



IN THE COUNTY COURT AT CENTRAL LONDON
CHANCERY LIST
MR RECORDER LAWRENCE COHEN QC

CLAIM NO. A10CL026

Royal Courts of Justice
Strand, London, WC2A 2LL

BETWEEN:

ANDROULLA MARCOU

Claimant

-and-

NIKI CHRISTODOULIDES

Defendant

IN THE COUNTY COURT AT CENTRAL LONDON
CHANCERY LIST
BETWEEN:

CLAIM NO B10CL246

NIKI CHRISTODOULIDES

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-and-

ANDROULLA MARCOU

Defendant

Mr Charles Holbech for Mrs Christodoulides

Ms Kate Selway for Mrs Marcou

Introduction

1. This is my reserved judgment after the trial of the following two matters:
 - 1.1. A claim by Niki Christodoulides (Niki) to prove in solemn form the Will (“Agni’s Will”) dated 7 August 2012 of her mother, Agni Iacovou (Agni). It is defended by her sister, Androulla Marcou (Andre) solely on the basis of a claim to set aside Agni’s Will. Andre’s case is that the Agni’s Will was procured by the undue influence of Niki and, so far as it is different, her fraudulent calumny. Andre counterclaims to have a grant of letters of administration in her favour on the basis that there is an intestacy. The Calumny Claim (as I shall refer to Andre’s claim to set aside Agni’s Will) is decisive of this part of the case.
 - 1.2. A claim by Niki to set aside a transfer by Agni of Hazelmead, Arkley in favour of both Niki and Andre on the basis that its execution was procured by the presumed or actual undue influence of Andre. The Transfer Claim (as I shall refer to this claim by Niki) is advanced on the basis that Niki’s capacity to bring it is as the executor of Agni’s Will or alternatively as residuary beneficiary thereunder.
2. The trial has lasted for 10 days. The first was for the most part a reading day with days 2-9 being taken up with hearing evidence from the witnesses. Day 10 (after a break of approximately one month) heard oral closing submissions after filing written submissions which have included a very detailed schedule containing the factual findings which each ask me to make. The Court’s reading time of these submissions which was necessary to be prepared for short oral closing submissions was in addition to the 10 sitting days. The parties’ time estimate (originally 8 days but revised to 10 days) has proved short by several days of the Court time required especially when the time for pre-reading of closing submissions and writing this judgment are taken in to account.
3. As for the Transfer Claim each alternative relied upon by Niki to give her capacity to sue depends on the Calumny Claim failing and Agni’s Will not therefore being set aside. Procedurally, I have appointed Niki to represent Agni’s estate for the purpose of this trial so that Agni’s estate will be bound by the result whatever the outcome. Although I had hesitation in appointing Niki to a representative capacity because her personal interest inhibited the balanced view expected of a representative party, I accepted the encouragement of both parties when the issue was canvassed in closing submissions that Niki was the only party with an interest in upholding Agni’s Will and it was desirable to appoint her so that there could be a final determination.
4. I must at the outset of my judgment acknowledge the assistance which I have received from two highly able and experienced members of the Chancery Bar who have presented their cases both forcefully and persuasively. The tenacity with which they have presented their cases has not inhibited a cooperative approach which has resulted in the production of a detailed agreed chronology and, equally importantly, closing submissions which are well organised and have greatly helped me in producing this judgment speedily. The schedule in which both sides have inserted the factual findings they ask me to make is again another aspect of the great assistance which has been given to the Court. The help which this schedule has been is undiminished even when I have not found it necessary to make specific factual findings as requested.
5. There are a number of other fairly general points it is important to make:

- 5.1. I have been addressed by both sides on the basis that both Agni and Panayiotis Iacovou (“Pani”), her late husband, never lost their domicile of origin and that both ceased to reside in England in 2003. This is the basis on which I have approached the case but it should not be thought that I am making any finding on the evidence about domicile or residence rather than deciding the case on the common basis on which both parties have proceeded. The subject is simply not in issue in these proceedings.
- 5.2. A subsidiary question arises from the domicile point just made: is English law the correct law by which to determine the validity of Agni’s Will? As to this, the parties have made common cause and both have asked me to determine the validity of Agni’s Will by applying English law. I have acceded to this sensible suggestion which both sides have submitted will allow a complete determination of the issue. I would add that, even if it were the case that Cyprus law was the correct law to apply, neither party has pleaded or sought to prove that it is different from English law. This would be an indispensable requirement if it was alleged to be different. The Court would therefore proceed on the basis that it is the same.
- 5.3. Proceedings are on foot between these parties in Cyprus as to the administration of Pani’s estate. Although I must look at some of the background to the Cyprus proceedings so far as it is material to the matters before this Court, I do so cautiously and have attempted to confine my findings to those which are essential to decide the matters before me.
- 5.4. Finally, there is a professional note of evidence which was typed live in Court. That note is very useful and, despite it having been corrected, it is not as accurate as would be a transcript of the tape recording. Caution is therefore needed when reading this note both for names which are not completely accurate and, occasionally, for sense. Nonetheless, it has truly lessened my burden and enabled the evidence to be taken much faster than the speed of my pen.

Calumny Claim - Summary

6. Andre’s claim to set aside Agni’s Will can be described briefly thus:
 - 6.1. Beyond the obvious mother/daughter relationship, Niki took care of her mother’s cash resources which were in form of fixed term bank deposits of approximately €1m (but in both € and £ denominations) in both England and Cyprus after the death in 2012 of her husband, Pani. The accounts in question were put into the joint names of Agni and Niki for what Niki described in her evidence as “*administrative convenience*”. According to Niki in her oral evidence, regardless of the bank mandates indicating that there was joint ownership on the part of Agni and Niki and that the accounts would pass to their survivor on the first death, that did not indicate that ownership had changed from Agni to Agni and Niki.
 - 6.2. It was always Agni’s intention to ensure a roughly equal distribution of her estate between her daughters. Even Niki accepts that this was Agni’s intention as late as March 2012¹. Andre relies on the evidence of Mr Antoniou to say that this intention continued right up to the drafting of Agni’s will. He was the professional will writer who, only about a week before Agni’s death, took instructions and arranged for Agni’s Will to be drafted. His evidence² was that Agni believed that excluding Andre

¹ T 8/12/2017 pages 22-23

² Witness Statement c/6/77 #12

“would allow a more even distribution of her assets to both daughters as Androulla had helped herself to a substantial amount of assets already and that Niki had not”.

- 6.3. After a series of incidents in March 2012 which I shall have to examine closely later in this judgment, €500,000 was transferred by Agni from the joint names of Agni and Niki into new accounts in the joint names of Agni and Andre. I can say neutrally but with complete accuracy that this greatly angered Niki. Despite Niki being added as joint account holder to these new accounts after only a few days when she travelled to Cyprus, the effect that this transfer had on Niki never appears to have dissipated.
- 6.4. Andre’s case is that Niki’s anger was manifested not only by accusing the Bank of Cyprus of improper conduct including one of its employees having taken a *backhander*³ (presumably from Andre) to effect the transfer but also by Niki then proceeding to poison Agni’s mind over the following months by representations made by words and actions indicating that Andre had stolen her mother’s money. Whether the word used was *stolen* or *taken* or even as Mr Antoniou says in his evidence *helped herself to a substantial amount of assets*, the substance is the same. The representations are said by Andre to be not only false but also fraudulent. I will be examining carefully the words and actions of Niki later in this judgment so that there is no need to summarise them at this point.
- 6.5. When Agni made a will excluding Andre from benefit a few days before her death and leaving everything to Niki, her intention was still to ensure a more even distribution of her estate between her daughters. The exclusion of Andre was because Agni believed that Andre had stolen assets from her or, if it be different, *helped herself* to use the words of the professional will writer.
- 6.6. Agni’s belief was based upon fraudulent misrepresentations by Niki that Andre had either stolen or taken a large amount of money from her. These fraudulent misrepresentations poisoned Agni’s mind to exclude Andre.
- 6.7. It is right to point out a further aspect which emerged during the trial: Niki, who was managing all of Agni’s cash in England, was present at the giving of the instructions for Agni’s Will when a materially inaccurate account of Agni’s assets was given so that the will writer’s advice on Agni’s intention to make a more even distribution of assets to her daughters was given on a false basis. I shall have to consider this aspect later in this judgment and, specifically, whether it was Niki who gave the information which she knew to be false or, perhaps, she merely stayed silent when Agni provided the information.
7. Niki’s response is to deny that she made any representations to her mother at all, at least any which she did not honestly believe were true. She tried to keep her mother calm and insulate and protect her from the distress caused by what Andre did. Agni excluded Andre from her will because that was her desire and, whatever she may have believed, it was not because Niki had poisoned her mind against Andre by fraudulent misrepresentations. Niki maintains the position that Andre did behave badly by moving control of Agni’s Bank of Cyprus account (in the joint names of Agni and Niki) to joint accounts in the name and requiring the signatures of both Agni and Andre. The control issue was not resolved by placing the money in all three names a few days later. She refused to get involved in the issue of whether £1,000 had been stolen from Agni’s rent.

³ F/4/30-33

As for *seeing wild dogs running along the wharf or paintings*⁴, Andre was questioning her mother's sanity and this was Agni's belief as well as her own when she read her the e mail. Agni's own beliefs were formed without any suggestion by Niki that Andre had stolen her money. A pleading point was also taken in closing submissions with which I shall deal at the end of my judgment.

8. Three further subsidiary issues have arisen in the course of the trial which I must note and they have been deployed by the parties in different ways. So far as Niki is concerned, they may explain why Agni, as a result of things Andre did or which are connected to her, took against Andre and excluded her from her will. So far as Andre is concerned, they are probably no more than extra particulars of the course of conduct amounting to a poisoning of Agni's mind. Time has been taken in the evidence on them by both parties and I think it right both to note them and reach a decision on them.

They are as follows:

- 8.1. Agni appears to have believed that Aris, Andre's husband, had stolen £1,000 from her by collecting rent due to Agni and pocketing £1,000 out of what had been collected. To Agni, this was a complaint which reflected on Andre. Niki does not seek to support Agni's belief as being factually correct but says that her belief was not induced by anything which she said or did. Andre on the other hand says that Niki told her mother that Aris had stolen the money.
- 8.2. Niki explains Agni's upset and anger with Andre in June 2012 in no small part on her view that Andre had "forced" Agni herself to pay for the oxygen cylinder which she needed on a plane journey in June 2012 from Cyprus to London (approximately €85). This may seem trivial, especially for a woman who had hundreds of thousands of Euros in the bank. According to Andre, it only makes sense if Agni had come to believe as a result of Niki's representations that Andre had indeed run away with Agni's money. It is, according to Andre, wholly wrong in its factual basis because her mother wanted to pay for the oxygen cylinder and exemplifies susceptibility to her sister's lies and influence because Agni came to believe Niki's untrue version of this though Agni not Niki was actually present at the time in question .
- 8.3. Niki says that Andre was questioning Agni's sanity which greatly upset her and further poisoned her against Andre. The way in which this occurred was that Andre sent an e mail to Niki on 18 June 2012 at 10:17 (the time may be significant as hereafter appears). Agni had gone to England from Cyprus on 16 June – this was her normal pattern when Pani was alive as Cyprus is rather hot in summer. The e mail was dealing with various medical issues being dealt with by doctors and a bundle of papers was attached. Its final paragraph stated *Just as a reminder mum cannot see very well and Dr Raziz did suggest she have the YAK*⁵ *procedure which would benefit her eyesight greatly and maybe if she can see she will then attempt to read instead of falling asleep. I am also concerned that she see imaginary dogs and pictures moving, this may be as a result of her eyesight.* Niki says she translated this into Greek for Agni (or perhaps just summarised it) and told her that Andre was asserting that Agni was losing or had lost her mind because she was seeing *wild dogs*⁶ which did not exist. According to Andre, a perfectly sensible letter clearly dealing with an eyesight problem on the suggestion of Agni's eye doctor was

⁴ These are Niki's own words describing the e mail she read to her mother – Note 08/12/2016 page 33.

⁵ Clarified in evidence to be the YAG laser procedure

⁶ These are Niki's own words Note 8/12/2017 pages 33 and 37

distorted to become reported as a suggestion that Andre was questioning Agni's sanity. So, when properly viewed, Andre's says this is another episode of poisoning with no honest basis.

The Transfer Claim - Summary

9. Niki's claim to set aside the transfer of Hazelmead can be summarised thus:
 - 9.1. Hazelmead had been the family home since 1979 and, when Pani and Agni returned permanently to Cyprus in 2003 they kept it as a second home to stay in during their visits to England where they spent summers to avoid the heat in Cyprus. Amongst other things, it served as the place in which to keep Pani's Rolls Royce motor car garaged.
 - 9.2. As a result of a transfer by Pani and Agni on 26 September 2011, Hazelmead was held by Agni, Niki and Andre as tenants in common as to 50%, 25% and 25% shares respectively. There is no challenge to the validity of this transfer but I shall have to consider some aspects of how it came to be executed later in this judgment.
 - 9.3. Pani died in England the early hours of 27 September 2011. Although he had been diagnosed some months earlier as being terminally ill with lung cancer, his death understandably left Agni, to whom he had been married for approximately 50 years and who was not in good health, in a state of shock.
 - 9.4. Niki alleges that during the afternoon of the very day on which Pani had died, Andre went to Hazelmead and brought with her a further transfer to be executed by Agni. Agni was the transferor and the transferees were Andre and Niki. The transfer was executed by all three of them but not dated at that time. Niki says that is because there was to be delivered to Agni a written assurance that she could stay in Hazelmead whenever she wished for the rest of her life – such a written assurance was never given so that the condition on which it was executed was never fulfilled.
 - 9.5. Niki alleges that Andre was a solicitor. Agni respected and looked up to Andre. Andre procured the execution of the transfer by giving advice to her mother that if she did not execute the transfer, the house would be swallowed up in tax when she died. Andre exerted pressure on Agni to execute the transfer immediately. She gives other examples of Andre having done legal work for Agni either in the past or in implementing Agni's other wish at the time to transfer one of her investment properties to Niki's son and one to Andre's son. Niki's case is that Andre was in a relationship of influence with Agni which is the first of the two requirements for a presumption of undue influence to arise.
 - 9.6. The transfer, according to Niki, is one which calls for explanation as it is a gift of a large capital asset by Agni. Thus the second requirement for the presumption of undue influence to apply is also satisfied.
 - 9.7. I must mention at this stage that Niki alleges that Andre's advice which procured Agni to execute the transfer was wrong. Counsel for Niki has relied on this allegation of advice to support Niki's case that there was a relationship of influence but seemingly disavows any case of actual undue influence. If this advice was actually given, Andre's own evidence was that she did not believe it was correct. In fact, her view was there was no likely tax saving from such a gift as she doubted that her mother would survive for a year, still less 7 years in order to exempt the gift from IHT. I put to Ms Selway on behalf of Andre in closing submissions that if I were to find that Andre did indeed give such advice, it would appear to have been fraudulent and would lead to the conclusion that there was actual undue influence

so that the transfer must be set aside. Ms Selway very properly agreed with this view. Despite Mr Holbech for Niki disavowing a case of actual undue influence, this does seem to me to be what is alleged in the alternative to presumed undue influence. If I find the factual basis made out, there is no doubt in my mind that the transfer must be set aside.

