

Neutral Citation Number: [2011] EWHC (Ch) 1

Claim No: HC09C01691

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18th January 2011

Before:

MR JEREMY COUSINS QC, SITTING AS A DEPUTY JUDGE OF THE CHANCERY
DIVISION

Between:

KUMARI MURPHY

Claimant

- and -

(1) NICHOLAS COURTAULD RAYNER
(2) AETERNUS LIMITED
(3) COURTINA CORP

Defendants

APPROVED JUDGMENT

Professor Mark Watson-Gandy (instructed by **Messrs Smithfield Partners Limited**, of 107, Cannon Street, LONDON EC4N 5AF) for the Claimant

Mrs Teresa Rosen Peacocke (instructed by **Messrs Penningtons** of Abacus House, 33, Gutter Lane, LONDON EC2V 8AR) for the Defendants

Hearing dates: 19, 20, 21, 22, 23, 26, 27, 28, 29, 30 July, 15, 20, 21 September, 26, 27, 28, 29 October, and 1st November 2010

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MR JEREMY COUSINS QC:

INTRODUCTION

1. In this case Mrs Kumari Murphy, who cared for Mr Nicholas Rayner for many years during which he has been disabled following a stroke, maintains that she has established interests in a valuable Knightsbridge flat, and other investments, which are owned or controlled by Mr Rayner. Her claim is made on the basis of proprietary estoppel.
2. Mr Rayner, a former Army officer, was by the mid-1980s a renowned auctioneer. He achieved international fame in 1987 when he auctioned the jewels of the late Duchess of Windsor. He was enjoying great prosperity, when, in 1994, he suffered a serious stroke which changed his life forever. His marriage to his second wife (Laetitia) broke down and within a couple of years they separated, subsequently divorcing. Ever since suffering his stroke Mr Rayner has needed a great deal of assistance with everyday living, and carers were engaged to assist even before Laetitia, in January 1996, moved out of their home, a flat in Eaton Square, SW1.
3. In the weeks prior to Laetitia's departure, Mrs Kumari Murphy visited the Rayners at their flat. She was introduced by the Filipino Centre, a charitable organisation, where she worked as a volunteer. The Centre helped in placing domestic workers, who were in difficult circumstances, with potential employers, especially those who were disabled. Other carers had been introduced to Mr Rayner by the Centre, but had not stayed. Mrs Murphy was not a domestic worker, and she visited to find out whether there were any problems. Although there are many issues between Mr Rayner and Mrs Murphy as to the basis upon which she cared for Mr Rayner over a period of more than twelve years, there is no doubt that she took on the *rôle* of carer.
4. In 1997 Mr Rayner moved from the flat in Eaton Square to his present home at 42, Kingston House South, Ennismore Gardens, London SW7 ("the Property"). The Property is owned by Aeternus Limited ("Aeternus"), a Gibraltar company. Both Aeternus and Courtina Corp ("Courtina"), a Panama registered company, which holds substantial investments ("the Investments"), and which appears to be managed from Switzerland, are owned and effectively controlled (though he is a director of neither), as I shall explain below, by Mr Rayner. After the move and until the autumn of 2008, Mrs Murphy continued to care for Mr Rayner. There were others who shared in his care, but what is beyond doubt is that she was the principal carer, and as a carer

looked after him very well. In the middle of 1996 they made a trip to Bangalore in India (“the Bangalore trip”), though whether Mrs Murphy’s reason for encouraging Mr Rayner in this was for treatment for his stroke, or to visit her family is a matter of contention. Over the years they also made other trips together overseas, mostly to Italy.

5. Whilst Mrs Murphy remained Mr Rayner’s carer all her expenses were paid by him; he also provided all her food and other necessities. He made gifts to her. However, Mrs Murphy is adamant that from the beginning to the end she was never remunerated for her work. She was never, she says, an employee. Mr Rayner is equally adamant that she was an employee, paid from the start, and by the time that she was (on his case) dismissed, her salary was £400 per week.

6. Mr Rayner remained in contact, in varying degrees of closeness, with his family in the broader sense; his first wife (Marina) and their daughter (Desideria), Marina’s daughter by her previous marriage (Domitilla), his siblings, and Laetitia. As the years went by Mr Rayner and Mrs Murphy seemed to have had less contact with others, including Mr Rayner’s family. Between themselves, however, Mr Rayner and Mrs Murphy seemed to function well, although from time to time he found her behaviour fell far short of what was acceptable. Nonetheless he was attached to her, and from 1998 onwards planned ever more generous provision for her on his death. At first he intended that she should occupy the Property, rent free, for eighteen months following his death; by early 2008 he intended that she should have the Property outright, and an eight per cent share in the Investments as well. He frankly conceded in his evidence that he told her over the years of the intended provision for her, and kept her informed of any changes in his plans. However, he maintains that this intended provision was the product of her dishonest conduct and pressure applied to him, or an abuse of her position at a time when he was very vulnerable.

7. In September 2008 Mr Rayner had a fall and suffered a fractured hip and many serious complications. As a result he was in hospital for many months. Whilst he was hospitalised, members of his family visited him. In varying degrees there had been strained relations between Mr Rayner’s family members and Mrs Murphy, and relations deteriorated sharply late in 2008 when Mr Rayner’s family began to suspect that Mrs Murphy was guilty of seriously misappropriating Mr Rayner’s money on a very considerable scale. They investigated the matter, and were not satisfied with the

explanations that Mrs Murphy gave and her perceived lack of co-operation with their enquiries.

8. The investigations led Mr Rayner to believe that Mrs Murphy was guilty of serious financial impropriety. He described himself as outraged at what she had done to him. He decided to dismiss Mrs Murphy early in 2009.
9. For reasons which I shall explain more fully below, this judgment does not deal fully with the extent to which there were alleged misappropriations of money by Mrs Murphy. That matter will have to await the taking of an account. However, this judgment does deal with the extremely important issue of whether Mrs Murphy procured Mr Rayner to make very substantial payments over many years for the benefit of her aunt's granddaughter, Veena Prabakaran ("Veena"), by falsely representing to him that Veena was Mrs Murphy's daughter. Veena, then a child, was introduced to Mr Rayner during the Bangalore trip. The payments related, Mr Rayner maintains, to Veena's education and houses for her and Mrs Murphy in Bangalore. The false pretence, Mr Rayner says, was kept up until after these proceedings began. Mrs Murphy says that she never claimed Veena was her daughter.
10. A few months after Mr Rayner's decision to dismiss Mrs Murphy, in May 2009, she commenced this action against Mr Rayner, and Aeternus and Courtina which respectively own the Property and the Investments. Her Particulars of Claim assert that by reason of proprietary estoppel she is entitled to orders that she is entitled to occupy the Property during Mr Rayner's lifetime, a transfer of it to her upon his death, and that the other promised financial provision must be honoured. In maintaining this case she asserts that she relied upon what Mr Rayner represented to her as to intended provision, and suffered significant detriment in consequence; in working for years without remuneration, in putting Mr Rayner first so that her marriage failed, in not making any other provision or career for herself, and in not returning to India.
11. Mr Rayner denies that Mrs Murphy is entitled to any of the relief which she seeks. Whilst accepting that he did tell her of the intended provision, he maintains that there was no detrimental reliance by her. He maintains she worked for pay, and challenges the other aspects of the alleged detriment, saying in effect that Mrs Murphy has cast around to find detriment. What is more he says that by practising deceit on him she has behaved in such a manner that equity should afford her no relief, and there is

nothing unconscionable in his refusal to keep to earlier assurances. Still further, he maintains that such promises as were made as to financial provision were procured by undue influence and therefore could found no estoppel. Mr Rayner claims an account in respect of all payments (they exceed on his case one million pounds) made to Mrs Murphy over the years, and return of the payments in respect of Veena which he says were procured by false representations. He also maintains that he should be reimbursed very considerable costs (over £100,000) incurred by him as a result of Mrs Murphy's alleged gross abuse of his telephone, in that she improperly made calls to India. She denies any such misconduct, and the investigation of that matter too will have to await the taking of an account. Finally, Mr Rayner alleges that Mrs Murphy has misappropriated some precious stones which were kept in a cashbox, as well as a rather special box given to him by the Duchess of Windsor's estate following the auction of her jewels, and many personal papers. These allegations as to items taken have been fully investigated in the course of the trial, and this judgment deals with them.

The course of the trial

12. Before I turn to deal with the background to this case in detail, and with the issues which I must decide, it is convenient to deal with the course of events at the trial. The hearing of this case began on 19th July 2010, and with the Vacation intervening and other unavoidable interruptions, submissions were not concluded until the beginning of November. Altogether some 17 witnesses were called to give evidence; eight for Mrs Murphy (including herself), and nine for the Defendants (including Mr Rayner himself). For ease of reference, and without implying any disrespect, throughout this judgment I shall refer by their first names to witnesses who are family members of either Mrs Murphy or Mr Rayner. Both sides relied on additional witness statements from witnesses who did not attend for cross-examination.

13. Although all parties gave standard disclosure by lists in December 2009, solicitors on both sides continued to pursue requests, both formally and informally, for additional disclosure right up to, and even during the trial. In the middle of September 2010 a hearing was organised for the purpose of dealing with a number of proposed directions, particularly as to additional disclosure, which had arisen in the course of the first two weeks of the evidence. On 12th July 2010, Mrs Murphy's solicitors served the first of two Notices to Prove; this first notice related to 12 documents the authenticity of which Mrs Murphy put in issue. Some of those documents had been

recently served, but the second such notice, relating to some 60 documents, concerned many which had been disclosed in Mr Rayner's original list. Most of the disputed documents were computer generated by Mr Rayner, some of these were in Mrs Murphy's name, but which he said he had created at her request as she is not able to use a computer. This very important question as to whether Mr Rayner falsely created documents for the purposes of this litigation, or some other improper purpose, goes directly to his credit, and therefore later in this judgment (at paragraphs 234-245) I deal with the matter fully.

14. Following Mr Watson-Gandy's careful opening of his client's case, Mrs Murphy gave evidence, but then matters developed unexpectedly, and it became necessary to give further directions at that stage. Mr Rayner's Counterclaim, by paragraphs 30(a)-(f), alleged breaches of duty and misappropriation by Mrs Murphy in six different respects:

- (a) Dissipation of cash payments (a claim exceeding £1m);
- (b) Misuse of telephone (a claim exceeding £100,000);
- (c) Dissipation of other payments of £95,853.41;
- (d) Payments in respect of Veena procured by misrepresentation;
- (e) Misappropriation of the precious stones in the cashbox as mentioned above;
- (f) Misappropriation of the box from the late Duchess of Windsor's estate.

15. By paragraph 33 of his Counterclaim Mr Rayner sought, amongst other things, an account of property obtained or dissipated by Mrs Murphy. In her Defence to Counterclaim, by paragraph 19, Mrs Murphy denied any duty to account for monies passing through her hands, maintaining that such monies were previously agreed, and in relatively small sums for which Mr Rayner had never required a retrospective account. She asserted that all such money was spent on general household expenses, and by paragraph 24 she denied that Mr Rayner was entitled to any relief by way of an account. In Further Information provided in September 2009 she confirmed that

the only money she received was from Mr Rayner's bankers (Messrs Hoare's) using cheques made out to cash, signed by Mr Rayner, for the purposes of domestic and healthcare needs. In her final witness statement she suggested that she made payments to some other people, for reasons not mentioned, on Mr Rayner's behalf.

16. When Mrs Murphy was cross-examined she asserted that the payments she had received, sometimes by cheque, had not been limited to household expenses. Some payments, she suggested, were by way of reimbursement to her for sums drawn by her on credit cards; other cash payments she said she passed on to other people at Mr Rayner's direction, in connection, she believed, with his alleged trading activities. (Mr Rayner in evidence denied any such trading activities.) Similarly Mrs Murphy sought to explain the large telephone bills on the basis that Mr Rayner had made, or directed to be made, numerous calls to India, and elsewhere for his own personal and commercial purposes. Since these trading allegations had not been anticipated from her pleaded case, or written evidence, it became apparent that they could not be investigated properly or conveniently at the trial, though for the first time it was conceded on Mrs Murphy's behalf that an account in respect of the items under sub-paragraphs (a)-(c) of Mr Rayner's Counterclaim should be taken. Following further consideration of the matter with counsel it was agreed on behalf of all parties that the account should take place following further directions subsequent to judgment upon the issues decided at trial, namely Mrs Murphy's claims for equitable relief and the matters arising under sub-paragraphs (d)-(f) of Mr Rayner's Counterclaim, and further that the trial of paragraph 30(d) in the Counterclaim should extend to deciding whether there should be a money judgment in respect of payments made in respect of Veena, and the associated "Bangalore house" payments.
17. The evidence considered went far beyond the oral testimony of the witnesses. Extensive reference was made, in very detailed opening and closing written and oral submissions by both counsel, to many documents in the voluminous trial bundle. As a result of this protracted scrutiny of the material before the court, a clear picture emerged of the events material to this case, and of the complexities and subtleties of the relationships between the principal people involved in Mr Rayner's life, and to a lesser extent Mrs Murphy's, over a period of nearly 13 years.

THE ISSUES

18. Both counsel provided me with detailed proposed lists of issues (for which I am very grateful), but they did not manage to reach complete agreement on them. I have to determine the following issues (some of which can be grouped together), which I have identified taking into account counsels' suggestions:

REMUNERATION

- (1) Was Mrs Murphy engaged as a paid employee by Mr Rayner, and if she was, then what was her remuneration? ("The remuneration issue")

ALLEGED MISAPPROPRIATIONS

- (2) Did Mrs Murphy, without Mr Rayner's permission, remove documents belonging to him from the Property, and if so what documents? ("The removal of documents issue")
- (3) Did Mrs Murphy steal £20,000 of precious stones from Mr Rayner's cashbox between 5th August 2005 and 8th September 2005? ("The precious stones issue")
- (4) Did Mrs Murphy steal from Mr Rayner a box that once belonged to the Duke of Windsor? ("The missing box issue")

VEENA-RELATED ISSUES

- (5) Did Mrs Murphy misrepresent to Mr Rayner that Veena was her daughter? ("The Veena issue")
- (6) Did Mrs Murphy make false representations to Mr Rayner concerning circumstances relating to the purchase of properties in Bangalore? ("The Bangalore houses issue")
- (7) If the answer to (5) and/or (6) above is "Yes", then was Mr Rayner induced by any such representations to make payments in respect of (a) Veena's school fees, (b) her subsequent education and maintenance, and (c) any

property or properties in Bangalore, and has Mr Rayner proved that he is entitled to recover any sums from Mrs Murphy before the taking of a full account between the parties? (“The recoverable payments issue”)

BREACH OF FIDUCIARY DUTY

- (8) Was Mrs Murphy in breach of fiduciary duties owed to Mr Rayner? (“The breach of fiduciary duty issue”)

DISPUTED DOCUMENTS

- (9) Did Mr Rayner rely upon fabricated documents in support of his case? (“The disputed documents issue”)

PROPRIETARY ESTOPPEL ISSUES

- (10) What, if any, promises did Mr Rayner make to Mrs Murphy as to:

- (a) providing a home for her at his London accommodation;
- (b) a gift of an interest in the Property after his death;
- (c) meeting her financial needs during his life;
- (d) meeting her financial needs after his death?

(“The assurance issue”)

- (11) Did Mrs Murphy rely on any such promises mentioned in (10) above to her detriment? (“The reliance issue”)

- (12) Was Mr Rayner induced to make any promises of provision for Mrs Murphy by any false representations made by her? (“The inducement issue”)

- (13) Would it be unconscionable for Mr Rayner not to keep such promises as he may be proved to have made? (“The unconscionability issue”)

- (14) Has there been any material change in circumstances which might be relevant to any relief to be granted? (“The change in circumstances issue”)
- (15) Were any promises of provision for Mrs Murphy the product of undue influence practised by Mrs Murphy? (“The undue influence issue”)
- (16) Has Mrs Murphy sought equitable relief with clean hands, and was she prepared to do equity? (“The clean hands issue”)
- (17) Are any promises made by Mr Rayner, in respect of provision for Mrs Murphy, binding on Aeternus and/or Courtina? If the answer to this question is “Yes”, then how is such effect to be given? (“The “Aeternus and Courtina issue”

THE WITNESSES

19. In making my assessment of the witnesses I have had regard to the whole of the evidence in the case, and the accounts which they have given in relation to the matters in issue. I am conscious that the observations which I make next with regard to some witnesses reflect findings which I have made on some important issues; where that is the case my reasons for such findings are addressed in respect of the particular issue. I have, however, found it helpful when considering the case in the round, to bring together the overall impressions which I have formed of the most important witnesses.

Mrs Murphy

20. Mrs Murphy grew up in India. Most of her family still lives in the area around Bangalore. Her mother is Mrs Animeamal. Mrs Murphy has three brothers, and at least two nephews; Mr Naveen Maduram and Mr Victor Maduram. (There may be other nephews or nieces, but they did not figure in the case.) Mr Rayner met her brother Yogepragasam (“Yoge”) during the Bangalore trip.
21. She came to England in August 1994 and met Mr Murphy almost immediately. She and Mr Murphy married on 5th December 1994 in Bromley and thereafter they lived at 36, Pleydell Avenue, in Upper Norwood, London SE19.

22. Mrs Murphy's first language is Tamil and although she does not claim to speak English fluently, she clearly has a very good command of the language, and gave her evidence, without difficulty and without the assistance of an interpreter.
23. In 1995 Mrs Murphy began working on a voluntary basis for the Filipino Centre in Holland Park. The charity caters, amongst other things, for those with disabilities, and in her early days of association with the Filipino Centre she performed administrative tasks. It was through the Centre that Mrs Murphy first came into contact with Mr Rayner. It provided carers previously for Mr Rayner, but there had been a high turnover of them.
24. Mrs Murphy was undoubtedly very capable and effective in terms of the physical care that she provided for Mr Rayner, and, giving evidence, he described her as a "wonderful carer".
25. Mrs Murphy gave evidence over several days. I found her to be a profoundly unsatisfactory witness. I make specific findings later in this judgment with regard to her evidence in respect of the principal issues in the case, but on factual issues of the utmost importance I have found her to be completely unreliable:
 - (a) She lied as to whether she was remunerated by Mr Rayner (see paragraphs 60-69).
 - (b) She misrepresented to Mr Rayner that Veena was her daughter, and consistently lied in court about the fact that she had done so paragraphs 171-188, and 219).
 - (c) In her pleaded case (as explained above at paragraphs 15-16) she deliberately misrepresented the extent to which she had received payments from Mr Rayner over many years.
 - (d) She removed personal papers belonging to Mr Rayner before she was excluded from the Property, and then put forward a false account as to how she had come by them (paragraphs 130-133).

Further, when she commenced her claim, she made an application to the court for an injunction requiring her re-admission to the Property, but in her supporting evidence

displayed a complete lack of candour with regard to the arrangements for her existing accommodation (paragraphs 127-129). A similar lack of candour was displayed in relation to bank accounts held by her; the true position, I find, was only revealed following persistent attempts (involving applications to the court) on Mr Rayner's behalf to obtain disclosure.

26. In the circumstances I have not found it possible to accept Mrs Murphy's evidence on matters which are in dispute, and where any burden of proof is upon her, where her evidence is not supported by other reliable material. Where her evidence has differed from Mr Rayner's I have preferred his save where I have specifically indicated to the contrary.

Mr Rayner

27. Mr Rayner was born in England in 1938. He has an older brother, Major Ranulf Rayner, a sister, Fleur Walbeoffe-Wilson, and a younger brother, Andrew Rayner. Following Sandhurst Mr Rayner was commissioned into the 11th Hussars in which regiment he served during the Aden Emergency in the mid-1960s. On leaving the Army in 1968 he lived for a while in Italy where he met his first wife, Marina Patriarca. By her first marriage Marina had a daughter, Domitilla (now Domitilla Steiner), who became Mr Rayner's step-daughter. Domitilla has a son, Mr Giacomo Steiner, Mr Rayner's "step-grandson". Marina's brother has a daughter, Sibilla Patriarca. By their marriage Mr Rayner and Marina had a daughter, Desideria. Domitilla and Desideria are step-sisters. Mr Rayner refers to this side of his family as his "Italian family", and I shall do so in this judgment.
28. In 1987 Mr Rayner divorced Marina and later in the same year married his second wife, Laetitia Reynolds. However, Mr Rayner remained on good terms with Marina and has preserved a good relationship with Domitilla.
29. By the early 1970s Mr Rayner had established himself in a very successful business in connection with jewellery. Initially he worked in Rome, but in the early 1970s moved to Paris where he was engaged by Chaumet and subsequently Cartier. His career took him to Sotheby's as an expert in its jewellery department. During his time with Sotheby's he worked in Zurich and then Geneva and, as mentioned above, became an extremely well known and distinguished auctioneer of jewellery.

30. By the mid-1990s Mr Rayner enjoyed considerable prosperity and he had considerable assets. He and Laetitia lived at 73 Eaton Square, London SW1 (“the Eaton Square flat”).
31. Sadly, Mr Rayner was struck down, and his established and promising career cut short, in August 1994 when he suffered a major stroke. This caused him to lose mobility on his left side. Whilst I accept his evidence that his speech was not affected, most aspects of his life were. Medical evidence dating from shortly after he suffered his stroke shows that Mr Rayner suffered from greatly elevated anxiety and depression. He could be impatient and unco-operative. Mr Rayner described the effect of the stroke on him as “devastating”, although leaving him mentally alert. As a measure of his intellectual capacity, he has been able successfully to undertake Open University studies over the years. However, he said that he has had trouble with dates and numbers. Since suffering his stroke Mr Rayner has consistently needed care and someone in attendance. He could not function without it in his daily living. He was able to walk with some difficulty, but often needed support. He managed to drive again, but in an adapted vehicle. He was able to use a computer, and the telephone. However, with washing, bathing, dressing and much else he needed help.
32. Unfortunately in 2008 Mr Rayner suffered a fall, following which he was admitted to Chelsea and Westminster Hospital for many months, with much of this time spent in the Intensive Care Unit. There were life threatening complications; he suffered from pneumonia and septicaemia, and required emergency surgery, including a tracheotomy. Although he recovered sufficiently to return home, he is now much weaker. He was unable to attend court, and had to give evidence by video-link from his bed. Even then, because of the necessities of medication, his evidence had to be taken in periods of limited duration, and was therefore heard over several days.
33. Mr Watson-Gandy cross-examined Mr Rayner at length on the many issues in this case, and on many points that were said to be relevant to credibility. Mr Watson-Gandy suggested in his closing submissions that many matters had emerged in evidence which should cause me to conclude that Mr Rayner had little compunction for being untruthful where he considered it was expedient. These included the fact that Mr Rayner accepted that (1) in order to assist Mrs Murphy’s nephews to gain admission to the United Kingdom he had falsely suggested to immigration authorities that he would assist financially with support and accommodation, (2) he had caused Domitilla’s name to be used improperly on documents to assist in the unlawful export

of some artefacts from Europe, and (3) he had lied (on his own case and in his own words) about Mrs Murphy's employment status to avoid tax. Mr Watson-Gandy relied on many other instances where it could be demonstrated that Mr Rayner's evidence was inconsistent or simply wrong. I accept that there were many matters where such shortcomings in accuracy were demonstrated. These included evidence about whether Mrs Murphy had a mobile telephone, and whether he had one himself, whether he had stayed with Mrs Murphy's family in India, whether he had ever made telephone calls to India, including to Veena. There were other important matters, for example in relation to the number of properties in Bangalore, in respect of the purchase of which Mr Rayner claimed to have assisted Mrs Murphy, yet where Mr Rayner's evidence was unclear, or even contradictory. Further some of the documents created by Mr Rayner were not always consistent with the likely chronology of events, or with each other. Many of these criticisms of Mr Rayner's evidence and his case I consider fully below when dealing with a particular issue in the case.

34. A serious, but disputed, allegation against Mr Rayner, was that he, or others on his behalf, had falsely created documents for the purposes of this litigation. For reasons which I give below, particularly at paragraphs 234-245, I reject that suggestion. I find that no documents were so created, by Mr Rayner or anyone on his behalf. In the course of this judgment I shall, however, indicate which of the documents I mention were challenged in the Notices to Prove.
35. Whilst Mr Rayner's conduct in dealing with matters of accounting for tax on salary payments, and in dealing with immigration and export authorities, is open to criticism, and whilst his recollections were undoubtedly not always accurate, I did not find Mr Rayner to be consciously untruthful as a witness. My assessment of Mr Rayner was that he did his best to tell the truth, and that where his evidence was shown to be wrong or inconsistent, this was to be accounted for by a genuine failure of recollection on his part.
36. I have, however, approached Mr Rayner's evidence with caution for a number of reasons. First, it has been demonstrated that his recollection can be inaccurate or inadequate, for example in apparently completely forgetting that he had stayed with Mrs Murphy's family at some stage when making the Bangalore trip. These deficiencies in recollection extended to very important issues such as the number of houses that he had allegedly assisted in funding for Veena's accommodation. Secondly, from the evidence it appears that Mr Rayner is as a result of his disability

and situation, susceptible to the influence of those upon whom he depends. I describe below how over the years Mrs Murphy had this effect on him, and the way in which he led his life. I have to take into account the fact that since late 2008 Mr Rayner has had very much assistance in particular from Desideria and Laetitia, and other members of his family, who in varying degrees, and for differing reasons, are not well disposed to Mrs Murphy, though no doubt each of them would say for good reason. Many of the reasons for their attitudes I have had to investigate in this trial. Desideria and Laetitia played a crucial part in the events which led to Mrs Murphy's ceasing to be Mr Rayner's carer. Thirdly, Mr Rayner, by reason of his physical state, has at times been fearful for his life. On one such occasion described by him (which I deal with below at paragraph 307) he suggested that he had been abused by Mrs Murphy and Selvaraj Krishnakumar (another of Mr Rayner's carers, referred to throughout the case, as I shall do, as "Krishna"). Given Mr Rayner's condition at the time of the incident, it was not possible to have confidence in his description of it. Such events were extremely rare, but I have to take into account the possibility that Mr Rayner's views of Mrs Murphy may have been affected by a distorted recollection of such an adverse experience. Where there are major differences between the evidence of Mr Rayner and Mrs Murphy and others, I have therefore considered whether there is other evidence which supports Mr Rayner's account, even though I have not found the absence of such supporting evidence to be necessarily crucial.

Other witnesses

37. Many other witnesses gave evidence in the case, but at this stage I confine my observations to the principal witnesses who gave evidence in court.
38. Veena was born in India in December 1988. She is the granddaughter of Neela, who is Mrs Animeamal's sister. Veena is therefore Mrs Murphy's aunt's grand-daughter. Veena's mother died when Veena was born, and Veena was cared for in the family of her grandmother (Neela) and by Veena's mother's cousin, Mr Yogaprakash. Veena's first language is English; she said that it was the language spoken at her home, although Tamil and another language were also spoken. She now lives and works in England, having studied here for some years.
39. Veena gave evidence about meeting Mr Rayner during the Bangalore trip, her contact with him from India, by letter and telephone, and Mr Rayner's suggestion that she should come to study in England. Veena was only a young child when she met Mr

Rayner in India, and those events occurred many years ago. Whatever Veena may have believed that Mr Rayner knew about her circumstances, she cannot possibly have known what information Mrs Murphy had provided in her absence. I consider that Veena sought to exaggerate the extent of her contact with Mr Rayner following the Bangalore trip. Whilst I accept that there was some, fairly minimal, telephone contact between them after that, I accept Mr Rayner's evidence which in substance was that it was confined to written exchanges. Nothing in the documents suggests that, for her part, Veena demonstrated any great interest in or attachment to Mr Rayner, and I cannot accept Veena's description of the degree of contact that there was.

40. Desideria frequently spent time and stayed with Mr Rayner in the early years following his stroke, but in 1997 she moved to New York for a couple of years and saw him less often in that period. She did, however, continue to visit and maintain contact. Following her return from New York, she spent a few months in London and became a regular visitor to the Property, but in 1999 she moved to Rome where she has lived since, making visits to see her father about five or six times a year. Once Krishna began to work for Mr Rayner, there was nowhere that Desideria could conveniently stay at the flat, but I accept that Desideria kept up her regular visits right up to the time that Mr Rayner was admitted to hospital for a long stay in 2008.
41. I found Desideria presented as a daughter genuinely concerned for her father's wellbeing, and who had made sustained efforts to maintain regular contact with him despite distance and other difficulties of circumstance.
42. Domitilla, although living in Italy, also remained attached to her step-father, despite his divorce from her mother. She appeared to me to have genuine concern for Mr Rayner in respect of the many problems that beset him over the years following his stroke. She was very upset by the serious difficulties in her dealings with Mrs Murphy which became an impediment to her having the kind of relationship that she wanted to maintain with her step-father.
43. In the case of both Desideria and Domitilla I have kept in mind the possibility that because they clearly experienced difficulties in their relationship with Mrs Murphy over many years, they might allow this to affect their evidence. There is no doubt that they perceived Mrs Murphy as an obstacle to the kind of relationship which they wanted to have with Mr Rayner, and they did not hide this. Further I have in mind

that both were aware, or in any event became aware before this litigation began, of the extent of the provision planned by Mr Rayner for Mrs Murphy, so they might have had a motive to sour that relationship and eliminate any claim that she might have on him, thereby enhancing the value of any expectations of their own. Having seen them give evidence, and taking into account all the material that I have had to consider, I am satisfied that both Desideria and Domitilla did their best to be as objective as they could be in the evidence which they gave. I found them both to be honest, and, for the most part, accurate witnesses, although Domitilla's recollection as to just when she learned of the intended provision for Mrs Murphy was probably wrong in that she learned rather sooner than she recalled.

44. Although Laetitia had little to do with Mr Rayner following the breakdown of their marriage in 1996, and subsequent divorce, she was able to give important evidence on a number of important aspects of the case concerning the very early days of Mrs Murphy's caring for him. Laetitia said in evidence, and I accept, that although there were only a few chance meetings with Mr Rayner after they separated, and before his admission to hospital in 2008, they were frequently in contact (about every two weeks) by telephone. She said that it was usually she who called him.
45. Whilst they had been apart for many years, when she learned that Mr Rayner was seriously ill in September 2008 Laetitia began visiting him in hospital, liaising with other family members, and helped Desideria in the sorting out of his financial affairs. Mr Watson-Gandy attacked her credibility on a number of grounds, none of which I found persuasive. For example, Laetitia had asserted in evidence that following the sale of a cottage, Mr Rayner paid some of the proceeds to Desideria who later made a repayment to Mr Rayner of a sum of around £20,000 because Mr Rayner had mistakenly overpaid Desideria and needed the money back for a tax payment. Mr Watson-Gandy suggested in closing that the apparent absence of any tax payment from Mr Rayner's account at Hoare's Bank connected with this matter suggested that Laetitia's evidence might not be truthful. This point was scarcely explored in evidence, and other possible explanations (such as a tax payment from some other source) for the suggested discrepancy were not eliminated. The fact is that Laetitia could only speak as to what her understanding was.
46. Ranulf and Fleur gave evidence. They have both remained in regular contact (albeit in more recent times based on short visits and telephone conversations) with Mr Rayner over the many years since he suffered his stroke. As such they have had the

opportunity to assess his condition, his spirits and the extent to which, and the manner in which, he was interacting with themselves and others. Nothing was advanced to justify doubting their integrity as witnesses, though Mr Watson-Gandy expressed reservations as to the accuracy of their recollections and whether they actually saw enough of Mr Rayner to make an informed assessment of his circumstances.

47. I found Laetitia, Ranulf and Fleur to be truthful and reliable in the evidence which they gave.

THE PROPERTY

48. On 7th April 1997 Aeternus became the registered proprietor of the Property. Mr Rayner accepts that Aeternus was set up for the purchase of the Property which is his current home. Mr Rayner also accepts that whilst he is not a director of either Aeternus or Courtina, he is a shareholder in both companies. His evidence was that he could not remember when Courtina was set up but that it was a very long time ago. When cross-examined about his relationship with, and influence over, Aeternus and Courtina, Mr Rayner accepted that the companies were created as a device to mitigate tax liability and that he could request the companies to do as he wished. He said that he supposed that he could take measures to see that his requests were observed and his instructions had never been disobeyed in that regard. In the light of these concessions it is, in my judgment, perfectly obvious that in reality Mr Rayner exercises control over those companies and could cause the Property to be dealt with as he would wish. This would extend to his ensuring that interests in the Property were created in favour of those chosen by Mr Rayner. This is entirely consistent with what he himself provided for in the Powers of Attorney to which I shall refer later in this Judgment.
49. In about April of 1997 Mr Rayner moved out of the Eaton Square flat to live at the Property. He has lived there, apart from his long period of hospitalisation beginning in September 2008, ever since. It was from the Property that he gave evidence by video-link in the course of this trial.
50. The Property has only two bedrooms. Mr Rayner occupied one bedroom (and still does), and whilst Mrs Murphy was his carer, she occupied the other. There is also a study which Krishna used as a bedroom.

THE REMUNERATION ISSUE

Mrs Murphy's introduction as carer

51. Mr Rayner returned to the Eaton Square flat from hospital in August 1994. At that time Laetitia still lived with him. Several carers were engaged; first Martin, then Redempta, then Nita. There was some overlap between them and, even when Mrs Murphy began caring for Mr Rayner, Redempta was still working at the flat.
52. By arrangement with the Filipino Centre, following a request for help probably made by Laetitia, one day in November 1995 Mrs Murphy went to the Eaton Square flat in order to assess the situation.
53. Mrs Murphy said that when she first met Mr Rayner he could not walk or talk. She said his stroke left him unable to pronounce words properly, which Mr Rayner disputed. I accept Mr Rayner's evidence on this point. She said that when she arrived at the Property, Laetitia opened the door to her but did not speak to her at all, not even saying "hello". She said that she had no conversation with anyone that day. She described how she stood in front of Mr Rayner and looked to see what was wrong with him. She said that she wiped saliva from his mouth, and wiped his eyes.
54. Mrs Murphy said that following this first visit she returned to the Centre and spoke to a Sister who worked there who asked whether Mrs Murphy could do something. She said that the following day she returned to the flat, without first having made an appointment, and on this occasion she did speak, albeit briefly, to Laetitia, of whose care Mrs Murphy was critical. She said that Laetitia had left Mr Rayner in his room in soiled bedding, covered with flies, and that the room stank of urine. The conversation with Laetitia, she said, consisted of little more than Laetitia's asking whether Mrs Murphy had experience as a carer, whether she was British, and whether she was married.
55. On this second visit, Mrs Murphy said that she stayed at the flat from about 9:00 a.m. until 6:00 p.m., only leaving after she had given Mr Rayner some supper. On leaving, she told the Porter that she was going but did not see Laetitia again that day. The following day, Mrs Murphy said she went again and on this occasion Laetitia was present and so was a friend of hers, Phyllida Poltock. Laetitia and Mrs Poltock occupied part of the Property, but on a floor immediately below that on which Mr

Rayner was situated; Laetitia disputed this description of accommodation arrangements, and denied that Mrs Poltock lived at the flat.

56. I reject Mrs Murphy's evidence as to the squalid conditions in which Laetitia allowed Mr Rayner to live. I accept Laetitia's evidence, supported by that of Mrs Poltock, that the flat had been adapted for Mr Rayner's living and that it was kept "*spotlessly clean*", and he was well cared for. I also accept the evidence of Mr Rayner and Laetitia that Mrs Murphy was interviewed, as one might expect, for her appointment, and I reject Mrs Murphy's account of the imperious manner with which Laetitia dealt with her on the first meeting. I find also that Mrs Poltock did not live at the flat as Mrs Murphy suggested.
57. It is not precisely clear when Mrs Murphy began to look after Mr Rayner, but Mr Rayner's diary entry for 27th November 1995, mentioning a payment to her of £30, suggests that she was doing so by that time.
58. Mrs Murphy said that she did not live at the Property before Laetitia finally left, but it was at that point that Mrs Murphy began to stay most nights. According to a diary entry made by Mr Rayner for 5th January 1996, Laetitia left on that day. It seems from the entry ("*Hurrah*") that at the time he was relieved. I find it is likely that it was around this time that Mrs Murphy began to spend most nights at the flat.
59. Following Laetitia's departure in January 1996, Mr Rayner became very substantially dependent on Mrs Murphy. At that time, and for many years afterwards, she was Mr Rayner's only full-time carer, though other part-time assistants were arranged from time to time. It was not until about early 2000 that Krishna was retained. Mr Rayner accepted that with Mrs Murphy around he felt secure that he would be looked after, and that she did her job well. He accepts also that they got on well together. In his evidence he mentioned how he was grateful to her for helping him out of an epileptic fit which he suffered as a result of his stroke. He said that Mrs Murphy was very good at dealing with such fits.

(i) *Evidence and submissions*

60. Mrs Murphy's case is that she received no remuneration at all, by way of salary, whilst she was the carer for Mr Rayner. In cross-examination she was taken to a number of the documents mentioned below that suggested that she had been paid

regularly for her services, beginning at a rate of £60 per week. She remained adamant that she was not paid any wage.

61. Mr Rayner's evidence was that Mrs Murphy was paid a salary from the time that she was retained. He said that the initial rate of £60 per week was agreed with Laetitia, and that the pay increased, first to £200 per week, and then to £400 per week. He said that Mrs Murphy was a nurse. Reliance was placed on a number of documents to demonstrate that Mrs Murphy was an employee and salaried. I mention those which I consider to be the most important:

- (a) A number of diary entries recording payments to Mrs Murphy; for example 27th November 1995 (£90), 8th December 1995 (£65), 1st February 1996 (£200) and 4th April 1996 (£200). It is unclear at precisely what date it is suggested that Mrs Murphy's pay was increased to £200 per week. (Some of the diary entries relate also to the physiotherapist "Judy" as mentioned below.) Another entry for 23rd June 1996, records that Mrs Murphy and Judy had not been paid. An entry for 1st December 1999, mentions advance pay of £600 for Mrs Murphy (and also £400 for Veena). I have to take into account that these entries do not necessarily demonstrate that pay, as opposed to reimbursement for something else, was being noted.
- (b) Some records refer to Mrs Murphy's taking leave. For example, there is a challenged message, dated 15th December 1995 produced on a computer, for Laetitia referring to making arrangements for Mrs Murphy to be taking leave with her family over the Christmas period, when Mr Rayner would be in Italy. There are diary entries for 25th and 26th November 1997, to "*Kumari on leave (urgent work)*". The taking of leave was consistent with a relationship of employer and employee.
- (c) On 21st July 1996, Mr Rayner claims that he wrote to Laetitia, referring to a meeting which he had with her the previous day. The note was produced, but its authenticity challenged. (Although the relevant Notice to Prove incorrectly refers to it as being dated 21st January, it is clear from the page numbering also mentioned that it was this document that the challenge concerned.) The apparent purpose of this note was to record for Laetitia the high costs which Mr Rayner was incurring in respect of his care and other expenses. The note

recorded that Mrs Murphy cost £200 per week, and £9,600 per annum. The note of 21st July 1996 also records weekly payments of £65 to Judy; payments to her are corroborated by diary entries for 8th January and 1st February 1996 (the latter being for two weeks). Mrs Murphy said in cross-examination that she did not see the note prepared for Laetitia, and she was adamant that she was not, at this time, or any other, being paid as the note suggested. She said that she could not say whether the other care costs listed by Mr Rayner in the note (such costs including the cost of a relief carer, physiotherapy, doctor's attendance, medicines and massage) were correct.

In assessing the weight to be attached to the note I take into account that it was written at a time when Mr Rayner and Laetitia had separated, and that he might have wished to present to her a pessimistic picture of his fortunes so as to depress any expectations in respect of a financial settlement upon divorce. I also take into account the fact that Mr Rayner said in his second witness statement (for the purpose of challenging expenditure asserted by Mrs Murphy) that he recalled having massages only on the Bangalore trip (see above), and that this is apparently inconsistent with the assertion in the note as to the cost of massages. However, Desideria's evidence, when she was taken to this note in cross-examination, was that she thought that her father might have continued with massages for a short time after the Bangalore trip. I accept that as the likely explanation for the apparent inconsistency in Mr Rayner's account, namely that such treatment had continued for a short while, and that he was genuinely making payment for it at the time when the note was written. I do not accept that Mr Rayner falsely put forward an account of his outgoings to Laetitia.

- (d) A letter addressed to "Whom It May Concern" and dated 25th July 2006. (In the course of the trial I was told by Mr Watson-Gandy that this document too was challenged, but it does not seem to have been subject to a Notice to Prove.) The letter referred to Mrs Murphy's wonderful care of Mr Rayner since his stroke some 12 years previously, and described Mrs Murphy as an excellent and knowledgeable carer. Materially it contained this passage:

"During this period, she has been recompensed with a salary of £400 for what is usually a 5-6 day week. On top of which, I have also paid her daughter's school fees of about £700 per month and I have

funded the building of a small house for her and her daughter in India and then a second one after the first was ruined by floods.”

I do not accept that this document was created by Mr Rayner for a dishonest purpose, or other than at about the time that it purports to have been created. I do, however, take into account that in about July 2006 the relationship between Mr Rayner and Mrs Murphy appears to have been particularly difficult with Mrs Murphy’s behaviour at Desideria’s engagement party (see paragraph 83(c) below), and the treatment of Giacomo (the incident described at paragraph 83(d) below) being in the recent past. This contested document was therefore probably created by Mr Rayner at a time when he briefly contemplated that the relationship between him and Mrs Murphy might be about to come to an end, however reluctant he might have been to end it, and however unrealistic, given his attitude to removing Mrs Murphy, that that might have been.

- (e) An audio recording (which was transcribed) of a conversation which took place on about the 6th December 2008 between Desideria and Mrs Murphy. Mrs Murphy is recorded saying “*my wage is £400*” and that she had not been paid since 7th September. Krishna’s pay was mentioned at £300 per week. There was discussion about making up the arrears. In a recording for 13th December 2008, Mrs Murphy, referring to herself and Krishna, said “*we are the people working for Sir*”. In another recording made on 19th December 2008, Mrs Murphy can be heard raising questions as to whether she has a job, finding another job, wages, and working for Mr Rayner. In closing submissions Mr Watson-Gandy questioned whether all relevant tapes had been provided to his client’s solicitors, and thus could not confirm that it was accepted that the tapes had been fully and accurately transcribed. I was unimpressed with this argument. The tapes were disclosed documents and if there was any issue as to their production, inspection or transcription, it could, and should, have been raised long before trial, let alone during closing submissions. There had been no prior intimation in the course of the case that these important tapes and transcripts were to be challenged. I was invited early in the course of the trial to listen to the tapes, and read the transcripts. No issue was raised then as to incomplete disclosure or inaccurate transcription.

62. In cross-examination Mr Watson-Gandy asked Mr Rayner about documents which contradicted his evidence as to the payment of a salary to Mrs Murphy:

- (a) A letter dated 24th April 2004 addressed “*To Whom It May Concern*”, but which Mr Rayner appears to have intended for Hoare’s bank. The letter was typed, I find by Mr Rayner, given that there is no suggestion that Mrs Murphy used his computer, and signed by Mr Rayner. It stated that it was a note to explain his general system for arranging household cash requirements and continued:

“I have found the physical access to my bank Hoare’s Lowndes Street Branch difficult to negotiate; so Kumari has kindly undertaken to cash cheques made out to her name, for the required amount of money needed to pay weekly expenses for wages, house maintenance and food etc., which normally amount to about £1,700 or sometimes, more, when there are large repair bills e.g. for frequent plumbing repair.

This is the reason why my bank account records show regular payments of approximately such sums to Kumari, which were not for her benefit; but for household expenditure.” (Underlining in original text).

- (b) A letter dated 8th May 2006 addressed to Miss Angela Jones of Lloyds TSB at its Sydenham branch where Mrs Murphy banked. This letter was written in response to a letter from the bank to Mrs Murphy, and contained the following passages:

“I am a disabled man who Mrs Murphy occasionally helps with various tasks.

From time to time, I have been able to help her with gifts of a little money; but, as these sums are given to her at irregular intervals and she is not my employee, they should not be regarded as a wage. As I find it difficult to visit the bank or shops, I also sometimes pay her a cheque in her name, to do so for me.”

- (c) A letter dated 30th December 2006 also addressed “*To Whom It May Concern*”. This letter was headed “*Past cheques drawn from my bank account*” and below that there was a further heading “*Kumari*”. This letter also appears to have been prepared on a computer by Mr Rayner. It states that it was written in case anyone was curious why Mr Rayner had regularly written so many cheques in Mrs Murphy’s name. It goes on to say:

“Except for her proper expenses, Kumari has not personally received this money”.

There then follows an explanation that most of the approximately weekly cheques were made out in her name because of his difficulty in negotiating Hoare’s Bank’s exterior steps, so that Mrs Murphy had kindly cashed cheques made out to her in order to allow him regularly to pay salaries and other household or personal expenses where cash was needed. The letter describes a system, as originally proposed by the bank, whereby Mr Rayner telephoned the bank with a list of cash requirements, with the bank’s preparing separate envelopes of different cash sums for Mrs Murphy to collect. It states that when it was not possible for Mrs Murphy to go to Hoare’s Bank, she had kindly cashed Mr Rayner’s cheques in her account with Lloyds TSB, which was done for Mr Rayner.

63. When questioned about these documents, Mr Rayner said he supposed that he was lying when he had asserted that Mrs Murphy was not his employee, and that his purpose in doing so was to try to avoid paying taxes. He said he did not know when he became aware of the tax issue, but there was always a threat of taxes.
64. A number of witnesses gave evidence to the effect that Mrs Murphy was paid a salary whilst working for Mr Rayner:
 - (a) Laetitia, who was involved in interviewing Mrs Murphy for a carer’s position, gave evidence that a wage of £60 per week was agreed, and that it was also agreed that Mrs Murphy would deal herself with tax and National Insurance. (Laetitia said that she was later informed by Mr Rayner that this wage was increased.) She said that she paid, in cash, this remuneration herself to Mrs Murphy. She acknowledged that no written contract was prepared for Mrs Murphy, and that other matters, such as holidays and sickness, were not discussed. She was, however, quite clear in her recollection as to Mrs Murphy’s status as a paid employee, even to the point that Mrs Murphy used to wear a uniform. Her recollection was supported by a computerised record which she had herself prepared; it consisted of a list of expenditure incurred in the week that she had left Mr Rayner. For 5th January 1996, the day before her departure, she noted a payment of £60 to Mrs Murphy. It was suggested by Mr Watson-Gandy, on behalf of Mrs Murphy,

in closing submissions, that Laetitia in giving evidence as to this document did so in the knowledge that it was a false record.

- (b) Desideria gave evidence that whilst she was living with Mr Rayner for several months from about the spring to the autumn of 1996, she had undertaken the task of going to the bank and cashing cheques for her father. She said that at that time Mrs Murphy's wage was £200 per week. Desideria recalled handing over this weekly wage to Mrs Murphy.
- (c) Ranulf gave evidence that when he had visited his brother in hospital in the autumn of 2008 he had seen Mrs Murphy. He said he asked her whether she was all right, her salary being paid by Mr Rayner, and her account fixed satisfactorily. The purpose, he said, in asking the questions was to address concerns that she was being paid given that his brother was hospitalised. He said that Mrs Murphy assured him that she was being paid and all was "okay". Such discussion took place, he said, on at least two occasions when Mr Rayner was hospitalised.
- (d) Fleur said in cross-examination that she had spoken to her brother from time to time, over the years, about his household affairs, in part because she had wanted to know that he was financially safe. She recalled that he had told her that he paid Mrs Murphy £400 per week. As best as Fleur could remember this conversation took place before Krishna worked for Mr Rayner, and this was about half way through the duration of Mrs Murphy's time with Mr Rayner. This is, of course, not direct evidence of such payment, and I take account of that.

65. Mr Watson-Gandy submitted that the evidence as to payment of salary was wholly inadequate. He pointed to the absence of any PAYE records, contracts of employment, and the lack of documentary records of payment. Such documents as did purport to record payments, such as diary entries, and the odd bank statement mentioning wages, he said, showed completely irregular payments that could be for anything, such as reimbursement of one-off expenses. He submitted that a far more compelling documentary record was to be expected in respect of an employee who worked for someone in Mr Rayner's position for a 12 year period. Mr Watson-Gandy attacked the reliability of Ranulf's and Fleur's evidence about pay, suggesting in

Ranulf's case that his belief was probably based on an assumption arising from answers to questions as to whether Mrs Murphy was financially "okay". In Fleur's case he drew attention to the fact that Fleur had said she and Mr Rayner had not discussed financial affairs, and contrasted this with her supposed knowledge about pay. He relied, unsurprisingly, on the letters of the 24th April 2004, 8th May and 30th December 2006 to which I have referred above.

(ii) Discussion and findings

66. If Mr Rayner's evidence as to payment of salary, when contradicted by the documentary record of his own making, had stood alone (ignoring for this purpose all other issues of credibility as between him and Mrs Murphy), there would clearly be room for doubt as to where the truth lies. However, I found the evidence of the other witnesses extremely compelling. I do not find it at all surprising that Ranulf and Fleur, as concerned siblings, should specifically enquire as to whether Mrs Murphy was being paid in order to see that their brother's position was secure. This was especially so when Ranulf raised the matter when Mr Rayner was hospitalised for a long period in late 2008. I do not consider that their evidence can be explained away as a misunderstanding. I completely reject the suggestion that Laetitia knowingly gave false evidence about the computer record suggesting that Mrs Murphy had been paid. I found her evidence as to discussions with Mrs Murphy about her engagement, including pay, to be entirely credible, and consistent with what was to be expected of the situation in which she and Mr Rayner were looking for help from a carer shortly before Laetitia left Mr Rayner in early 2006.
67. I consider that it is inherently unlikely that Mrs Murphy would have been prepared to take up a position as a full-time carer, in difficult circumstances, had she not been remunerated. It is difficult to understand why she would not ask for remuneration. In this context it is significant that Krishna was paid a wage of £300 per week (in cash). It would be extraordinary for the principal carer, Mrs Murphy, to be paid nothing, when Krishna was being paid, and on her case (which I do not accept) when there was another paid employee in the shape of Justin (see below at paragraphs 110-114).
68. I accept the evidence of Laetitia, Desideria, Ranulf, and Fleur on this important issue as to remuneration, and reject entirely Mrs Murphy's claim that she was not paid a wage for her work. By way of further corroboration of Mr Rayner's evidence there are the various diary entries (which were not challenged) and other documents (such as Laetitia's computerised note, and the note of expenses prepared for Laetitia in July

1996) which taken together powerfully support Mr Rayner's case as to remuneration. Finally, there are the statements made by Mrs Murphy as to her "job" and her "wage" in the recorded conversations of which there are transcripts. Mrs Murphy's statements in those conversations are incontrovertibly supportive of Mr Rayner's case. Even without the evidence of the recorded conversations I would have found the evidence as to remuneration extremely strong and certainly demonstrating the case to a high degree of probability; with what was said in the recorded conversations, it becomes overwhelming.

69. I consider that Mrs Murphy's motive for seeking deliberately to mislead the court was to try to bolster her case as to her expectation of an interest in the Property. As for the inconsistent documents prepared by Mr Rayner (which suggest that Mrs Murphy was not remunerated), I consider that in all likelihood he was motivated partly by a desire to avoid any tax consequences, whether for himself or Mrs Murphy, and partly by a wish to ensure that the transactions he was arranging (for whatever reason) were completed without interference from the bank.

THE HISTORY FROM 1996 TO 2009

The Bangalore trip

70. A sufficiently good rapport, and confidence in the relationship, was established by late April of 1996 when Mr Rayner and Mrs Murphy planned a trip to Bangalore. This was the first trip to India that Mrs Murphy had made since she first arrived in England in 1994. She said in evidence that she believed that Mr Rayner would benefit greatly from Ayuverdic treatment, a form of intensive physical therapy that she knew was available in India. Therefore the trip, which took place in June 1996, was arranged. She said that her family, who lived in Bangalore, helped make all of the arrangements and that she and Mr Rayner stayed with her family in India. The effect of the trip, she said, was greatly to improve Mr Rayner's condition both as to ability to speak, and to walk.
71. I do not accept Mrs Murphy's evidence that Mr Rayner could not speak properly before he went to India. This is inconsistent with the evidence of other witnesses including Mrs Poltock to the effect that Rayner's power of speech was not affected by his stroke. At trial, DVD evidence was put in relating to a lecture which Mr Rayner gave in the course of the Bangalore trip. The lecture was given to a substantial audience and Mr Rayner spoke confidently and authoritatively on the subject of great

pieces of jewellery. The DVD showed that Mr Rayner needed some assistance in moving around, and in particular help with his wheelchair. He was, however, able to stand for the purpose of delivering the lecture. I note that according to a report in *The Hindu* (a national newspaper in India) in June 1996, Mr Rayner did not share her opinion of the benefit of the treatment. I accept Mr Rayner's evidence that his condition was not improved as a result of going to India.

72. During the Bangalore trip Mr Rayner was introduced to members of Mrs Murphy's family, including Veena. Mr Rayner's evidence was that he and Mrs Murphy stayed in a hotel. His recollection was supported by evidence given by Veena who recalled travelling to the hotel which was about 15 miles from her home. However, in a letter dated 24th June 1996 which Mr Rayner sent to Yoge (Mrs Murphy's brother), Mr Rayner thanked Yoge and his family for their kindness shown during the Bangalore trip. The letter mentioned, amongst other things, "*home made porridge in the morning*", which suggests that Mr Rayner's recollection of not staying with the family at all, is faulty. The letter also demonstrated the esteem in which Mr Rayner then held Mrs Murphy as is shown in the following passages:

"Knowing your sister so well, I suppose that I should not have been surprised at the natural kindness, generosity and thoughtfulness of her close family. ...

Your dear sister Kumari is well and flourishing, although poor girl, she continues to have a very tough job looking after me!"

The letter also referred to "*extraordinary hospitality*" and "*a huge thank you for all you did for me*". I find that for some, but not all of the time during the trip, Mr Rayner and Mrs Murphy did stay at a hotel, but at other times stayed with her family.

The problems in Mrs Murphy's marriage

73. Mrs Murphy's case was that following the return from Bangalore her marriage ran into difficulties; she relied on matters connected with this in support of her case as to detrimental reliance on assurances given by Mr Rayner. She maintained that her marriage was destroyed because of Mr Rayner. Mrs Murphy's evidence in cross-examination, at first, was that Mr Murphy was not unhappy that she stayed with Mr Rayner or even when she went for six weeks to India with him. She said the problems first arose after she came back from India; she decided that she wanted to go back to Pleydell Avenue to try to save her marriage, informed Mr Rayner of this and that she would move out and find another job. She said that she left Mr Rayner with the

porter, Michael, at the Eaton Square flat and went to Pleydell Avenue, but Mr Rayner turned up the very next day in a taxi at her home and in this situation she accompanied him back to Eaton Square. A few days later, she asserted, her mother-in-law told her that she should not go back to her home; despite this she went to Pleydell Avenue, only to find that Mr Murphy was no longer living there. When she explained her circumstances to Mr Rayner, he gave her permission to stay with him. As to promises allegedly made to her at this time, these are considered later in this judgment (see especially paragraphs 276 and 293) Later in her cross-examination it emerged that when she had completed her Legal Aid form in October 2009, she had given the date of her separation from Mr Murphy as April 1996, that is to say before the Bangalore trip.

74. Mr Murphy, who incidentally still lives at the address in Pleydell Avenue, said his marriage to Mrs Murphy became “rocky” when she moved to stay with Mr Rayner. He said, in cross-examination, that he had met Mrs Murphy in 1994 at a time when she was staying in a refuge run by a community of nuns. Following their marriage, she moved to live at Pleydell Avenue, last living there in 1996. Despite their long ceasing to live together as husband and wife, Mr Murphy explained that there has been no divorce because of his religious convictions as a Catholic, and the feelings on the subject of divorce held in his family.
75. I am not satisfied that Mrs Murphy’s marriage broke down only following the Bangalore trip, or any attempt on Mr Rayner’s part to dissuade her from returning to Mr Murphy. I consider that it is likely that such difficulties as arose between Mr and Mrs Murphy occurred before the trip was made, and that no intervention by Mr Rayner played any part.

The development of the relationship between Mr Rayner and Mrs Murphy

76. Over the years, in addition to the Bangalore trip, Mr Rayner and Mrs Murphy made excursions to Switzerland and Italy. There is much other evidence, covering the many years during which Mrs Murphy cared for him, that Mr Rayner became very attached to her. For example, in a birthday poem written for Mrs Murphy in June 1998, Mr Rayner referred to her as “*Dear Koo Koo*”. The poem contained the lines:

*“Don’t leave me, my love
Or ever make me blue
You’re my only friend true”.*

77. A Christmas message from the late 1990s, accompanied with a sketch of a Christmas tree was addressed to “*Darling Kuku*” and was signed with “*love from Nichol*”. In a letter of 15th February 2001 addressed “*To Whom It May Concern*”, Mr Rayner wrote:

“I write this following a recent medical crisis for which I was hospitalised, and because a member of my family suggested that I know longer required Kumari’s help.

Kumari greatly assisted me in hospital. She has now looked after my health wonderfully for over 6 years.

In the event that I should ever again be hospitalised, it is my wish that Kumari stay with me in hospital if she can and be able to continue to use [the Property] as is convenient to her whilst I am in hospital”.

78. Mr Rayner’s affection for Mrs Murphy appears to have continued up to and beyond the time when he was admitted to hospital in the autumn of 2008. Mr Rayner then called Mrs Murphy from hospital and left a message for her. This was shortly after Ranulf and Desideria went to the Property (see paragraph 123 below) to collect Mr Rayner’s computer and other documents:

“Hey Kuku where are you cabbage ... Kuku today Ranulf and Desi went to the flat, they took away the computer and many important files, so don’t worry about that I really want to see you tomorrow ok love bye ...”.

79. There was clear evidence that Mr Rayner came to trust Mrs Murphy, not merely as a carer, but with his money. Undisputed evidence in the case demonstrated that over many years Mr Rayner entrusted significant amounts of money to Mrs Murphy, leaving her not only to collect very substantial sums of money in cash from his bankers, but also to expend the money on his behalf. Since the question of accounting for monies received is not to be the subject of the present trial, it is not within the scope of this judgment to make any determination as to whether that trust in respect of handling money was in any way abused. The fact that a high level of trust was placed by Mr Rayner in Mrs Murphy is, however, an important feature of the relationship.

80. There were, however, other aspects of the relationship between Mr Rayner and Mrs Murphy which were not positive and which are highly material in forming a view concerning the issues which I must decide. Many witnesses, including Mr Rayner, whilst acknowledging the quality of her physical care, criticised Mrs Murphy for

isolating, controlling and bullying him. This evidence, and Mrs Murphy's response to it, requires careful consideration.

81. Domitilla's evidence was that she had a very close and trusting relationship with Mr Rayner which lasted beyond his marriage to Marina. She described how as early as the autumn of 1997, when she visited him with Desideria at the Property, he appeared to be nervous, uncomfortable and unhappy. She said that he reported that Mrs Murphy was "*giving him hell*" which she did when they were alone, would not let him do what he wanted to do, and told him "*the most horrible things*". She reported his telling her that he could not stand her but had "*to stick with her because it is thanks to her that I am alive*". Not surprisingly, Domitilla said that she remembers this very well because it was repeated many times by Mr Rayner, and all of this made her feel worried and powerless. Domitilla said that she and Desideria tried to assure Mr Rayner that it would be possible to replace one carer with another, and they offered to stay in London whilst the replacement was organised. However, she said that the following evening Mr Rayner appeared to be discouraged and made Domitilla and Desideria promise not to discuss the matter again, and he said that if they really wanted to help him then the best thing that they could do would be to consider him as being dead.
82. Domitilla said that from the inception of Mrs Murphy's caring for Mr Rayner, until her ultimate dismissal, she was never allowed to stay overnight at the Property, and was only allowed to make short visits when in London, having travelled from Milan. (On this point it must be noted that the Property was not big enough to put up guests properly, especially from early 2000 when Krishna occupied the study.) She described how Mr Rayner "*wanted*" her to speak in English when making telephone calls, and how the loud speaker was used so that Mrs Murphy could listen into the call. To try and address this problem they adopted the practice of speaking on Sundays when Mrs Murphy took a day off. Domitilla complained that letters and postcards did not appear to reach Mr Rayner. She described how Mr Rayner asked her to be especially nice towards Mrs Murphy because otherwise she would be unpleasant to Mr Rayner for days after each visit.
83. Domitilla referred to other instances of Mrs Murphy's conduct:
 - (a) An occasion when Mr Rayner and Mrs Murphy were in Italy, and Domitilla invited Mr Rayner to visit her in Milan. He said that this would not be

possible because Mrs Murphy would not allow it, but that instead Domitilla should travel to Padua and meet for a coffee. Domitilla drove over 240 kilometres in order to meet Mr Rayner, but they were only together for an hour.

(b) Mr Rayner reported that Domitilla's suggestion, during the Padua trip, that Mrs Murphy should take a holiday whilst Mr Rayner stayed with Domitilla for a period during the summer, was very badly received by Mrs Murphy who became furious with Mr Rayner as a result. Many years later, in November 2007, Mr Rayner mentioned the incident, in a (challenged) letter to Domitilla saying of it "... *When you're dependent on someone, the goodwill of that person is vital. For example, I got absolute hell for days after your holiday suggestion*".

(c) In July 2006, at a party arranged by Mr Rayner to celebrate Desideria's engagement, Mrs Murphy made a "*terrible scene*", screaming and crying in front of Desideria, and others present, because, Mrs Murphy considered, Domitilla had not paid Mrs Murphy sufficient attention. A few days later, Mr Rayner wrote to Domitilla, referring to the incident, and apologising for Mrs Murphy's behaviour. In the challenged letter he said:

"I am afraid that she has an absolutely horrible difficult character which I have to bear every day because she's otherwise so good at looking after me. In fact, I honestly don't think that I'd be alive today without her."

(d) In July 2006 Domitilla's son, Giacomo, who was then aged 17, planned to stay with a friend at the Property. They dined with Mr Rayner, but at around midnight when Mr Rayner was asleep, Mrs Murphy required Giacomo and his friend to leave immediately, and they had to search for other accommodation. This was the subject of a challenged e-mail exchange between Domitilla and Mr Rayner. From that exchange, it does appear, however, that Mr Rayner himself had been rather irritated with Giacomo for turning up with a young woman and expecting sleeping arrangements to be made at very short notice.

(e) One of the most troubling allegations raised by Domitilla relates to the autumn of 2007. She says that she was then requested by Mr Rayner, via

Desideria, not to visit Mr Rayner any further because her visits always created problems and threats to leave emanating from Mrs Murphy. Domitilla said that she was very upset about this and wrote a long (challenged) letter in Italian to Mr Rayner which, for the purposes of these proceedings, was translated into English. In its description in the trial bundle it is suggested that this letter dates from around late 2007 or early 2008; it seems to me it might have been the letter to which Mr Rayner responded in November 2007 mentioned at (b) above. In the letter she referred to the difficulties of getting mail to Mr Rayner (implicitly past Mrs Murphy) and she mentioned the request made through Desideria. In her letter, Domitilla expressed real sadness that this position had been reached, suggesting that a problem for Mr Rayner was that he tended to push away “*some nice and independent people*” but not others who would “*start bossing you around and put you under*”. She expressed her pain at learning that Mr Rayner did not wish to see her and her view that this was “*something absurd and against nature and good sense*”.

84. Domitilla said that despite all of the problems which she experienced, she did visit Mr Rayner again in about July of 2008, but it was a rather formal and embarrassing visit during which Mrs Murphy never left the room. The meeting lasted for only about half an hour. She said that it was only after Mr Rayner became hospitalised in September of 2008 that she had free access to him for the first time in about 14 years, and became able to talk to him freely about anything she chose. Even then she said that when she met Mrs Murphy at the hospital there were arguments because she refused to provide Domitilla with medical insurance papers, and refused to provide keys to the Property so that she could try and find the documents herself.
85. When Domitilla was cross-examined about her evidence, she said that it was not possible to rescue someone who did not wish to be rescued and she considered that she did not have the authority to step in unless Mr Rayner agreed with her. She acknowledged that during the 13 years or so that Mrs Murphy was with Mr Rayner, trips were made abroad and that sometimes visits were made to Ranulf and Fleur. She accepted also that the Property only had limited bedroom accommodation, but explained that she would have been prepared to sleep on a sofa or in a sleeping bag. She did not accept that she needed to be prevented from staying at the Property. She conceded that Mr Rayner could be obstinate at times and that there were clashes of personality within the family.

86. Desideria described the changes affecting Mr Rayner's life in the years following his stroke. She said that in the early years, Mr Rayner was never alone, and had plenty of visitors. From early 1997 Desideria was in New York for some years and did not see her father so frequently during that period, during which Krishna also began working for Mr Rayner. Following her return to Europe, Desideria also became concerned that it appeared that Mrs Murphy listened in on telephone calls and did not pass on letters to Mr Rayner.
87. Desideria said that she had witnessed very difficult behaviour on the part of Mrs Murphy on a number of occasions:
- (a) At formal dinner parties, if Mrs Murphy had not been placed next to Mr Rayner, she would simply go away leaving him in much distress. A particular example that she gave was in relation to what occurred at the wedding of her cousin, Marisa, in 2002. On this occasion, Desideria said, that Mrs Murphy made "*a terrible scene*" whilst Mr Rayner was climbing some steps. Mrs Murphy said that since his family were there to help him, they could take care of him, whereupon she left.
 - (b) Similar conduct was experienced most of the times when Desideria visited Mr Rayner. She would say that because Desideria was there, she, Mrs Murphy, was no longer needed and would leave. In discussion about such conduct, Desideria said that Mr Rayner's position was that whilst Mrs Murphy had a very difficult character, she was a good carer and he had to put up with her possessive and jealous character. These sentiments are reflected in the correspondence emanating from Mr Rayner to which I have referred.
 - (c) She described the same incident as that described by Domitilla in respect of the party which Mr Rayner had organised for Desideria.
88. In cross-examination, whilst challenged about these matters, Desideria explained her concern that her father was becoming cut off from friends and family. She acknowledged that people did go to see him at the Property, but these were mostly family and very few friends. She described how his days became shorter, with his getting up late in the morning and going to bed at around 7:30 in the evening. She said that his rare excursions from the Property made it difficult for him to have normal relationships.

89. Ranulf also spoke of Mrs Murphy's domination of his brother, and her complaints about Desideria (in particular taking Mr Rayner's money). Ranulf referred to a challenged letter sent by Mr Rayner to him in July 1997 in which Mr Rayner expressed thanks in respect of a stay and continued:

“Thank you especially for being extra sensitive so far as Kumari is concerned. You can have little idea how important this has become to me, being so completely reliant on her goodwill. She is very proud and temperamental and continually complains of how unappreciative my family has been to her for virtually keeping me alive during the last 3 years. I have to say that my Italian family have also been particularly remiss on showing any appreciation to her. Laetitia has also naturally ignored her for giving me the help which she herself should have done. So thank you Ranulf for saying something to her this time. But it would help even more if you could spare a few moments to write her a little note, to say how much the whole family appreciates her ceaseless efforts on my behalf. I am sorry if this request sounds pathetic and I suppose the natural reaction to her playing up, would be why not change her for another helper? The answer to this, is that she is easily the best of the different carers I have had, and has done an enormous amount to help my recovery. It will be impossible to find anyone else of her skills and devotedness. I also owe her a lot of loyalty from my part, for what she has done for me. Despite her difficult temperament, I have therefore made up my mind that I will have to continue to depend on her until I have regained much more mobility and independence. Kumari at least maintains that she has great respect for my elder brother, a letter to her from you would mean much more, than from anyone else. So soon as you can, please find time to write something about how grateful everyone is to her etc. Address the envelope separately and simply to Kumari and this address. This is important because I believe it will make her easier to persuade to accompany me on country weekend invitations in the coming weeks.”

(Underlining added)

90. These kinds of requests of family members, on the part of Mr Rayner, became a feature of his relationships with his family.
91. Ranulf described one incident of particularly inappropriate behaviour on the part of Mrs Murphy. This was in respect of an occasion when the grandstand at Exeter Racecourse was to be named after Mr Rayner's father. Mr Rayner attended the event, accompanied by Mrs Murphy, who challenged one of the ladies attending a ceremonial luncheon as to why she, Mrs Murphy, was not expected to attend the luncheon. Mrs Murphy flew into a violent rage calling the lady concerned “*every name imaginable*”.
92. When challenged about these matters in cross-examination, Ranulf affirmed what he had said in his witness statement. In relation to the Exeter Racecourse incident, when

it was suggested to him that the incident had descended into a scuffle, he disputed this. It became apparent that a matter of particular concern to Ranulf had been the complaints which Mrs Murphy had made with regard to Desideria. In re-examination he elaborated upon this saying that he did not listen to such “*mad chatter*” and put the telephone down.

93. Fleur experienced what she believed was Mrs Murphy’s listening in on telephone calls with Mr Rayner. She spoke of how Mr Rayner seemed “*absolutely terrified*” that Mrs Murphy might leave. She also had formed the impression of her dominance in relation to her brother. In cross-examination she described how Mr Rayner appeared to be going “*downhill*” with Mrs Murphy’s doing everything for him so that he became ever more dependent on her. She said she felt unable to intervene because Mr Rayner had his own life and did not want to be dictated to by his sister or brothers. She acknowledged the good physical care that Mrs Murphy provided.
94. In re-examination Fleur, like Desideria, described her concern about the ever shortening days that Mr Rayner spent when living at the Property, getting up late in the morning and going to bed early in the evening. She contrasted that with the normal day that he would have on visits to Devon.
95. Miss Sibilla Patriarca, Marina’s niece, similarly described difficulties in having contact with Mr Rayner. She mentioned that Mrs Murphy objected to their speaking in Italian, because she could not understand it. She too had a clear impression that Mrs Murphy listened in on telephone calls. She described one quite remarkable incident which she witnessed. She said that Mr Rayner had an argument with Mrs Murphy, whereupon Mrs Murphy said that she would leave him. This was followed by her telling Mr Rayner to repeat an apology a thousand times, which he did, from his wheelchair. (This evidence was read, and therefore there was no opportunity to test it by cross-examination. Mr Rayner himself did not recall this incident.)
96. Julie Lynn-Evans, Mr Rayner’s niece (by his sister, Fleur), said that by the late 1990s she visited Mr Rayner only every few months, but she too experienced how Mrs Murphy did not leave her and her uncle to talk alone. Mr Rayner, she said, seemed to have become isolated, and not taking responsibility for himself. Julie found the atmosphere “*horrible*” because, she said, Mr Rayner and Mrs Murphy seemed to have developed a “*cloyingly unhealthy relationship*”. She said that following his stroke, Mr Rayner used to eat perfectly well, and she recalled taking him to restaurants.

Following Mrs Murphy's engagement, Mrs Murphy began feeding Mr Rayner, though it seemed to Julie that he was giving up some dignity which he did not need to do. He had perfectly a good arm with which he could eat. By around the late 1990s Julie saw Mr Rayner as becoming more and more isolated, with his becoming more withdrawn and saying it was not convenient for members of the family to visit him. She mentioned how, although Mr Rayner had been an extremely social man who loved to see friends, they gradually dropped away because of the problem of getting to him. By way of an example of Mrs Murphy's intrusive conduct, Julie described an occasion when she wanted to speak to Mr Rayner about her divorce, but even in that situation, Mrs Murphy remained present, forcing Julie to abandon the topic. She did not feel free to talk.

97. Other witnesses, including Laetitia and her friend, Phyllida Poltock, also gave evidence of how Mrs Murphy engaged in conduct likely to alienate visitors. In Mrs Poltock's case, for example, it consisted of allegedly making a false complaint to Mr Rayner about how Mrs Poltock had stolen things from the Eaton Square flat (necessarily before Laetitia left in 1996); Mrs Murphy denied this incident. Whilst I am quite satisfied that Laetitia and Mrs Poltock were perfectly genuine in their expressions of concern about how Mr Rayner appeared to become isolated in the many years that Mrs Murphy cared for him, I do not find their evidence on this point helpful. Neither of them had the opportunity to observe Mr Rayner's social interaction at close quarters during that period, and much of their evidence is clearly not independent of what was relayed to them by Mr Rayner.
98. There is, however, one further piece of evidence which I should mention, as it was quite striking; it came from Mr Costas Ioulianou. He is in the business of providing information technology support and services, and Mr Rayner was one of his customers. On a visit to the Property, in about 2006, Mr Ioulianou recalled that Mrs Murphy made unsolicited comments about Mr Rayner's daughter stealing money from Mr Rayner. The daughter concerned was not named. In cross-examination Mr Ioulianou was quite adamant that this incident had taken place.
99. Mrs Murphy did not accept that she had tried to isolate Mr Rayner or that she had bullied him in any way. Indeed, in parts, her case was that Mr Rayner was not visited by members of his family; I mention, in this regard, the evidence of Dorothy Samarawickrama described at paragraph 113 below. That witness spoke highly of

the care provided by Mrs Murphy, saying that she was like a nurse, a mother and a sister to him and that she was “*always there*”.

100. To demonstrate Mrs Murphy’s dedication to Mr Rayner, Mr Watson-Gandy called Sister Margaret Healey, of the Congregation of the Sisters of St. Louis. She recalled how the Centre which she helped to run had provided a number of carers to assist Mr Rayner before Mrs Murphy. None of them stayed for any significant time. Sister Margaret described how a lady (presumably Laetitia) called the Centre and was desperate for assistance. Thereafter, Sister Margaret remembered hearing from Mrs Murphy about how she enjoyed looking after Mr Rayner.
101. Mrs Murphy’s husband, Mr William Murphy, gave evidence as to the long and unsocial hours that Mrs Murphy worked to look after Mr Rayner and how, based upon his opportunity to observe the relationship between them, she was always patient and very giving of her time.
102. Mrs Murphy said that when she first met Mr Rayner he could not get through a day without assistance, and that he needed somebody very much and was very dependent on her. She said he could not do many things for himself and that she had to do many basic tasks for him, such as washing, cleaning and feeding.
103. She denied the allegations put to her with regard to her behaviour. Dealing with the alleged incident at the racecourse she said that the lady with whom she had had a disagreement had pushed her, causing her to suffer a cut. She denied that she had flown into a violent rage on being told that she would not be allowed to sit with Mr Rayner.
104. Mrs Murphy denied any suggestion that there had been a row at Marisa’s wedding. She said that she had simply left as she had not been allowed to go inside. As to the incident at Desideria’s engagement lunch, she said that she had not become upset or cross, and did not leave. Although she accepted that Mr Rayner had subsequently written letters apologising for her behaviour, she said that it was unnecessary for him to do so.
105. She denied in particular that she lost her temper with Mr Rayner. She denied the “*thousand apologies*” incident described by Sibilla, but did accept that she had

insisted that Giacomo and his friend leave the Property after Mr Rayner had gone to bed.

106. Mrs Murphy denied that she ever insisted that Mr Rayner spoke English on the telephone, or that she had demanded that the telephone be placed on a speaker when he was using it. She said that Mr Rayner was a chain smoker and could not smoke and hold the telephone at the same time. She denied that she listened in on an extension.
107. Mrs Murphy described a considerable improvement in Mr Rayner's condition under her care. She said that when they returned from the Bangalore trip, he was very happy and wanted to get involved in everything, that he began engaging in business, and she encouraged him to undertake lectures. She said that he took up driving again and they were able to make trips to Europe. She said that it was her decision that he needed to get out of his flat and into the fresh air. He took up university courses and studied for examinations, used computers and the internet in relation to finance; in short, she said, he made very substantial progress towards rehabilitation on many fronts. She said that Mr Rayner had a very bad temper and it was because of this that none of his family wanted to stay with him. She said that she did try to control his emotions, when his temper got the better of him and, for example, when he spat at her and threw food at her. She denied that she had exploited Mr Rayner emotionally. She said that he could not be controlled because he would do whatever he wanted to do. She denied that she had any control of his assets.
108. The issue as to whether or not Mrs Murphy ever misappropriated money belonging to Mr Rayner is not something for decision at this stage in the case, but it is only right to say that Mrs Murphy denied that she ever misappropriated any money belonging to him. She accepted that she did go to the bank to collect cash, but this was simply to pick up amounts arranged by Mr Rayner. He would drive to the bank and wait outside.
109. I shall, when considering the undue influence issue (at paragraphs 319-329), in conjunction with further evidence relating to that issue, make additional findings in the matters considered in this part of the judgment. At this stage, however, I make the following factual findings with regard to the nature of the relationship between Mrs Murphy and Mr Rayner:

- (a) Mr Rayner became very attached to Mrs Murphy, and as time went by the strength of the attachment increased. The attachment went beyond a mere physical dependency upon her in respect of his day to day living. An emotional dependency developed, so that he began to feel great apprehension about being without her, and he became convinced that he could not satisfactorily replace her with anyone else; this is reflected in much of his correspondence with his family. See especially the letters in 1997 to Ranulf, and to Domitilla in 2007. He was aware of the fact that she behaved badly, but felt unable to tackle the problem.
- (b) Mrs Murphy was aware of the extent of the dependency, and knew that because of it she could behave badly towards Mr Rayner and his family, and that he would tolerate it because he felt unable to dispense with her. This led to his making requests to family members (demonstrated in the correspondence) imploring them to accommodate Mrs Murphy's behaviour.
- (c) Mr Rayner became so dependent on Mrs Murphy, and felt so vulnerable, that he was even prepared to see himself cutting off, or much reducing, contact with family members whom he loved; the requests to Domitilla in 1997 to "*consider him as being dead*", and in 2007 not to visit.
- (d) As the years went by Mr Rayner did become increasingly isolated from family and friends, seeing less and less of them. His daily routine and manner of living became unnecessarily restricted; he did not need, for example, to be helped with his feeding, or to have the curtailed days. The focus of his life became ever more his time with Mrs Murphy. I find that, to some considerable extent, Mrs Murphy encouraged this, as she did not like having to deal with the family members, and believed that in social gatherings her status was challenged. This isolation increased the dependency, the vulnerability, and the need to address all manner of Mrs Murphy's demands, from help with Veena, to how she should expect to be treated by others.
- (e) Mrs Murphy liked to monitor what was happening in Mr Rayner's life. This is why she remained present when visitors were around, and why she wanted dialogue to be conducted in English rather than Italian or French. I find she probably did make a habit of listening in to telephone calls, and also did not pass on all correspondence to Mr Rayner.

Krishna and Justin

110. In about January 2000 Krishna was employed to work for Rayner as an additional carer. Krishna gave evidence through an interpreter, although he said he could speak a little English. His first language is Tamil. There was a lack of clarity as to just how Krishna came to be recruited; he said that when visiting a relative in hospital he met Mr Rayner who was in an adjacent bed. This was inconsistent with other documentary evidence which suggested that Mr Rayner was not in hospital at that particular time. I am not persuaded that Krishna's account is accurate; but Mr Rayner's evidence on this topic was also vague. The fact is that Krishna was taken on, and helped Mrs Murphy; he also dealt with jobs such as parking Mr Rayner's car. He undertook many of the more physically demanding jobs associated with providing care. Krishna was paid in cash by Mr Rayner, the cash being collected by Mrs Murphy from the bank.

111. Krishna remained in Mr Rayner's employment until after Mr Rayner's admission to hospital late in 2008. Both he and Mrs Murphy maintain that in around 2003 a further carer called Justin was employed by Mr Rayner, which Mr Rayner denies. This matter is of some importance because it has a bearing on issues as to what Mrs Murphy did with monies received from Mr Rayner. She says that some of the money was used to pay Justin. Whilst the accounting issue is not for this trial, the question of whether there was an employee called Justin was fully investigated in evidence, and Mr Watson-Gandy has invited me to make a finding on that point, so I shall do so.

112. Krishna said that Justin was a friend of his from Sri Lanka, and that Justin was recruited following a deterioration in Mr Rayner's health. Justin used to help at nights; also he was able to help in holding Mr Rayner when he suffered from fits. Mrs Murphy and Krishna were not able to manage this alone. Krishna said that Justin worked for Mr Rayner until the time when he was admitted to hospital in 2008.

113. Another witness, Dorothy Samawickrama, called on behalf of Mrs Murphy, gave evidence about encountering Justin at the Property. She also lived and worked in the same block of flats in which it is situated. She looked after some neighbours' children, often encountering Mrs Murphy and Mr Rayner, and visiting the Property for various reasons over a period of years. She said that when she visited the Property, Justin was there from time to time, although she could not remember when she first met him. She said that he spoke English, but appeared to be from India or Sri Lanka. Over the many years of her calling at the Property and getting to know Mr

Rayner and Mrs Murphy, she said that she never once met anyone from Mr Rayner's family.

114. I accept that Mrs Samarwickrama might have encountered a man at the Property from time to time, but such a person could have been no more than a friend of Krishna. I am not satisfied that the person encountered was called Justin. I have doubts as to whether Mrs Samawickrama actually did visit as often as she recalls, given that she claimed never once to have encountered any members of Mr Rayner's family. Equally there was no evidence that any of Mr Rayner's family ever encountered Justin. There is no trace of a reference to Justin in the documentary records. I am not satisfied by the evidence adduced on Mrs Murphy's behalf that there ever was an employee called Justin.

Mr Rayner's admission to hospital in September 2008

115. On 7th September 2008 Mr Rayner fell and suffered injury. He was admitted to Chelsea and Westminster Hospital, where at times his condition was sufficiently serious to require admission into the Intensive Care Unit. He lapsed into unconsciousness at times. Mrs Murphy spent a great deal of time at his bedside, both day and night, although she did return to the Property to sleep on occasions.
116. Mrs Murphy's evidence was that Mr Rayner's instructions to her had been that in such a situation she should contact Ranulf and Fleur, but not the Italian family, out of fear that they would put him into an NHS hospital, and also because they might try to get rid of her as she suggested that they did when he was ill in 2001. However, Mrs Murphy did notify family members, including the Italian family and Laetitia. It was, I find, at Fleur's insistence that Mrs Murphy contacted Desideria. Mr Rayner's condition remained extremely serious for a considerable time, as is reflected in Ranulf's letter to him dated 13th October, in which Ranulf also mentioned how Mrs Murphy's constant presence was a wonderful help. Domitilla's challenged e-mail dated 27th September to Andrew mentioned further surgery in connection with the bowel, a tracheotomy, and the need to remain in the Intensive Care Unit for another two weeks.
117. Mrs Murphy maintains that once Desideria became involved in Mr Rayner's affairs Mr Rayner suddenly and inexplicably changed his attitude towards her. She said that she considered that Desideria and Laetitia had brainwashed him. There is an issue as to how soon Desideria first visited the hospital; Mrs Murphy, supported by Krishna's

evidence, says it was on 17th October 2008, but Desideria said that it was very soon after she learned of Mr Rayner's admission and was in September. Her presence was referred to in Domitilla's e-mail to Andrew. I accept Desideria's evidence as to how soon she visited. I also accept Laetitia's evidence that she visited Mr Rayner regularly from around 11th October. It is clear from Domitilla's e-mail to Andrew that there was natural concern as to how Mr Rayner's financial affairs were to be handled at this time; she touched on questions of arrangements to be made with the bank, the payment of bills, and the possibility of a power of attorney. Domitilla also expressed doubts about the wisdom of a situation in which only Mrs Murphy was aware of Mr Rayner's affairs. Mrs Murphy appears to have resented this, as well as any notion of a power of attorney, and in her evidence complained of how the family members immediately sought information about finances and assets. In cross-examination Mrs Murphy said that when asked by Desideria, she did not say that Mr Rayner's papers were at the Property. At this time her things were still at the Property, and she acknowledged that she was still occupying her room there. She accepted that she did not mention to Ranulf, or anyone else, that the documents were at the Property, as she believed that Mr Rayner would get better. On her own evidence it seems that Mrs Murphy adopted a position of deliberately not co-operating.

118. I find that the relationship between Mrs Murphy on the one hand, and Desideria and Domitilla on the other, rapidly became even more strained than it had been before, and that this was because of Mrs Murphy's resentment at what she saw as inappropriate interference, in particular by Desideria. I consider, however, that Desideria's concern and her desire to "get a grip" on Mr Rayner's affairs was perfectly understandable and sensible. It was not as if Mr Rayner had appointed Mrs Murphy as his attorney to deal with such circumstances. It was natural that a close family member should want to become closely involved. Mrs Murphy's increasing hostility was, I find, also displayed towards Laetitia.

Execution of Powers of Attorney on 20th November 2008

119. Mr Rayner said, and I accept, that when he asked Desideria and Laetitia to help him, they told him that they would need a power of attorney. However, his evidence was, and again I accept it, that at this time he wanted to ensure that Mrs Murphy had a home at the Property, and this was why the powers were drafted as they were. On 20th November 2008, Mr Rayner executed a General Power of Attorney appointing Laetitia and Desideria to be his attorneys, subject to a proviso in the following terms:

“My flat at 42, Kingston House South is not to be sold during my lifetime without my consent in writing and the authority conferred by this General Power of Attorney expressly excludes any authority to my attorneys to enter into or authorise any arrangement which may give effect to such sale or which in any way evicts or interferes with the occupation of the flat by my carer Kumari.”

120. On the same day Mr Rayner executed a Lasting Power of Attorney, also in favour of Desideria and Laetitia. This was subject to a restriction in terms similar to the proviso in respect of the General Power in that it sought to protect Mrs Murphy’s occupation of the Property. Additionally Mr Rayner set out guidance for his attorneys, namely, that he wished Mrs Murphy to be able to live rent free at the Property during his lifetime and that this was why he had restricted the Power to *“enable her to live there for as long as she shall wish”*.
121. Both Powers of Attorney were witnessed by Julie Burton of Penningtons, Mr Rayner’s solicitors. In the case of the Lasting Power she also signed the core certificate confirming that in her opinion Mr Rayner understood its purpose and the scope of authority under it, that no fraud or undue pressure had been used to induce him to create it, and that there was nothing else that would prevent its being created. This certificate was signed under a caption that warned against signing if in doubt as to any of those matters. The Lasting Power was registered at the Office of the Public Guardian on 22nd January 2009.

Mrs Murphy’s dismissal as carer and removal from the Property

122. Following execution of the General Power in their favour on 20th November 2008, Desideria and Laetitia obtained statements from Hoare’s Bank concerning Mr Rayner’s accounts. Desideria said, and I accept, that she then learned of the very substantial withdrawals from the account that had been made, and confronted Mrs Murphy about this soon afterwards at the hospital, at which Mrs Murphy made inappropriate threats. It was at about this time that Desideria began to make recordings of conversations with Mrs Murphy, and also began to press for an account of what had become of the large sums paid to her by Mr Rayner. Mrs Murphy’s position was that she had stolen nothing.
123. On about 5th December 2008, Desideria went to the Property with Ranulf with a view to collecting some clothes, Mr Rayner’s computer, and some of his papers. She could

find no bank statements, or cheque stubs (save a few), but did retrieve the computer. This visit is what prompted Mr Rayner's call to Mrs Murphy mentioned at paragraph 78 above.

124. For reasons explained earlier I am not concerned in this judgment with the accounting issues which have arisen between the parties, but I must mention briefly how the issues were raised in the early stages, as this is relevant to the circumstances of Mrs Murphy's departure from the Property and the end of the relationship with Mr Rayner. On 16th December 2008, Desideria wrote to Mrs Murphy to ask for an account, and followed this up with further letters. On receiving no response Desideria then set up a disciplinary meeting in January 2009. Mrs Murphy, by letter, responded on 7th January, denying the allegations made, and questioning Desideria's authority, stating that the convened hearing was not convenient. On 9th January Desideria proceeded with the disciplinary hearing in the absence of Mrs Murphy, and subsequently wrote to advise her that she had not properly accounted for sums paid to her, vastly in excess of Mr Rayner's expenses, and that she had wrongfully removed Mr Rayner's property. She advised Mrs Murphy of her dismissal. Mrs Murphy responded by letter of 19th January, denying that she was an employee and asserting that she had the right to remain in the Property. On 29th January, Desideria informed Mrs Murphy by letter that 18 bags of her belongings had been placed in the basement at Kingston House. Desideria said in evidence that she personally dealt with the packing up of Mrs Murphy's belongings, and did not include any papers, divorce or otherwise, belonging to Mr Rayner. She said she found no papers apparently belonging to Mrs Murphy. She described how there were filing cabinets both in her father's room and in Mrs Murphy's, but she said that by the time she took photographs of the flat (which were in evidence) the cabinet in Mrs Murphy's room had gone. This was some time between 16th and 25th December 2008. The Duke of Windsor's box was not amongst items she came across on packing up Mrs Murphy's things.
125. In the meantime, on 16th January 2009, the locks at the Property were changed so that Mrs Murphy, and Krishna, no longer had access to it. Mr Rayner remained in hospital for about eight months, not returning home until the middle of 2009.
126. I accept Mr Rayner's evidence that his attitude to Mrs Murphy changed as a result of the financial investigation undertaken by Desideria and Laetitia. He believed that he had been seriously wronged. Of course at this time, on his case, he did not know of

the true position concerning Veena and the fact that she was not Mrs Murphy's daughter.

Mrs Murphy's application for an injunction

127. On 18th May 2009, Mrs Murphy issued her claim form. She then made an application for an interim injunction requiring Mr Rayner and Aeternus to allow her to occupy the Property, relying on much the same material as has been advanced on her behalf at trial in support of her claims. She said in her witness statement in support of her application that she had been staying with friends since her exclusion from the Property, but this could not continue for much longer. She gave her address as 20, Pitcairn Road, Mitcham. She put in written evidence (dated June 2009) from Mr Thiruvilan Mohan, who said that he is the tenant of that property. Mr Mohan's evidence, relied on also before me under the Civil Evidence Act 1995, was to the effect that, as a mark of friendship, he had agreed to accommodate her on a temporary basis, but that he could not do so any longer.
128. In fact Mrs Murphy continues to live at the address in Pitcairn Road, and in cross-examination it became apparent that her associations with that address went back many years. Mr Murphy has paid Council Tax bills relating to it for a long time, and the accounts for outgoings such as gas, electricity and telephone, and television licence are in the name of Mrs Murphy alone or with Mr Murphy. Mrs Murphy said that students live at the address and she merely collected money from them and paid the bills by direct debit. Her nephews have lived there as well, and so has Veena, who gave that address in her witness statement.
129. I consider that the suggestion in Mrs Murphy's first witness statement that there was something imminently precarious about her occupation of the address at Pitcairn Road was, to say the least, misleading. The presentation of her case for an injunction was hardly consistent with the candour required of someone seeking such relief from the court. Although the application for injunctive relief came before the court at various stages, no substantive order was made in relation to it.

ALLEGED MISAPPROPRIATIONS

The removal of documents issue

130. Mrs Murphy, giving evidence, denied that she removed any papers from the Property, although she accepted that quantities of Mr Rayner's personal papers, including those

relating to his divorce from Laetitia had ended up in her possession. She said that Mr Rayner had given his personal papers to her to look after, but that his family, in clearing her possessions out of the Property, had mixed up these papers with her personal effects. (In closing submissions Mr Watson-Gandy conceded that all the papers copied in the trial bundle between pages 277 and 297 had been produced by Mrs Murphy; these included some of Mr Rayner's divorce papers.) She described how her personal possessions had been put in black sacks and boxes and deposited in the basement at the Property. (Krishna described how his possessions were dealt with similarly.) She said that these personal papers of Mr Rayner were handed by her to her solicitors.

131. I find that Mrs Murphy took personal papers belonging to Mr Rayner. I reject her account as to how Mr Rayner entrusted papers to her for safekeeping, and I accept Desideria's evidence (described above at paragraph 124) about the packing up of Mrs Murphy's property. Mr Rayner had storage facilities in his own room. He had no reason to fear that family members would intrude into his flat and take papers which, on Mrs Murphy's case, he needed to entrust for safety to her. I consider that Mrs Murphy was particularly interested in papers that might, as she perceived it, help her to make her claim, such as the letters written in January and February 2008 respectively to Aeternus and Courtina concerning provision for her.
132. There will therefore be an order that Mrs Murphy delivers up Mr Rayner's papers which she has accepted, by her lists of documents or other informally effected disclosure, are in her possession. As to the form of the order, I will hear submissions if agreement cannot be reached as to its precise scope. I cannot make an order for the delivery of documents generally by her, as it must be demonstrated on a balance of probabilities that a particular document was taken by her and has been retained. Where, however, she has accepted that Mr Rayner's documents are in her possession, an order for delivery is appropriate.
133. It was, of course, a serious breach of duty on Mrs Murphy's part, to remove Mr Rayner's papers without his permission.

The precious stones issue

134. Mr Rayner also claims in respect of the loss of approximately £20,000 worth of precious stones contained in a cashbox kept at Hoare's. This, it was alleged, was removed from the bank by Mrs Murphy on 5th August 2005, and returned empty on

8th September of the same year. The box, the Counterclaim alleges, contained stones bought by Mr Rayner in India and Hong Kong.

135. Mrs Murphy accepted that she had collected the cash box on 5th August 2005, but said that she put it on the dining room table at the Property. She did not know what was in it, and did not return it subsequently, notwithstanding any documents suggesting otherwise. She said she did not remember the Duke of Windsor's box. She denied taking the stones or the late Duke's box.
136. Mr Rayner's evidence as to the allegedly misappropriated stones was that "theoretically" he still had the box, that he had not looked inside it since 2008; he could not say who had told him the stones were missing. When I asked him if he had the box or it was missing, he said he thought it could still be missing, but he confirmed he had not looked inside for the stones. On this evidence there is no basis for a finding that Mrs Murphy took any stones, or even that they are missing. I dismiss that part of the Counterclaim.

The missing box issue

137. As for the Duke of Windsor's box, I accept that it was a gift to Mr Rayner from the late Duchess's estate, and that it was of great sentimental value to Mr Rayner, being associated with the pinnacle of his career. I also accept that it has now disappeared from the Property, and whilst Mr Rayner was in hospital. However, Mrs Murphy was not the only person who had access to the flat at or around the time of the disappearance. There is no evidence that she has been seen with it since it vanished. The most that can be said is that Mrs Murphy at one time, before the locks were changed, had the opportunity to take the box. This falls well short of proving that she did so. I dismiss that part of the Counterclaim also.

THE PLANNED PROVISION FOR MRS MURPHY

138. Mr Rayner's plans for the provision of Mrs Murphy, and what he told her and others about them, are fundamental to the proprietary estoppel issues which I consider rather later in this judgment. However, some of the factual material relevant to those matters has a direct bearing upon the Veena-related issues, and so I deal with those matters now.

The arrangements for provision

139. On 27th January 1998, Mr Rayner prepared a letter to Desideria. It was his intention that she would only be given this letter on his death. The purpose of the letter was to inform Desideria about his assets and whom to contact. He put a value of £1.9 million on his interests in Courtina and said that his accounts with Hoare's bank had a balance of about £200,000. At that time he considered the Property to be worth about £650,000, and his interests in other family assets to be worth approximately £300,000. At this stage he did not appear to contemplate that the Property would be subject to any interest in favour of Mrs Murphy.
140. On 14th December 1998, Mr Rayner prepared notes for his then solicitor, Mr Patrick Collin, and himself. In those notes he indicated that he wished there to be an arrangement in favour of Mrs Murphy whereby she would be allowed to live in the Property for 18 months (implicitly following his death) with one year's service charges to be paid in advance by Courtina, providing that after that Mrs Murphy would have to be responsible for paying if she was still living there. Only a week later, on 21st December 1998, and in another note, Mr Rayner recorded a change of mind for notification to Aeternus. By this time it appears he had spoken to Mrs Murphy who had informed that she had no wish to use the flat after his death. In those circumstances he wished any arrangement in favour of Mrs Murphy concerning the Property to be deleted, and for the Property simply to be left to Desideria without any ties. However, he modified his instructions in respect of Mrs Murphy noting that in respect of Courtina, Mrs Murphy should receive 8% of its assets. Against this wish he recorded the words "*not housekeeper please, instead, "carer and companion"*". At this stage his wish was that Desideria would receive 62%, Domitilla 15%, and Marina 15%. This was followed by the Will dated 10th March 1999 under the terms of which Domitilla and Desideria were appointed to be his executors and trustees. Further it provided that Desideria should have any money remaining in Mr Rayner's account at Hoare's bank, free of inheritance tax absolutely. Mr Rayner gave all his real and personal property to his trustees for the payment of his debts and other expenses to be divided as to 62% in favour of Desideria and 15% in favour of Domitilla, as to 15% in favour Marina and "*as to the remaining 8% thereof unto my carer companion Kumari Murphy c/o [The Property] in the event of her predeceasing me then I give her share to her daughter Veena as and when she shall reach the age of 18 years.*" It is significant to note that the Will appears to reflect clear understanding that Veena was Mrs Murphy's daughter.

141. Mr Rayner's plans changed again in May 2001. In a letter dated 30th of that month (to be read following his death) and addressed to Marina, Desideria and Domitilla, he referred to his Will of 10th March 1999 and explained that Desideria would eventually inherit the Property, but he noted an important caveat which was that Mrs Murphy should have possession of it and be allowed to live there for up to two years after his death with service and other annual charges (except water, electricity and telephone bills) being paid for from other family resources which he mentioned. The letter said that if Mrs Murphy should move out before the end of the two-year period, and in any event once the two years had expired, the flat should revert to Desideria's unencumbered ownership. Mr Rayner explained that the money on which he had been living was the Courtina investment portfolio, whose investments he then stated to be worth approximately £2.25 million. Mr Rayner mentioned that the fund manager was GAM. In the letter Mr Rayner intimated a 10% provision from the Courtina assets in favour of Mrs Murphy although this was not followed through in the note of the 31st May next mentioned.
142. A separate note dated 31st May 2001 dealt with Mr Rayner's intended alterations to his Will. In respect of the Investments, Mr Rayner wished to modify his plans so that Marina would receive 27%, Domitilla 15%, Mrs Murphy 8% and Desideria 50%. In the same document, as well as noting that Mr Rayner wished £8,000 to be given to Krishna (who by then had been employed for just over a year) Mr Rayner expressed the wish that the long lease in respect of the Property should be left to Desideria subject to a proviso that Mrs Murphy had possession of it for a two-year period following his death.
143. On 19th June 2001 Mr Rayner, by letter, advised Mr Collin of his wishes, which were again subject to slight revision. On this occasion he envisaged that Desideria would receive 52% in respect of Courtina and Marina 25%. The intended 2-year provision of accommodation in favour of Mrs Murphy, of the Property, was maintained.
144. Mr Rayner's diary entry for 19th June 2001 suggests that at 7:00 p.m. he met with Mr Collin – "*Patrick curry and Will*". There is a separate typed note which was prepared by Mr Rayner also on 19th June 2001, which note was addressed to Mr Collin. In this note Mr Rayner said that from the Courtina assets Krishna should receive £8,000 ("*provided he has worked for me until not less than 2 weeks before my death*"), with the balance of the monies to be divided as to 8% in favour of Mrs Murphy, 52% in favour of Desideria, 25% in favour of Marina, and 15% in favour Domitilla. As for

the Property, it was to be given to Desideria “*With the strict proviso that Kumari has possession of it and be allowed to live there for up to 2 years following my death. But at any time, that she does not live there permanently, and anyway 2 years after my death, it will become the unencumbered property of Desideria, for her to sell, rent, or live there*”. Arrangements were suggested in respect of the payment of outgoings. Other gifts were indicated in favour of Desideria (cottages and a small farm in Devon) and Marina (“*the tiny flat*” in Rome). Desideria was to have any balance in the Hoare’s bank account.

145. Another supper with Mr Collin was arranged for 7:30 p.m. on 23rd August. Shortly thereafter, on 26th August 2001, Mr Rayner signed a letter of wishes addressed to the directors of Courtina. The provision contained in this letter substantially accorded with that set out in the note of 19th June. However, as to the 25% in favour of Marina, Mr Rayner added in manuscript that in the event that she should predecease him then her share should be given to Desideria and Domitilla in equal shares. Further, it was specifically noted that in the event that Mrs Murphy should predecease Mr Rayner then her share should be given “*to her daughter Veena as and when she reaches the age of 18 years*”. Further correspondence followed with Mr Rayner’s Swiss lawyers, Messrs Bär & Karrer. The letter of wishes, and the communications with the Swiss lawyers are all challenged, even including a fax (dated 30th August 2001) from the lawyers which suggests that it was sent using their notepaper.
146. On 8th December 2002 Mr Rayner wrote further to Dr Karrer enclosing a letter of wishes to Aeternus. In the letter to Dr Karrer, Mr Rayner referred to Mrs Murphy as “*the lady who has looked after me during my 8 year convalescence from the stroke*” and said that she was to be allowed to reside at the Property for two years after his death if she wished to do so, during which period the service charges and council taxes should be paid from the Courtina account. This letter he asked to be filed with his letter of wishes of 26th August. It would seem that the letter to Aeternus was simply a copy of the earlier letter bearing that date.
147. As described above, it is apparent that during the early years of the decade Mr Rayner appeared to have fairly well settled intentions that the provision for Mrs Murphy should amount to 8% of the Investments and two years’ rent-free occupation of the Property. This appears to have remained the position until the summer of 2005. Mr Rayner’s diary entry for 17th August of that year notes that at 6:00 p.m. he was to see “*Andrea/lawyer for Will*”. Following this, and on 3rd September 2005, Mr Rayner

wrote to Miss Andrea Fraser, of Jacobsens, solicitors in Lincoln Inn's Fields, thanking her for visiting him and agreeing to re-draft his Will. Mr Rayner's letter contained a specific request that the provisions in respect of Mrs Murphy's occupation of the Property should be changed from two years to five years.

148. A further appointment was made with Miss Fraser for 31st January 2006. It appears that this appointment, if it was fulfilled, led to no immediate change of arrangements.
149. On 9th May 2006 Mr Rayner wrote to Mr Leon Kaye, a solicitor, setting out new instructions concerning his Will. The letter mentioned that the tidying up of his Will had been left "*unfinished by Patrick*" (Mr Collin) "*because of his sudden retirement, and then by another solicitor who fell ill and has not reappeared*". Mr Collin had, in fact, been struck off the roll of solicitors by the Law Society, although the circumstances concerning that are not relevant in my judgment. In his letter to Mr Kaye, Mr Rayner indicated a significant increase in the provision for Mrs Murphy, namely that she should be allowed to live in the Property for 10 years after his death. This was so, he explained, to give her the security of her home. The letter elaborated upon provisions in respect of outgoings.
150. By a letter to Marina, Domitilla and Desideria dated 11th August 2006, written for the purpose of explaining his Will (and being read after his death), Mr Rayner said that Mrs Murphy had looked after him "*fantastically well, and literally kept me alive*" over many years, so that it was only fair that she should receive a small bequest from him, as should Krishna. He explained that Desideria would inherit the flat but that Mrs Murphy would be allowed to occupy it for 10 years, with provision being made for outgoings. He mentioned that he and Mr Collin had calculated future tax and service charges in respect of Mrs Murphy's occupancy so that the sum in the Will was bequeathed to Aeternus to enable it to pay such bills during that occupancy. Further he said that Mr Collin had retired as a full time solicitor, but had kindly undertaken to continue working on Mr Rayner's wills, saying that nobody knew more about his affairs or wishes than Mr Collin, and recommending that his advice should be sought on such matters. Extensive reference was made in the letter to other assets and arrangements. All of this suggests that Mr Rayner was fully conversant with his own affairs, and completely understood the arrangements being made.

151. On 12th August 2006 Mr Rayner wrote to the directors of Courtina setting out his wish to provide £50,000 to Aeternus to cover the service charges and council tax for the Property.
152. In a note prepared for Marina, Desideria and Domitilla, dated November 2007 and signed “*Your very very loving husband, father and friend*”, indicating how close Mr Rayner remains to his “*Italian family*”, Mr Rayner set out further explanations in relation to his Will. These letters do not appear to have been intended for despatch at the time of their creation, but rather were created for consideration following Mr Rayner’s death. Once again, this letter referred to the quality of care provided by Mrs Murphy. It explained why the contemplated division of assets favoured Desideria as against Domitilla, namely that Domitilla had the advantage of another inheritance. Significantly it mentioned that as neither Desideria nor Domitilla were likely to want to live in London in the foreseeable future, Mr Rayner was leaving the Property to Mrs Murphy with a small bequest of money to help her pay major bills for the first few years. The letter continued:

“I beg you not to challenge my bequest of this flat to Kumari because she really deserves it. I thought long and hard before making this decision which was made while I was of sound mind and without any undue pressure on me.”

Later in the same document there was a request to contact Mr Collin if anything was not clear.

153. At about the same time Mr Rayner prepared notes headed “*Patrick’s Will Advice*”. This was clearly a reference to advice given by Mr Collin. The notes included the following passages:

“Make sure letter of wishes to Aeternus includes new flat inheritance arrangements.

...

FINAL FAMILY LETTER.

To say: My Will and its associated Letters of Wishes and this letter is written while I am of sound mind with no undue pressure put on me. The idea to leave this flat to Kumari is entirely mine. I have done this in recognition of Kumari’s extraordinary assistance to me since my stroke in 1994, without which, I sincerely believe that I would have died rather sooner. So I hope that nobody in my family will try to challenge my wishes of this deserving bequest to her.”

154. A diary note for 12th November 2007 records the meeting with Mr Collin concerning a new Will and the potential dismantling of Aeternus.
155. By a letter of wishes of 8th January 2008 to Aeternus Mr Rayner recorded that he wished to bequeath the ownership of the Property to “*My dear friend Mrs Kumari Murphy; without whose extraordinary help on which I have depended over many years, I doubt that I would be alive today*”. The letter continued stating that after giving the letter much thought Mr Rayner considered that Mrs Murphy merited the bequest free from any caveats and overrode the previous letter of wishes that the apartment should be left to Desideria “*after 10 years of my death*”. The letter concluded:

“Lastly, I declare that I am writing this letter, in sound mind with no undue pressure brought upon me by anyone.”

It was signed by Mr Rayner and witnessed by Mr Collin.

156. On 5th February 2008 in a further letter of wishes to Courtina, Mr Rayner said that he desired in respect of the Investments to make a bequest of £8,000 to Krishna and as to the remainder he wished them to be divided as to 12% in favour of Domitilla, 60% in favour of Desideria and 20% in favour of Marina, with the remaining 8% to be given to his “*carer companion*”, Mrs Murphy, and in the event of her predeceasing him, then to “*her daughter, Veena (living in Bangalore, India)*”. Veena’s address was recorded at the foot of the document as being in Bangalore, although by now she was in fact living in London. The letter was signed by Mr Rayner and witnessed by Mr Collin.
157. Mr Collin, in his witness statement, said that he confirmed that Mr Rayner wrote both the last mentioned letters in a sound mind and without any undue influence and was very clear as to his intentions when Mr Collin explained the contents of both letters before they were signed. However, Mr Rayner’s evidence suggested that Mrs Murphy was present when these matters were dealt with.
158. Mr Collin did not, in his witness statement or when giving evidence, elaborate upon the steps that he had taken to be satisfied that Mr Rayner was indeed free of any undue influence. I do, however, accept Mr Collin’s evidence to the effect that Mr Rayner was clear about his intentions. There is no reason to suppose that the

documents executed by Mr Rayner reflected anything other than his expressed wishes.

159. A draft Will dated 6th March 2008 provided for all Mr Rayner's interests in properties in South Devon, owned jointly with his brother Andrew, as well as other Devon properties to be left to Desideria, whilst he left to his "*dearest former wife*", Marina, any money that remained in the Hoare's bank account.
160. Subsequently, when executing the Powers of Attorney in November 2008, Mr Rayner made it clear that they excluded any authority adversely to affect Mrs Murphy's occupation of the Property; see above at paragraphs 119-120.
161. In short, over a period of about 10 years, Mr Rayner's intended provision for Mrs Murphy started with an intention that she should have 18-months' rent-free occupation of the Property and concluded with an intention that she should have the Property absolutely, together with an 8% share of the Investments.

Mr Rayner's statements about intended provision

162. Mrs Murphy's pleaded case was that her marriage broke down in about July 1996, in large part due to her care of Mr Rayner, and that when she told him that she could no longer care for him because she needed to attempt a reconciliation with her husband Mr Rayner tried to persuade her to remain with him (see above at paragraph 73, and below at paragraph 293). The Particulars of Claim asserted that Mr Rayner represented to her that "*if she remained with him and cared for him during his lifetime he would provide her with all her material needs and make provision for her on his death which would enable her to remain living in England or to return to India*". The pleading asserted that Mrs Murphy relied on this representation and agreed to remain with, and care for, Mr Rayner. Following the move to the Property in April 1997, it was pleaded, Mr Rayner frequently represented that Mrs Murphy could live there for her lifetime, and at a later time he represented that it would be hers on his death. Reliance on these representations was asserted.
163. At paragraphs 130-131 above I have rejected Mrs Murphy's account of how she came by Mr Rayner's documents, but I mention the subject again now because it is relevant to the question of what Mrs Murphy knew of the contents of the documents. In her first witness statement Mrs Murphy's evidence was in line with her pleaded case, adding that Mr Rayner told her ultimately that she was to have the Property outright,

and that he gave her copies of the letters to Aeternus and Courtina written respectively in January and February 2008, mentioned above. This statement rather suggested that Mrs Murphy saw the contents of the letters in early 2008. In her fourth witness statement Mrs Murphy said that Mr Rayner had given these and other documents to her, and asked her to keep them safe, which she did by putting them in a bag in her room at the Property. She said that he told her to take an envelope of documents to Ranulf “*if anything ever happens*”. She said that Mr Rayner knew that she would rely on his promises, closing off the possibility of returning to Mr Murphy, and that she did. She said that for this reason, and to provide her with comfort, Mr Rayner provided her with his private documents relating to his financial affairs and his companies, and asked her to keep them safe. She repeated that in the later years of the relationship Mr Rayner made it clear that the property would belong to her.

164. However, when Mrs Murphy was cross-examined she gave a rather different account. She said that she did not remember talking with Mr Rayner about arrangements for her to stay at the Property. As to the documents, she said that Mr Rayner gave her an envelope and told her that she should not open it unless something happened to him, and that she later gave the documents to her solicitor. In re-examination her evidence was that she gave the unopened envelope to her solicitors. She added that the first time that she found out that she was to own the flat was when her solicitors went through the paperwork. She said in terms that Mr Rayner had not promised her the Property, but he did say that “*Everything is here for you. It is your house.*” She said “*He used to hold my hand and say ‘I arrange everything for you – don’t leave me and go’.*” She said that Mr Rayner also told her that the “*small matchbox*” of a flat was for her.
165. In his second witness statement Mr Rayner said that he and Mrs Murphy did discuss what was going to happen following his death. He said that he wanted to be as generous as he possibly could be to her; he felt responsible for her and wanted her to stay to look after him. He mentioned a particular discussion in which Mrs Murphy asked for the intended ten-year provision of accommodation to be extended.
166. In cross-examination Mr Rayner accepted that he knew that Mr and Mrs Murphy did not get on. He said that he had gone to Pleydell Avenue in 1996 for the purpose of persuading Mrs Murphy to return to him. He said she came back eventually, and he told her that they would look after each other, and that she would be comfortable. He

considered her to be a very good carer, and he was determined that she should stay with him as she looked after him wonderfully.

167. Mr Rayner accepted that he told Mrs Murphy about the variations in the intended provision for her. He recalled the “*matchbox of a flat*” discussion, saying that Mrs Murphy was to have the flat for a time, after which it was to go to Desideria. He was, however, unclear as to when this conversation took place, first recalling that it was about ten years ago, but almost immediately he corrected himself to say it was only about a month before the termination of Mrs Murphy’s employment. He said that he made the changes in respect of intended provision because Mrs Murphy was “*pushing*” him, and putting him under “*terrific pressure*”. As for the letter of November 2007, described above (paragraph 153), in which he indicated that the Property was to be given to Mrs Murphy, he said that the whole point was that he was under pressure, and to relieve that pressure he told her of the intended change.
168. I accept Mr Rayner’s evidence that he did tell Mrs Murphy of the intended provision, and the variations which he made from time to time, and I do not accept that his statements went beyond telling her of the provision which he actually planned from time to time. (As for what happened at about the time that he visited Pleydell Avenue in 1996, I do not accept that he gave any assurances going beyond the very vague statements which he acknowledged, these being to the effect that they would look after each other, and that Mrs Murphy would be comfortable.) I reject Mrs Murphy’s evidence which is inconsistent with this. I particularly reject her evidence that she only discovered the provision planned in early 2008 (as described in the letters to Aeternus and Courtina in January and February) as a result of her solicitors’ reading unopened documents much later. I also reject, as explained above, her account of being entrusted with papers by Mr Rayner so as to provide her with comfort.
169. As to why Mr Rayner made the intended provision, and the issue of pressure, I consider these matters below in the context of undue influence.
170. Mr Rayner said in cross-examination that his family knew about the provision he intended for Mrs Murphy. He said that he probably did discuss with Domitilla that he intended to make a substantial bequest to Mrs Murphy. The evidence does not, in my judgment, demonstrate that the precise detail of the intended provision was discussed with members of Mr Rayner’s family, but I find that it is likely that Mr Rayner did let be known his intention to make significant provision for Mrs Murphy. This was reflected in a long letter (mentioned again below) which Domitilla sent to him in late

2007 or early 2008. In that letter she raised the matter of provision for Mrs Murphy, hinting that it was suspected to be on a very grand scale, and suggesting that if that were the case then matters should be put properly into order, and that the family should be made fully aware of what was intended. In particular, Domitilla suggested, Desideria needed to be considered and informed. It is also consistent with the contents of an undated letter sent by Marina to Mrs Murphy some time late in 2008 following a hospital visit to see Mr Rayner; Marina thanked Mrs Murphy for what she was doing for Mrs Rayner and said “*you will never be left, not without the good money you deserve and have the right to, nor without esteem, respect and gratitude!*” I consider that Domitilla’s evidence that she only learned of the substantial intended provision for Mrs Murphy in late 2008 was inaccurate; she is likely to have known many months earlier than this.

VEENA-RELATED ISSUES

171. Veena is the granddaughter of Mrs Murphy’s aunt. One of the major factual issues in this case is whether Mrs Murphy told Mr Rayner that Veena was her daughter. If she did, that was plainly untrue. It is convenient to consider together the Veena-related issues as to whether Mrs Murphy misrepresented her relationship with Veena, and thereby procured payments for her education and maintenance, both during and after her schooling in India, as well as payments for houses for her in Bangalore.

172. When the case was originally pleaded on his behalf, Mr Rayner made no allegation as to any false representations concerning Veena’s parentage, he says, because the truth was not known to him. The Defence asserted that Mrs Murphy had misrepresented that money and property were needed to care for his and Mrs Murphy’s needs, and that Mrs Murphy had dishonestly and systematically misappropriated money, and personal property, from Mr Rayner over a number of years. In his Counterclaim it was alleged that Mrs Murphy misrepresented her personal circumstances and financial needs, and misappropriated money. Further it alleged that Mr Rayner had made payments of £1,400 over a considerable period, misrepresented by Mrs Murphy to have been needed to pay school fees for Veena in India, when in fact Veena was an adult living in London. Thus, as pleaded originally, Mr Rayner’s complaint as to the “Veena payments” was that he was misled in to believing that Veena was still at school in India. By her Defence to Counterclaim Mrs Murphy asserted that she had no daughter, and had never claimed to do so. It was alleged that Mr Rayner had offered to sponsor her sister’s daughter’s education, partly to express his gratitude for

the generosity of Mrs Murphy's sister's family during the Bangalore trip. In Further Information provided in December 2009, Mr Rayner specifically complained of the misrepresentation of Veena as Mrs Murphy's daughter.

173. As to the pleaded case, Mr Watson-Gandy submitted in closing that it was not open to Mr Rayner to pursue any claim in respect of the return of monies paid in connection with Veena's education, at least for education in India, because the Counterclaim had not been amended to put the case on the basis that payments in that regard, from the inception, had been procured by false representations. He conceded, however, that the same allegedly false representation could be relevant to any claim in equity made by his client. He drew attention to the limited initial complaint intimated in the Counterclaim, concerning payments when Veena was in England.
174. Mrs Peacocke submitted, correctly in my view, that it was necessary to read the pleadings as a whole, and for this purpose to take into account what was pleaded in Further Information.
175. I consider that it is open to Mr Rayner, on his pleaded case, to pursue the claim in respect of the school fees, and not merely payments since Veena became an adult, living in London. The Further Information clarified the nature of the false representations alleged; indeed Mr Watson-Gandy acknowledged as much in the course of the trial on 26th July. I also take into account that the nature of Mr Rayner's complaint was highlighted very clearly in witness statements, and that by the beginning of the trial no-one can have had any doubt as to the nature of the case that was pursued. It is noteworthy that in his detailed written opening submissions Mr Watson-Gandy specifically addressed the issues of misrepresentation of Veena as Mrs Murphy's daughter, and payments for her education in India, referring in this regard to the pleaded Further Information. The whole trial was conducted on the premise that recovery of the school fees was in issue, and examination, cross-examination and re-examination of witnesses was dealt with on that basis. It would be completely contrary to the overriding objective to approach the case at this stage on any other footing. Had it been necessary to do so I would have given permission to amend the pleadings accordingly. No question of any prejudice arose.
176. The various issues connected with Veena which I have identified above, have a very close connection with each other, and common themes. I have therefore found it convenient to consider the evidence and submissions on each before expressing my

findings in relation to those issues as a whole. Mr Watson-Gandy identified a distinct and separate issue, namely whether Mrs Murphy misrepresented the need for payments to her own mother in India. For the purposes of this trial I do not regard that as a genuinely separate issue, because it is really part of the consideration of the Bangalore houses issue.

(i) *Evidence and submissions on the Veena issue*

177. Mr Rayner's evidence was that on the Bangalore trip Veena was introduced to him as Mrs Murphy's daughter; although Mrs Murphy had mentioned her daughter at about the time she started working for him, it was the first time that he met her. He said that Mrs Murphy had told him that she had had an arranged marriage, being raped by her husband on their wedding night, and that Veena had been the result of this incident.
178. On meeting Veena, Mr Rayner told her that she would be the "Nightingale of India". He said, in cross-examination, that Veena was not known by him to be an orphan because he believed that her mother (Mrs Murphy) was with them there in Bangalore. He said that he believed that Mrs Murphy was Veena's mother and that he helped Veena and agreed to educate her. He said he would not have made the payments in connection with Veena if he had known the truth.
179. Mrs Murphy's evidence was that Veena's mother died giving birth to Veena in 1988, whereupon Veena was taken in by Mrs Murphy's family in Bangalore and cared for like a daughter and was treated as such by her family. Mrs Murphy said "*she treated us like her parents*". She said that on the Bangalore trip Mr Rayner met Veena, who was being cared for by Yogaprakash, her brother. Mr Rayner, she said, was well aware of Veena's background and that her mother had died. She said that following the Bangalore trip Mr Rayner spoke frequently to Veena by telephone (and Veena's evidence supported this), and also encouraged her in her education, later offering to sponsor her in the same way that he offered to sponsor her nephews, Naveen and Victor. (Mr Rayner said that he did not meet Victor or Naveen in Bangalore, although he did subsequently meet them when they came to England.) Mr Rayner disputed that there had been any such telephone contact, but this cannot be completely correct; his letter to Veena of 13th January 1998 shows that they had spoken at about that time. Further, his diary for that period has her telephone number. I do not accept, however, that there was any regular contact by telephone, and I find that the call in January 1998 was likely to have been an isolated incident, or one of a very limited number of

occasions, and I reject Mrs Murphy's and Veena's evidence which suggests otherwise.

180. Mrs Murphy mentioned how Mr Rayner wrote letters to help Veena, Naveen and Victor with visa applications (as undoubtedly Mr Rayner did). In a letter dated 16th October 2006 to the UK Consulate in Chennai, India, Mr Rayner described himself as “*a long-time close friend of her family*” and explained that he had agreed to be her sponsor, requesting that she be granted a visa to continue her studies in London. He said that he was undertaking responsibility for her while she was in England. He mentioned that Veena was aiming to take a degree in business administration at the London Academy of Administrative Studies. Over the following months, Mr Rayner was assiduous in pursuing the matter of Veena's visa. He sent many more letters to the same effect as the one mentioned, although the intended course of study and the institution concerned changed. Mr Rayner repeatedly emphasised his standing and means to assist Veena. On one day alone, in March 2007, he sent many faxes to the consulate.
181. None of the letters sent to the consular authorities mentioned that Mrs Murphy was Veena's mother and lived in England, a point which Mr Watson-Gandy relies upon, submitting that these would have been obviously relevant factors in the consideration of the visa application. Mr Rayner said, on this point, that he had no idea of why Veena needed a visa, being the daughter of a British subject, but he did not know that Veena was entitled to visit the United Kingdom (if indeed that was the case). However, when at last a visa was granted, Mr Rayner did, in a letter to Veena dated 17th April 2007, say how happy he was that it had at last been obtained. He referred to her as “*Darling Veena*”, and set out guidance as to how to deal with some outstanding matters. He signed off with “*lots and lots of love, and also from your Mama, of course*”. The authenticity of that document is not challenged by Mrs Murphy.
182. Over the years, Mr Rayner sent a number of letters and poems to Veena, always referring to her in affectionate terms, and for the most part signing himself as “Nicholas”. It is noteworthy that in many of these communications he refers to Mrs Murphy as Veena's mother; for example an unchallenged¹ letter dated 13th January 1998 – “*Your mother is very well, but of course misses you a lot*”. (Other examples include unchallenged letters of 15th December 2000 (“*Your mum is very well*”), and

¹ Save as to the fact that there were two editions of it, only one with the words “*from your Uncle*”. This discrepancy was a point, amongst many others, relied upon by Mrs Murphy to suggest that Mr Rayner had fabricated or interfered with documents for the purposes of the litigation.

25th December 2005, in which Mr Rayner urged Veena to discuss her future with her aunts and uncles, “*your mum and with me*”.) Especially noteworthy are the contents of a poem sent to Veena on 29th November 2001:

*“Darling Veena
Of sweet thirteen
T’was far too early that you were ween
From loving Mamma Kumari
Of whom, alas you’ve seen so little
Since you were little two or three
...”*

183. Mr Watson-Gandy submits that these kinds of statements are all just part of the myth that Mr Rayner, Mrs Murphy and Veena built up amongst themselves, whereby they all maintained a pretence that somehow Mr Rayner was related to Veena, and referred to Mrs Murphy as her mother, whilst everyone knew the true position. He referred to Veena’s evidence that on her meeting Mr Rayner in Bangalore he had said that he was her father and Mrs Murphy her mother. It must, however, be said that whilst this suggestion appears in her witness statement it was in the context of Mr Rayner’s asking Yogaprakash, in response to Veena’s referring to him as her father, whether this was so. When Yogaprakash said he was not, Mr Rayner said, according to Veena, “*I’m your father from today, call me ‘dad’*”. Mr Rayner accepted that this exchange had occurred, saying it was his “*just being a bit over the top*”. Veena’s evidence was that when she received Mr Rayner’s letters she knew that Mrs Murphy was not her mother. This building up of a “known myth” among the participants, Mr Watson-Gandy submits, is demonstrated by other references, such as to “*grandfatherly advice*” in Mr Rayner’s letter to Veena of 25th December 2005, and his letter of 13th January 1998 “*with lots of love from your Uncle*”.
184. These myths argued Mr Watson-Gandy, fooled no-one, least of all Mr Rayner, who despite the many references to Mrs Murphy as a mother, in letters to Veena, knew full well the true position. In particular, Veena said in her evidence that Mr Rayner told her that she had no mother, but that she could call Mrs Murphy mother.
185. Mr Watson-Gandy, in closing, drew attention to what he called a curiosity in the evidence, namely that when Mr Rayner wrote to Veena on 25th December 2005 he addressed it to Veena Maduram, whereas when dealing with her visa application correspondence he had used her correct name “Prabakharan”. I do not find the use of the differing surnames to be of any significance. I note that Maduram, or a slight variant “Madurai”, was clearly a family name. It is unquestionably the name of Victor

and Naveen. Mrs Murphy's Indian passport which appears to have been issued in Bangalore on 29th April 1992 (the photocopying is slightly indistinct) gives her name as Madurai, and her father's name as Madurai also, whilst her mother's name is given as Animeamal. When Mr Rayner wrote a letter for sending to India ("Dearest Yoga, Veena, Lenin and all the family"), on 3rd March 2007, it was to "the Maduram Family".

186. There are, however, other instances of references to Mrs Murphy as Veena's mother, and these are in documents prepared for people who did not share in the suggested myth. These include letters to Courtina, dated 26th August 2001 (this being a challenged letter), and 5th February 2008 (unchallenged, making provision for a share of the Courtina assets to go to Veena if Mrs Murphy should predecease Mr Rayner). There are many other documentary records of references to Veena as Mrs Murphy's daughter; in a letter to Mr Markes concerning a Bangalore house purchase (below), to Mrs Shanti Rajan concerning storm damage to Veena's home, and in letters drafted by Mr Rayner for Mrs Murphy at her request.
187. Other witnesses also spoke of Mrs Murphy's references to Veena as her daughter. Fleur said that Mrs Murphy often spoke of her daughter in India, and that this was a discussion point between them, as Fleur has four daughters. Desideria said that Mrs Murphy frequently spoke of her daughter. Julie Lynn-Evans recalled a conversation before the Bangalore trip when Mrs Murphy and Mr Rayner spoke of intending to visit Mrs Murphy's daughter in India. Ranulf remembered mention of Mrs Murphy's daughter in a similar context.
188. Significantly, Mrs Murphy made reference to her daughter in the recorded conversations; "*my daughter gone*", "*I told you to educate my daughter, 1400 he will give me that will be for food, clothing, that is also not sufficient, she was in a very good university*" (on 13th December 2008).

(ii) Evidence and submissions connected with Veena's education payments

189. Mr Rayner said that he paid a great deal for Veena's education, agreeing to do this when Mrs Murphy told him that she could not afford it. He said he was affected by his "guilt" about Mrs Murphy's looking after him rather than her daughter. In his second witness statement he referred to a schedule of payments. His evidence, clarified in re-examination, but in my judgment consistent throughout his written and

oral evidence, was that the payments for Veena had begun when she was a very small child, and had been made “*pretty well*” through the whole of the period that Mrs Murphy worked for him following the Bangalore trip. On his evidence, the payments divided into two broad categories; first, the payments mostly later in time, made by cheques in favour of Mrs Murphy (in some cases supported by cheque stub records), and secondly, mostly earlier, those made to a Mr Sivasundram for transmission to India.

190. As to the first category, at the conclusion of submissions a schedule of payments by cheque was provided by Mrs Peacocke (it also having appeared earlier in the trial bundle); it contained a convenient breakdown of the claim, in respect of which a money judgment was sought in favour of Mr Rayner, by reference to the years in which payments were made; 2003 £7,900, 2004 £17,500, 2005 £21,000, 2006, £18,200, 2007 £14,700, 2008 £12,600. Some of these claims are supported by cheque stub records; 2006 £7,000, 2007 £9,100 2008 £9,800 (£25,900 in all). Where the cheque stubs are available, they record the payment with words along the lines “*Kumari – Veena’s School Fee*” (*sic*), and suggest a payment of £1,400. Most of the payments are not supported by cheque stubs; Mr Rayner’s case is that many of his documents are no longer available, he says having been removed by Mrs Murphy. The payments reclaimed are not uniformly in the sum of £1,400 but are generally so. Thus there were payments of £700 in August 2003, but also a further payment of £1,400 that month. Altogether there are five payments of £700 recorded. In August 2005 there were two payments of £1,400, and Mr Watson-Gandy observes they cannot both have been for that month’s fees. In November 2003 there was a payment of £1,600. In each case, however, there are entries in Mr Rayner’s bank statements showing a debit item for the sum in issue, and almost always, though not invariably, there is a corresponding entry in Mrs Murphy’s bank account records consistent with her having deposited the amount paid by Mr Rayner. On occasions the sums do not precisely match, but this is likely to be explained by the deposit of other monies at the same time. Where, however, there are cheque stubs, the position is clear, at least as to the fact of payment. Thus cheque stub 2222 (said to relate to Veena’s school fees) in September 2008 relates to a debit to Mr Rayner’s account with Hoare’s on 11th September 2008, and is shown as presented in Mrs Murphy’s deposit account 8080 at Lloyds TSB on 9th September 2008.

191. The regular cheque payments of £1400 began only in 2003, and no money judgment is sought, at this stage in proceedings, other than in respect of the cheque payments mentioned.
192. As to the second category, Mr Rayner's evidence was that he made payments from a much earlier time to a Mr Sivasundram who ran a jeweller's shop known as Western Jewellers in Tooting. Mr Sivasundram was able to arrange money transfers to India. Mr Rayner said that Krishna also knew Mr Sivasundram, and had worked for him, but he denied ever having met him himself or having been into Western Jewellers. The payments made to Mr Sivasundram were, said Mr Rayner, in part remuneration for Mrs Murphy and in part for Veena's education. Payments to Western Jewellers were also made for gifts of jewellery to Mrs Murphy. The payments to Mr Sivasundram, and Western Jewellers, began in 1997, and continued every year through to 2006, although they fluctuated considerably in number and amount. For example there were ten payments in 1998, but only two in 2000. Some payments were for quite large sums, such as £5,000, and one was even for £15,000, while others were for just low hundreds. A few payments were for £1,400, the same as the school fee payments on the cheque stubs, but there was no regular pattern. The payments to Mr Sivasundram and Western Jewellers exceeded £90,000 in total.
193. Mr Rayner's diary entry for 3rd April 2006 specifically recorded that it was the last month of Veena's school fees. Further, many of the payments said to relate to school fees came at a time after Mr Rayner had written letters in connection with Veena's visa. Mr Rayner must have known by then that Veena was not still at school, and that the payments could not literally be for such fees. When cross-examined about this he accepted that there was no reason to be paying for further fees in India. He was asked about a particular cheque stub, written in September 2008, in connection with school fees. He said that Mrs Murphy told him that she needed him to continue paying, but he knew that by then Veena was in Britain.
194. Mrs Murphy said that it was Mr Rayner who offered to sponsor Veena, although she was in India. In her witness statement she said that she had no reason to doubt that some of the payments made by Mr Rayner did go to Veena in Bangalore, but she denied payments of the level suggested by Mr Rayner. However, she said that of the payments made by Mr Rayner some monies went to other institutions, including the Lily Rose Convent in Bangalore. She said that on one occasion she asked Mr Rayner why he was writing cheques which he described as being for Veena's school fees.

She said that at this he became upset and asked her to leave the room and the subject was never discussed again. When asked about the payments to Mr Sivasundram she said that they were nothing to do with her, and that Mr Sivasundram should be asked about them.

195. She accepted that she did pay cheques from Mr Rayner into her bank account, but this was done, she insisted, at Mr Rayner's request. She referred to Mr Rayner's letter of 8th May 2006 (mentioned above in connection with her remuneration) to demonstrate that the payments were not for her. The monies were paid out, she maintained, to other people with whom Mr Rayner directed her to exchange envelopes. For example, Mr Rayner would tell her that someone called Bruno was coming and that she should take cash from her savings, which Mr Rayner then passed to Bruno.
196. In cross-examination she said that she did not accept that Mr Rayner made arrangements for money to be paid for Veena's school fees, despite what was written on the cheque stubs which showed a figure usually of £1,400. She said that she did not use any of the money which Mr Rayner gave to her for Veena's school fees, but that it was dealt with as Mr Rayner instructed. She elaborated on this in re-examination, suggesting, by way of example, that a payment of £1,400 made to her on about 7th September 2006 was paid at Mr Rayner's direction as part of a £2,000 payment to Bruno on 15th September of that year. She said she did not know why Mr Rayner wanted such payments to be made, but he directed them. Although she acknowledged there were cheque payments to her of £1,400 she said these were for other things such as shopping. At one point she said, in relation to all the cheques that Mr Rayner asserted were for school fees, that she put them into her account, took the money out, and gave them to Mr Rayner's friend.
197. In connection with the payments to Bruno, Mr Rayner accepted that he had been interested in recovery of treasures from a sunken ship and that he knew a man called Bruno, a boat salvager. He denied that he had traded with him, but acknowledged that he had once tried to help him to get permission for a salvage operation off Indonesia. He said he made one payment to him in connection with an unconnected interest in a guru in Malaysia.
198. Mrs Murphy relied on a statement from Louisa Gerald (read under the Civil Evidence Act 1995) which states that she met Mr Rayner when he was in India. It suggests that Mr Rayner gave financial support to the Lily Rose Convent, and that payments were

made through Bruno. Mrs Gerald said that Mr Rayner confirmed that some of the money he sent should be used for Veena, but the rest was for the Convent. Owing to a lack of funding in recent times, she said, the Convent has closed.

(iii) Evidence and submissions on the Bangalore houses issue

199. Mr Rayner seeks to be repaid monies which he provided in connection with the purchase of properties in Bangalore, to which he says he contributed in the belief that Veena was Mrs Murphy's daughter. Documents upon which he relies suggest transfers of money to Mrs Murphy's mother, described as Mrs Jamuna, in Bangalore. The properties, he says he understood, were to be homes for Veena. Mrs Murphy said that if there had been any such purchase, she was not aware of it, and that her mother's name is not Jamuna, but Animeamal.
200. At the outset it should be said that Mr Rayner's case is unclear with regard to the number of houses concerned. In Further Information he asserted that it was at least two; in his second witness statement the evidence suggests two, although one of the documents he mentions suggests three. At one stage in cross-examination Mr Rayner said it was two houses, but much later (in September 2010, in supplemental cross-examination following a keyword search of his computers) he said that there was some confusion because he was told untruths. He said he did not really remember how many payments he made. He remembered that one house was called Padova Villa. (There is, I observe, a connection between Mrs Murphy and Padua (the English name for that city) in that Mrs Murphy venerates St Anthony, and she and Mr Rayner even made a visit to his shrine in the Basilica in the city.)
201. Many documents are relevant to the transactions in question. The first in time, at least on its face, is dated simply "August 1999." It appears to be a draft, awaiting the insertion of a precise date and a precise figure as to the amount received:

"Dear Sir,

I write this to acknowledge receipt (sic) of £... which you have paid (sic) me as a redundancy payment in consideration of my approximately 4 years employment by you. From November 4th 1995 to August 1999. During which time I have received a full and fair salary, which you have paid me every week.

I also acknowledge receiving from you, your kind and generous financial help with my daughter's school fees in India, as well as help with the

purchase of a small house in Bangalore, and after this became uninhabitable due to storm flooding, for then also generously helping me to buy a second house in Bangalore.”

This document bears no signature, and was recovered from Mr Rayner’s computers in the process of disclosure. Its authenticity is challenged by Mrs Murphy. She says that it was not created by her, or as it might have been intended to suggest at her request, but either by Mr Rayner or someone on his behalf. The chronology contained within it as to the purchase by August 1999 of not one, but two properties, simply cannot be correct, even on Mr Rayner’s case, which is that in 2000, and then 2001 he helped to fund two property acquisitions. Therefore, even if there were three instances of such help, no more than one could have occurred by August of 1999. Also the reference to flooding precedes, by some six months, reference to the same thing in the letter to Mr Markes, mentioned next; this latter point could perhaps be explained on the basis that the flooding occurred by August of 1999 but the housing problem was not resolved by the time of writing to Mr Markes, but there is no such explanation available for there being a reference to two transactions by August 1999. As to this document, in cross-examination Mr Rayner first said he could not remember creating it, but immediately corrected himself saying that it was written in case he ever had to “sack” Mrs Murphy, elaborating that it was a precautionary measure which was never used.

202. The next document (also challenged) dealing with this topic is a letter dated 12th February 2000 from Mr Rayner to Mr Martin Markes. The letter, headed “*Kumari*”, reads as follows:

“To first, introduce myself, Kumari has been living with me and looking after me wonderfully, since I had a stroke, some 6 years ago.

I writing (sic) on behalf of Kumari, who was not confident about writing in English, to explain her situation to you.

The reason for this letter, is because Kumari desperately wishes to exchange the small house that she owns in Bangalore, for a better house that she has been offered by a local school who want their house for the pavilion of their sports ground.

I previously helped her financially to acquire her present house, but unfortunately it has since, become uninhabitable because of local flooding.

The house that she is being offered is a much better one. But the trouble is that the school is asking for the difference in value between the two houses, but it still seems to be a great opportunity for Kumari. The new house which

is one of the school's staff quarters, would make an excellent abode for Kumari's daughter, Veena, and Kumari's unmarried sister.

Kumari has told me that you have generously offered to help her a little financially, come the time that she really needed some help.

The difference in value between the two houses, which Kumari will have to pay, is GBP £28,000 of which, Kumari has already £10,000.

I am only able to finance another £8,000.

Which still leaves GBP£10,000 to find.

I know that she would be eternally grateful if you are able to give her this. I hope you are well on the way to recovery from your own stroke.

With very best wishes.

Yours sincerely,

Nicholas Rayner."

203. This letter suggests that there was assistance with a purchase before 2000, but only on one occasion. Mrs Murphy says of this letter that she did not mention Mr Markes at all; she did not know him, and did not remember wanting houses described in the letter. She said that she did not know anything about a house bought for her before 2000, or a house which had become uninhabitable as a result of flooding. She said that she did not tell Mr Rayner the facts described in the letter, which were untrue, not least because her younger sister is still unmarried. Furthermore, she said that she had not told Mr Rayner that she had £10,000. She denied that she had ever previously looked after anyone who had suffered a stroke. Mr Rayner said in cross-examination about this letter that it was based upon information provided by Mrs Murphy as to her employment by Mr Markes in the United States and a promise of money when needed by him. Mr Rayner said that he faxed the letter to Mr Markes to "take him up on that". He said that he did not remember if Mr Markes had sent the money.
204. There was another related letter dated 26th June 2000, which Mr Rayner said was faxed to Mr and Mrs Markes, and it was also challenged. This letter entitled "Kumari's House" reads as follows:

"Because it was I that originally wrote to you, I feel extremely remiss in not having written to you before, to have at least acknowledged your great generosity in helping Kumari with the purchase of her house in Bangalore. I

was hugely impressed by the speed with which you reacted in transferring that no small sum, so quickly to her when she needed it.

The deal has long been completed, which could not have happened without your contribution.

I have in fact been waiting for a many times requested photograph of the house, to send to you, but this has still not materialised from Bangalore.

I hope you are getting better from all the effects of the stroke.

With many apologies for my delay in writing to you. I will do so again, as soon as we have received a photo of the house to send you.

With best wishes,

Yours sincerely,

Nicholas Rayner”

205. Mr Rayner said that he believed that he had never received a photograph of the house concerned. He said that Mr Markes dealt with the money transfer himself. Mr Rayner said that whilst he believed that he never spoke to Mr Markes, he must have been told by Mrs Murphy that the money had arrived. He did not know who the seller of the property was. Mr Rayner was adamant that all the documents which he had were genuine documents, that is to say not created falsely for the purposes of the case. He relied upon an entry in his diary (unchallenged) for Monday 14th February of that year:

“Today sent £8000 to M. Jamuna (mother) for KK’s house swop.

...

HRS today asked to transfer of 10:085 and 10,000 receipt from Reas (paid £20,000 previously for house).”

The reference to HRS was clearly to Hoare’s Bank. Mr Rayner’s bank statement for the 17th February 2000 shows a transfer of £8,026.60 to “F/O M Jamuna”.

206. A letter dated 9th May 2001 (challenged) addressed to Mr Rodney Disosa purporting to have been sent by Mrs Murphy also bears slightly on the matter of building work for Mrs Murphy and Veena:

“Dear Rodney,

I am so sorry to hear that you have not been very well.

I have always been so impressed by your wonderful helpfulness to the people in our area of Bangalore.

I am also extremely grateful for your help with our own building work and the way you have assisted my daughter, Veena.

Thank you so much for all you have done for us.

I hope you will be better soon.

With warmest regards,

Yours,

Kumari Murphy”.

This, on Mr Rayner’s evidence, would be an instance of a document he created at Mrs Murphy’s request.

207. The next instance of disputed assistance was in late 2001, and referred to in a challenged letter dated 19th September 2001, addressed to Mrs Shanti Rajan, in Bangalore. It was headed “*Purchase of house of Kumari and her daughter*”:

“I am very sorry to hear about the recent storm damage to your school.

I am especially sad that the house where Kumari’s daughter was living has collapsed. I was pleased to be able to financially help Kumari to buy that house from the school.

Thank you for your offer of another house in the school’s grounds, where Kumari’s daughter could live. Kumari is most grateful for your offer and eager to accept it. I am pleased to financially help her with the purchase of this one also.

I have understood from Kumari that the price of this house in British pounds is £15,000 but that the school’s insurance is paying £6,000 for the damage to her house. Therefore she should pay you £15,000 less £6,000 equals £9,000. (9,000 British pounds).

I will transfer this amount to you by October 15.

Please would you very kindly confirm to me by letter that you agree with the above financial arrangement and that this house will remain reserved for Kumari.

With kind regards.

Yours sincerely

Nicholas Rayner”.

208. In this connection, Mr Rayner relied upon two further documents dated 20th September 2001, the first (not challenged) is one to his Swiss lawyer, Dr. Martin Karrer. The faxed details appear at the foot of this copied document, namely 20th September 2001, with a transmission time of 20:17. The copy document is endorsed “Eingegangen 21. Sep. 2001” indicating receipt on that date. The text of the letter reads:

“Dear Dr. Karrer

URGENT PLEASE

I hope you are well.

Please would you be kind enough to arrange the following transfer of money from the Courtina account:

£9,000 (nine thousand pounds) in Indian rupees to:

Mrs Jumuna

Account no. 20894

Canara Bank

Viveke Nagar VN

Bangalore 560047

India

Swift Code CNRB IN BB BID

This matter is rather urgent and I would be terrifically grateful if you are able to give instructions for the transfer today, with a request to the bank to make it as quickly as they can.

With best regards.

Yours sincerely

Nicholas Rayner”

209. Whilst this may prove a payment in rupees to Mrs Jamuna, it does not prove Mrs Jamuna’s relationship to Mrs Murphy, or that the transfer was for property in Bangalore.

210. The other letter of 20th September 2001 (challenged) upon which Mr Rayner relies was addressed to Mrs Shanti Raja and headed “*House purchase for Kumari and her daughter*”. It was in the following terms:

“I write, following my recent letter and your faxed reply to Kumari. Today I have instructed my bank to transfer £9,000 (nine thousand British pounds) to the bank of Kumari’s mother, Mrs Jumuna, in Bangalore. She will let you know as soon as her bank receives the money in order for her to pay you for the house. I am afraid that it normally takes the banks a few days to complete an international money transfer so I hope that you will be patient to await the arrival of this money which I can assure you is on its way. In the meantime, please would you very kindly confirm to Kumari by fax that the house is reserved for her purchase.

Thank you again for your kindness in offering the sale of this house to Kumari and her daughter.

With kind regards and also from Kumari.

Yours sincerely,

Nicholas Rayner”

211. As to the letter of 19th September 2001, Mrs Murphy says that she had never heard of the school mentioned in the letter (Swami Veivka Nantha School), and that she did not tell Mr Rayner that the house in which Veena lived had collapsed. She did not accept that Mr Rayner had sent £9,000 to India to buy a house in the school grounds, and said that she knew nothing about the transfer of money in which Dr Karrer became involved, or why Mr Rayner had effected any such transfer. She said that she received no faxed reply in response to another letter that Mr Rayner supposedly sent to Mrs Raja on 20th September 2001 (also challenged).
212. Mr Rayner relies in support of his case on this transaction upon unchallenged diary entries for the 20th and 21st September 2001: “*Sent £9,000 in rupees to Kuku’s mother for house*” and “*Karrer’s confirmed that bank is sending £9,000 today to India*”. A bank statement relating to Courtina is also relevant; an entry for 21st September 2001 recorded a payment of £9,015 to Canara Bank in Bangalore. A further document from HSBC bank referred to the payment, noting that there was to be a conversion to Indian rupees for the account of Mrs Jamuna.
213. Mr Rayner relied on two further challenged letters both dated 4th October 2001. The first was addressed to Mrs Jamuna and headed “*Ref £9,000 transfer to you at Canara Bank to help purchase Kumari’s house*”. The text of the letter was as follows:

“I hope that you are well.

I am afraid that I made a silly mistake in quoting your incorrect bank account number for transferring to you the money to help Kumari with the purchase of the new house at the Swami Veivka Nantha School.

I am enclosing a copy of letter, sent by fax today, to a friend of Kumari’s who works at the Bank, whom [sic] I hope will correct my mistake.

However, it might be a good idea for you to telephone him to make sure there are no complications.

Kumari is in very good form and is being a marvellous companion and nurse during my convalescence from a stroke. Although she is often homesick and I know how much she misses you.

Kumari sends you her love with this.

With best regards.

Yours sincerely,

Nicholas Rayner”

214. The second letter of the same date was addressed to Mr Prame Kumar, at the head office of Canara Bank in Bangalore, and was headed “*Ref my mistakes of Mrs M. Jamuna’s bank account number*”. Its text was as follows:

“On September 20, 2001, my bank despatched a transfer of £9,000 (9,000 British pounds) to Mrs Jamuna’s account at the Viveka Nagar branch of Canara Bank.

Unfortunately I mistakenly gave them the wrong account number for Mrs Jamuna’s account, giving them the wrong account number 20894.

Instead of her correct account number 20984.

Luckily, her daughter, Kumari, knows that you are working at the head office of Canara. So I am writing to ask you to make sure that this money is credited to Mrs M. Jamuna’s account number 20984 when this transfer arrives.

This matter is somewhat urgent because the money is destined to help buy a particular house for Kumari and her daughter in Bangalore and if this money is not paid soon, she could have missed the opportunity of buying that house.

Kumari hopes that you are well and sends you her warmest regards.

With kind regards.

Yours sincerely,

Nicolas Rayner

P.S. Please could you be kind enough to telephone Mrs Jamuna when the bank receives the transfer. Tel. Bangalore 571 22391.”

215. Mrs Murphy said that she did not know why a transfer, or any transfer, to someone called Jamuna was made and she denied that she had a friend who worked at the Canara Bank, or knowledge of Mr Prame Kumar, although she conceded that she did recognise the telephone number given in the letter. This, she said, was for a telephone booth in a building, as opposed to in a street. She said that she often dialled that number for Mr Rayner and gave him the telephone; if Mr Rayner wanted to speak to Louisa Gerald, then Mr Rayner would use the booth number. She said that when Mr Rayner asked her to telephone that number, it was to get Louisa Gerald and not Mrs Jamuna. She conceded that a post-it note which appeared in Mr Rayner's diary in September 2001, which made reference to the school and gave a telephone and fax number (the latter being the number appearing in Mr Rayner's letter to Mr Kumar), was in her handwriting, although she said that the other entries on the diary page were in Mr Rayner's writing.
216. Mr Watson-Gandy drew attention to a challenged letter dated 31st January 2004 addressed to Mr Rayner and for Mrs Murphy's signature. This letter was disclosed only in September 2010 following a keyword search of Mr Rayner's computers, as part of the continuing exchanges between the parties as to disclosure. It acknowledged receipt of £10,000 to help "*me buy another house in Bangalore after my house was about to be demolished to make way for a new airport road. I further acknowledge receipt of your previous payments (£8,000) on my behalf to finance the original purchase of the above house, as well as the purchase of my first house (£9,000) which became uninhabitable due to storm flood damage.*" It referred to those payments being an advance on a redundancy payment, and knowledge of generous provision in Mr Rayner's Will. This letter suggests not two but three transactions. Mr Rayner, asked about this in evidence, said that it was composed as a receipt, following one of the numerous occasions when Mrs Murphy said she was going to leave. He said that although he asked repeatedly for a signed copy to be returned to him, it never was.
217. Mr Watson-Gandy submitted that Mr Rayner's case as to funding any house purchases should be rejected. He maintained that three transactions simply could not

be made out, and that the letters suggesting otherwise (August 1999 and January 2004) sought to record a false history. He reminded me that Mr Rayner's evidence in cross-examination, at least originally, was that he had funded two, not three houses. He said that Mr Rayner knew that Mrs Murphy's mother's name was not Jamuna. Mr Watson-Gandy pointed to a document (in fact challenged) dated 15th March 2002 which Mr Rayner said he sent to Mrs Murphy's mother addressing it to Mrs Maggie Maduram, saying in evidence that he must have been confused by Mrs Murphy's having given him different names. He submitted that there were numerous other indications that the disputed assistance had not been given; an absence of photographs, supporting conveyancing documents and lawyer details, information about vendors, and letters addressed to the properties, and even addresses for them. The sums contributed also varied between the documents and other evidence given by Mr Rayner. Mr Watson-Gandy powerfully developed his attack on the inconsistent internal chronology of the challenged documents.

218. Mrs Peacocke, whilst submitting that the evidence of two instances of assistance on house purchases was strong, accepted that the case for three was much weaker. She did, however, point to the fact that a £15,000 cheque payment by Mr Rayner to Mrs Murphy in March 1997 was recorded in the Hoare's Bank statements. This payment was not however something about which Mr Rayner gave any evidence. However, she submitted that the evidence for the support of at least two instances of assistance were strong. There were bank records of payments, on one occasion (2001) an undisputed communication with the Swiss lawyers, unchallenged diary entries, and the contemporaneous, though disputed, correspondence with Mr Markes in 2000, and Mrs Rajan, Mrs Jamuna and Mr Kumar in 2001.

(iv) Findings on the Veena-Related Issues

219. I am entirely satisfied that Mrs Murphy represented to Mr Rayner that Veena was her daughter. (I find that probably Mrs Murphy mentioned her as such before the Bangalore trip; this is supported by the evidence of Julie Lynn-Evans and Ranulf, both of whom I found to be truthful.) The numerous references to Mrs Murphy as mother and Veena as daughter in the letters and poems sent by Mr Rayner to Veena, the references in other correspondence (including to Courtina), the evidence of Fleur, Ranulf and Desideria, and not least what is contained in the recorded conversations, all point to the same conclusion. I reject Veena's evidence that Mr Rayner said she could call Mrs Murphy her mother. I do not find the fact that Mr Rayner adopted an

affectionate tone to Veena, or used terms such as “*grandfatherly advice*”, or referred to himself as “*Your Uncle*”, in the least inconsistent with this finding. Mr Rayner wished to be kindly to Veena, not least because he was acutely conscious of his perception that her mother was in London looking after him, and not with her daughter in India. The poem from which I have quoted above encapsulates his feelings very well. It was these feelings which Mrs Murphy nurtured, and went on to exploit.

220. I find that Mr Rayner did, over a long period, pay money in respect of Veena’s education, and I accept his evidence that this began soon after the Bangalore trip, but I do not at this stage find it possible to ascertain precisely when payments began, or in what amount they were made, though generally they were for £1,400. I refer again in this connection to Mrs Murphy’s comments in the recorded conversations (“*I told you to educate my daughter*”). These payments were made only because Mr Rayner believed Mrs Murphy’s statements to the effect that Veena was her daughter. I reject Mrs Murphy’s evidence that even where the cheque stubs record a payment in respect of Veena’s school fees she accounted in some manner to Mr Rayner, using the money as he directed, for example by making a cash payment to Bruno.
221. Whilst I am satisfied that Mr Rayner knew that payments made from around the middle of 2006 could not literally relate to school fees, I accept his evidence that he continued to make payments in respect of Veena because Mrs Murphy said that they were still needed. She was, after all, still undertaking educational courses, though in England. The description on the cheque stubs, whilst inaccurate, does not invalidate Mr Rayner’s complaint that he was making payments at Mrs Murphy’s behest to support Veena in her education, and that he did so in the belief that Veena was her daughter.
222. I am therefore satisfied that where there are cheque stubs recording a payment for school fees, that money was paid to Mrs Murphy for school fees, and was not intended or expected to be used for any other purpose whether for Mr Rayner’s alleged trading activities, a payment to Lily Rose Convent, or otherwise. What Mrs Murphy then did with the money is not clear, but it was obtained on a completely false premise (that Veena was Mrs Murphy’s daughter), and Mr Rayner is entitled to its return.

223. As to other cheque payments said to be for school fees, but not supported by a stub recording such a payment, even where those are in the sum of £1,400, I do not propose at this stage to order that there be a money judgment. Those matters should be left over to the taking of an account. It follows that Mr Rayner's claims in respect of payments for school fees where there is no record of a cheque payment to Mrs Murphy, must also be dealt with on the taking of an account. An investigation at that stage will consider payments to Mrs Murphy, her case as to precisely what monies were received by her, and what she did with them. Consideration will have to be given to whether Mr Rayner was trading, as she alleges, and to whether payments made by him to her were made in connection with that purpose. I cannot safely on the material before me now, decide those matters without proper consideration being given to the whole of the relevant material, not all of which is before me. Both counsel accepted that issues as to trading would have to await the taking of an account. What marks out the payments supported by cheque stubs as being in a different category is that they were undoubtedly received by Mrs Murphy, as her own bank records show. Further, I am entirely satisfied that such payments were made for the purpose of paying for Veena's education, and not for anything else. The suggestion that Mrs Murphy then accounted for the money in some other manner, having been given it for "school fees" is fanciful, and I reject it.
224. There will therefore be a money judgment on the Counterclaim in the sum of £19,600 representing the total of payments made for Veena's education, where the payments are supported by a cheque stub. Other payments claimed in respect of Veena's education will have to be considered at the stage of taking an account.
225. As for the assistance with property purchases in Bangalore, I am satisfied well beyond a balance of probabilities that Mr Rayner assisted with such transactions in 2000, and again in 2001, and in the sums recorded in the bank statements. For reasons explained below I reject the suggestion that the correspondence relating to these transactions was forged, and I accept that payments were made and for the purposes recorded in the diaries. I am not satisfied on a balance of probabilities that prior to 2000 Mr Rayner did provide financial assistance with a house purchase; though I acknowledge a real possibility that he did so. However, given his inconsistency on this point expressed in evidence, and his own uncertainty on the topic, I cannot be satisfied that any such help was provided. Even if I were satisfied that there had been some assistance, I could not find in what sum, on the evidence available. I am not satisfied that the £15,000 payment in 1997 was made in this connection. Mr Rayner's

inconsistencies I attribute to confusion on his part rather than any attempt to mislead the court.

226. In my judgment what matters is that I find he was induced by the false representations as to Veena to make the payments. It therefore does not matter whether or not Mr Markes ever existed or Mrs Murphy worked for him, whether or not any houses were ever acquired, or who lived in them. Mr Rayner made the payments on the strength of a false representation by Mrs Murphy. Mr Rayner believed that he was helping to provide a home for his career and her daughter in India. The truth or falsity of some incidental information that she provided (for example about Mr Markes or floods) is nothing to the point.
227. In the circumstances I find that Mr Rayner is entitled to a judgment in the sum of £17,041.60 (£8,026.60 in 2000 and £9,015 in 2001) in respect of the payments made for the purpose of assisting with the acquisition of properties in Bangalore.

THE BREACH OF FIDUCIARY DUTY ISSUE

228. Counsel for both parties made submissions as to breach of fiduciary duty, but in terms of what needs to be decided in this trial, in my judgment resolution of the question of whether Mrs Murphy was in breach of fiduciary duty adds little. I will, however, deal with the matter briefly.
229. In *Bristol & West Building Society v Mothew* [1998] Ch 1, Millett LJ, as he then was, set out what has become well recognised as a classic description of a fiduciary. At page 18 he said:

“A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. As Dr. Finn pointed out in his classic work *Fiduciary Obligations* (1977), p. 2, he is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary.”

230. In my judgment in many material respects Mrs Murphy can be seen to have undertaken an obligation of loyalty to Mr Rayner, giving rise to a relationship of trust and confidence. She was not a financial *confidante*, but he entrusted her with money to expend on his behalf, he allowed her access to all his personal items around the Property, and critically she was charged with his care.
231. She has accepted that an account must be taken of what monies she received from Mr Rayner and what she has done with such monies. If on the taking of such account it transpires that she misapplied monies, then she will undoubtedly have been in breach of fiduciary duty; the remedy will be considered at the appropriate stage. She was quite clearly in breach of her fiduciary obligation of good faith to Mr Rayner when she removed his papers from the Property. She also breached her fiduciary duties as carer in taking advantage of her position to procure payments from Mr Rayner, on false pretences, for Veena's education and for the houses in Bangalore.
232. It would have amounted to a breach of fiduciary duty for Mrs Murphy, as his carer, to apply improper pressure to Mr Rayner, or to exploit his vulnerability, so as to make financial provision for her. Such conduct would involve abusing her position and preferring her interests over his. The issue of whether there was such conduct I consider below in relation to the undue influence issue.
233. However, these breaches of fiduciary duty do not affect otherwise my findings as to the relief to which either party is entitled, or not entitled as the case may be.

THE DISPUTED DOCUMENTS ISSUE

234. As is now apparent, Mrs Murphy has challenged numerous documents produced by Mr Rayner, suggesting in terms that some were created for the purposes of the litigation, or otherwise improperly. In relation to other documents it is simply that the authenticity of the documents is required to be proved. Some additional documents were challenged in cross-examination although not formally in the Notices to Prove. It is suggested that any fabrication of evidence was undertaken either by Mr Rayner, or others on his behalf. Most, but not all, of the challenged documents are ones which purport to have been created by Mr Rayner, but others (for example a fax dated 30th August 2001 from Dr Karrer concerning Courtina, and a letter and e-mails from Domitilla) are not.

235. The challenged documents extend in time from a letter to Laetitia dated 15th December 1995 about Mrs Murphy's Christmas leave, to early 2009. Some of these documents, for example one purporting to be a letter to Mrs Maduram (15th March 2002), are, on Mrs Murphy's case positively unhelpful to Mr Rayner; in that particular instance by suggesting that he knew that it was not a Mrs Jamuna who was Mrs Murphy's mother. Quite why Mr Rayner, or anyone on his behalf, would want improperly to generate documents unhelpful to his case never became clear.
236. Many of the disputed documents fall into three categories; first, those relating to issues about Mrs Murphy's pay and employment (for example the note for Laetitia dated 21st July 1996), secondly, those concerning what Mr Rayner believed about Veena (for example the letter to Mr Disosa dated 9th May 2001), and thirdly, those relating to the Bangalore house purchases (for example the letter to Mr Markes of 12th February 2000). For reasons given above in relation to the issues concerning pay and what was said about Veena (including what Mrs Murphy was recorded saying on these matters), I consider that Mrs Murphy was paid and that she represented to Mr Rayner that Veena was her daughter. References to such matters in contemporaneous documents are therefore to be expected. In connection with the Bangalore house purchases, the disputed documents are corroborated by unchallenged diary entries.
237. Mrs Murphy said she did not create any computer generated documents herself. Her evidence was that she was not able to use a computer. Mr Rayner accepted that Mrs Murphy was not computer literate, and said that he did, at her request, create documents (including some of the challenged ones) for her from time to time. He said that she was not confident in her written English. One such letter was supposedly to Mrs Murphy's cousin referring to lending to him a house; a blank space was left in respect of the address of the house. Mr Rayner explained that there was nothing unusual about the letter's being written in English as Mrs Murphy's family did speak a lot of English together. (In this connection it is noteworthy that Veena said in evidence that it was her first language.) As to the letter, he said that he imagined that Mrs Murphy knew her cousin's name to put on the envelope, and that the address of Mrs Murphy's house, which was left blank, was accounted for, he believed, by the fact that when he prepared the letter he did not have before him the letter under reply, although of course Mrs Murphy had the name and address to insert. Another letter, supposedly to her mother, referred to Mrs Murphy's being happy to send her as much money as she could manage for the benefit of the family. It mentioned also that Mrs Murphy had to work extremely hard for the amount that she

was able to send. Mr Rayner said that this challenged letter was prepared at Mrs Murphy's request. It was put to Mr Rayner that both the letters mentioned were created for the purposes of the case, which he denied saying that no documents were created for that purpose.

238. Mrs Murphy also challenged other documents which Mr Rayner said he created at her request; for example a letter to DHL dated 20th January 2003 concerning delivery to her of a birthday gift sent from India.

239. For reasons described above when considering particular matters in issue, Mr Watson-Gandy mounted an attack upon many of the disputed documents as to inconsistency with known facts, or aspects of Mr Rayner's case as now presented. He attached particular significance to the letter dated August 1999, and how it simply could not be reconciled with the suggestion that two property purchases were made after 1999. As to that particular objection, Mrs Peacocke submitted that an explanation could be that Mr Rayner had prepared an original document in August 1999, and then simply updated it (and resaved it) subsequently in respect of any additional transactions, hoping eventually to get Mrs Murphy's signature as a form of receipt. In my judgment that is the likely explanation.

240. I do not accept that Mr Rayner, or anyone else on his behalf, created documents dishonestly for the purposes of this case, and I reject any such suggestion. Some of the challenged documents are supported by other unchallenged documents; for example in the case of the Bangalore house purchases, there are diary entries which corroborate the disputed documents as to the purpose of payments. In the case of other documents, the challenge involves not merely Mr Rayner's giving false evidence, but allegations that others are implicated in knowingly adopting a false record; for example, in the case of Laetitia's computer record of pay for Mrs Murphy, and Mr Rayner's letter of July 1997 (complaining about Mrs Murphy) received by Ranulf. I do not accept that these other witnesses, whom I consider to be completely honest, would have been prepared to become involved in such seriously improper conduct. I accept Mr Rayner's evidence as to how from time to time he created documents at Mrs Murphy's request (for example the letters to DHL and her cousin). I also accept that he created some documents (for example the 31st January 2004 letter) with a view to their being signed by Mrs Murphy. He did not pretend that Mrs Murphy had ever actually signed the documents. Some of them were, on their face, incomplete drafts with spaces to be completed; for example the one dated August

1999, blank as to date and amount advanced. Such documents could never in that incomplete state have been intended to be uttered as ones to which Mrs Murphy had bound herself.

241. In order to reach this conclusion as to the genuineness of the disputed documents, I have not needed thus far to have resort to a letter from Messrs Smith & Williamson (“S&W”, an accountancy practice in London) dated 14th September 2010 addressed to Mr Rayner’s solicitors (“the S&W letter”), and prepared at their request. S&W examined two computers belonging to Mr Rayner for the purpose of investigating the dates of creation of ten particular documents. These were the letters purportedly created for Mrs Murphy to send to her mother and cousin, the two letters to Mr Markes, the letter dated 9th May 2001 to Mr Disosa, the two letters to Mrs Rajan, the letters of 4th October 2001 to Mrs Jamuna and Mr Kumar, and the August 1999 letter. All of these letters are described above. The S&W letter sets out a number “findings”. For reasons I need not elaborate upon, the findings are inconclusive as to precise dates when documents were created, but the view is expressed that one of the computers (referred to as Computer B) is relatively old and had not been used for some years. Elsewhere the S&W letter states that the ten investigated documents appear on Computer B. Further a back-up disc was examined and this suggested that all ten documents must have existed by October 2006.

242. The ten investigated documents are said to have been created more than four years ago, which is long before this litigation was in contemplation, and long before there was any suggestion of any dispute between Mr Rayner and Mrs Murphy. The S&W letter therefore would, if its contents are accepted, tend to support the view that the ten significant disputed documents with which it deals were not created for the purposes of the case as suggested by Mrs Murphy, since they were created long before the case was contemplated.

243. Mr Watson-Gandy objected to my having any regard to the S&W letter. He fairly pointed out that there had never been a direction for such “expert” evidence, and that some of the contested documents had only recently been disclosed. He made the obvious, but nonetheless extremely important, observations that the letter was not subject to testing in cross-examination, and did not contain a statement of truth. He argued forcefully that the letter could not satisfy the requirements of an expert report, reminding me of the requirements of CPR 35, and an extensive body of case law on this topic. He submitted that even if I could properly take the S&W letter into

account, I should not attach any weight to its conclusions because of other inadequacies in it. Mrs Peacocke accepted that the S&W letter did not satisfy the requirements of an expert report, and she was right to make that concession. However, she argued that I could still have regard to it as a hearsay statement of opinion, and that whilst the general rule (CPR 35.5) is that expert evidence is to be given in a written report, I could direct otherwise.

244. I accept Mr Watson-Gandy's submission that the S&W letter does not qualify as an expert report as it clearly does not satisfy the requirements of the CPR for such a report. I do not consider, however, that this prevents me from relying upon it as a hearsay expression of expert opinion, if it is otherwise appropriate to do so. There remains a discretion under the CPR to receive expert evidence other than in the form of a report satisfying the requirements of the rules. However, having reflected carefully on this point, I am not persuaded that I should attach any weight to the S&W letter. It is not, from its contents, even clear that its author has any personal knowledge of what he writes about, referring throughout to how information and materials were passed to "us" and how "we believe" various things about dating of the challenged documents. This use of language suggests that the author may have played no part in the investigation himself. It is not clear to what extent the author has any expertise in the subject matter in question. Although he is described as an "Associate Director Forensic Technology", his qualifications and experience are not stated, nor is the expertise of his practice (or any other person who actually undertook the investigation if not himself) in relation to the subject matter. Further, important statements are made apparently based on information provided by Mr Rayner, and other assertions are made as to how Computer B "*has clearly not been used for some years*". The extent to which these matters were verified, and how secure the conclusions based upon them might be, is not discussed. It would not be fair, given these inadequacies in the evidence, and the lack of any opportunity for Mr Watson-Gandy to explore these and other points in cross-examination, to attach weight to the S&W letter on the important issue of the genuineness of the disputed documents.
245. In the event I have found it unnecessary to rely on the S&W letter to reach my conclusions as to the authenticity of the disputed documents.

PROPRIETARY ESTOPPEL ISSUES

246. Save in relation to undue influence, I have considered above most, but not all, of the evidence which relates to this group of issues. Where additional evidence is relevant, I deal with it in relation to the particular issue under consideration. I consider, first, the principles concerning proprietary estoppel, and then submissions and my findings on the assurance, reliance, inducement, unconscionability, and change in circumstances issues. I have found it more convenient to deal separately and subsequently with the undue influence issue.

Relevant principles

(i) Submissions made on behalf of Mrs Murphy

247. