up a Will knowing the mental health history of the deceased;
> g) Inducing the deceased to execute a Will knowing the mental health history of the deceased; and
> h) Failed to procure a medical assessment whereby a medical practitioner would attest to the competence of the deceased to draw up a Will prior to him doing so."

11. There are no additional particulars of the claim of duress, it is simply pleaded in the alternative that the Defendants caused Mr Hendrickson to enter into the Will under duress.

12. The claim for adverse possession is pleaded as relating to three different parts of the property on the corner of Dundonald and Princess Streets (**the Hendrickson Apartments**). These are:

    (a) The second floor East apartment with assessment number 020505019 (in which the Plaintiff and Mr Hendrickson resided);
    (b) The rear upper apartment with assessment number 020500017; and
    (c) The basement apartment East with assessment number 020501013 along with the shop situate on the Princess Street side of the building.

13. It is pleaded that the Plaintiff together with Mr Hendrickson exercised exclusive possession for a period of over 20 years and that others who may have been entitled to an interest in these properties pursuant to the Last Will and Testament dated 20 November 1990 of Ivan Gordan Hustus Hendrickson who died on 4 January 1991 had been dispossessed.

14. The Amended Defence is dated 24 November 2021. It is admitted that Mr Hendrickson was a patient on occasion at MAWI but it is pleaded that at the time of execution of the Will, Mr Hendrickson had "full testamentary capacity". It is also pleaded that Mr Hendrickson was 48 years of age when he executed the Will and that he did not live to see 57 years of age as pleaded in the Re-Amended Writ.

15. The Amended Defence pleads that Mr Hendrickson had a close relationship with his only daughter, the Third Defendant and that the Plaintiff made unsuccessful efforts to alienate Mr Hendrickson from his daughter.

16. The Amended Defence pleads that the Second Defendant was not in Bermuda when the Will was drawn and executed and that the Second Defendant was not aware of the existence of the Will until after the death of Mr Hendrickson.

17. It is denied that any influence was brought to bear on Mr Hendrickson by any of the Defendants with respect to his Will and that it was prepared and executed on the initiative of Mr Hendrickson. It is further pleaded that there was nothing about the circumstances of drawing or executing the Will that caused the First Defendant to believe that Mr Hendrickson did not have testamentary capacity. The pleas of undue influence and duress are denied and it is pleaded that the Defendants did not have any reason to suspect that a medical assessment was necessary.

18. With regard to Mr Hendrickson's interest in the Hendrickson Apartments, it is pleaded by the Defendants that Mr Hendrickson only had a part interest in the building which he shared with numerous family members. It is further pleaded that Mr Hendrickson had expressed the desire that his share go to the Third Defendant as his only daughter. It is also pleaded that Mr Hendrickson also believed that he had a one half interest in a property in Jamaica situate at 38 Miami Drive, St. Catherine, Jamaica. It is pleaded that he co-owned this with the Plaintiff.

19. With regard to the claim for adverse possession, this is denied. It is pleaded that the Plaintiff resided in the second floor West apartment in the Hendrickson Apartments (with assessment number 020506015) and not as pleaded the second floor East apartment with assessment number 02050519 but only from 2004 onwards and not before. It is further pleaded that none of this occupation was adverse to the interests of Mr Hendrickson who exercised full control over the relevant parts of the property and that the Plaintiff resided in the property with full acquiescence and consent of Mr Hendrickson. There was thus no exclusive possession by the Plaintiff who it is pleaded

had the consent and permission of the Defendants to continue to reside in the property following the death of Mr Hendrickson.

The Will

20. As mentioned above, the Will was executed on 29 January 2013. The Will was professionally drawn by the experienced barrister and attorney, Ms Nadine Francis (**Ms Francis**). The Will was also witnessed by Ms Francis and a member of her staff.

21. The Will is a short document which states the full name of Mr Hendrickson (Mark Brian Austin Hendrickson) and also states that he was "… of 6 Princess Street, Pembroke Parish, HM10…".

22. Clause 2 of the Will appoints the First and Second Defendants as executrixes. There are only four clauses which deal with substantive provisions.

23. By Clause 4 Mr Hendrickson leaves a gift, conditional upon the Plaintiff pre-deceasing him, of his "interest" in the real property situated at 38 Miami Drive, St. Catherine, Jamaica, West Indies. Mr Hendrickson leaves half this "interest" to his daughter, the Third Defendant, and the other half to "… Stacey Stupart, Roshell Stupart, Rayshell Stupart and Shelly-Ann Stupart". The Testator refers to these four individuals as "my children" even though they were not in any legal sense Mr Hendrickson's children and it is clear that there is at least one spelling mistake in the given names.

24. Clause 5 deals with the Hendrickson Apartments which are described as "situate at the corner of Princess and Dundonald Streets". Mr Hendrickson leaves his interest in this property to the Third Defendant "… together with the shop and the two apartments".

25. The third substantive gift is set out in clause 6 of the Will which leaves Mr Hendrickson's "…share of the estate of Joyce Hendrickson…" to the Third Defendant.

26. Fourthly, Mr Hendrickson leaves the residue of his estate equally between the Plaintiff and the Third Defendant.

Witness Evidence

27. For the Plaintiff I heard evidence from the Plaintiff, her daughters Rachelle Alexis Stupart and Stacey Ann Tamara Stupart. I also heard evidence from Collisha Hendrickson who is a cousin of Mr Hendrickson.

28. For the Defendants, I heard evidence from each of the Defendants as well as Ms Francis.

29. Given the obvious importance of the evidence of Ms Francis as the professional who drafted the will and met with Mr Hendrickson in the course of taking instructions and

execution of the will, I will deal with Ms Francis' evidence first and then move on to that given by and on behalf of the Plaintiff and that of Defendants.

Ms Francis

30. Ms Francis gave her evidence in a very clear and professional manner as to be expected from an experienced probate practitioner.

31. Ms Francis adopted as her evidence-in-chief her witness statement dated 3 April 2025. In this statement she describes meeting Mr Hendrickson on or around 17 January 2013 for the first time. Ms Francis recalls that the First Defendant was with Mr Hendrickson for the introduction but not thereafter. Ms Francis stated that she knew both the First and Second Defendant.

32. Ms Francis' evidence was that Mr Hendrickson provided her with a "Will Instructions" form page 3 of which was included in the documents exhibited to the witness statement.

33. In the course of Ms Francis' oral evidence a complete copy of this document consisting of four pages was produced. These four pages were produced together with a receipt for payment for $498.75 which indicated on its face that the First Defendant had paid this account. In addition, a sixth page was included in the bundle of documents which appeared to be an internal practice management document from Ms Francis' law firm.

34. I will return below to the first and second page of the Will Instruction Form but for the moment the relevant point is that Ms Francis referred in her witness statement to section F of this form which is entitled "Instructions for Disposal of Estate".

35. Ms Francis' evidence was that she had made a number of manuscript amendments to the form as produced by Mr Hendrickson. The words on the form produced by Mr Hendrickson are set out in Ms Francis' witness statement as follows:

> "Shayla Hassell will get my 50% interest in 38 Miami Drive, St. Catherine, Jamaica W.I. while my wife will get the other 50% of 38 Miami Drive. Hendrickson's Apt's left to my Daughter Shayla Hassell along with the shop & two apartments (studio)"

36. Ms Francis' evidence was that darker type annotations on this form were in her handwriting. There were four of these. Two related to the instructions with respect to the Jamaica property. The words "my wife" were crossed out and the words "Stupart children" written in. In the margin, a note was added "if wife predeceases". With regard to the gift of the Hendrickson Apartments, Ms Francis added "has an interest" in the margin and below wrote "corner Princess + Dundonald St.".

37. Ms Francis explained these annotations as having arisen during the course of the initial meeting with Mr Hendrickson and that she had asked Mr Hendrickson about the ownership of the Jamaica property. Ms Francis stated that from what she was told by Mr Hendrickson she understood that Mr Hendrickson and the Plaintiff owned the property as joint tenants which is why Ms Francis added "if wife predeceases".

38. Ms Francis' evidence was that it was Mr Hendrickson's understanding that if he died before the Plaintiff she would become the full owner whereas if he survived the Plaintiff he wanted the property split equally between his daughter, the Third Defendant, and his wife's children.

39. Ms Francis's evidence was also that she asked Mr Hendrickson to clarify where the Hendrickson Apartments were which is why she added "corner Princess + Dundonald" and also asked him what he considered he owned which is why she added "has an interest".

40. Ms Francis further gave evidence as set out in her witness statement that she asked Mr Hendrickson whether he had any bank accounts and that he said that he did not and nor did he own a car, truck or boat. Ms Francis also stated that she explained the nature of the residue clause.

41. Ms Francis' evidence was that following this initial meeting she drafted the will in accordance with her instructions and that Mr Hendrickson returned to her office on 29 January 2013 to review the draft. Ms Francis stated that Mr Hendrickson came to that appointment alone and that she explained each part of the will, checked it was in accordance with Mr Hendrickson's instructions and that he understood its terms. Ms Francis' evidence was that Mr Hendrickson confirmed that the draft was in order after which it was executed and witnessed by Ms Francis and her assistant, Latasha Levon.

42. With regard to the question of capacity, Ms Francis' evidence-in-chief in her witness stated was that Mr Hendrickson presented as a "… stable and rational young man". The evidence was that he showed no sign of any mental illness or distress and that he demonstrated full understanding and awareness of the discussion, his wishes and the terms of his will. Ms Francis confirmed that she was not aware of any mental illness and had no reason to suspect any from her meeting with Mr Hendrickson.

43. In cross examination, Ms Francis explained that will instructions forms produced by her office were readily available to the community and that she did not recall who made the appointment for Mr Hendrickson. Ms Francis recalled that the First Defendant was present in the reception when she met Mr Hendrickson but not thereafter and she had no recollection of the Third Defendant being present. Ms Francis' evidence was that this was the first time that she had met Mr Hendrickson although she knew the First and Second Defendants and that the Third Defendant was his daughter.

44. When pressed on why she had not made any inquiries as to Mr Hendrickson's medical condition Ms Francis explained that she would not ask a client who presented as a normal and logical person about any illness. Ms Francis was very clear under cross examination that there was no indication whatsoever of any mental illness or any reason to suspect that Mr Hendrickson had a history of mental illness.

45. Ms Francis was pressed on this point a number of times and was very clear in her evidence that she observed nothing to put her on notice of any mental illness or any suggestion that Mr Hendrickson was being pressurized to make a will or dispose of assets in a particular way. Ms Francis' evidence was that had she observed any sign of a disturbance of the mind then she would have inquired further but she did not.

46. With regard to the Henrickson Apartments, Ms Francis stated that she knew that the title to the property was complicated and that Mr Hendrickson knew that he only had an interest in this building.

47. With regard to the first page of the Will Instruction Form, Ms Francis was pressed on the issue that Mr Hendrickson's name was misspelt. On page one of this form, in capital letters, Mr Hendrickson's name is stated to be "MARK BRAIN AUSTIN HENDRICKSON". Ms Francis said that this was not the "be all and end all" and what mattered was whether Mr Hendrickson was able clearly to express his wishes. I do not consider that there was clear evidence at trial on who completed the first two pages of this form. It was completed in capital letters and there was also at least one spelling mistake in the spelling of the Christian names of the Stupart children (Rachelle Supart's name is spelt as Rayshell). On the second page the executors are listed (again in capital letters) as Judy Hendrickson and Karen Hendrickson (not Nwaobi).

48. Ms Francis was also pressed on why the address on the face of the Will of "6 Princess Street" was incorrect. Ms Francis' evidence was that a draft of the will would have been sent out to Mr Hendrickson between the first and second meeting and that Mr Hendrickson would have given her this address. Ms Francis was very clear in her evidence that Mr Hendrickson knew where he lived, knew what he owned and knew what he wanted to do with what he owned.

49. Ms Francis' evidence was that she did not know if either the First or Second Defendant knew that they were named as executrixes but that she was aware that the First Defendant had paid her bill although she did not speak to her when she paid the bill.

The Plaintiff

50. Turning now to the Plaintiff's evidence, notwithstanding that the Plaintiff adopted her witness statement dated 3 June 2025, she also gave extensive oral evidence-in-chief.

51. The Plaintiff gave a narrative history of meeting and getting married to Mr Hendrickson and moving into the Hendrickson Apartments a short number of years after the marriage. The Plaintiff also supplemented her witness statement in respect of assisting Mr Hendrickson to negotiate with the Corporation of Hamilton with regard to unpaid tax on the building and stated that she assisted Mr Hendrickson in paying some of the debt due. The impression given was that this was some years ago and perhaps not long after the Plaintiff and Mr Hendrickson had moved into the Hendrickson Apartments.

52. The Plaintiff gave evidence of discovering that Mr Hendrickson had mental health issues and the evidence was unclear as to whether this was before the marriage in 2002 or shortly after. The evidence was that Mr Hendrickson had been admitted to St. Brendan's Hospital (now MAWI) for two weeks.

53. The Plaintiff gave evidence of various incidents during the marriage which gave rise to concern on the part of the Plaintiff as to Mr Hendrickson's mental health. For example, the Plaintiff stated in her evidence that she had found Mr Hendrickson standing outside in his underwear in the rain and acting in a strange way.

54. The Plaintiff gave evidence of the use of alcohol and cannabis and that there was tension between husband and wife because Mr Hendrickson was not taking his medication. The Plaintiff gave evidence of a relapse in around 2003 and of learning that Mr Hendrickson had had an accident and a brain injury some years before when living in Jamaica. The Plaintiff stated that Mr Hendrickson had been diagnosed with a "chemical imbalance".

55. The Plaintiff also gave evidence about forgetfulness on the part of Mr Hendrickson and a lack of attention to Mr Hendrickson's personal hygiene. The Plaintiff also gave evidence about her relationship with the Third Defendant and of various incidents between the Plaintiff, the Third Defendant, Mr Hendrickson and other family members over the years.

56. I did not find this evidence of any particular assistance and will not summarise the whole of the evidential landscape here. It is obvious that there was a degree of tension in the various relationships and the picture that the Court has is of Mr Hendrickson having mental health issues over the years which were to a greater or lesser extent managed by the intervention of the medical profession. I will come back to this issue in greater detail when dealing with the evidence of the Third Defendant and the medical notes and records which were exhibited to her witness statement.

57. Focusing on the Plaintiff's evidence of Mr Hendrickson's mental health condition, the Plaintiff gave evidence that Mr Hendrickson went to Ghana in 2005 at the time that his mother had died and that he had a relapse and gave away all of his clothes. The Plaintiff's evidence was that Mr Hendrickson had a relapse in 2006 and was again admitted to MAWI and a change of medication had a significant impact on Mr Hendrickson. The

Plaintiff's evidence was that there was another admission to MAWI in 2008. This admission was followed by a visit to Jamaica.

58. The Plaintiff's evidence was that Mr Hendrickson would sleep all day and that this was a consequence of medication. The Plaintiff's evidence was that Mr Hendrickson's last job was at the Gas Station on Front Street but that he could not hold down this job having put the wrong fuel in vehicles more than once. The Plaintiff stated that Mr Hendrickson would not take his medication or would "put it under his tongue". The impression that the Court has from the Plaintiff's evidence is that the Plaintiff struggled to cope with the challenges posed by Mr Hendrickson's illness and behaviour. The Plaintiff gave evidence of one incident where Mr Hendrickson tried to get on the roof of the building and the Plaintiff trying to get Mr Hendrickson to come back inside.

59. On the issue of the relationship between Mr Hendrickson and the First Defendant, the Plaintiff's evidence was that the First Defendant was a "big sister" figure to Mr Hendrickson and that she was strict and stern.

60. The Plaintiff's evidence included references to Mr Hendrickson's mother's will and again I did not find this evidence of any assistance.

61. Of key importance, however, is the Plaintiff's evidence concerning how it came that Mr Hendrickson executed the Will. Again, this evidence was not particularly clear. The Plaintiff's evidence was Mr Hendrickson's sister Clover (who did not give any evidence in these proceedings) had left a telephone message for Mr Hendrickson which stated that the First Defendant had made an appointment with a lawyer for Mr Hendrickson to make a will and that "… everything is to go into Shayla's name".

62. The Plaintiff's evidence was that upon confronting Mr Hendrickson about this he said "It is not me, it's Judy" and ran out of the room. The Plaintiff's evidence was that she telephoned the First Defendant who said that she had assisted her brothers and sisters to make wills and that she apologized.

63. The Plaintiff's account of these events, which appear to be reasonably contemporaneous with the drafting and execution of the Will in January 2013, include the Plaintiff's account of Mr Hendrickson feeling unwell and appearing incoherent. The Plaintiff's account is that she called MAWI and made an appointment with the caseworker, a Mr Michael Looby.

64. The Plaintiff's account of a visit to MAWI at this time is that she told Mr Looby that the First Defendant was taking Mr Hendrickson to make a will and that Mr Looby told the Plaintiff that "… anything his sisters tell him to do, he is going to do". The evidence was that Mr Hendrickson then said "It's Judy, she is going to pay $400.00 for it".

65. It seems to be accepted that the First Defendant came to Bermuda on 6 January 2013 and that the Plaintiff left the Island on a trip the same day. The Plaintiff returned from

overseas and her evidence was that she found a piece of paper on Mr Hendrickson's dresser which Mr Hendrickson said had been given to him by the First Defendant. This document bears the date January 15th 2013 and reads as follows:

> Property
>
> 1. 38 Miami Drive
>   St. Catherine, Jamaica
>   50% Owner-Wife
> 2. Your share of
>   Joan Hendrickson's
>   Estate (Deceased)
>   In Bermuda
>   Share of Hendrickson's
>   Apartment Pembroke Bermuda
>   (Not Yet Probates)
> 3. Your share of
>   Joyce Hendrickson's Estate
>   Deceased 2004/5
>   Probate in Process
>
> Accounts in Bermuda
>
> 1. Bank of NTB – Bank of Butterfield)
> 2. HSBC A/C
> 3. Personal Possessions
> 4. Executor of Your Estate

66. The Plaintiff's evidence was that during the visit of the First Defendant to Bermuda that the First Defendant had taken Mr Hendrickson out several times including on a bus ride to Somerset and St George's. The Plaintiff also reported that Mr Hendrickson told her that after "the visit to the lawyer" that Mr Hendrickson, the First Defendant and the Third Defendant went to lunch.

67. Following the death of Mr Hendrickson it was the Plaintiff's evidence that the First Defendant told her that she could remember Mr Hendrickson's "shuffling walk" as he walked to the office of Ms Francis. It was further her evidence that the First Defendant had said that she did not know that Mr Hendrickson was unwell and there was a suggestion that the First Defendant said that they could "see what could be done" by saying that Mr Hendrickson was of unsound mind. This is denied by the First Defendant.

68. The Plaintiff's evidence was also that the Third Defendant told Stacey Stupart that she was present when her father signed the will. This allegation is denied by the Third Defendant and not supported by the evidence of Ms Francis.

69. Focusing on the key issues relating to the pleas in the Writ, the Plaintiff's evidence was that Mr Hendrickson's comprehension and general mental faculties declined in the months leading up to the execution of the Will.

70. The Plaintiff also stated in evidence that she had reason to believe that Mr Hendrickson was unduly influenced by the First Defendant. The key allegation in the Plaintiff's witness statement adopted as her evidence in this case is that the First Defendant "…exerted a controlling and manipulative influence over [Mr Hendrickson]. Mark always said she was bossy".

71. This allegation is then extended to the Third Defendant based on the assertion that the First and Third Defendant accompanied Mr Hendrickson to Ms Francis' office "… on or around the date the Contested Will was signed and was present before and/or during discussions regarding the contents of the Will. [sic] their conduct raises serious concerns as to the voluntariness of [sic] the Mark's actions and the authenticity of his intentions".

72. It will be clear that this allegation, that anyone else apart from Ms Francis was physically present when Mr Hendrickson gave the instructions for his will and executed his will (save for in the latter case the second witness), is not supported by Ms Francis' evidence which I accept as being truthful and forthright.

73. Under cross examination, Mr Rothwell took the Plaintiff through a number of Mr Hendrickson's medical notes and records and put it to the Plaintiff that Mr Hendrickson had short periods of admission to MAWI in 2003 and 2006 and that these allowed him to recover. The Plaintiff did not accept this and repeated that Mr Hendrickson had a "chemical imbalance" and that as he got older the episodes of poor mental health got more intense. The Plaintiff's evidence under cross examination was that Mr Hendrickson got worse in or around 2012 and she repeated that a persistent problem was getting Mr Hendrickson to stay on medication that had been prescribed.

74. It was put to the Plaintiff that a number of the particulars in paragraph 6 of the Re-Amended Writ related to 2015, shortly before Mr Hendrickson died, and were not contemporaneous with the execution of the Will in 2013. The Plaintiff's evidence was that she had difficulty recalling dates and did not accept that Mr Hendrickson had not been admitted as an inpatient to MAWI from November 2008 until just prior to his death in 2015.

75. Mr Rothwell took the Plaintiff through a number of the medical records in the period 2008-2013 which show fairly regular interactions with MAWI doctors and the case worker, Mr Looby and also a failure to attend appointments. There are also references in these notes to a degree of disagreement between the Plaintiff and Mr Hendrickson in particular with regard to Mr Hendrickson sending funds to a friend in Jamaica. What these notes and records do not suggest to the lay reader is any serious relapses in Mr Hendrickson's mental health.

76. Mr Rothwell then focused on a number of key medical notes which appear to have been made around the time that Mr Hendrickson gave his instructions for and executed the Will.

77. The first is dated 11 January 2013 and this records that Mr Hendrickson walked in to MAWI with the Plaintiff and that the Plaintiff had called earlier to report that Mr Hendrickson was not feeling well "… mentally since last night". The note continues:

> "Wife reports that on the weekend she overheard Mark's sisters arranging an appointment for Mark to see a lawyer to write a will. Mark did not share this information with his wife. She confronted him and told him she "felt betrayed" last night. Subsequently this morning he reports feeling unwell. Today wife confronted Mark at length about his sisters interfering in their marriage. Mark offered minimal responses and often tried to laugh off the matter. Wife indicated that she doesn't like Mark's sisters because they don't like her."

78. This narrative is followed by a note of an assessment of mental state which states "no psychotic symptoms stable".

79. The following note is dated 14 January 2013 and appears to be in the same handwriting. This note is signed by "M Looby" and I assume this is the Michael Looby who is referred to above as the case worker. It is again worth setting out this note in full:

> "Poor communication between husband and wife, also significant trust issues. Advised them to take time to openly discuss at least the "will" issue. Advised that they consider marital counselling. Service user and wife understood recommendations."

80. The next note is dated 31 January 2013, is a much longer note of a visit by Mr Hendrickson alone and is in different handwriting which is difficult to read. It records that it is a follow up appointment at the outpatient clinic. It records that the patient stated that he is "doing good". The "past psych history" records "schizoaffective disorder. Last admission in 2008 Nov". The "impression" in part says "stable at present".

81. In response to Mr Rothwell pressing the Plaintiff on the notes recording that Mr Hendrickson seemed stable at this time, the Plaintiff's response was that Mr Hendrickson did not just get up and decide to make a will and she suggested that it was not in his nature to do this of his own volition.

82. The Plaintiff was further questioned with regard to the medical notes through to that recording Mr Hendrickson's admission on 30 January 2015 under section 13 of the Mental Health Act 1968 for further psychiatric assessment and stabilization. The

diagnosis on admission was "Schizoaffective Disorder – bipolar type, most recent episode manic". Sadly, Mr Hendrickson died the following day on 31 January 2015.

83. Before leaving these notes and records and the cross examination of the Plaintiff in respect of them, I should note that they record that Mr Hendrickson spent time in Jamaica in 2014 and there was again concerns about appropriate medication. The notes also record further marital strife with the notes recording on 26 November 2014 ""We have a house in Jamaica. I [i.e. Mr Hendrickson] have been paying $1000 per month for the mortgage. She [i.e. the Plaintiff] won't tell me where we are at with the mortgage". In response to Mr Rothwell's questions the Plaintiff accepted that Mr Hendrickson was upset about the property in Jamaica and that his name was not on the title. The Plaintiff accepted that she retained the Jamaica property following Mr Hendrickson's death but she expressed strongly in cross examination a sense of unfairness that she would not, under the terms of the Will, be able to remain living in the apartment which she shared with Mr Hendrickson.

84. Of central relevance to the case made by the Plaintiff, in response to Mr Rothwell's questioning the Plaintiff stated that someone would have had to tutor Mr Hendrickson to make a will in the terms that he did which in the view of the Plaintiff was unfair to her. The Plaintiff stated that Mr Hendrickson would not have done this on his own and that he "did not think like that".

Plaintiff's Witnesses

85. The Court heard evidence from two of the Plaintiff's daughters, Stacey Ann Tamara Stupart (**Stacey Stupart**) and Rachelle Alexis Stupart (**Rachelle Stupart**). Stacey Stupart gave her evidence remotely from Jamaica while Rachelle Stupart (who is a resident of Bermuda) gave her evidence in person. Each had produced a witness statement which was adopted as evidence-in-chief.

86. The evidence of each witness was of very limited relevance to the key issues that fall to be determined in this case.

87. Dealing firstly with Stacey Stupart, her evidence included a description of the onset of mental health issues that Mr Hendrickson had in 2003 and which are referenced above which occurred when Stacey Stupart was visiting Bermuda.

88. Stacey Stupart also gave an account of a conversation with the First Defendant in or around the time that Mr Hendrickson made his Will in which she called the First Defendant and asked her why she would take Mr Hendrickson to make a will without informing his wife. Stacey Stupart's account of this conversation was that the First Defendant apologized for this and said that she did this for all of her siblings.

89. Stacey Stupart also gives an account of Mr Hendrickson's visit to Jamaica in 2014 but she visited Bermuda during this time and reported what she was told about Mr Hendrickson's ill health during this visit. Stacey Stupart also gave evidence of her impression that Mr Hendrickson's health and interest in life had deteriorated towards the end of his life. She described Mr Hendrickson as "childlike" but also a good person who treated her mother well.

90. Stacey Stupart also gave evidence that her mother and the Decceased had been in "exclusive possession" of the property in which they lived and that the neighbours regarded the property as that of both Mr Hendrickson and the Plaintiff. With regard to the Will, Ms Stupart gave evidence that the Third Defendant told her that she was present when Mr Hendrickson made his will.

91. With regard to the property in Jamaica, Stacey Stupart's evidence under cross examination was that Mr Hendrickson's name was on the title of this property with her mother and did not come off the title of the property until after his death and when the mortgage was paid off.

92. Rachelle Stupart gave evidence of her affection for Mr Hendrickson and that she had a close relationship with him. She also described him as "childlike". Rachelle Stupart gave evidence of Mr Hendrickson's visit to Jamaica in 2014 and that Mr Hendrickson was refusing to take his medication. Rachelle Stupart gave evidence of Mr Hendrickson being taken to hospital in Jamaica during this visit but he was not admitted.

93. Rachelle Stupart also gave evidence in respect of the First Defendant and her relationship with Mr Hendrickson. Ms Stupart stated that they had a strained relationship "based on fear". Ms Stupart stated that threatening to call the First Defendant when Mr Hendrickson was uncooperative would make Mr Hendrickson upset and fearful.

94. The Court also heard evidence from Collisha Hendrickson who is a cousin of Mr Hendrickson and who resided for a number of years in the Hendrickson Apartments. Ms Hendrickson's evidence was that Mr Hendrickson had "mental challenges" and had been treated at MAWI. Ms Hendrickson also gave evidence that the relationship between Mr Hendrickson and the Plaintiff was tempestuous and this would be caused by Mr Hendrickson refusing to take his medication. Ms Hendrickson's evidence was that Mr Hendrickson showed signs of physical deterioration from around 2008.

95. Ms Hendrickson also gave evidence about the time period when the Will was executed. This consisted of stating that the First Defendant was visiting frequently around this time and taking Mr Hendrickson out while Mr Hendrickson "… mentally did not appear to be himself". Ms Hendrickson stated that around this time Mr Hendrickson was doing and saying "odd" things and his behaviour seemed to be irrational. She was of the view that towards the end of his life, Mr Hendrickson was not of "sound mind".

Evidence of the Defendants

96. Each of the Defendants made initial witness statements in March or April 2025. This was followed by responsive witness statements dealing with those of the Plaintiff and her other witnesses in July 2025. Each of these statements was again adopted as evidence-in-chief. On many issues there were point by point rebuttals from each of these witnesses to the witness statements of the Plaintiffs. In the following summary, I will not set this out and rather will (as with the Plaintiff's witnesses) focus on evidence which is central to the issues of testamentary capacity, undue influence and adverse possession.

97. Dealing firstly with the evidence of the First Defendant, she describes herself as the matriarch of the family and came across in giving evidence as a person of strong or even dominant character. The First Defendant described her interaction with both the Plaintiff and Mr Hendrickson over the years and noted that she left Bermuda in 2007 or 2008.

98. On the issue of whether the First Defendant during her visit to Bermuda in January 2013 took Mr Hendrickson away from his home or on bus trips, the First Defendant's evidence was that the only time she went anywhere with Mr Hendrickson in the last 10 years of his life was when she accompanied him to the offices of Ms Francis in January 2013.

99. The First Defendant does not shy away in her evidence from having advised and assisted Mr Hendrickson to make a will. The First Defendant's evidence was that she offered to do the same for all her siblings and fund the exercise from the funds in their grandmother's estate of which she was executrix.

100. The First Defendant described the reaction of the Plaintiff and one of her daughters as going "ballistic" over this issue. The First Defendant's account of her interactions with her brother with respect to making a will is that sometime between 2007 and 2013 it was Mr Hendrickson who called the First Defendant and said that he wanted to make a will. The First Defendant's evidence was that she gave Mr Hendrickson advice that he would need to have a list of assets and decide who he wanted to be his Executor.

101. The First Defendant's account of events is that it was sometime before 2013 when she first became involved in respect of Mr Hendrickson's will and she recounts asking the Third Defendant to make an appointment with Ms Francis. According to the First Defendant, this was done by the Third Defendant but then cancelled because the Plaintiff had learned of this appointment and had been upset.

102. The First Defendant also describes being telephoned by the Plaintiff's daughter from Jamaica and a heated conversation taking place. All of this is said not to have taken place in 2013 but sometime before, however in her second Witness Statement the First Defendant accepts that this conversation was with Stacey Stupart and it seems to me most likely that this was in 2013.

103. The First Defendant's evidence is that Mr Hendrickson then raised the issue of a will again in or about 2013 and the First Defendant repeated the exercise of having the Third Defendant make an appointment with Ms Francis. The First Defendant accepts that she walked with Mr Hendrickson to Ms Francis' office and waited with him until Ms Francis came to get him. The First Defendant's witness statement recorded that the Third Defendant was also present for the walk to Ms Francis' office and for the introduction to Ms Francis. However, the First Defendant, under cross examination, stated that the Third Defendant was not in attendance.

104. The First Defendant's evidence about the mental state of Mr Hendrickson at this time is that since she left Bermuda in 2007 at no time did she think that Mr Henrickson was not "in his right mind". She accepts that she had been told about Mr Hendrickson's "episodes" but her evidence as to whether he recalled attending MAWI with the Plaintiff and Mr Hendrickson was unclear.

105. The First Defendant was clear that she made no suggestion as to what the provisions of Mr Hendrickson's will should be.

106. The First Defendant also takes issue with the Plaintiff's account of Mr Henrickson's visit to Ghana for his mother's funeral and does not recognize the account of Mr Hendrickson giving away his clothes. The First Defendant did accept that the Plaintiff reached out to her on more than one occasion for help with Mr Hendrickson and also that she attempted to assist getting Mr Hendrickson admitted to MAWI. The First Defendant places this as in 2006.

107. With regard to the document listing Mr Hendrickson's assets which is set out at paragraph 65 above, in the First Defendant's witness statement she states that she did not create the document which was exhibited to the Plaintiff's witness statement and which was typed up. The First Defendant backs this up by saying that she did not know the location of the property in Jamaica which is listed on that document. However, when the handwritten original version of this document was produced without prior disclosure to the Defendants during the cross examination of the First Defendant, the First Defendant readily accepted that the document was in her handwriting and that she had assisted Mr Hendrickson with this list in order that he could get prepared for his meeting with Ms Francis.

108. The Second Defendant gave her evidence remotely from Ghana where she has lived since 2002. The Second Defendant was not in Bermuda at the time of execution of the Will and her evidence is therefore of limited assistance in respect of Mr Hendrickson's capacity at this time. The Second Defendant gave evidence that Mr Hendrickson seemed fine to her when they spoke by telephone.

109. The Second Defendant did give evidence of some information provided by one of Mr Hendrickson's doctors at MAWI (then St. Brendan's) during the 1990s but I do not

consider that this evidence is of any relevance. The Second Defendant stated that she did have a close relationship with the Third Defendant and this involved an investment of considerable time and money including securing private education for the Third Defendant in Jamaica and having the Third Defendant to live with her in Ghana for a time.

110. The Second Defendant gave evidence that Mr Hendrickson had expressed the wish during his lifetime to her that he wanted the Third Defendant to inherit his share of the Hendrickson Apartments. The Second Defendant stated that she did not know that she had been named as an executrix until after Mr Hendrickson's death or that Mr Hendrickson had made a will.

111. The Second Defendant also gave evidence about the Jamaica property to the effect that Mr Hendrickson had been paying $1,000 towards the mortgage for 16 years but that he had been upset shortly before his death because he had found out that the Plaintiff had taken his name off the deeds of this property. The Second Defendant goes so far as to suggest that this upset led to Mr Hendrickson's death and that when challenged about this by the Second Defendant, the Plaintiff gave conflicting accounts.

112. The final witness for the Defendants was the Third Defendant who describes a close relationship with her father throughout her childhood and into adulthood. This included frequent times spent together as well as regular telephone contact while she was away at school. The Third Defendant described her relationship with the Plaintiff as "touch and go" and describes various incidences the details of which are not important for the purposes of this judgment.

113. With regard to Mr Hendrickson's mental health, the Third Defendant recounts only two "episodes" that she witnessed prior to the day before his death in January 2015. The first one was sometime before 2008 when she attended MAWI with the Plaintiff and Mr Hendrickson. The second was the difficulties that Mr Hendrickson encountered when he visited Jamaica in 2014 and the Third Defendant's account of what she was told about this by her father was that he blamed the stress of discovering that his name was not on the deeds of the Jamaica property.

114. The Third Defendant also gives an account of the events of 30 and 31 January 2015 that it is unnecessary to recount.

115. As mentioned above, the Third Defendant exhibits the medical notes and records of Mr Hendrickson and includes in her First Witness Statement an account of those records. The Third Defendant also produced a summary of those records. To the extent that those records are relevant to the issues before the Court I have referred to them either above when dealing with the cross examination of the Plaintiff or below and setting out my analysis.

116. The Third Defendant also gives an account of the visit to Ms Francis' office when Mr Hendrickson provided instructions for the Will. The Third Defendant refers to Mr Hendrickson filling out a form but her evidence is that she did not attend any meeting with Ms Francis or go out for lunch with her father and Aunt Judy. The Third Defendant is also clear that she was not present at all on the second occasion when Mr Hendrickson executed the Will.

117. I should again note that the Third Defendant (as did all the Defendants) provided in her Second Witness Statement a point by point rebuttal to many points in the Witness Statements filed by and on behalf of the Plaintiff. While this may be understandable given the very personal nature of this dispute, from a forensic point of view much of this background evidence is not material to the legal issues in this case.

The Law
Testamentary Capacity

118. Section 6 of the Wills Act 1988 provides that:

> To be valid, a will shall be made by a person who –
> (a) is aged eighteen years or over; and
> (b) is of sound disposing mind

119. The test for determining whether a testator has a "sound disposing mind" is that set out in *Banks v Goodfellow* (1861-1873) ALL ER Rep. 74.

120. The test has been followed in many judgments in Bermuda including recently by Mussenden J. (as he then was) in *Doleta Bean v Anthony Caisey and Keith Caisey* [2023] SC (Bda) 12 Civ and *Stoneham v Fraser* [2020] SC (Bda) 92 Civ. Both of these authorities were referred to by Mr Rothwell in his written submissions.

121. In the latter case, the learned Judge summarized the law as follows:

> "Mr Banks [in *Banks v Goodfellow*] had at times been of unsound mind and had been confined previously in a county lunatic asylum. He had been discharged from the asylum but he remained subject to certain fixed delusions. Cockburn CJ stated as follows [at page 56]:
>
> *"It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and with a view to the latter object that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties; that no insane delusion shall influence his will on disposing of his property, and bring about a disposal of it which would not have been made otherwise*."

74. In determining the issues as cited in the above passage, the Court is required to consider both factual and medical evidence. The nature of the Court's inquiry is defined by *Tristam and Coote's Probate Practice, 32nd Edition* at paragraph 34.38 as follows:
"The issue of testamentary capacity may be determined by medical evidence as to the medical condition of the testator or testatrix but in many cases will not be, and requires the court to apply a commonsense judicial judgment based on the whole of the evidence."

75. The burden of proof in cases where testamentary capacity is alleged is a shifting one. It initially rests with the propounder of the will… The legal principle applicable to the shifting burden of proof was summarised in *Ledger v Wooton* [2007] EWHC 90 (Ch) as follows:
"(a) the burden is on the propounder of the will to establish capacity; (b) this remains the case even if the propounder has already obtained a grant in common form; (c) where a will is duly executed and appears rational on its face, then the court will presume capacity; (d) an evidential burden then lies on the objector to raise a real doubt about capacity; (e) once a real doubt arises there is a positive burden on the propounder to establish capacity."

76. Where a will is duty executed, drafted by a competent lawyer who affirms that the client had testamentary capacity, it will carry weight in support of stage (c) above. The "Golden Rule" for wills and probate practitioners when dealing with an elderly and or ill testator is to obtain the evidence of a suitably qualified medical practitioner on the test status capacity. The rule and its limitations were summarized in the English case of *Key v Key* [2010] 1 WLR 2020 Ch at paragraph 7 and was cited in *Creary v de la Chevotiere* and by me in the case of *Bean v Caisey*:
"7 The substance of the golden rule is that when a solicitor is instructed to prepare a will for an aged testator, or for one who has been seriously ill, he should arrange for a medical practitioner first to satisfy himself as to the capacity and understanding of the testator, and to make a contemporaneous record of his examination and findings: see Kenward v Adams, The Times, 28 November 1975; In re Simpson, deed (1977) 121 SJ 224, in both cases per Templeman J, and subsequently approved in Buckenham v Dickinson [2000] WTLR 1083, Hqff v Atherton [2005] WTLR 99, Cattermole v Prisk [2006] 1 FLR 693 and in Scammell v Farmer [2008] WTLR 1261, paras 117–123.

8 Compliance with the golden rule does not, of course, operate as a touchstone of the validity of a will, nor does non-compliance demonstrate its invalidity. Its purpose, as has repeatedly been emphasised, is to assist in the avoidance of disputes, or at least in the minimisation of their scope. As the expert evidence in the present case confirms, persons with failing or impaired mental faculties may, for perfectly understandable reasons, seek to conceal what they regard as their embarrassing shortcomings from persons with whom they deal, so that a friend or professional person such as a solicitor may fail to detect defects in mental capacity which would be or become apparent to a trained and experienced medical examiner, to whom a proper description of the legal test for testamentary capacity had first been provided."

77. Capacity can fluctuate and it is open to the court to accept that at various times the testator may have been of sound disposing mind at various times prior to and after the making of the… [will]. However, the Court must answer the following questions in the affirmative to be satisfied that the testator had the requisite mental capacity at the time the wills were executed;
    a. Did the testator understand the effect of her wishes being carried out on her death?
    b. Did the testator understand the extent of the property she was disposing?
    c. Did the testator understand the nature of the claims upon her estate? and
    d. Did the testator have a rational basis for making… [the provision that he or she did]?

78. A plaintiff does not have to establish that the testator lacked capacity in relation to all of the above, it is enough if any one of them is missing. I rely on *Re Taylor (deceased)* [2010] Bda LR 1 at paragraph 7. The degree of extent of understanding for execution of a will is a high one, see *Re Beany deceased* [1978] 1 WLR 770, cited in *Pedro v Pedro & HSBC Bank Bermuda Limited* [2019] Bda LR72 at paragraph 180.

79. In respect of understanding the nature of the claim of others, in *Creary and de la Chevotiere* and cited by me in *Bean v Caisey* at paragraph 50 it stated:
"8. As to the nature of the claims of others upon the testator, it has been said that the court must be satisfied that no insane delusion is influencing him to dispose of his property in a way that he would not have done had his mind been sound. See the leading case of Banks v Goodfellow (1870) LR 5 QB 549, *per Cockburn CJ at 565*.

9. Thus, where a testator suffers from delusions, the court must be satisfied that they did not or were not likely to have an influence on the disposal of his property. This is because the rationale for denying testamentary capacity to persons of unsound mind is the inability to take into account and give due effect to the considerations which ought to be present to the mind of a testator in making his will. See Banks v Goodfellow, *per Cockburn CJ at 561 and 566*.

11. However a testator is free to dispose of his property as he sees fit, even if the terms of the will are hurtful, ungrateful, or unfair to those whose legitimate expectations of testamentary capacity are disappointed. See Hawes v Burgess [2013] EWCA Civ 74, *per Mummery LJ at para 14*.

12.Provided that the testator has the requisite understanding, he need not possess the faculties of mind and memory in as great a degree as he may have formally done. See Den v Vancleve 2 Southard at 660, to which I was referred in argument, cited with approval by Cockburn CJ in Banks v Goodfellow at 567.

13.The burden is on the propounder of the will to establish capacity. See Ledger v Wootton [2007] EWHC 2599 (Ch), *per HH Judge Norris (as he then was) at para 5. Thus, where the testator suffers from delusions, the burden is on the propounder to show that they could not reasonably be supposed to affect the disposition of his property. See Smee v Smee* (1879) 5 PD 84 *at 91, per Sir James Hannen at 91*."

122. In the English Court of Appeal in *Burns v Burns* [2016] EWCA Civ 37, the trial judge had provided the following formulation of the classic *Banks v Goodfellow* test in the following more modern language:

> "[33]… the testator must:
>
> (a) Understand that he is giving his property to one or more of the objects of his regard;
> (b) Understand and recollect the extent of his property;
> (c) Understand the nature and extent of the claims upon him, both of those whom he is including in his will and those whom he is excluding from his will;
> (d) Ensure that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it, which, if the mind had been sound, would not have been made."

123. McCombe L.J. in *Burns v Burns* (at [46]) approved this summary as accurately representing the test and I consider this also to be a useful and accurate summary.

124. It is clear from the authorities that a diagnosis of even lifelong serious mental illness does not automatically result in a finding of a lack of testamentary capacity.

125. A recent example which demonstrates this in the English High Court is *Vegetarian Society of the United Kingdom v Scott* [2013] WTLR 525.

126. In that case the challenge was to all five wills of a schizophrenic testator who had suffered a serious bicycle accident at the age of 19 and had thereafter had symptoms of severe schizophrenia and logical thought disorder. The testator had left the bulk of his considerable estate to two vegetarian charities despite the fact that he was a meat eater.

127. HHJ Simon Barker QC sitting as a judge of the High Court held that the testator had testamentary capacity notwithstanding his long history of serious mental illness. Having considered the evidence of competing medical experts, Judge Barker QC rejected the proposition that (at [46]) "… the testator's thoughts were so severely disordered and his schizophrenia was such that all times he was or should be taken to have been prevented from exercising his faculties or comprehending the claims to which he should give effect when making a will".

128. In doing so in that case, Judge Barker QC applied the test in *Banks v Goodfellow* having decided that the burden had shifted back to the propounder of the will because a "real doubt" had been raised as to capacity. The Judge accepted that capacity is time and task specific and this is a point to which I will return.

129. The authorities also caution against too readily upsetting on the grounds of testamentary capacity a will that has been drafted by an experienced and independent lawyer.

130. In *Hawes v Burgess* [2013] EWCA Civ 94, Mummery LJ said this at [60]:

> "My concern is that the courts should not too readily upset, on the grounds of lack of mental capacity, a will that has been drafted by an experienced independent lawyer. If, as here, an experienced lawyer has been instructed and has formed the opinion from a meeting or meetings that the testatrix understands what she is doing, the will so drafted and executed should only be set aside on the clearest evidence of lack of mental capacity. The court should be cautious about acting on the basis of evidence of lack of capacity given by a medical expert after the event, particularly when that expert has neither met nor medically examined the testatrix, and particularly in circumstances when that expert accepts that the testatrix understood that she was making a will and also understood the extent of her property".

131. While there is no expert medical evidence in this case, in my view the caution expressed by Mummery LJ with respect to the role played by an experienced and independent lawyer is relevant.

Undue Influence

132. The law on undue influence was also summarized by Mussenden J. in Stoneham v. Fraser:

> "113. The modern application of the equitable principle of undue influence is found in *Royal Bank of Scotland Plc v Etridge (No. 2)* [2002] 2 A.C. 773 HL**.** *Etridge* has been cited with approval by this Court in several judgments (*Lawrence v HSBC* 2020 BDA LR 36 and *Wong ,Wen- Young v Grand View Private Trust Company Limited et al* [2022] SC (Bda) 44 Com (22 June 2022) and more recently by me in *Rita Furbert v Williston Furbert and Dawn Furbert* [2023] SC (Bda) 76 Civ.
>
> 114. In *Etridge*, Lord Clyde distilled the primary question for the Court in any undue influence claim at paragraph 93 as follows:
>
> *"[at] the end of the day, after trial, there will either be proof of undue influence or that proof will fail and it will be found that there was no undue influence. In the former case, whatever the relationship of the parties and however the influence was exerted, there will be found to have been an actual case of undue influence."*
>
> 115. In the recent Privy Council case of *Nature Resorts Ltd v First Citizens Bank Ltd* [2022] 1 W.L.R. 2788 it stated that the equitable doctrine of undue influence is a single concept despite the common understanding of the doctrine

being divided into two categories: actual and presumed undue influence. At paragraph 11 it stated:

> *"But in Etridge the House of Lords made clear that undue influence is a single concept. It does not have two different forms. The correct analysis of the two categories is that they refer to different ways of proving undue influence. Presumed undue influence refers to where the person alleging undue influence relies on an evidential presumption. Actual undue influence refers to where the person alleging undue influence relies on direct proof (of A's conduct, within a relationship with B, which led to B not exercising a free and independent judgment)." [emphasis added]*

116. In *Snell's Equity 34th Edition* at 8-021 it confirmed that the requirement to provide direct proof of conduct does not extend to proof of specific acts but instead can include a vast penumbra of facts. The court must take into account all the circumstances of the case and can infer undue influence.

117. *Snell's* comments, also at 8-021, state that the doctrine of actual undue influence is often split into two further strands: (i) improper threats or improper inducement; and or (ii) where the nature of the relationship between the parties is such as to impose on a "*duty to behave to the vulnerable party with candor and fairness. If the stronger party then acts in breach of their duty, the transaction can be set aside for undue influence*". (See *Libyan Investment Authority v Goldman Sachs International* [2016] EWHC 2530 (Ch), [137] per Rose J.

118. Undue influence in the context of dispositions made by will means coercion to make a will in particular terms (See *Williams on Wills 11th Edition* at 5.9). In *Bean v Caisey* I cited the case of *John Edwards v Terence James Edwards, Elizabeth Maude Coombes & The Partner of KTP Solicitors* [2007] EWHC 119 (Ch) where Lewinson J stated as follows:

> *"There is no serious doubt about the law. The approach that I should adopt may be summarised as follows:*
>
> *i) In a case of testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;*
>
> *ii) Whether undue influence has procured the execution of a will is therefore a question of fact;*
>
> *iii) The burden of proving it lies on the person who asserts it. It is not[1] enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary deposition;*

[1] The quotation from the decision of Lewison J. from *John Edwards v. Terence James Edwards, Elizabeth Maude Coombes & The Partners of KTP Solicitors* omits the crucial word "not" from paragraph 47 iii) of the judgment. What Lewison J. said in this paragraph was "The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis." (emphasis added).

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

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

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

vii) There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is "fraudulent calumny" The basic idea is that if A poisons the testator's mind against B, who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character then the will is liable to be set aside;

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

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

The Legal Burden

119. In *Thompson v Foy* [2009] EWHC 1076 Ch at [101] (cited with approval by this Court in *Pedro et al v Pedro and HSBC Bank Bermuda Limited* [2019] Bda LR 66), the discussion shows that legal burden to prove undue influence falls on [the party who asserts it], where the Court stated:
"*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*"."

133. It is thus clear that the burden of proof in respect of the claim of undue influence rests on the Plaintiff and there is no presumption of undue influence.

Adverse Possession

134. Section 16 of the Limitation Act 1984 makes provision for the time limits in actions for recovery of land. By section 16(1) it is provided that "no action shall be brought by any person to recover any land after the expiration of 20 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person".

135. Section 16 must be read with section 18 and Part 1 of the First Schedule. The effect of these provisions is, as Hellman J. noted in *Burch v Westend Properties Limited* [2016] SC (Bda) 14 Civ., that "… if another person is in adverse possession of land for 20 years then the owner's title to the land will be extinguished unless, within that period, the owner has brought an action to recover the land".

136. The classic exposition of the law on adverse possession is that of Slade LJ (as he then was) in *Powell v McFarlane* (1979) 38 P&CR 452. This was cited with approval in the Court of Appeal in *Wilkinson, Outerbridge & Brewer v Mackie* [1990] Bda LR 7 at 10-11.

137. The party asserting adverse possession must demonstrate both factual possession and the intention to possess ('*animus possidendi*'). A key feature of factual possession is, as Slade LJ said in *Powell v McFarlane*,:

> "Factual possession signifies an appropriate degree of physical control. It must be single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on the land without his consent cannot both be in possession of the land at the same time."

Submissions
Plaintiff

138. The Plaintiff's submissions were provided with assistance from her Mackenzie Friend, Mr Hamlett.

139. Reliance was placed on the test in *Banks v Goodfellow* and it was submitted that for a long period of time as demonstrated in Mr Hendrickson's medical records he had suffered from frontal lobe damage to the brain. In addition, reference was made to the medical records which recorded schizoaffective disorder and bi-polar disorder. Emphasis was placed on a number of occasions on which it was clear from the medical

notes and records that Mr Hendrickson had been an inpatient and suffering from serious symptoms of mental illness.

140. It was submitted that Mr Hendrickson's family (including the Defendants) were well aware of his mental illness and that there was a duty to inform Ms Francis of this history.

141. Emphasis was placed on the role of the First Defendant in the plans to make the Will in January 2013 and the drafting of the list of assets. It was submitted that it was highly relevant that the First Defendant had made the appointment with Ms Francis (or arranged for it to be made), paid the bill of Ms Francis, escorted Mr Hendrickson to the office of Ms Francis and had in effect isolated Mr Hendrickson from the Plaintiff, his wife.

142. It was submitted that this conduct was a "drip, drip" approach of influence and amounted to overbearing the will of Mr Hendrickson.

143. A number of errors on both the Will Instruction Form and the executed Will itself were highlighted. The suggestion was that Mr Hendrickson could not recall his own address and the address given to Ms Francis did not even exist.

144. It was submitted that Mr Hendrickson was susceptible to influence due to his medical condition.

145. With respect to the claim in adverse possession, emphasis was placed on the evidence that the Plaintiff had assisted Mr Hendrickson to get a tax problem sorted out with the Corporation of Hamilton and had contributed financially to the household.

Defendants

146. On the key issue of testamentary capacity, Mr Rothwell submits that the Court is required to consider both factual and medical evidence. He refers to Tristam and Coote's Probate Practice, 32nd ed at paragraph 34.38:

> "The issue of testamentary capacity may be determined by medical evidence as to the medical condition of the testator or testatrix but in many cases will not be and requires the court to apply a commonsense judicial judgment based on the whole of the evidence"

147. The Defendants rely upon the following passage in *Ledger v Wooton* [2007] EWHC 90 (Ch) on the issue of the shifting of the burden of proof:

> "(a) the burden is on the propounder of the will to establish capacity; (b) this remains the case even if the propounder has already obtained a grant in common form; (c) where a will is duly executed and appears rational on its face, then the court will presume capacity; (d) an evidential burden then lies on the objector to

raise a real doubt about capacity; (e) once a real doubt arises there is a positive burden on the propounder to establish capacity."

148. They argue that the so-called "Golden Rule" for wills and probate practitioners, which provides that when dealing with an elderly or ill testator a suitable medical report as to capacity ought to be obtained, does not apply in this case.

149. Mr Rothwell accepts that the Court must answer the following four questions (which replicate those set out above and articulated by Mussenden J (as he then was) in *Stoneham v. Fraser*:

(a) Did the testator understand the effect of his wishes being carried out on his death?
(b) Did the testator understand the extent of the property that he was disposing?
(c) Did the testator understand the nature of the claims on his estate?
(d) Did the testator have a rational basis for bequeathing the property?

150. It is also accepted by the Defendants that the degree of understanding for execution of a will is a high one referring to *Re Beany deceased* [1978] 1 WLR 770 cited in *Pedro v Pedro & HSBC Bank Bermuda Limited* [2019] Bda LR 72 at paragraph 180.

151. Applying these principles to the facts of this case, the Defendants submit that Mr Hendrickson's testamentary capacity ought to be presumed because the Will was duly executed and appears rational on its face. It is submitted that the "Golden Rule" is inapplicable in this case because Mr Hendrickson was neither elderly nor seriously ill.

152. It is submitted that Mr Hendrickson did have the capacity to understand what he was doing and did in fact understand what he was doing.

153. Mr Rothwell submitted that the Will is rational in that Mr Hendrickson wanted his property or interests in property to be divided between his wife and only child. He bequeathed his Bermuda property in the form of his interest in the Hendrickson Apartments to his only child, the Third Defendant while his wife, the Plaintiff, would take the benefit of the Jamaica property if she survived him. This was on the basis that the understanding of Mr Hendrickson was that he was a joint tenant in the Jamaica property. It is further argued that it was entirely rational for Mr Hendrickson to leave what he understood to be his interest in the Jamaica property, in the event that he survived his wife, equally between the Third Defendant and the Stupart children.

154. On the issue of whether the burden of proof as to capacity shifts to the Defendants, Mr Rothwell argues that it does not because the Plaintiff has not raised a "real doubt" about capacity. Even if such a doubt were raised and should the Defendants have the burden,

it is submitted that looking at all of the evidence including the medical notes and records and taking a common sense approach, the burden is discharged.

155. On the issue of the medical notes and records, the Defendants submit that it is relevant that Mr Hendrickson was not admitted to MAWI between 2008 and 2014 and that the records from the key period in January 2013 do not support a claim that he lacked capacity at this time. It is submitted that Mr Hendrickson did not suffer from delusions let alone specific delusions relating to his property.

156. With regard to undue influence, the Defendants argue that the burden is on the Plaintiff and it is a high one. They submit that there is no evidence of coercion, intimidation or manipulation. They argue that none of the Defendants had any knowledge of the contents of the Will prior to Mr Hendrickson's death. They accept that Mr Hendrickson's health is a relevant issue when considering whether there was overbearing of his will but they also point out that there is no suggestion of a course of conduct relating to, for example, other financial transactions.

157. On the issue of adverse possession, the Defendants submit that the Plaintiff resided in the apartment with Mr Hendrickson's consent up to the time of this death and with the permission of the Defendants since his death. They submit that there is simply no case in adverse possession.

Discussion and Findings

158. As I have stated above, there are in effect two key issues in this case. First, is the Will valid or is it to be impeached on the basis of (a) testamentary capacity; (b) undue influence; (c) duress. Second, has the Plaintiff established any interest *vis a vis* the estate of Mr Hendrickson by adverse possession in any part of the Hendrickson Apartments.

159. I will deal with the issues of (a) duress; and (b) adverse possession first.

160. With regard to the plea of duress, as noted above, this issue is pleaded in one short sentence with no particulars. This is a wholly inadequate pleading and does not add anything to the claim in undue influence. With regard to the validity of the Will, the real battleground to which I will return in detail are the pleas of lack of testamentary capacity and undue influence.

161. With respect to the plead of adverse possession in respect of certain parts of the Hendrickson Apartments, this claim must fail. The only Defendants to this case are the three named Executors in the Will and thus the only legal person possibly represented in this case as it relates to the Hendrickson Apartments on the Defendant side of the record is the estate of the late Mr Hendrickson.

162. The Plaintiff cannot in my view set up a case of adverse possession against the estate of Mr Hendrickson for the very straightforward reason that such a claim pursuant to section

16 of the Limitation Act 1984 must be established over a period of 20 years. Since it is 10 years since Mr Hendrickson's death, such a claim against his estate is a legal impossibility unless it could have been maintained against Mr Hendrickson's interest in the property during his lifetime by the Plaintiff for the appropriate period to make a continuous period of 20 years.

163. Prior to Mr Hendrickson's death, he lived in the Hendrickson Apartments in the same apartment as the Plaintiff. The Plaintiff at no time prior to Mr Hendrickson's death has exclusive possession *vis a vis* Mr Hendrickson and her occupation of the property with Mr Hendrickson cannot have been adverse to Mr Hendrickson.

164. While I do not need to decide this issue, if it were relevant to do so I would hold that time has not started running against the estate of Mr Hendrickson for the purposes of the Limitation Act 1984 by the Plaintiff's occupation of the premises while this litigation has been on-going.

165. One can well understand why the Plaintiff wishes to have some property right in the apartment in which she has lived since the early 1990s, however, the legal position seems to me to be that whatever the complexity of the interest of Mr Hendrickson in that property (which does not fall to be determined in this case), that interest forms part of the estate of Mr Hendrickson and is not the property of the Plaintiff.

166. Turning now to the plea of lack testamentary capacity and undue influence, these are to some extent intertwined because, as made clear by Lewinson J. in *John Edwards v Terence James Edwards, Elizabeth Maude Coombes & The Partner of KTP Solicitors* [2007] EWHC 119 (Ch): "The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one".

167. Thus the state of Mr Hendrickson's health (including his mental health) is relevant not only to the question of whether he had testamentary capacity in January 2013 but also the question of whether the conduct of any of the Defendants was sufficient to overbear his own free will with respect to his testamentary dispositions.

168. With respect to Mr Hendrickson's testamentary capacity and dealing firstly with the important issue of the burden of proof, I adopt the helpful formulation of HHJ Norris QC (as he then was) in *Ledger v Wootton* [2007] EWHC 2599 (Ch), namely:

> "(a) the burden is on the propounder of the will to establish capacity; (b) this remains the case even if the propounder has already obtained a grant in common form; (c) where a will is duly executed and appears rational on its face, then the court will presume capacity; (d) an evidential burden then lies on the objector to

raise a real doubt about capacity; (e) once a real doubt arises there is a positive burden on the propounder to establish capacity."

169. Therefore, if the Will is duly executed and valid on its face (which in my view it is in this case), the Court will assume capacity. An evidential burden then rests on the objector (in this case the Plaintiff) to raise a real doubt about capacity. If such a doubt is raised then a positive burden returns to the propounder of the Will (in this case the Defendants) to establish capacity.

170. On the issue of the burden of proof in respect of capacity, I reject the submission of the Defendants that the burden rests on the Plaintiff. Their argument is that there is no real doubt about capacity. I disagree.

171. I accept that the "real doubt about capacity" must relate to capacity at the time that the instructions were given for the disputed Will and its execution. In this case that means January 2013. However, this does not mean that relevant evidence of mental illness before and after those crucial events are irrelevant for the purposes of answering the question of whether a "real doubt about capacity" has been demonstrated. A long history of mental illness clearly cannot be brushed to one side in this inquiry and in my view is highly relevant.

172. This is the approach taken by HHJ Norris (as he then was) in *Ledger v Wooton* at [7] where the learned Judge reviewed relevant evidence of mental illness over a 40 year period.

173. The medical notes and records in Mr Hendrickson's case demonstrate a similar factual picture. I consider the following summary taken from the Bermuda Hospital Board Admissions form (which records an admission date of 13/4/2008) is sufficient to illustrate why I consider this to be the case:

> 13/10/2006 – 25/10/2006 – Schizophrenia Affective Illness
> 9/82003 – 22/8/2003 – Frontal Lobe Syndrome/Psychosis
> 1/11/2001 – 14/11/2001 – Brief Psychotic Episode
> 29/3/1997 – 15/4/1997 – Acute Psychosis
> 20/10/1995 – 26/10/1995 – Drug Induced Psychosis
> 20/4/1994 – 9/05/1994 – Anxiety
> 14/03/1990 – 21/02/1990 – Drug Inducted Psychosis

174. I would also add that the fact that Mr Hendrickson was compulsorily admitted to MAWI under section 13 of the Mental Health Act 1968 on the day before his death and about 2 years following the execution of the Will reinforced my view that there is ample evidence that there is a "real doubt about capacity" in this case so as to firmly place the burden of proof as to capacity on the Defendants as the propounders of the Will.

175. However, for the following reasons I am satisfied that this positive burden of proof which rests on the Defendants has been discharged in this case.

176. While Mr Hendrickson had a long history of mental illness, I accept that between 2008 and the date of execution of the Will, he had not been admitted as an inpatient. I accept that the medical notes and records to which my attention was drawn during the course of the trial from late 2008 to late 2014 record a lack of consistency with taking mediation and the frequent missing of appointments by Mr Hendrickson. However, in so far as they record meetings with or examinations of Mr Henrickson, the consistent picture appears to be one of a fairly stable mental state. These notes and records do not paint a picture of any acute issues during this time.

177. I accept, of course, that the Court has not had the benefit of any expert evidence on the issue of capacity or any expert interpretation of the medical notes and records to which I have referred. However, the parties referred extensively to these notes and records in support of their rival contentions and I consider it appropriate for the Court to take a common sense approach to a reading of the medical records produced.

178. In that context I turn now to the month of January 2013 and to what I consider are the important records from 11, 14 and 31 January 2013 to which I have referred above. In my view what the records from 11 and 14 January 2013 suggest is a considerable level of marital strife between the Plaintiff and Mr Hendrickson over what Mr Looby, the MAWI case worker, records as "the will issue". I consider it particularly relevant that Mr Looby appears to have recorded on 11 January 2013 "… mental state – no psychotic symptoms. stable". I also consider that it is relevant that Mr Looby has recorded on 14 January 2013 that he advised both Mr and Mrs Hendrickson to consider marital counselling. I do not consider that such a suggestion would have been made (or have been recorded as being made) to Mr Hendrickson if Mr Looby considered that Mr Hendrickson was not stable (as he had recorded just 3 days earlier). I am conscious that Mr Looby was not a witness in the case I have not heard from him and thus a degree of caution must be applied to these medical notes and records. However, they do give a contemporaneous account by medical professionals who had a duty to record their findings.

179. Also of considerable importance is the much longer note from 31 January 2013 from the outpatient clinic. This is in some respects difficult to read but there is a clear note of "stable at present" directly across from the abbreviation "imp" which I assume stands for "impression". There is again nothing in this note which would suggest that Mr Hendrickson had suffered from any deterioration in his mental health leading up to this appointment which was, of course, only 2 days following the execution of the Will.

180. I have noted above the inherent limitations which arise from the Court not having any expert evidence or hearing from the medical professionals who were the authors of the notes. Nevertheless, in my view the medical notes and records paint a picture of stability

in medical condition throughout January 2013 and indeed for a number of years immediately preceding this.

181. If the medical notes and records were the only material on which capacity were to be assessed then there may be some doubt as to whether they are sufficient to discharge the burden of proof that I have found rests on the Defendants.

182. However, in this case the Court also has the evidence of Ms Francis which I have summarized above. It is clear from Ms Francis' evidence that Mr Hendrickson did not demonstrate in either meeting with her in January 2013 any signs that he did not fully understand and have the capacity to understand what he was doing in executing the Will. Ms Francis was pressed on a number of occasions and was very clear in her evidence which I accept.

183. I do not think that anything turns on the errors on the face of the Will or the Will Instruction Form. I agree with Ms Francis on this point that what is important is whether the Will clearly expressed Mr Hendrickson's testamentary wishes and there seems to me to be no doubt that the language used in the Will does this. With regard to the Will Instruction Form and the misspelling of Mr Hendrickson's second name, there was no clear evidence in my view as to who completed the first two pages of this form (which were completed in capital letters unlike the third page) and I do not consider that misspelling is an indicia of a lack of capacity in any event.

184. With regard the witness evidence of the Plaintiff on the issue of capacity, I accept that the "will issue" caused considerable stress in the household between the Plaintiff and Mr Hendrickson. The Plaintiff's evidence was also consistent with intermittent periods when Mr Hendrickson's mental health was not good. However, I do not accept that the Plaintiff's evidence establishes any breakdown of his mental health in January 2013. In my view the evidence of the Plaintiff (and her witnesses to the extent that it is relevant) does not support the proposition that Mr Hendrickson was someone who lacked mental capacity generally and the examples given of erratic or disturbed behaviour were generally lacking in specificity as to time. As noted above, the issue of capacity is time specific and in my view the evidence in this case supports a finding of testamentary capacity on the relevant dates in January 2013.

185. In summary on the issue of capacity, I find that the Defendants have satisfied the burden of proof on them. In my view Mr Hendrickson did understand the effect of his wishes being carried out on his death. I am also of the view he did understand the extent of the property that he was disposing. It matters not for these purposes what the actual situation was with regard to the Jamacia property (i.e. whether or not it was held on joint tenancy). It is clear in my view from the evidence that Mr Hendrickson believed that he had a shared interest in this property with the Plaintiff and that he would have something to leave should he be the second to die.

186. It is also clear in my view that Mr Hendrickson understood the nature of the claims on his estate. The only beneficiaries under the Will were his wife, his only child and potentially the children of his wife (the Stupart children). These are exactly the people who might be considered to be those with claims on his estate (in particular his wife and daughter).

187. There is also in my view a rational reason for the disposition that Mr Hendrickson chose to make in his will. It seems to me to be perfectly rational that Mr Hendrickson would want the Third Defendant to inherit whatever interest he had in the Hendrickson Apartments in light of the fact that the Plaintiff as his widow would have the property in Jamaica that Mr Hendrickson had spent so many years contributing to the purchase of by way of mortgage payments. I do not consider I need to determine any of the contested issues about the Jamaica property whether in terms of the amount of regular mortgage payments or otherwise.

188. With regard to the pleaded case in undue influence, as I have noted above, this is intertwined with the issue of capacity.

189. It is clear from the authorities referred to above that the question of whether undue influence was brought to bear by any of the Defendants so as to vitiate the Will is a question of fact. The burden of proof rests on the Plaintiff and while it is the civil standard of proof, it has been described by Lewison J. in *Edwards v. Edwards & Ors* as a "high burden". As the learned Judge stated in the same case, "… it is not enough to prove that the facts are consistent with a hypothesis of undue influence". Rather, what must be shown is that the facts are inconsistent with any other hypothesis.

190. What must be shown is coercion and this is to be distinguished from persuasion but pressure on someone of reduced mental fortitude (even if having capacity) which causes a testator to succumb for the sake a of a quiet life, if carried to the extent that it overbears the testator's free judgment, is enough to amount to coercion.

191. While there may well be on the facts of many cases, including this one, a fine line between encouragement and coercion, in my judgment the established facts in this case do not amount to coercion.

192. It is clear that Mr Hendrickson was encouraged to make a will by the First Defendant. The First Defendant makes no secret of this and I accept her evidence that there was a first attempt to have Mr Hendrickson make his will a number of years before 2013 which was aborted following the objections of the Plaintiff.

193. With regard to the events of January 2013, it is not disputed that the First Defendant played an instrumental part in Mr Hendrickson in fact going through with meeting Ms Francis for the first time but there are a number of key features of the facts as I find them that are particularly relevant.

194. First, it was on the Plaintiff's account of events a source of considerable tension between herself and Mr Hendrickson that the issue of making a will had again been raised in January 2013. I have already set out in some detail the medical notes and records which reveal that on two occasions before the first meeting with Ms Francis, there had been visits to MAWI in which the "will issue" had been discussed and during which the Plaintiff had expressed her unhappiness.

195. It is certainly an element of the factual picture that points against coercion in my view that the issue of writing a will had been so openly ventilated between the Plaintiff and Mr Hendrickson.

196. With regard to the document dated 15 January 2013 which was found by the Plaintiff on Mr Hendrickson's dresser and referred to in detail above, in my view it is significant that this document sets out a list of assets and certain relevant issues (such as "executor of your estate"). If the intention of the First Defendant as draftsperson of this document had been to coerce Mr Hendrickson it was in my view a very odd way to go about it. The document does not on its face direct Mr Hendrickson to make any particular choice about the assets which are listed.

197. I also note an important inconsistency in the evidence which again in my view points against there being evidence of coercion. On the Plaintiff's case (and as set out in her witness statement), the telephone message from Mr Henrickson's sister Clover which preceded the meeting with Ms Francis said "Judy has made an appointment for you to go make a Will with a lawyer and everything is to go into Shayla's name". In my view it is an important aspect of the claim of undue influence and the evidence said to support it that Mr Hendrickson did not in fact exclude from his will either the Plaintiff as his wife or her four children from her first family. In other words, Mr Hendrickson did not make a will that resulted in "… everything … [going] into Shayla's name".

198. I have quoted above the passage from *Thompson v Foy* [2009] EWHC 1076 (reported at [2010] 1 P. &C.R. 16) (again of Lewison J)

> "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".

199. In my view the testamentary provision of Mr Hendrickson set out in the Will can readily be accounted for by the ordinary motives of ordinary people. In my view it is entirely understandable that Mr Hendrickson might well have wanted his only daughter to have the benefit of his Bermuda real estate in the context of the Plaintiff having a property in Jamacia in respect of which Mr Hendrickson had contributed financially. While I have no evidence about any residue in the estate, the residue clause splitting this between the

Plaintiff and the Third Defendant is again not surprising and seems to me to point against undue influence.

200. Quite apart from the evidence of Ms Francis, I would not have considered that the Plaintiff had discharged the burden of proof in respect of undue influence. However, I again consider that it is significant that Ms Francis met on two occasions with Mr Hendrickson and that he was alone in the meeting on both occasions. Ms Francis' evidence does not in any way suggest that Mr Hendrickson was doing anything other than expressing his own free will. Much is made of the fact that the First Defendant was instrumental in arranging the first appointment and paying for the provision of legal services but in my view the evidence establishes that all of the direct interaction with Ms Francis were conducted alone.

201. While I accept that the First Defendant is a person with a strong character, and notwithstanding some inconsistencies between the First and Third Defendant's account of events, I found the First Defendant to be a truthful witness. I consider it to be of particular importance that when during the course of cross examination, the original handwritten document listing Mr Hendrickson's assets was produced for the first time, that the First Defendant readily accepted that she had produced it. I do not consider that the evidence that Mr Hendrickson was in fear of the First Defendant to be either reliable or convincing and I do not accept it.

202. I also consider that the Third Defendant was a truthful witness and nothing in the evidence of either the First or Third Defendant came close to describing conduct that when fairly analyzed could be considered to be conduct that could give rise to a finding of undue influence.

203. I have no doubt that the First and Third Defendants hoped and perhaps expected that Mr Hendrickson would leave his interest in the Hendrickson Apartments to his only child but that is not the same thing as exerting undue influence.

204. With regard to the Second Defendant, I do not consider that there was any material evidence concerning the conduct of the Second Defendant that could properly support a claim in undue influence. The Second Defendant was not in the jurisdiction at the time of execution of the Will and has lived abroad for some time. It is unfortunate that the Plaintiff's claim was pleaded, improperly in my view, against all three Defendants.

Conclusion

205. For the reasons explained above, I find that the Will of Mr Hendrickson dated 29 January 2013 is not impeachable either on the ground of lack of testamentary capacity or undue influence. I therefore dismiss these claims and order that the Will should be admitted to probate in solemn form of law.

206. I have also explained why in my view the claim in adverse possession is hopeless and this too is dismissed.

207. Unless one of the parties files a form 31TC within 14 days of the date of this Ruling to ask for a hearing on costs, I award the costs to the Defendants to be taxed on the standard basis if not agreed.

DATED this 29 day of October **2026**



KEITH ROBINSON
ASSISTANT JUSTICE