10. Andre completely disputes the factual basis of the claim.
11. As to the detail of the execution of the transfer, Andre says that the transfer was not executed by Agni on the day of Pani's death. It was executed between the date of Pani's funeral on 3 October 2011 and 11 October when Andre returned home to Cyprus. It was executed by Agni in the presence of Niki (who also executed it) but it was not dated at that time. She accepts that it was agreed that her mother could stay at Hazelmead whenever she wanted for the rest of her lifetime but, just like every other gift made over the years, that arrangement was purely oral but no less binding than if it had been written down. The suggestion that the arrangement permitting Agni to occupy Hazelmead whenever she was in England might be written down was a much later invention by Niki. The idea of protecting Agni first appeared as a question in Niki's e mail of 14 May 2012⁷. By 5 August 2012 it had become a statement by Niki that the transfer should not be registered without a document signed by Niki and Andre stating that whilst Agni is alive, *neither of us will rent or sell the property*. If that was the arrangement, there was no reason why Niki, who was equally a donee from Agni, could not have written a simple letter recording the arrangement but she did not do so. Andre also accepts that at some stage after Pani's death, Agni was worried about whether she had enough money. Andre says that she reassured Agni that she had enough money to live on even if she lived for 40 years – at that stage, Agni had (or could imminently expect to have) approximately €1m⁸ in bank deposits as well as other properties and her permanent home in Cyprus.
12. As to the allegations of advice, Andre accepts that she qualified and practised as a solicitor but she had, to her mother's knowledge, retired from practice at least 10 years before these events and she was not advising her mother at all. The only role she took on was the one of implementing her mother's wishes by preparing the transfer. She did not say that there would be any tax advantage in Agni giving her share of Hazelmead to her daughters – she believed that there would be no such advantage for IHT purposes as her mother, who had serious health problems, was unlikely to survive for even a year. Equally, reserving the ability to use Hazelmead would mean that the gift would not work for IHT purposes. She was simply implementing the desire of her mother to give away to both of her children many of her assets in her lifetime and enjoy the pleasure of giving.
13. Andre points out that there had previously been a series of lifetime gifts and the gift of Hazelmead, together with two other gifts of properties to grandchildren made simultaneously, was nothing out of the ordinary for Pani and Agni. It was hardly giving away Agni's last penny – she owned her own home in Cyprus and either had or would imminently have approximately €1m in bank deposits in her name split between London and Cyprus. As Andre put it in evidence, Agni had enough money for all of her needs if she was to survive another 40 years. Making the gift was exactly what Agni of her own

⁷ D/256 *My concerns are if property in our name how can we protect mum with regards no force of sale of rental while she is alive. If we do a paper on the side for her is it valid.* The quotation is accurate despite the grammatical problems.

⁸ Agni herself told her GP in July 2012 that this figure was £1m – I will recite the letter below

volition wanted to do, she knew exactly what she was doing and continued to be pleased that she had done so for the remainder of her life. Despite knowing she had made the gift, there was never a murmur of complaint by Agni during her lifetime and nor, for that matter, by Niki.

14. So in summary, Andre says:

14.1. Her participation in the process of the transfer was as a daughter and not as an adviser – the fact that she happened to be a solicitor before she retired 10 years before the transfer is an irrelevance. She gave no advice and was under no duty to advise. All she did was to implement her mother's wishes by drawing up a transfer. She says that Niki has failed to satisfy the first requirement for the presumption to arise because there was no relationship of influence.

14.2. Andre also says that the second requirement for the presumption to arise was not satisfied because there is nothing about this gift which calls for explanation. It is merely a continuation of a pattern of giving substantial gifts of property to her two daughters in roughly equal amounts. This gift was actually equal between the two daughters, who would be expected to receive a gift like this. The size of the gift may have been large (probably about £500,000 in total divided equally between Andre and Niki) but the size needs to be compared to the remainder of Agni's assets (ownership, subject to the administration of Pani's estate, of her own home in Cyprus and approximately €1m in bank deposit plus miscellaneous other assets). This is simply not a case which demands explanation at all. On the contrary, it is exactly the type of gift which Agni could be expected to make – there is not a shred of evidence that Agni was unhappy about the gift during the remainder of her lifetime except, perhaps what came through Niki's mouth or which was written down by her.

14.3. Andre's case is accordingly that no presumption of undue influence arose.

15. The remainder of my judgment is organised as follows:

15.1. The law

15.2. The Witnesses – general assessment

15.3. The factual issues

The Law

Calumny

16. The law is not in dispute between the parties and it is wholly unnecessary to explore interesting subtleties in order to decide this case. I gratefully adopt the following summary of principle by Lewison J (as he then was) in Re Edwards [2007] EWHC 1119 (Ch) at [47] which itself was quoted and followed by Proudman J in Re Boyes [2013] EWHC 4027 (Ch) at para. 115

i) In a case of a 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 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 disposition;

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) Coercion 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 discretion 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 mind 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 dispositions, the testator has acted as a free agent.

17. As Mr Holbech put it in his opening submissions, the burden of proof rests on the person alleging undue influence or fraud. Although the standard of proof is the civil standard (ie on the balance of probabilities) and undue influence can be found by the court drawing inferences from all the circumstances, the cogency and strength of the evidence required to prove fraud is heightened by the nature and seriousness of the allegation (Re Boyes [2013] EWHC 4027 (Ch) at para. 113). I accept this submission without hesitation. I would add to it that the less likely is an allegation, the more convincing the evidence will have to be to prove it.
18. For my part, I do not see value in analysing the factual findings of the cases which have been cited to me rather than their principles. The decision in each must inevitably be the product of the factual findings on the same clear principles which each applies.

Undue Influence relating to the Transfer Claim

19. Again, I do not see that there is any serious dispute as to the law applicable to this case. Mr Holbech on behalf of Niki primarily advances a case of presumed undue influence. Once that presumption arises, it must be for Andre to rebut.
20. In my judgment, the following two propositions are clear from Royal Bank of Scotland v Etridge (No 2) [2002] 2 AC 795 as to what will generate the presumption of undue influence:
 - 20.1. There must be a relationship where one party can exercise influence over another party which need not be one of dominance – I will refer to this as a relationship of influence;
 - 20.2. The transaction in question must call for explanation without which it must be presumed to be the product of undue influence.
21. As to the relationship of influence, a professional relationship such as that of solicitor and client would suffice but the relationship called for may be much less formal than such a relationship. In the case of an elderly parent dependent on her children for the administration of her affairs, the relationship with the children would suffice. We are looking for no more than a relationship in which a person can be influenced in view of the characteristics of the persons in question.
22. As to whether the transaction calls for explanation, it is necessary to consider all of the circumstances: in the case of a gift, the Court must consider to whom the gift was made and by whom and set that in the context of the particular relationship (eg professional such as solicitor or familial such as parent and child); the size of the gift relative both to the wealth and expected intentions of the donor in such a relationship are also of great importance; as to the expected intentions, a lifetime gift which does not divide an asset between the expected beneficiaries in the future in the fashion which might be expected may itself be a feature calling for explanation, depending on the circumstances of the case. So to exemplify, a generous gift to a solicitor by a client (eg a bottle of fine wine) at Christmas or perhaps on the successful conclusion of a matter may be completely innocuous. However, a substantial gift (eg of the client's principal asset such as her home) to that same solicitor with whom there is no family relationship obviously demands explanation. Where the case is between these extremes, the particular facts of the case in the context of the particular relationship will determine whether the gift demands explanation.

The facts

23. I have found it helpful to approach the facts in stages:
 - 23.1. Impressions of Witnesses
 - 23.2. Background matters: family history, Agni's characteristics & health
 - 23.3. Andre and Niki: description and gifts from Pani and Agni
 - 23.4. Pani's deathbed
 - 23.5. The Transfer of Hazelmead
 - 23.6. Pani's death to February 2012
 - 23.7. March 2012
 - 23.8. June – August 2012

The Witnesses – general assessment

24. Significant points have emerged in the course of hearing the witnesses which do not directly decide the factual issues but nonetheless do provide very useful insight into the reliability or lack of it of the testimony of some witnesses whose evidence conflicts. Although comparison of testimony with those contemporaneous documents and facts which I accept as proven must be the primary evidential tool of a judge, assessing the reliability of the witnesses is also an important tool for the Court. In the case of some witnesses, the points which have emerged do provide guidance on their reliability either negative or positive. I must therefore deal now with these points for each witness to whom this applies. Having said that, it has seemed to me important to stand back and ask whether these points are affected by the evidence as a whole – that exercise has added to my confidence that my views are correct. I also have reminded myself once again that the fact that I may have testimony from an unreliable or dishonest witness before me does not of itself determine the outcome of the claims. That outcome is to be decided by determining whether the party bearing the onus of proof has discharged it.

Niki

25. Niki was the second witness who gave evidence but hers is undoubtedly the principal witness evidence on her side and it is sensible to take it first. She was in the witness box for a little over two Court days and I have therefore had more than ample opportunity to assess her character and evidence. For reasons which I will explain, I find Niki to be a thoroughly dishonest and manipulative individual to whom integrity and truth are less important than achieving what she wants, even when she knows she is not entitled to it. Her dishonesty extends to:

- 25.1. Dishonestly making an application together with her mother to the District of Court of Limassol for relief to which she knew she was not entitled;
- 25.2. Swearing on oath to that Court to the truth of a written statement containing false statements of a critical kind which she knew to be untrue in order to make it appear that she was entitled to the relief when, in fact, she knew that she was not;
- 25.3. Procuring official documents to evidence a critical false assertion in the proceedings, namely that she lived permanently in Cyprus when she did not in fact live there.

These findings are based purely on Niki's own evidence to me though the finding that her conduct was dishonest is my own conclusion which I regard as inescapable from the admitted facts. I will explain this very clear conclusion before turning to the disputed facts.

26. Niki's explanations of her conduct also require mention as they well represent her evidence more generally. Niki was wholly unable to acknowledge that there was or even might be anything wrong in her conduct. She was wholly unapologetic and proffered different explanations at different times in her evidence. There was one theme of her explanations which recurred time and again: Andre was to blame and Niki had been acting on her "instructions" though, with regard to the first episode I am about to describe, this cannot be the case.

27. As for the first episode which I use as the clearest possible example on which to base my findings, it starts with the retaining of Mr Constantinides as a Cyprus lawyer on 26 or 27 March 2012 and the application to the District Court of Limassol made by Niki and Agni for Niki's appointment as administrator of the estate of Pani. This was made on the basis that Pani died intestate. Rolled into this episode is also the execution of what has been called a *Waiver or Renunciation*. By this document executed by Agni on the after of 28 March 2012 after the Court hearing, Agni renounced in favour of Niki the entirety of her interest in the estate of Pani. In effect, this document was a transfer of Agni's interest by way of gift to Niki which, on the basis that there was an intestacy, was a transfer of a one third interest in Pani's estate. On the basis of the evidence provided to the District Court of Limassol, this gift was valued at approximately €870,000.
28. Mr Constantinides gave evidence before me which was completely clear in two respects which I accept: first, that he asked and was told by both Niki and Agni that Pani had left no will⁹; secondly, that he told Niki in their first meeting on 26 or 27 March that to be eligible to be appointed as an administrator, she must reside in Cyprus permanently¹⁰ – this is one of the first things he said.
29. As for representing to Mr Constantinides that Pani had left no will, Niki's evidence was that she did not remember saying this but she did not challenge Mr Constantinides' evidence directly. In my judgment, Mr Constantinides's evidence is to be preferred in his recollection as any lawyer making an application to the Court on behalf of a party wanting to administer an estate obviously needs to know whether or not there is a will. Niki's own evidence was that she knew her father had left a will the statement which I find that she made was a lie. Niki's attempt to explain what seems to have been a straightforward lie is that the executors had renounced their right to probate. It appears to be true that the executors named in the will had renounced their right to probate¹¹ but I fail to see how this is the same as there being no will. There were beneficiaries named in that will who continued to retain an entitlement so that the disposition of Pani's estate was different from what would occur on intestacy. More people than on an intestacy had an interest in the estate. I can see no reason which can fairly be described as proper or honest why Niki did not tell her own lawyer the truth in answer to his question. The statement that Pani had died without a will was repeated in Niki's written statement to the District Court. That statement was sworn before the Registrar by Niki on 28 March 2012 so that this is an example of Niki lying on oath.
30. As for residence, Niki accepts that she knew that she needed to be a permanent resident in Cyprus to become an administrator. Her evidence was that she had already been told by Andre that she could not be an administrator because she was not permanently resident in Cyprus. According to Niki, Andre had *screamed* this at her earlier in March 2012¹² which was before her meeting with Mr Constantinides. Mr Constantinides also made this clear to her and the significance of his question as to whether she lived in Cyprus cannot have been lost on Niki.
31. Niki attempted in cross examination to justify her statements to Mr Constantinides (and later to the Court in her sworn statement) by saying that she was a Cyprus resident and she was someone who went away a lot to work in England. In my judgment, this was a

⁹ Note 6/12/2016 page 41

¹⁰ Note 6/12/2016 page 44

¹¹ E/2/74 & 75

¹² Note 7/12/2017 page 49

lie. Niki knew that she was not a Cyprus resident whether permanent or, indeed, in any other meaningful sense. She was a permanent resident in England where she had lived with her husband and children since 1995. She flew into Cyprus in mid March 2012 in response to Andre having told her that Agni's account at the Bank of Cyprus then in the joint names of Agni and herself had been transferred into new accounts in the joint names of Agni and Andre. By the end of March 2012, once she had done what she could in Cyprus (as to which I will say more in this judgment), she returned home to England and did not return to Cyprus once again until after Agni's death in August 2012 in order to move money from Pani's bank accounts which she controlled.

32. Niki's deceit as to her residence was not only of Mr Constantinides but also of the Mukhtar¹³.

33. The Mukhtar was the local official responsible for the area of Limassol in which Agni lived. Niki visited him on 27 March 2012 and she obtained a certificate from him as to her residence for the purpose of joining the electoral register¹⁴ and as to the heirs of Pani. This certificate could only have been obtained by Niki on the basis of her representation as to her residence in Agni's apartment. The purpose of obtaining this certificate was to present to the Court if needed to support her application to appoint her as administrator of Pani's estate. In my judgment, the seriousness of this lies not only in Niki's deceit but also its nature – it was procuring an official document to use as evidence which may be required for a Court process to make it appear that Niki's lie as to her residence was true.

34. The deceitful statements to the District Court of Limassol are important to recite.

35. On 28 March 2012, an application¹⁵ for the appointment of Niki as administrator of Pani's estate was made to the District Court of Limassol. Paragraph 1 of the English translation of the Application is as follows:

Herewith an application is submitted to the Court for providing to [Niki] ... from Limassol, Aghiou Andreou, 352 Panama Court, 3rd floor, flat 301 3035, Limassol ... the Documents for the administration of the estate of [Pani] ...

The address given for Niki was Agni's residence. The estate was estimated to be €2,625,000. The application continued to state "*the only ones who are entitled to benefit from the property of the estate*" were Agni, Andre and Niki. (This was only accurate on an intestacy for the provisions of Pani's will had other beneficiaries.)

36. The application was supported by a written statement of Niki – in English terms, an affidavit though with one material difference. The oath was actually taken and the truth of the statement was sworn to by Niki in person in the face of the Court - before the Registrar when the application was made¹⁶. I have already drawn attention to the statement which Niki knew to be false, namely that Pani had left no will. The affidavit described Niki as *from Limassol* but, when read in conjunction with the application reciting her address (Agni's apartment) and Niki's knowledge of the Cyprus residence requirement, must plainly be evidence which she knew to be false and which was intended to deceive the Court.

37. Finally in this episode, a guarantee was required by Court in the sum of €5,250,000 (double the estimated size of the estate) for Niki's performance as administrator. The

¹³ Mistakenly referred to in the Note of evidence as the Yaktar

¹⁴ G1/1/68

¹⁵ G1/1

¹⁶ Described by Mr Constantinides in paragraph 12 of his Witness Statement C/4/20

guarantee was given by Niki, her husband and Agni. The title of the document signed by all three of them was

MANAGEMENT GUARANTEE WITHOUT A WILL

As with Niki, her husband falsely stated himself to be *from Limassol*.

38. Much later, when Andre had discovered what had happened and challenged Niki's appointment on grounds including that she was not resident in Cyprus, Niki swore an affidavit¹⁷ in which she said *"In the last years I reside in Cyprus for most of the time. Recently I applied to be enrolled with the electoral registers."* She produced the application to join the Electoral roll *with confirmation from the mukhtar of my residing in Cyprus*. The statement as to her residence in Cyprus was nothing but a lie repeated again on oath.
39. The schedule of issues tackles what occurred in a very detailed fashion. Amongst the issues on which I have been asked to make factual findings is whether the application to the Court and form of consent to it were deliberately framed so as to mislead the Court into thinking that all of the heirs including Andre had consented. Whereas there may be much to be said that this was the case, not the least of which is Niki kept the application for and grant of administration secret from Andre until after Agni's death and after all of the bank accounts had been emptied, it is not necessary for me to decide this issue in these proceedings in order to reach a conclusion. The Court in Cyprus is much better placed than this Court to decide that issue and related matters such as whether Mr Constantinides was under a duty when going before the Court without notice to other interested parties to draw to its attention that Andre was not only an heir but had neither been served nor did she consent to the application. Mr Constantinides' view was that it was up to the Court to study the papers lodged very carefully, to deduce that the form of consent lodged was not the consent of all three heirs and then to decide whether Andre should be served. The professional conduct of Mr Constantinides may be part of the issue for the Court in Cyprus to consider but is not an issue for decision in these proceedings.
40. The second episode giving guidance on Niki's reliability as a witness arises from the following pleaded particular¹⁸ which Niki (who is the Defendant) gave of Andre (who is the Claimant) reposing trust and confidence in Andre:

6.2. The Claimant prepared two TR1s for execution by the Claimant, the Defendant, their late father, Panayiotis Iacovou ("Mr Iacovou"), and Mrs Iacovou, in which they were named as "Transferor". By one of those TR1s Hazelmead was transferred to the Claimant, the Defendant, and Mrs Iacovou, as tenants in common in equal shares. By the other TR1 Hazelmead was transferred to the Claimant, the Defendant, and Mrs Iacovou as to 50% for Mrs Iacovou, 25% for the Claimant, and 25% for the Defendant. Both of these TR1s were executed on 26 September 2011, on the day before Mr Iacovou's death, when he was fatally ill in hospital. Mrs Iacovou signed both TR1s, and acquiesced in the registration of the second of the two TR1s, at the behest of the Claimant, whom she trusted to deal with legal, tax and financial matters.

¹⁷ G1/1/60

¹⁸ A/4

41. I draw attention to the assertion that these forms of transfer were “*executed*” which must include execution by Pani. So far as there might be doubt, this was made clearer by paragraph 48 of Niki’s 1st witness statement signed by her on 28 August 2013. She said¹⁹:

[Andre] produced different versions of various Transfer and copies of the Transfers that were signed by our late father are exhibited at

42. The 6th Witness Statement of Niki signed on 2 December 2016 (shortly before the trial commenced) said in paragraph 3 that it was made to *set out the true position regarding Father’s signature on the transfer ...* It continued:

5. I refer to the 2 signed TR1’s of 26th of September 2011 signed by myself, Andre, my mother and father. In relation to my father’s signature I signed both TR 1’s on his behalf on the 26th September 2011 in my father’s hospital room at the Bishop’s Wood Hospital. Andre, my mother and Wilma as well as my father were all present.

6. I signed both Transfers on the advice and instructions of Andre, who told me that I could sign in the name of my father and on his behalf on the basis that he was of sound mind and agreed to the transfer, but was physically incapable of signing. Andre told me that I was entitled to sign on behalf of my father as I was also a signatory on his bank accounts. Before I signed the transfer with my father’s name, my father indicated his agreement to me signing on his behalf and I proceeded to sign both transfers in his name.

43. Andre says that she was not present when Pani signed the transfer. This, she says, is hardly surprising. She had only recently arrived from Cyprus and, being at the end of a chemotherapy course, was to say the least, not feeling very well. She had spent nearly the whole day of the day of her arrival with her father and, just like Niki, she was not in the room with him every moment on 26 September. The first she learned of the suggestion that Niki rather than Pani had signed was in this witness statement just before trial and she cannot say whether it is true that Niki had actually signed Pani’s name and procured the witness (Agni’s maid) to sign. She certainly did not give the advice that Niki was entitled to sign for Pani because she was a signatory on his bank accounts. Niki’s suggestions that signing for Pani was on *the instructions of Andre* was a lie. The transfer has actually been registered and Niki does not seek to have it set aside.

44. I do not regard it as necessary to decide whether or not Niki signed Pani’s name. If such a decision was required, evidence directed to it would be before the Court, probably including handwriting expert evidence. What, in my judgment, matters is the implication on the reliability of Niki’s evidence. If her 6th witness statement is true that her father did not sign the transfer but she did, her pleaded case and paragraph 48 of her 1st witness statement are false to her knowledge. The same is true vice versa. This is another example of Niki’s evidence being unreliable and not honest.

¹⁹ C/3 #48

45. Whilst dealing with this subject, even if Niki did sign Pani's name, I will record that I regard it as highly improbable that Niki did so on the advice and instructions of Andre, particularly when I take into account the supposed justification of this advice and instruction given by Niki - I accept Andre's evidence that she could not have given this explanation and she did not give it. This is an example of an invention by Niki in trying to point the finger of blame at Andre completely untruthfully for what she perceives to be her own advantage.

Yiannis Christodoulides

46. Yiannis is Niki's husband. My initial impression was of a much more measured and balanced witness than Niki although one whose personal knowledge (rather than what Niki had told him) of several of the critical events was limited. By way of example, he said that he drove Niki and Agni to meetings, such as that with Mr Constantinides and those with various banks, but waited in reception rather than going into the meeting. One exception is a meeting at the Bank of Cyprus at which Niki's written complaint against the Bank was discussed and which I shall have to consider later in this judgment. As will appear later in this judgment, I have found his explanation of what occurred at that meeting to be so improbable that I cannot accept it. The same is true of certain other incidents. There are two significant, more general reservations which I hold as to this witness. First, there is clear evidence in the form of a recording of a phone call²⁰ in which he has applied pressure to the husband of another witness for her to alter her evidence. That pressure was all the more unfortunate with the threats of *consequences* if the evidence was unchanged and of becoming *enemies* in the same breath as talk of families. It was taken by the witness who heard it as a threat of violence. In my judgment, even if the threat were not to be interpreted as a threat of violence, that pressure was a wholly improper interference with a witness. Secondly, I do not regard Yiannis as having told the truth to me in explaining this conversation. He said that it was not aggressive and people from Cyprus commonly shout in conversations. If I ignore the volume of the conversation, I cannot accept as truthful that this conversation was not aggressive. The terms of the transcript belie this.

Mr Constantinides

47. Mr Constantinides was in a difficult position in giving evidence to this Court whilst continuing to act for Niki in live proceedings in Cyprus and trying to protect privilege. He was somewhat defensive about some aspects of his evidence, specifically the short meeting on 26 or 27 March 2012 with Niki and Agni which dealt with three separate subjects but of which no attendance note was available, even if one was written²¹. In some respects, I am able to accept his evidence but in other areas I feel the need for caution, particularly if his evidence flies in the face of a great deal of testimony from other witnesses which I accept. One such aspect was as to Agni's understanding in that meeting of only 45 minutes or perhaps an hour – I accept his evidence that Agni was not shrewd, business like or experienced in financial matters but what he says of Agni's understanding does not sit comfortably even with Niki's evidence to which I come later.

²⁰ He or his wife had recorded this call allegedly because of her hearing difficulty

²¹ See Para 132 below

Mrs Georgiou

48. I found Mrs Georgiou to be a mature, sensible and reliable witness who did her best to assist the Court. She was readily able to distinguish between what she actually remembered and the conjecture of what was likely to be the case. Equally, she appeared to be able to distinguish between what Agni had told her and what she had learned from Niki. It would have been helpful if she had in her Witness Statement spoken not only of her social relationship with Pani and Agni but also of her rather closer friendship with Niki with whom she dines approximately monthly. However, in general, I accept her evidence.

Mr Antoniou

49. Mr Antoniou is an independent financial adviser and he has been described as a professional will writer. Approximately 20% of his work is connected to the preparation of wills. His evidence was that he does not prepare wills himself. He has been accredited in taking instructions for the preparation of wills and confines himself to taking instructions on what he calls a Will Pack, sending it off to his professional body which, in turn, sends back the will it has prepared for him from the questionnaire completed by him. Although I do not doubt Mr Antoniou's integrity, he had poor recollection of detail in connection with the material events. Nonetheless, what he did remember provides important if not critical pieces of the factual matrix, namely as to what Agni believed as to her assets at the time and her intention in making a will. It also provides evidence of the part Niki played in the preparation of the will.

Mr Costas Constantinou

50. Mr Constantinou was the witness to what is said to be Agni's signature on a document²² bearing date 18 June 2012 by which it was stated that Agni wished to give the sum of £167,796.19 to Niki. Mr Constantinou was an unsatisfactory witness who appeared unwillingly under the compulsion of a witness summons. His evidence spanned the short adjournment and, in addition to the normal warnings to a witness giving evidence, he was told to return at 2pm. He did not but returned at 2.30 saying he had made a "wrong turn". I was told he had sent an sms message to Niki's solicitors over the adjournment demanding more than the conduct money he had been proffered which he thought was inadequate. He was visibly uncomfortable in his demeanour when questioned about important details. His evidence as to certain aspects of the case with which I shall deal below needs to be assessed with great caution. It is my assessment of the substance of his evidence which explains my description of him as an unsatisfactory witness. I make this assessment when I come to deal with the document he witnessed.

Mr Panayiodou

51. Mr Panayiodou was for many years the solicitor who acted for Pani. I found his evidence useful and reliable and I have no hesitation in accepting it though its substance did not go to the heart of the case.

Mrs Panayiodou

52. This witness gave evidence of a single episode in November 2011 when she visited Hazelmead with her husband and it is the only occasion on which she met Agni. The nature of the episode is such that she has a clear memory of it and I accept her evidence in its entirety.

Andre

²² D/281

53. Andre was a calm and sensible witness who dealt with all questions some of which were difficult and personal put to her in a convincing fashion. Her evidence obviously needs to be compared to the contemporaneous documents but there is nothing in that process or her evidence in general which causes me to doubt her evidence. I would observe that although Andre is able to give evidence about what she saw, much of her case must inevitably depend on what was going on between Niki and Agni which Andre did not see or hear. In this respect, evidence other than Andre's is important.

Aris

54. Aris had very little material evidence to give and I do not find his evidence important. I will only say that my view is that the two attacks which were made on him by Niki were not justified. The first was as to a Facebook discussion referring to a pot of gold at the foot of the rainbow. I accept that this discussion had nothing to do with Agni or the family's money. I also accept that Niki's attack on him in her unpleasant e mail of 24 July 2012²³ is without any foundation. He was a caring son in law who had visited Agni to take bread and milk – she was living alone with Vilma and was not at all well. Finally, I do not think it is necessary or desirable to look at the substance of the complaint made by Niki against him to the Institute of Chartered Accountants of England and Wales which has been dismissed both on initial assessment and on review. It may be true that this was another wild and disreputable allegation by Niki but it is preferable to concentrate on the wide ranging matters truly before me.

Nektaria

55. Nektaria was Agni's niece and she was close to Agni who treated her as a mother once Agni's sister died. Agni undoubtedly spoke to her of some of the things that troubled her and I accept Nektaria's report. She did not display any bias of loyalty to one or other sister rather than to Agni. I found her to be a decent and upright young woman whose evidence I have not the slightest hesitation in accepting. She did not speak English and her evidence was taken through an interpreter. Although she had some very basic ability to read English, she could not and did not read texts or e mails in English. I should also note of her that there was considerable distraction with caring for a very young child in some of her conversations with Agni and that same distraction applied to her husband.

Mr Pantelli

56. I found this witness, like Nektaria, his wife, to be a thoroughly decent and upright witness who did his best to assist the Court. It is highly unfortunate that there was an attempt by Niki's husband to pressure him to persuade Nektaria to change her evidence and I accept that his interpretation of the consequences which were threatened were potentially of violence and families becoming enemies.

Background – family history and Agni's characteristics

57. Both parties have rightly drawn my attention to the family background which I will endeavor to summarise. In this regard, such limited areas of dispute between Andre and Niki as exist matter little, if at all.

58. Pani and Agni were born in Cyprus in the 1930s. They married and had two daughters whilst still in Cyprus – Andre born in 1960 and Niki born in 1964. A few months after Niki's birth, the family migrated to England.

²³ D/286

59. Pani and Agni remained in England for nearly 40 years before returning to live permanently in Cyprus. Pani became an insurance broker and also invested in property, both in the UK and in Cyprus. He was a successful businessman and, as will appear below, accumulated significant assets. It is clear from the evidence that he was shrewd, strong minded and forceful. He knew what he wanted and set about achieving it determinedly. There seems to be no dispute that Pani was not only paternalistic even after his daughters' marriages but also attempted to be controlling in his dealings with his daughters. This inevitably gave rise to a degree of friction at times with his daughters, both of whom had been raised and educated in this country, but his characteristics do not seem to have prevented the continuation of a loving bond between him and his daughters.
60. Agni was a full contributor to the success of the family. She not only looked after the home and brought up her daughters but also went out to work. Work on the production line in a tobacco factory is an example of the kind of work she did. The language spoken at home was throughout these years always Greek.

Agni – Language and Literacy

61. Despite living in England for so long, her spoken English remained poor at best – Andre has described it as “pidgeon English” which Niki seemingly accepts and all witnesses have confirmed to be accurate. As for Agni's written English, although it is apparent from her will²⁴ that she could sign her name in English characters, the parties are agreed that she could not read English in any meaningful fashion so that she could not have been expected to be capable of reading and understanding either the transfer by which the disputed disposition of her interest in Hazelmead was made or even her own Will. She was dependent on others to read them in English and translate them orally into Greek for her.
62. As for Agni's literacy skills in Greek, no evidence has been placed before me save that she grew up in a village and does not appear to have undertaken education of any kind beyond school. My own interpretation of the evidence is that Agni could probably read Greek – Andre's e mail²⁵ to Niki dated 18 June 2012 is an example where it states that if Agni's eyesight was to be improved *maybe if she can see she will then attempt to read instead of falling asleep*.

Agni's business skills

63. The witnesses are all at one that Agni, in contrast to Pani, was neither shrewd nor experienced in any way in business matters. During Pani's lifetime, that is until less than a year before her own death, Agni always relied heavily on her husband to look after not only all family business matters but also matters of domestic administration. Pani therefore paid all domestic bills and helped Agni with matters such as setting up her own bank account. I have noted that one of the medical reports records the effect on Agni of the death of Pani who was, in its own words, her *carer*.
64. Without in any way understating the contribution to the success of this family of a decent, hard working and upright woman who loved both of her daughters, I can fairly describe Agni as completely unsophisticated. This impression is fortified by what I will say below as to Niki's own contemporaneous description to the Bank of Cyprus in a letter of complaint.

²⁴ Signature at E/79

²⁵ D/273

Agni's health

65. Agni's health had been poor over a prolonged period of time. I have found a useful summary to be in a report²⁶ of Dr Anastassiades dated 15 February 2012 shortly after Agni returned to Cyprus. Agni had a kidney removed at age 19. She suffered chronic renal failure, chronic myeloid leukaemia as well as other conditions. She was obese, had difficulty in moving and was suffering a number of problems at that time for which she was referred for further investigations. Later records²⁷ indicate investigations continuing in April and May with an admission to hospital in Cyprus with heart issues in May and urgent hospital visits in early June by this time noting, amongst other things *sleep reversal*.
66. Agni travelled (in the company of Vilma, her housekeeper) to England on 16 June 2012 for a family wedding. Unfortunately, Agni's health did not improve in England and investigations of serious health issues continued. I need only note two aspects. First, Agni saw her GP with Niki present on 25 July 2012 and asked her GP to certify she was "not mad"²⁸. The GP's opinion was that she was logical and coherent and was of sound mind. Secondly, on 1 August 2012, following a call to Niki from the specialist doctor who had organized blood tests earlier that day, Agni attended A&E and was admitted into intensive care where she was recorded as not "wardable" over several days.
67. The doctor's notes²⁹ of 1 August record that Niki was told that blood tests results showed severe dehydration and alarming deterioration in renal function. "*I advised to take her to nearest A&E TONIGHT to be admitted as otherwise she is likely to pass away in next few days.*" From the point of view of chronology, this was two days after the session with Mr Antoniou, the will writer and 6 days before she signed her will in hospital just before she died. Agni's death was caused by a heart attack.

Hazelmead

68. In 1979, the family home, Hazelmead, Arkley near Barnet, was purchased in the sole name of Pani. By a Deed of Trust dated 9 April 2002 and made between Pani and Agni, Pani declared that he held Hazelmead on trust for himself and Agni as beneficial joint tenants. Thereafter, transfers apparently executed (though whether or not all registered, I do not know) creates a tangled picture as to the chain of title particularly as to beneficial ownership. I do not need to resolve that history completely for the two issues in these proceedings for which Hazelmead is in play – namely the Transfer Claim and, perhaps, Niki's reliance on transfers executed on Pani's deathbed as a particular to establish that Andre advised Pani and Agni so that there was a relationship of influence with Agni. In short, the following seems to have been the position:

68.1. By a transfer³⁰ dated 4 October 2006, Pani and Agni transferred Hazelmead to themselves, Andre and Niki as joint tenants – it is not apparent from the office copy entries which are before me whether or not this transfer was registered but, in my judgment, it does not matter.

68.2. By a Declaration of Trust date 5 December 2006³¹, Pani, Agni, Andre and Niki declared that they held Hazelmead for the benefit of Pani and Agni. There is some

²⁶ D275

²⁷ D276 onwards - Andre sent these with her e mail dated 18 June 2012 D/273

²⁸ H/19

²⁹ H/2/51

³⁰ E/1/4

³¹ E/1/8

dispute about this Declaration of Trust. Andre says her father decided to cancel it and she thought that her parents had destroyed it. Niki says that this was drawn up because there were matrimonial difficulties between Andre and Aris, her husband, and Pani did not want there to be any possibility that any of the family's assets might fall into his hands on a divorce. Andre says this might have been Pani's motive but she was never told that. I do not regard it as necessary to reach any conclusion on this.

68.3. By a transfer³² dated 26 September 2011 which was executed on Pani's deathbed, Pani, Agni, Andre and Niki transferred Hazelmead to Agni, Andre and Niki recording that they were to hold the property on trust for themselves as tenants in common as to 50% to Agni, and as to 25% to Andre and as to the last 25% to Niki. This transfer was registered. Other transfers executed or partially executed on the same day contain similar dispositions of legal ownership but record different provisions as to beneficial ownership.

68.4. Office copy entries at HM Land Registry as at 1 March 2012 record that Pani, Agni, Andre and Niki were the Registered Proprietors of Hazelmead.

Andre and Niki -brief personal description and gifts to them (including Hazelmead)

69. Andre and Niki were both educated and went to university in England. A few more details are helpful:

69.1. Andre studied law and became a solicitor and in 1985 married Aris Marcou, a chartered accountant. They have three children. Andre stopped practising in 2001 and went with her children to live permanently in Cyprus in 2003. Her husband, Aris, retains his UK accountancy practice and travels regularly between the UK and Cyprus. Unfortunately, Andre was diagnosed with non-Hodgkins lymphoma and, during 2011, she underwent chemotherapy treatment in Cyprus up to a few days before her father's death in England on 27 September 2011. There can be no doubt that this left her feeling most unwell at the very time when she learned that her father was dying. She immediately travelled to England (against medical advice) arriving on the morning of 26 September.

69.2. Niki took a degree in Business Studies and has worked in various businesses of her own, some of which seem to have been associated in some way with her father. She married Yiannis Christodoulides in 1989. He had studied law at Athens University. They have two children. Regrettably, Niki has also suffered from cancer though no further details have been placed before me. Niki went to live in Cyprus in 1988 when her husband opened a night club. After the club had been destroyed in an arson attack, she returned permanently to the UK in 1995 and, subject to the potentially contentious subject of what occurred in March 2012 when she made statements and obtained evidence that she was resident in Agni's flat in Limassol for the purpose of applying to be appointed as administrator of Pani's estate, nothing has changed regarding her residence in England. I must deal with the March 2012 events later in this judgment.

³² E/1/16

70. I have mentioned already that over the years there was friction between Pani and his two daughters and their husbands. It is unnecessary to examine this closely or apportion blame rather than to note that it existed. The material extra point which must be noted is that the friction was not only between Pani and his daughters but also between Andre and Niki themselves. However, by the time of Pani's death, Andre and Niki were speaking to one another and appeared to be acting cooperatively and harmoniously with regard to the care of their parents and their business and property affairs. The evidence of Niki has made it clear that she still harbours deep resentment of Andre. Although Andre acknowledges the existence of friction, no similar resentment of her sister was evident.
71. In spite of the friction, Pani and Agni were parents who made generous gifts to their daughters, albeit that the gifts were less than straightforward and there seem to have been strings attached usually if not always.
72. In 2003, Pani and Agni returned permanently to live in Cyprus. They made their home in their flat at Panama Court in Limassol, which was owned by one or both of them. Indeed, the whole block was built for them and there were at least two business units in it within Pani's or their ownership.
73. Pani and Agni decided to give various of their UK property interests to Andre and Niki. Whilst he was alive, Pani always took the lead in this, but Agni appears to have been happy to go along with his wishes. Pani always asked Andre to prepare the relevant conveyancing documentation. The 2006 transfer of Hazelmead recited above is an example(E/1/4-5). The condition imposed by Pani orally was that Hazelmead should continue to be available for him and Agni whenever they visited London. There is no doubt that Andre and Niki agreed with this. Andre had already moved permanently back to Cyprus (in 2003) while Niki and Yiannis had (in 2005) had purchased their present home in Essex.
74. On the same date as the transfer of Hazelmead, 4th October 2006, Pani and Agni also transferred the entirety of their freehold interest in 450 West Green Road, London N15 3PT, to Andre and Niki as tenants in common in equal shares. Again, Andre prepared the TR1. The condition of the gift imposed by Pani was that the rental income (from the residential and commercial tenants at the property) should remain available to be paid to himself and Agni should they require it. Andre and Niki agreed to this and the rents were accumulated. This condition was imposed entirely orally.
75. A few years later, on 8th January 2009, Pani gave his 921,240 shares in Tiebridge to Andre and Niki equally. That company owned two rental properties, 217 Lordship Lane, N7 (a house) and 194 Seven Sisters Road, N4 (a shop with flats above).
76. I have not recited the gifts made exhaustively. What appears from the pattern is that a gift to one daughter would invariably be matched by a gift to other daughter which was roughly equal though it would not necessarily be made at the same instant of time (eg wedding presents).

77. I have already described the dispute as to whether the transfer of Hazelmead was made either on the afternoon of Pani's death (Niki's case) or in early October (Andre's case). It is material to note that apart from this disputed transfer, Agni also made gifts of her remaining UK property interests to her grandsons. These were the freehold interests in two properties (known as 33 Chatsworth Road and Kilnwood Court) which she had purchased as investments for £7,905 in 1993 and which yielded annual ground rents totalling £1,225. Agni gave one of the ground rent properties to Andre's son George, and the other ground rent property to Niki's son Christian (who was then under 18). Both Andre and Niki were involved in these discussions, Niki chose which property she preferred for her son and it was agreed that Andre would prepare the necessary TR1s. These dispositions are not in dispute by Niki. Nor is the entirely oral arrangement that although the titles to the properties were being transferred, Agni was to continue to have the rents of them paid to her during her lifetime. Aris was collecting and managing these properties and accounting to Agni for the rents.
78. The significance of these undisputed transfers is that they do appear to be evidence of Agni having the same desire as Pani to dispose during her lifetime of her properties by giving them to her daughters or their families roughly equally. Andre relies on this as evidence of Agni's similar intention in relation to Hazelmead.

Pani's Deathbed

79. I do not regard it as either necessary or desirable to decide whether Niki is telling the truth in her 6th Witness Statement that she signed Pani's name because he was physically unable to do so in his dying state. What I do decide is that if she did so, that fact was unknown to Andre prior to the service of Niki's witness statement just before the commencement of the trial. I also find that Niki's explanation of why she signed Pani's name is untrue. It would be easy to rest this conclusion on the basis that having seen and heard the witnesses give evidence, I prefer the evidence of Andre to the evidence of Niki. That is accurate but it seems to me to be important to examine both Andre's and Niki's evidence more closely as I am conscious that as a retired solicitor, albeit not one specializing in litigation, a court room may be a much less alien environment to Andre than it is to Niki. Probability is itself an important evidential tool available to choose between conflicting evidence.
80. Pani was plainly concerned when he knew that he had only days left to live to do his best to sort out his financial affairs. It was not only the transfer of Hazelmead which was a burning concern to him but also trying to get his bank accounts into a form which facilitated Agni drawing on them. Niki was busily engaged in communication with the Bank of Cyprus which had approximately €600,000 on deposit and even received a fax at the hospital as part of the process to try to add her as a signatory to the accounts. The intention according to Niki was not to change ownership of the accounts but administrative convenience. This is wholly understandable as Agni was regarded by Pani and, in my judgment, by both of his daughters as incapable of dealing with administering the substantial bank accounts by herself.
81. Andre had a concern as to whether Pani was capable of understanding what he was doing. In my judgment, this was dealt with by her responsibly. Enquiry was made of Pani's doctor who advised that he was capable. A letter recording this which Andre thought (prior to disclosure) existed was actually produced by Niki on disclosure,

thereby confirming the accuracy of Andre's memory. When it comes to the extraordinary story told by Niki that she signed Pani's name on the transfer on Andre's *advice and instructions*, this must either represent a deliberate lie by Niki or by Andre.

82. Niki explains in her 6th Witness Statement that Andre *told me that I was entitled to sign on behalf of my father as I was a signatory on his bank accounts*. I find this so improbable that I do not believe it. Niki is an intelligent and educated woman who was adept in being able to distinguish between concepts of ownership of a bank account and being signatory for administrative convenience, regardless of what the contractual documents might indicate. In my judgment, she was well able to understand that being a signatory on a bank account is a very different thing from being authorized to sign documents not related to the bank accounts. Indeed, she was not only able to understand this but, in my judgment, did understand it. This is not only an improbable explanation but when the characteristics of Niki are considered and I add to them the dishonest conduct of Niki which I have found elsewhere in this case, I have no hesitation in preferring the evidence of Andre, which I found to be convincing.

83. There is another aspect of the deathbed events on which I must make an observation – namely the perceived characteristics of Agni. Pani, Niki and Andre all treated her as vulnerable and, in my judgment, rightly so. Although I do not accept that Andre was advising as a solicitor at this time or even giving legal advice informally, it seems to be that both of the daughters were assuming the role of looking after their mother's affairs for the future.

Execution of Transfer of Hazelmead

84. In my judgment, Andre's evidence as to when and how this transfer was executed is to be preferred and I accept it.

85. Niki's case that Andre came to Hazelmead on the afternoon of the very day that her father died with the transfer form and pressed her mother to execute it that very day seems to me to be highly improbable. I accept that Agni was likely to have been in a state of shock on that day and it would have been completely inappropriate to press Agni to think about the ownership of Hazelmead or even IHT on that day. If Andre had done what would seem to me to be such a cruel, unfeeling and inappropriate thing on that day, my view is that Niki can be expected to have stood up to Andre most forcefully. Niki did not do that but signed the transfer herself. Although the evidence of Mr and Mrs Panayiodis persuades me that Niki was insensitive in the way she talked about having got the house from Agni in front of her, I still think that even she would have not countenanced Andre pressing Agni to give away her interest in Hazelmead before Pani was even cold.

86. There is a small detail in which Niki and Andre are not at one as to what happened on 27 September 2011 – the detail of whether Agni went out to eat with Andre and Aris or whether there was food at home in Hazelmead. Taken alone, this might matter little but it is a detail as to which Andre's recollection has again proved right. When her account was challenged, she was able to produce the bill from the very restaurant in which the party ate on that sad day.

87. In my judgment, Andre's version of when and how the transfer of Hazelmead was executed by Agni, namely in early October between the time of Pani's funeral and Andre's return to Cyprus is much more probable before I even take into account my view of Niki's character and the unsatisfactory nature of her evidence. I accept Andre's version.

88. There is a caveat. Whereas I accept that Andre did not give legal advice to Agni and certainly did not pressure Agni to execute the transfer by threats of the consequence of the house being swallowed up in tax, I think that it is undoubtedly the case that Agni would have looked to both of her daughters rather than just one of them for guidance as to what to do. Even though I can readily accept in the light of the pattern of making gifts previously and of its continuation with the gifts to the grandsons that Agni's desire was to give Hazelmead to her daughters, it is inescapable that an elderly person of Agni's characteristics of vulnerability would be likely to have been influenced by the guidance, positive or negative of her daughters. Although I would not hold that there was a relationship of influence with Andre as a solicitor or because she gave or had previously given legal advice, Agni's relationship with both daughters (together or severally) does, in my judgment, clearly amount to a relationship of influence for the purposes of considering the first question in determining whether a presumption of undue influence arose.
89. There is another aspect of the transfer of Hazelmead with which I must deal before turning to the second question. Niki asserts that the execution of the transfer was conditional upon the promise of Andre and Niki that Agni could stay there whenever she wished for the rest of her life being reduced to writing and signed by both of them. The promise was never reduced to writing and never signed by Andre or Niki and therefore, according to Niki, the transfer should never have taken effect.
90. It is common ground between Niki and Andre that Agni was to be entitled to stay in Hazelmead whenever she wished for the remainder of her life. Although not explicitly discussed, Hazelmead could not be sold or rented during Agni's lifetime – this is implicit in the promise. It is completely unsurprising that such a promise would not have been reduced to writing instead of being left as an oral understanding which all parties would have trusted one another to perform. Leaving important oral promises like this unwritten was exactly how Pani had behaved (relating to the transfer of shares in a property holding company to both daughters) and how Agni herself behaved in relation to the transfer of title to the ground rent properties to her grandsons, despite which she was still entitled to receive the rents. This arrangement can actually be seen to be working from the evidence albeit that in 2012, Agni thought quite wrongly that Aris had pocketed £1,000 rather than paying her the full amount he had collected.
91. Apart from it being unlikely that the arrangement was to be reduced to writing, the correspondence convincingly demonstrates that Niki has invented this allegation months after the event:
- 91.1. Niki's e mail³³ to Andre of 14 May 2012 contains the following on the subject (some while after Niki had written to the family solicitor instructing him to stop the process of registration):
- have spoken to savvakis [the solicitor] today with regards to [Hazelmead]. My concerns are if property in our name how can we protect mum with regards no force of sale or rental while she is alive. If we do a paper on the side for her is it valid or legal, i just need assurances that whilst we are doing this to avoid the level of tax cos we are going to get hit anyway unless she clears 7 years, but that she is safe with her choice of living in it for her lifetime.*

³³ D/256

....

I am not delaying for any reason but for the confusion of the whole damn thing and getting it right from the beginning.

This was the debut of the suggestion of a signed side letter. The way in which Niki herself put it in her e mail is completely inconsistent with what Niki came to allege later. It is also instructive to see that as Niki explains the point, the issue is one of her own and not her mother.

- 91.2. The next iteration by Niki is in her e mail³⁴ dated 1 August 2012. I note the date as falling between the instruction of the will writer on 30 July and her mother being most unwell later that day causing her to be admitted to intensive care in hospital. It seems very unlikely that Agni's condition had developed suddenly and this appears confirmed by what Niki said:

I have been discussing with mum the benefits of transferring [Hazelmead] to you and me 50/50..... I think the best way forward for this and is also in both our interest to get [Hazelmead] sorted, is to both agree to sign a letter that neither of us will rent or sell her home whilst she is alive. This will give her peace of mind and take away her anxieties that seem to be causing her great distress and breathing problems.

- 91.3. The final iteration before the allegation in these proceedings is in Niki's e mail³⁵ to the family solicitor dated 5 August 2012:

I am re-confirming that due to personal reasons my mother ...and myself are not willing to transfer the shares of the property at this stage. Therefore under no circumstances are any papers to be filed that may have previously been signed, without the signatures of both [Andre] and [Niki] stating and agreeing that whilst [Agni] is alive, neither of us will rent or sell the property. Whilst this document has not been forthcoming to date, me and my mother refuse any further transfers. Any papers submitted to the contrary will be dealt with legally as fraud.

92. In my judgment, there is not the slightest suggestion in these e mails written by Niki herself that there was the conditionality she now alleges. In my judgment, this is another lie by Niki to attempt to manipulate the truth to suit her.

93. I will at this point deal with the suggestion that the transfer of Hazelmead calls for explanation. In my judgment, it does not but is exactly what I would have expected Agni to do. The following is material:

- 93.1. The gift of Agni's 50% interest in Hazelmead was to both of her daughters in equal shares – it was not a disproportionate gift to only one of her daughters who had a relationship of influence with her. Both had that relationship. This is quite unlike the cases of gifts to professionals which call for explanation. It is also quite unlike cases where there is benefit conferred on a single expected future beneficiary (who has a relationship of influence) when others receive nothing.

- 93.2. The gift is exactly what I would expect to occur from the pattern of gifts established by the evidence. So, for that matter, is the oral promise of entitlement to occupy Hazelmead.

³⁴ D/291

³⁵ D/293

- 93.3. The size of the gift may be large but size must be considered relatively to the then assets of the donor. I can do no better in this regard than to quote what is recorded in a letter dated 12 December 2012 from Dr Pelendrides to Niki's solicitors. It refers to Agni's consultation with Dr Pelendrides on 25 July 2012 in the presence of Niki in which the doctor was asked to certify that she was "not mad". The doctor recorded the following:

She [Agni] told me that her late husband had left her £1,000,000 and houses in Cyprus and England. She also said that she and her late husband had advised their daughters to love each other and solve any problems they might face amicably.

Agni was therefore hardly leaving herself short of assets when she gave away her 50% interest in Hazelmead as her summer home to her daughters. Andre was probably correct in telling Agni that she had enough money to live on for 40 years. This reflected the relatively modest lifestyle of Agni.

94. Mr Holbech cross examined Andre on what would happen if Agni needed residential care as she got older – would not Agni need every penny of her money? Andre's convincing answer was that in Cyprus, parents do not go into residential care when they need to be looked after, they go to live with their children. I am entirely satisfied that this is correct. Andre and, for that matter, her husband Aris would willingly have accommodated, cared and provided for Agni. For all of her failings in other respects, my judgment is that Niki and her husband would have done exactly the same. This is simply not a good point in the particular and unusual circumstances of this case.
95. Niki advanced another line of attack on the transfer so as to suggest it called for explanation. As she had advanced in the correspondence, Hazelmead could have been sold or rented whilst Agni was still alive. In my judgment, there is nothing in this point. First, Andre and Niki were already trustees and beneficial owners of a share of Hazelmead so each would have had the right to apply to the Court for a sale. Secondly, the only change in risk from the transfer is that Agni no longer had a direct beneficial interest in the proceeds of sale Hazelmead rather than a right to occupy for life. Given that both daughters were the trustees so that there could be no sale or letting without the consent of both of them or an order of the Court, the point must amount to a fear that the Court would lack any shred of sense, the more so when the promise which had been agreed was considered. In my judgment, this point is completely theoretical and I reject it.
96. I therefore hold that the transaction was not one which demanded an explanation and, despite the relationship of influence which I have found, does not generate a presumption of undue influence.
97. Before passing from this, I cannot help noting that the undue influence point is only of significance if Agni's Will is upheld. In this event, Agni's share of Hazelmead will pass to Niki. If Agni's will is not upheld, there will be no practical difference between what occurs if Niki and Andre have equal shares in Hazelmead by reason of the transfer and a division on intestacy of Agni's 50% share.

Pani's death to early March 2012

98. With regard to Pani's bank accounts in both England and Cyprus, they appear to have been transferred into the joint names of Agni and Niki. Taking the Bank of Cyprus as an

example, the accounts were capable of operation on the signature of either Agni or Niki. The bank mandate indicated that on the first death, the survivor was entitled to the account. Despite this, Niki's evidence has been that there was no change of ownership of the accounts. They belonged to Agni and Niki's name was on the accounts purely for administrative convenience.

99. It is necessary to mention where the parties were in this period:

99.1. Niki remained at home in England although she went on holiday from time to time, something which attracted Agni's attention as to how she was paying for it.

99.2. Andre returned home to Cyprus in early October and came back once again for the mass celebrated on the 40th day after Pani's death.

99.3. Agni remained at Hazelmead until Christmas which she spent with Andre and her family at their holiday home in Austria. She returned to Hazelmead until 9 February 2012 when she went home to Cyprus together with Vilma, her housekeeper/maid.

100. In February 2012, Andre and Niki were discussing by e mail and telephone the appointment of administrators for the estate of Pani in Cyprus – amongst other things, there was real estate in Cyprus which needed to be dealt with. Andre had suggested Mr Papantoniou but Niki said she might wish to use someone in Limassol rather than in Nicosia and suggested two lawyers³⁶. Andre spoke to one and was favourable in her report and seemed willing to instruct him³⁷. There would appear to be nothing abnormal in the interactions at this stage which seemingly show cooperation between the sisters. Whether or not this was genuine on the part of Niki must be a matter of doubt in the light of what I now turn to describe.

March 2012

101. The events of March 2012 are critical in understanding this case and I must deal with them in detail. They are at the heart of the factual disputes between the parties.

102. Agni needed a new debit card to draw on her account at the Bank of Cyprus. Andre and Niki both say that they arranged for Pani's brother, Christakis, to take Agni to the bank in Limassol to collect the card. It does not matter which.

103. At some time before 5 March 2012, Christakis took Agni to the Bank of Cyprus. Whilst at the bank, Mr Tsingis³⁸ and Mr Michalakis, two members of its management team spoke to Agni. What was said to Agni by them is in hot dispute though neither sister was present to hear it and there is no direct evidence from the bank or its employees. There seems little doubt that what was said upset Agni.

104. According to Andre, she learned from Agni of her visit to the Bank of Cyprus when Agni visited Andre at her home in Nicosia on Monday 5 March. Agni had not understood what had been said to her by the Bank staff. She appears to have understood that the Bank were concerned that Agni did not properly understand what had occurred with her account the previous December. Agni told Andre that Niki had added her name to Agni's accounts in the UK in the previous December to help her manage her money. A telephone conversation between Andre and Niki followed and, although its content is in dispute, it does not appear to be in dispute that amongst the things discussed was that Andre's name could be added to both the UK and Cyprus bank accounts. Niki says this changed after 9 March because Agni no longer wanted Andre on those accounts.

³⁶ D/208 1 March 2012

³⁷ D/209 5 March 2012

³⁸ Mistakenly referred to at times in the Note as Singuss

105. The conversation between the sisters on 5 March seems to have been cordial. After it, Andre wrote her e mail³⁹ of 5 March to Niki in perfectly friendly terms as to the way forward in dealing with the administration of Pani's estate, dealing with the registration of the transfers of Hazelmead and asking for details of the UK bank accounts. She said *Please arrange to include my name ...* and concluded by telling Niki to enjoy Budapest where she intending to go for a weekend away shortly thereafter. The incident in the bank was not significant enough to get a mention.
106. On Wednesday 7 March, Andre and Agni together attended the Bank of Cyprus in Limassol and saw Mr Tsingis and Mr Michalikis. I will first record Andre's position and will then recite Niki's position which is found in the contemporaneous correspondence. Andre says:
- 106.1. Mr Tsingis explained that there had been a €600,000 fixed term deposit account in the names of Pani and Agni which was broken in December 2012 approximately one month before its maturity date in January 2012. This had resulted in a penalty. This was done on instructions signed by Agni. He had telephoned Agni who was in the UK to see whether she understood that the €600,000 fixed term investment was being broken early and the proceeds were going into the joint names of Agni and Niki. He was not sure that Agni had understood this. Niki had apparently spoken on the telephone and told the bank that money was urgently required for medical expenses. As to the dealings after that, €500,000 of the money had been immediately reinvested in a further 3 month fixed term account expiring on 8 or 9 March 2012. The remainder was not withdrawn but left in a current account and most was put into the same fixed term deposit in February 2012.
- 106.2. Mr Tsingis explained that he had previously asked Agni if she understood that if she died, the money in the account would belong to Niki. (I comment that the bank were right that, as between them and the account holders, the account would belong to Niki if Agni died and Niki survived her. Niki has said that putting her onto the account jointly with Agni was not intended to change the ownership of the money in the account and was done for pure administrative convenience. I accept this as well as Mr Holbech's submission that the bank mandate would not have altered the ownership of the money as between Agni and Niki. However, this did not affect the correctness or propriety of what the bank told Agni. It is true that Niki could walk in to the bank on the moment after Agni's death, withdraw every cent and give the bank a good receipt for the money.)
- 106.3. Mr Tsingis raised the subject of diversification of assets. Specifically, there was already a bank crisis in Greece and rumours of an impending one in Cyprus (it arrived the following year) and the fact was that investor protection was limited to €100,000 per account holder.
- 106.4. It appeared that the fixed term investment made the previous December matured in a couple of days. Andre and Agni therefore arranged to return two days later on 9 March when €400,000 would be withdrawn in two tranches of €200,000 and be deposited in other banks in order to enjoy full protection for Agni's money. €180,000 or thereabouts would be left in the Bank of Cyprus.

³⁹ D/209

107. It is convenient to interject to deal with the subject of the breaking of the deposit in December 2011 before proceeding with the story. The bank statements⁴⁰ produced on disclosure indicate that the deposit of €600,000 initially became €596,819.86 with the impact of the penalty. The bank did refund €1,232.36 of this penalty – still leaving at least €2,000 lost and probably more because I have not seen a cent of interest credited. I note:

107.1. Andre says that there was no obvious reason for the deposit to have been broken prematurely – this seems to me to be incontrovertible (though Niki does dispute it) because no money was actually withdrawn and no proper explanation has been given of why a significant penalty should have been taken in order to break the deposit early.

107.2. Niki disputes Andre's understanding from Mr Tsingis that Niki had said the money was required urgently for medical expenses. She says merely that Agni had a need to have some money to which she could resort.

107.3. Andre is right that this does not explain why other money in the estate (some hundreds of thousands of pounds) could not be made available and why it justified taking this step immediately rather than waiting until after Agni returned from her Christmas holiday in Austria with Andre.

107.4. Andre says and, I think Niki probably does accept, that the breaking of the deposit was something managed and orchestrated by Niki, albeit obtaining Agni's signature. In my view, it was entirely beyond the capability of Agni to be dealing with the bank in this way and she was dependent on Niki in this respect who either was or became at a similar time a joint account holder with Agni.

108. I regard this transaction as lacking any sensible explanation and it adds weight the suggestion that the purpose of breaking the deposit prematurely was to transfer the money into the joint names of Agni and Niki which then occurred and could not have occurred without breaking the deposit.

109. I return to the events of March 2012.

110. After the meeting on 7 March at the Bank of Cyprus, Andre discussed matters at home with Agni. (Niki was by this time either in Budapest or on the way there and one of the things I have noted and accept is the evidence of Nektaria, as well as Andre that Agni had concern about whether Niki was using Agni's money to pay for her holidays.) Andre says that she asked Agni if she wanted the new, proposed accounts set up so that both Andre's signature and Agni's signature were required to make withdrawals. Agni said she trusted her daughters but was more comfortable if the new accounts were set up in this way.

111. On Friday 9 March, Andre and Agni returned to the Bank of Cyprus to see Mr Tsingis. Agni withdrew €400,000 which was given to her in two bank cheques for €200,000 each. The balance of about €180,000 was left at the Bank of Cyprus. Agni and Andre deposited one of the cheques in Hellenic Bank and one in USB Bank. New 3 month fixed term joint deposit accounts in the names of Agni and Andre were opened at each bank requiring both signatures to operate them. In addition, a current account was set up at each bank for Agni into which the interest earned was to be paid though I point out the obvious that the balance would be zero before interest was actually received. Whether

⁴⁰ F/6/38

interest was payable monthly or quarterly, the expected balance of these accounts would be zero in March.

112. Niki was due to return from Budapest late in the evening of Sunday 11 March 2012. At 08.08 on that day, Andre sent an e mail to Niki explaining what had been done on 9 March and what had been discovered. Andre said the following:

Trust you had a great time in Budapest!

I went with mum to the Bank of Cyprus in Limassol in connection with the 500,000 euro bond which expired on the 8th March and moved 200,000 Euros to USB and 200,000 to Hellenic . I left 100,000 with the BoC . I have placed them all on a 3 month fixed deposit which are currently in joint names with mum and me until we get around to sorting out all the matters properly.

While I was there we discussed the original bond which was fixed until January 2012 and I asked Mr Achileas on what basis the bond was broken one month early resulting in mum having to pay back one months interest. He told me that it was done at your request and that you had called him and told him that mum was very ill/ in hospital and that she needed the money. This came as a great surprise and disappointment to me as I know that mum was at no time at death's door and further she had plenty of money which she can use in the UK and which you are joint owner with. There was no good reason I believe why the bond should have been broken or your name put on the bond, as you know and I have said many times there is no inheritance tax in Cyprus to warrant this type of action. If there was a good reason please tell me what it was.

If God forbid our mother had died last week you would have been left in a position with approx 900,000 euro (taking into account the accounts in the UK) in your sole name which I would have had no legal claim over. Niki this cannot be morally right even if you say that you are doing this for my protection I do not see it like that, especially as you kept all this from me even after I kept expressing my concerns at the large sum of money in BoC and the need to move it. That was why I was pressing to move along quickly with the probate in CY thinking the bond was in dad's sole name. You could have told me then and we could have moved it in January when the bond expired instead of fixing it all again with the same bank - this was at the very least negligent in itself because of the current dangers with the BoC.

I thought we had promised dad on his death bed that we would do right by each other and I have taken that on board, I want to change our relationship for the better, but your actions in keeping me in the dark and making changes to all the accounts without discussing and agreeing this with me does not show fair play. In fact even with the administration of dad's estate which is usually dealt with by a member of the family leaving in Cyprus for the sake of convenience and the choice of the lawyer you have sort to veto and have your way. It was clear from this that you do not trust me and for this reason I did not raise any objection and agreed to use a lawyer which you named but who in reality neither you nor Linda know at all or his capabilities in this area of the law.

As a result of all the above and to prevent any further misunderstandings in the future all matters to do with mum and with dad's estate need to be fully discussed and agreed by all three of us. No more secrets or half truths for any reason please!

113. In my judgment, what was said in this e mail appeared moderate and sensible and it dealt with the issues that had emerged (if Andre's version is true) in what is a constructive fashion trying to get matters back on track. I note particularly that Andre was completely open about what had been done in putting the funds into joint names with Agni and her *until we get around to sorting out all the matters properly*. She also raised what the bank had said about the deposit being broken the previous December and what was the explanation of it – Niki had said that *mum was very ill/in hospital and needed the money*. Andre pointed out that was not true and said *If there was a good*

reason please tell me what it was. (I comment that this was a perfectly fair question put in a non-hostile fashion. If there was a good reason, I am still not conscious of what Niki says it might be.)

114. Niki was furious at this. She had conversations with her mother at the end of which she reported in a text⁴¹ to her cousin Nektaria as follows: *"can you please call mum at andre because now she is understands what they have done she is crying and andre is shouting at her"*.. The extraordinary thing about this text is that Niki sent it to her cousin in English when she knew that Nektaria did not speak English and only had the most basic ability to read English with great effort. I make two comments on what I regard as a very important piece of evidence that has come from Niki herself contemporaneously:

114.1. First, the tone of this text accurately conveys the impression which Niki gave in her evidence namely that there was something outrageous or disgraceful in what *they had done* this appears from the next letter which I recite to be a reference to both Andre and the Bank of Cyprus. I heard in evidence more than once Niki explaining Agni's change of heart as being along the lines of *After what she [Andre] did*.

114.2. Secondly, and equally important is the reference to *now she understands what they have done*. That understanding could not have come from Andre (except if it was as above) and nor could it come from the Bank of Cyprus. The only person from whom it could have come was Niki herself. I will have to examine most carefully what Agni understood after her conversation with Niki to have been done.

115. On 13 March 2012, Niki wrote a four page letter⁴² of complaint to Mr Michalakis, the Manager at the Bank of Cyprus and dispatched it by e mail. I have read the whole letter carefully but abstract only the following which not only contains Niki's explanations in her own words but also provides valuable insight into her thinking:

115.1. Niki stated that she was shocked at recent events in the Bank and her letter was a formal complaint against the Bank and MrTsingis.

115.2. She continued:

This has shocked beyond words or explanation the events that have resulted From a simple instruction to add Mrs Andre Marcou (Mrs Agni Iacovou daughter and my sister) to the account. Having discussed with my mother we agreed it was best to add my sister to the account after Mr Tsingis had distressed my mother by telling her on a visit to the bank for a debit card for the current account, that if she was to die tonight Niki Christodoulides would take all the money. This caused such distress to my mother who when I called from England to see how she was , I found to be crying uncontrollably And I assured her that there was no problem we will add her as the bond expires very soon. While I had sent my mother to the bank with my uncle (dads brother) and wife to arrange the card, he refused they be with her and Took her in his room to distress her in this way.

- 115.3. The following paragraph makes clear that Niki is saying that it was she who had instructed the Bank to add Andre and that it could be done when the bond expired on 8 March after her return from Budapest. She said that when she had called Mr Tsingis (presumably the previous day) he would not speak to her as she

⁴¹ G2/269

⁴² F/30

was no longer an account holder. She continued to say this of her instruction to the Bank:

The instruction Mr Tsingis received was to add my sisters name, not to remove my name, remove the funds from the bank, and set up another bond of 100,000(I don't even have the figures) in joint names with her and my mother only, two signatures required. All to be executed before I came back from a short break, Strange and questionable don't you agree!

115.4. Niki continued to allege that there was a *"CONSPIRACY and/or MISREPRESENTATION to defraud my mother of her power over her monies in the account"*. In the same tone she said *"I am lodging and INTENT TO DEFRAUD at whatever cost and unfortunately for the parties involved in this horrendous heinous event I have the time and money to take this all the way. She demanded explanations and said I am extremely angry at the manipulation that has gone on here and no one can convince me otherwise that there is clearly an intent to defraud and someone is expecting a backhander for carrying this out. (Emphasis added)*

115.5. I need to quote two other passages from this letter where I find Niki's description of Agni. This description matters for we are dealing with the same person with the same frailties not only on the occasion in the bank but also later on when it came to (allegedly) making a substantial gift to Niki and then making her will. On this last occasion, there is no presumption of undue influence but the Court most certainly does take into account the characteristics of the testatrix in deciding whether there was fraud or undue influence. Niki said:

She is an elderly woman who my father protected and dealt with all their affairs, she has never even paid a bill or read a bill let alone a contract in her lifetime. She needed protection and a third trustworthy party to explain everything slowly, clearly and several times to understand. She told me that some of the conversation was in Greek but some was in English and my mother even though she lived 46 years in England does not speak English! Mrs Marcou new and anyone present would have realised that! That's how vulnerable my mother is and that is why my father entrusted me to protect her and that is my duty as her daughter. I did not need my father's instructions to do so anyway.

A little later, Niki referred to her mother as *"this frail, uneducated, elderly housewife, recently WIDOWED."*

116. The Bank (by a different officer) acknowledged Niki's complaint and asked to be allowed time to look it. The writer hoped to be able to get back to Niki early the following week.

117. There was over the next few days contact between Niki and Nektaria and her husband Harris Pantelli (who himself worked in a bank) asking for a recommendation of a banking lawyer.

118. Niki and her husband then travelled to Cyprus as soon as they could but did not at first tell Andre of their presence though I note that Andre was actually away in England visiting her son until 20 March.

119. On 20 March Niki's evidence is that she took Agni to Hellenic Bank, USB Bank and the Bank of Cyprus for Agni to attempt to withdraw €10 from her accounts. At each of the

banks, the bank told Agni that she could not make a withdrawal. According to Niki, this greatly upset Agni. Niki reports Agni as saying that Andre told Agni that she (Andre) could not take out any money without Andre's signature.

120. I must comment straight away on these visits to the banks. I observe that whatever might have been the credit balance on the fixed term deposit accounts, Agni had not a cent of credit in her current accounts for withdrawal. By the stage of the visits to these, Niki knew and understood this as well as the implications of the accounts having been set up to be operated on joint signatures. In my judgment, there was only one purpose of these visits – to persuade Agni that Andre had managed to put Agni's money beyond her (Agni's) reach. Agni was bound to be and was distressed by this.

121. Later that same day, Andre, who had just returned from England, met with both Niki and Agni in Agni's apartment. Niki's husband was present. There is absolutely no doubt that there was a heated conversation in Agni's presence which is quite different from what Niki has maintained namely that she always tried to keep her mother calm and away from the dispute. (That suggestion is also belied by the bank visits to which I have just referred and by a further meeting at the Bank of Cyprus to which I refer below.) Nor is there any doubt that Niki was furious with Andre though the details of what passed are in dispute. There seems to me to be only two features of this conversation which matter:

121.1. Andre says that Niki told her mother in front of Andre that her money had gone into a "black hole". This was not the literal expression used as Agni probably would not have understood it. Niki was telling her mother that she would never see her money again after what Andre had done. In contrast, Niki seems to say that she was making the complaint that her mother's money had been "locked down" so that she could not get at it and that it had been done behind Niki's back and contrary to the express instructions which she (Niki) had given to the bank by telephone to add Andre as a signatory to the account. This summary may grace Niki's version with a greater degree of coherence than I felt it had when cross examined. I prefer the evidence of Andre in this respect though, with one exception, the difference between the two versions is not great. I have no doubt that on this occasion Niki was accusing Andre of improper conduct in Agni's presence. She was accusing Andre of tricking her mother and of putting her money where she would never be able to get her hands on it again. In my judgment, what Niki was saying was not only untrue but also must have been known to be untrue by Niki. What occurred the next day is material in this respect.

121.2. During this heated conversation, Agni had plainly obtained the impression that Andre had cheated her. Agni raised an allegation of being cheated which was quite different. She said she had been cheated by Aris (Andre's husband) keeping £1,000 from the ground rents he had collected. He had sent to her £1,250 in January which the documents show was the right amount but she was convinced that the amount should have been £2,250. There has been no attempt on behalf of Niki to say that Agni had actually been cheated. Niki knew the true position and actually had the documents being the leases at which she had looked in deciding which property to choose for her son. One may say that Agni's view of this was misdirected to Andre entirely but it demonstrates how Agni thought of Andre and her husband as one. But for one thing, this part of the conversation might be wholly irrelevant to Andre's claim of calumny and it might even provide Niki with a

basis for saying that her mother's belief that she had been cheated had nothing to do with Niki. That one thing is Nektaria's evidence. Nektaria in her witness statement⁴³ refers to Agni telling Nektaria and her husband of her upset with Aris over the supposedly missing £1,000. Nektaria said that she and her husband "*were very surprised with this statement and I asked her how she came to this conclusion. [Agni] replied that Niki had told her. This conversation about [Aris] was repeated again by [Agni] when we visited her for the last time at [Andre's] house ... a day or so before her trip to England in June 2012.*" For my part, I have no hesitation in accepting Nektaria's evidence of what Agni told her. Nektaria and her husband were decent young people and looked up to Agni as the person who had literally stood in the shoes of Nektaria's mother after she had died. Their loyalty was to Agni and not to either sister which is indicated by Niki's own attempt to engage help from Nektaria. I can see no reason why Agni would have said this unless it was true. I regard it as highly improbable that Agni (as described by Niki herself to the Bank of Cyprus) would have had the slightest idea of what rent would have been due to her. Niki for practical purposes was managing her mother's finances and my view, quite apart from Nektaria's persuasive evidence, is that she was probably the source of this piece of poison against Aris which she realized would be likely to reflect in her mother's eyes on to Andre.

122. On 21 March 2012, Niki, Andre and Agni together visited Hellenic Bank, USB Bank and the Bank of Cyprus when all of the accounts (with the possible exception of Agni's current account) were put into the joint names of all three of them to be operated on all three signatures. This still did not satisfy Niki. I have not noted any suggestion by Niki that she or her mother said at this time that the mandates should permit operation on the single signature of Agni.
123. At some time during these visits to the banks, Niki told Andre that they needed a break as she and Agni needed to go to a meeting. She did not say what the meeting was. The trip round the banks continued later in the day.
124. The meeting for which there had been a break was (unbeknownst to Andre) a meeting at the office of the Bank of Cyprus (different from the branch) to discuss Niki's complaint. According to Niki, Agni asked Niki's husband to attend with them as without a man present she did not think that they would be taken seriously. The evidence of Niki and her husband is that in the meeting the complaint was discussed and her mother became upset. The meeting was calm in tone. The bank said that there was nothing that they could do as they had acted on instructions that Agni had given and signed.
125. In my judgment, the account given of this meeting by both Niki and her husband is highly improbable. My view is that in discussing a complaint by Niki that the Bank had conspired to defraud her mother and that someone at the bank was expecting a "backhander" (presumably from Andre) this meeting was most unlikely to have been calm and civil in its tone. It would have been hard enough for an experienced lawyer to have achieved such a result. My judgment of Niki is a person who is wholly unable to restrain herself from forceful, intemperate and manifestly untrue allegations of the kind which the meeting was discuss.
126. There is another point arising from this meeting which belies Niki's evidence that she never made allegations about Andre's misconduct (as Niki saw it) and kept her mother

⁴³ B/10/65 #12

insulated from the arguments to keep her calm. I do not see how this can be true when Agni was taken to a meeting to discuss the Bank conspiring to defraud Agni and its staff taking a backhander from Andre.

127. On 26 March, Niki again took Agni to the Bank of Cyprus. They tried to withdraw all of the entire balance of €18,900 in the current account in which any of the three signatories could operate the account. Niki's evidence is that the bank refused and said that it wanted all of the accounts at the Bank of Cyprus to be closed. According to Niki, later that day Agni presented her debit card in a grocer's shop and it was declined. The account was frozen. There is a dispute about whether Niki told Agni that the account being frozen was all Andre's fault. Andre says she spoke to Agni and told her she had not asked for the accounts to be frozen.
128. Andre is likely to be correct that she had done nothing to cause the accounts to be frozen. The explanation appears to me to be that the Bank wanted the accounts closed and to have no more to do with Agni and Niki as customers. This is hardly surprising in view of the allegations made by Niki in her letter to the Bank and the meeting which had been held. The Bank's decision to close the accounts is borne out by the evidence that Mr Michalikis of the Bank telephoned Andre that afternoon and asked her to attend the next day with Niki and Agni for them to close the accounts and pay out the money in them. Andre's initial reaction was to tell Mr Michalikis that Niki was no longer in Cyprus (which she believed to be the case). He corrected her knowing as he did that she remained there.
129. I have noted that Niki says that the Bank of Cyprus never replied substantively to her letter of complaint. I find this most improbable and almost inconceivable that the bank would not have responded to so serious a written complaint as Niki had made, especially when it is common ground that the bank said that it was no longer willing to have Agni as a customer.
130. Perhaps the most extraordinary episode in March was still to come.
131. On 26 or perhaps 27 March, Niki telephoned Mr Constantinides who had been Pani's lawyer and set up an urgent meeting with him. She took Agni along with her. According to his evidence the meeting lasted 45 minutes or so or perhaps an hour. He saw them again in Court on the morning of 28 March and again briefly on the same afternoon when the renunciation mentioned below was executed. He never saw Agni again. The meeting dealt with the following three subjects:
 - 131.1. What had happened at the Bank of Cyprus on 9 March and whether Andre could be reported to the police for fraud as a result of her conduct on that day;
 - 131.2. Obtaining the appointment of Niki as administrator of Pani's estate on the basis that there was no will and on the basis that Niki was a permanent resident of Cyprus living in her mother's apartment. I have already dealt with this aspect of the meeting and will not deal with again now.
 - 131.3. Agni renouncing her one third interest in Pani's estate in favour of Niki (in English terms this would be an assignment). On the basis of the information given then to Mr Constantinides the value of the interest being given to Niki was approximately €860,000.
132. At no time during the meeting did Mr Constantinides see Agni without Niki present. Although he said Agni did some of the talking, there is a disparity between his account and the description provided to the Bank of Cyprus of Agni as to what she can be expected to have known and said. It is overwhelmingly probable that Niki did the vast

majority of the talking and drove the subjects with which the meeting dealt. Mr Constantinides' evidence was that he thought the he made an attendance note. I ordered its disclosure. After he returned to Cyprus I was informed by Mr Holbech on instructions that Mr Constantinides could not find a note. Niki was billed for the services rendered.

133. In my judgment, the discussion of whether Andre could be reported to the police for fraud was an occasion when Niki must have been articulating in the presence of Agni that her belief was that Andre had tricked her mother and it was just another way of saying that her mother's money was never going to be seen by her mother again. I bear in mind Niki's own words⁴⁴ written a little later to Andre to describe Niki's accusation against Andre. She said on 24 July 2012 *what you are forgetting, she does not need my consent or signature her accounts are either/or as they were in Cyprus, before you took the money and ran!*" (Emphasis added). In my judgment, this or words very similar is exactly what Niki was likely to be saying throughout not only to Andre but also to Agni. Agni lacked the experience or education to engage in sophistry of the kind attempted by Niki. What these words would mean to Agni (as they would to any reasonable observer) is that Andre had stolen the money. I cannot begin to think that Agni would have appreciated the difference between theft, taking the money and running, just taking the money or even Andre just withdrawing it. It has to be remembered that Niki was consulting Mr Constantinides on whether Andre could be reported to the police for fraud.
134. The subject of the validity of Agni's renunciation of her interest is being litigated before the District Court of Limassol and it is undesirable for me to express any view on it. I confine myself to observations on the evidence so far as material here. This was a very substantial gift by Agni to only one of her daughters. It was made without independent advice from Mr Constantinides and, considering how Niki had described her mother's need to have things explained four times, very slowly in order to understand them, this plainly did not happen in a meeting of an hour or less dealing with three subjects, one of which managed to extract sufficient information to prepare in final form all of the Court documents to seek an administration order.
135. The application to the District Court of Limassol was made on 28 March and granted sometime in May when tax clearance was obtained.
136. There is a final point to make about Niki's application. In contrast to the cooperative approach of previously, she had taken matters into her own hands. Not one word of this application was ever breathed by Niki (or, for that matter, by Agni) about it to Andre over the months which followed. Nor was anything said of the purported renunciation to Niki by Agni of her interest in Pani's estate – not even to Nektaria. After Agni's death, Andre's counsel in Cyprus discovered by chance what had occurred. Niki has been wholly unable to provide any credible explanation for her silence. In my view, Niki was taking time to cover up what had occurred and which was continuing to occur to give Niki the best chance of getting away with the supposed gift from Agni.
137. I have puzzled over Agni not informing Andre or Nektaria of the application for administration or of her renunciation in favour of Niki. None of the witnesses have given the slightest hint that Agni was anything other than a straightforward and upright character though simple minded with difficulty in understanding complexity or nuances

⁴⁴ D/287

in financial dealings. I do not see it at all likely that she connived with Niki in suppressing the truth of what had occurred over the months of April, May and the first half of June. During this period she was still in Cyprus and having her medical needs lovingly cared for by Andre. The most likely reason for this silence is provided in how Niki described Agni to the Bank of Cyprus: she simply had not understood what had occurred with Mr Constantinides and at the Court in the very short time taken. It is equally likely that the subject on Agni's mind which received the most attention was the one which was most hurtful – the poison (for that it was) that her much loved and admired daughter Andre had somehow defrauded her.

138. Before passing from the topic of March 2012, I need to record explicitly my views on one further point. During Niki's evidence, I was anxious to ensure that I really understood what Niki thought was so "*heinous and horrendous*" in Andre's actions. Niki's answer to me was that Andre had removed Agni's money from Agni's own control. Her mother according to Niki was in need of protection and she was abused by Andre. I am afraid that I can see nothing wrong with what Andre did – her mother plainly was in need of protection from abuse and her mother's assets needed sensible protection. Requiring more than one signature was a prudent thing to do, especially if that signature might be Niki's or her mother's at Niki's instigation. The incident of breaking the fixed deposit in December 2011 is an ample demonstration of this, as was the need to spread the bank deposits between banks in times of financial uncertainty. Niki had no sympathy with any of this as it involved criticism of her stewardship of her mother's affairs. The point that Agni would have nothing to live on was nothing but scaremongering by Niki.

139. I would add to the previous point that the need for protection of Agni as a vulnerable person manifested itself at least twice in 2012 – the supposed gift of Agni's interest in Pani's estate and the occasion when Niki transferred to herself £167,000 of Agni's money as a supposed gift to which I must come shortly. I will need to consider also a third occasion orchestrated by Niki – the making of Agni's will.

June – August 2012

140. Agni returned to England with Vilma on 16 June on a long arranged flight in order to attend a wedding. She stayed in Hazelmead with Vilma. I need to deal with the following incidents in this period:

- 140.1. Payment for the oxygen cylinder;
- 140.2. 18 June – the alleged gift to Niki;
- 140.3. Seeing imaginary dogs – madness or eyesight?
- 140.4. 30 July – the visit to the Mr Antoniou
- 140.5. The making of the will

141. **Payment for the Oxygen Cylinder:** In isolation, it is completely trivial whether Agni paid €85 her for oxygen cylinder because she wanted to pay or because, in Niki's terms, Andre "forced" her to pay. Agni was a woman who had hundreds of thousands of pounds in bank deposits and I can see no reason why she should not have paid. The significance comes from Mrs Georgiou's evidence (which I accept) that by the end of July or, perhaps, 1 August, Agni was complaining bitterly that not only had Andre tried to steal the money Pani had left her but also that Andre had made her pay for the oxygen supply. I can deal with this very briefly. There is only one piece of direct evidence before me on the subject – that of Andre who took her mother to the airport and has said that her mother paid because she wanted to pay. I have found Andre to be a

credible and reliable witness and I accept her evidence. This incident clearly had become distorted in Agni's mind when she spoke to Mrs Georgiou when she literally parroted out Niki's view that I have no doubt had been repeatedly put to this vulnerable woman. This incident is closely related to the imaginary dogs incident which was in a similar time period and in which Niki's part can be clearly seen. In my judgment, putting this incident into the context of the entirety of the evidence, I am satisfied that it is another episode of Niki persuading her mother successfully that Andre had done something wrong. The fact that Agni came to believe Niki's version demonstrates how weak she was at that time and how easy it was to give her a false view.

142. **Imaginary Dogs:** I have dealt with some parts of this subject already, namely Andre's handover of medical records in her e mail of 18 June at 10.17 – I mention this time because it was less than 45 minutes after this that Niki transferred to herself about £167,000 from the joint Barclays Bank account she held with Agni and in respect of which her ownership was not beneficial but fiduciary in character – I regard this as unlikely to be a coincidence. What I know from Niki's oral evidence is the following: first, in the way in which Niki portrayed this, she viewed it as Andre questioning Agni's sanity and not passing on the view of the doctor dealing with her eyesight; secondly, Niki translated this e mail for Agni or passed on the substance of it to Agni at some time before 25 July; by 25 July when Niki took Agni to Dr Pelentrides to ask her to certify that Agni was *not mad*, Agni clearly believed that Andre was questioning her sanity. Niki herself said in cross examination that she told her mother that Andre was questioning her sanity – this is apparent even in the change of language from the letter. In my judgment, it is overwhelmingly probable by reason of these facts Niki induced the belief in Agni that Andre was questioning Agni's sanity. That is just not a fair or realistic interpretation of the 18 June e mail. Niki is an intelligent, university educated woman (though not honest) and I do not accept that she genuinely believed that Andre was suggesting her mother was mad rather than she had been told that she may be suffering from a condition with her eyesight which was capable of being treated by a named procedure. The condition was causing her vision to see distant objects moving about. Again, the sequence of events is probably no coincidence in that 5 days later, Niki took Agni who was clearly most unwell, to a will writer. For the will to be valid, she would need to be able to prove Agni's capacity.

143. **18 June – Gift?** At 10.58 on 18 June⁴⁵, Niki transferred to her own account with Yiannis the sum of £167,796.19 from the joint account she held with Agni at Barclays. Niki's own evidence is that the money in the account belonged to Agni and that she was only a joint account holder for administrative convenience. My view is that Niki's relationship with her mother was not only fiduciary in character (because she was managing Agni's money) but also it was in this instance a full trust relationship because Niki (together with Agni) had the money in their legal ownership. Niki says that this was a gift from her mother. Yiannis confirms that Agni wanted to give the money to Niki⁴⁶. Niki drew up a one page document dated 18/6/2102 in typescript for Agni to sign. According to her, Agni did sign on 18 June in the presence of one of her Greek speaking

⁴⁵ F/93

⁴⁶ Niki evaded directly answering the question put to her in cross examination as to whether it was the *wild dogs on the wharf* e mail which was the reason Agni wanted to give her this money 08/12/2016 page 33. However, her answer does seem to accept the connection. With the very limited period of time which elapsed between the e mail in question (10.18) and the transfer (10.58) it is very unlikely that this was done.

neighbours, Mr Constantinou who signed as a witness and inserted the handwritten date. In my judgment, if this document was signed by Agni at all, as to which I make no finding, it was not signed for weeks after the date which it bears, probably whilst Agni was in hospital. I reject the evidence of Niki and Yiannis on this document and, so far as it is contrary to what I have just said, also the evidence of Mr Constantinou. I need to explain my findings:

143.1. On 30 July, Niki took Agni to Mr Antoniou, the will writer. His contemporaneous handwritten note was made listing Agni's assets in the presence of both Agni and Niki. (I am aware that parts of the note were made later but not this part.) Niki provided the information in that list – it is plain from what everyone says about Agni that there was no realistic possibility that she could have listed the banks and amounts set out there. On the list is "*Barclays £167,000*". This was the money which had been transferred to Niki and Yiannis by Niki six weeks earlier. Agni plainly did not know of this "gift" on 30 July. Niki, as someone managing Agni's assets, was in my judgment obviously under a duty to provide an accurate list to the will writer – how otherwise could he advise and draw an appropriate will? Niki's explanation is that although her mother had given her the money, she knew that she could have it back if she needed it. I reject this explanation. The will writer needed to know what assets the testatrix had. Equally, if he was to give her advice – and, as I shall show shortly that was his contemplation by asking to have time alone with Agni – he needed to know the true state of affairs.

143.2. There is more that I must set out on probability:

143.2.1. The witnesses are at one that this document was signed during the afternoon – if that is so, the document must have been signed after and not before the gift was made. If the document was genuine, it does seem probable that the document would be signed in the afternoon at the earliest. Mr Constantinou worked and 18 June was a Monday so it would be unlikely he would be home in the morning. Equally, it was unlikely that Agni who lived at least a half hour's journey from Niki would have arrived in Niki's home before 11am when the transfer was made.

143.2.2. Mr Constantinou's evidence was that he had learned from Agni about her intentions and the problems weeks before he witnessed the document. He said in February. Agni had only arrived from Cyprus two days before the date this document bears. She had not been in England since early February when it is common ground none of the problems had occurred and nor had the intention to make a gift been formed. This itself calls the accuracy of his evidence on the dating of the document – he says he wrote the date himself in handwriting on the correct date.

143.2.3. Mr Constantinou's immediate recall of the day of the week when the document was signed was that it was a Saturday. Of course, this by itself is a small thing as memories can play tricks but as part of the larger picture, I take it into account.

143.2.4. As to his witnessing of the document, he had no idea of Agni's literacy skills and did not know that she could not read or speak English. He knew that the document was recording a gift of £167,000 and did not think that the amount mattered. In his eyes it was small as he was used to dealing in very large sums as a City banking analyst. He did not translate or explain the

document rather than simply witnessing it. His evidence in cross examination really did not bear out what is said in paragraph 9 of his witness statement that he had met with Agni at Niki's request to explain the letter and to witness it. I would add that he did not support paragraph 11 either – he could not read what is written in Greek so that the text did not come from him.

143.2.5. When I add to all of this that Mr Constantinou was a very reluctant witness whose demeanour in the witness box and more generally with the Court displayed that reluctance as well as his discomfort with the subject, I cannot accept his evidence on the document which clashes with the probability that the document was much later in time and after 30 July. That itself calls into question whether he actually witnessed Agni's signature at all. On 1st August, it was a busy day for Agni who was most unwell. At lunch time she was having tests regarding her kidney failure. She probably met and had coffee with Mrs Georgiou after that. At about 10pm she was taken by ambulance in the light of the test results to Barnet Hospital where she died a few days later. Mr Constantinou did not visit Agni in hospital.

143.2.6. On the question of whether Agni actually signed the document, I do not need to reach a conclusion but I will confess to harbouring doubts in view of what Niki says about signing a transfer for Pani on his deathbed. If this issue requires to be decided in the future (which I hope will be unnecessary), it will require handwriting evidence.

144. 30 July – the will writer:

144.1. I hope that I can deal with this subject with brevity.

144.2. I have quoted in paragraph 6.2 above from Mr Antoniou's witness statement which is relied on by Andre. I accept this evidence. In my judgment, this proves with the clearest possible evidence the following:

144.2.1. Agni believed and intended the exclusion of Andre would have the effect that there would be a more even distribution of assets between her daughters;

144.2.2. Agni's belief as to this effect was based on her mistaken belief that Andre *had helped herself to a substantial amount of assets already and Niki had not*. I remain conscious that a mistaken belief on the part of Agni is no reason by itself to set aside her will. That consequence only follows if the mistaken belief was induced by fraudulent misrepresentations or fraudulent calumny which is no more than a specific type of fraudulent misrepresentation.

144.3. Mr Antoniou's evidence assists me with the question of misrepresentation by Niki in one respect: Niki, who had set up the meeting with Mr Antoniou through her accountant and was there for most of it, was plainly the one who gave the information to Mr Antoniou on Agni's assets. As someone who was managing her mother's financial affairs and, as I have already pointed out, was actually a trustee of the funds in bank accounts where she was a joint account holder, she had a duty to speak. Silence will not do for a fiduciary. The listing of assets was woefully inaccurate. Agni's home in Cyprus was not on the list. As for the Cyprus bank accounts, the following note⁴⁷ recorded by Mr Antoniou was critical to begin to advise on whether the exclusion of

⁴⁷ E100

Andre effected the more even distribution of assets intended by Agni: “*USE TO HAVE £500,000 IN CYPRUS BUT NOW IN ANDROUILLA’S NAME IN DISPUTE*”. The Cyprus accounts were not to Niki’s own knowledge in Andre’s name. They were in the joint names of Agni, Andre and Niki and, if Agni died, the succession of the accounts so far as the banks were concerned would be an equal division between Andre and Niki. I tend to think that Niki had already appreciated that the monies were Agni’s and so would fall to be disposed of according to the will. I do not believe for a moment that Agni was being deceptive or devious in sitting silently when Niki gave this information – Mr Antoniou’s evidence was that Niki probably did give the information. It indicates what Agni had come to believe, namely that Andre had taken the money and would have it. Whether this is put as *helped herself, taken the money and run* or just *taken*, it comes to the same thing. In my judgment this belief was brought about by Niki’s representations which she knew to be untrue and which were fraudulent. Even if there had been no representation prior to this date, Niki’s failure to correct what she knew to be false when she was a manager and trustee of Agni’s money was a misrepresentation. I have no doubt that these were fraudulent misrepresentations and it is they which were the direct and, if it matters, the sole cause of Agni’s mistaken belief.

145. **Agni’s Will** In my view, nothing changed after the instructions to Mr Antoniou. Mrs Georgiou (who confirmed in her evidence that she did think that Agni wanted an even distribution between her daughters) confirms that Agni’s mistaken beliefs continued to subsist. The circumstances in which the will was collected by Niki on 7 August with Agni just out of intensive care and executed the same day do not provide me with any assurance that Niki believed anything other than her mother was likely to die imminently. She had, after all, been told on 1 August of the seriousness of the situation and that without treatment she would pass away within days. She does not appear to have said quite this to Andre who I can be sure in the light of her behaviour when Pani was dying – Andre at the end of her chemotherapy course and against medical advice came immediately. Andre’s presence was the last thing which Niki wanted before she had managed to procure the will to be executed by Agni.

146. In summary, my finding is as follows: Agni’s mistaken belief that her will would effect a more even distribution of assets considering what Andre had helped herself to was induced by the fraudulent misrepresentations of Niki that Andre had stolen, helped herself or taken Agni’s money and run – this is fraudulent calumny as Niki had successfully poisoned Agni’s mind against Andre. I regard the subsidiary episodes relied on differently by both parties⁴⁸ (Aris pocketing £1,000 of rents; wild dogs – Andre was questioning Agni’s sanity and the oxygen cylinder) as properly viewed as incidents of this same course of conduct.

Pleading

147. Mr Holbech on behalf of Niki has developed a pleading point in his closing submissions. He says that the case of fraudulent misrepresentation amounting to calumny is not adequately pleaded against Niki.

⁴⁸ See paragraph 7 above

148. Any allegation of dishonesty ought, in my view, to be pleaded with the greatest particularity which is possible in the circumstances. The Court must be astute to ensure that any deficiency in the pleading does not cause prejudice to the opposite party in any fashion such as not having the opportunity to prepare or present her case as she may wish if she knew fairly what the allegation is against her. To this degree, I accept Mr Holbech's submission.
149. I can readily accept that the pleading on behalf of Andre can fairly be said to be much more sketchy than it might have been if its subject had been explored with 8 days of evidence before it was written. What I do not accept is that has caused one ounce of prejudice to Niki. I have not understood Mr Holbech to have suggested that it has. There are special features of a case such as this which are in marked contrast to a fraudulent misrepresentation case between the party who received and the party who made the representation. The representations in a calumny case are not made to the claimant and can almost never be pleaded with the same degree of precision or particularity as would be expected in a commercial fraud case. The representee is dead and, if the claim is made good, has gone to his or her grave with the poison having done its work. In this particular case, much has been learned as the evidence emerged. For example, it could never have been known that Mr Antoniou would say what he did say (prior to his witness statement of 7 November 2016) as to Agni's intention to exclude Andre in order to ensure a more even distribution of assets because Andre had helped herself to a substantial amount already. Nor could the behaviour with regard to District Court in Cyprus be unwound and understood before the evidence of both Niki and Mr Constantinides. These are examples only.
150. I have read Andre's pleading with care and, whilst not perfect, it is sufficient in my judgment to support the case which has been advanced. Although it is true that some of the points (see paragraph 7 above) were not part of Andre's pleaded complaint, they have been introduced by Niki to explain Agni's belief other than by reference to her fault. Both sides have freely investigated the points and the evidence has been taken without a murmur of objection. Most influentially of all, it has caused no prejudice. If the point had been pressed before closing submissions, it might (I do not put it higher) have led to an application to amend. I can think of no witness who might have been called but who was not and no line of questioning which might have been followed which was not. An objection of this kind at the stage it was raised is without substance in the circumstances of this case and I reject it.
151. I will hear counsel on the appropriate orders and I invite Ms Selway to submit a minute which if possible is agreed to reflect this judgment.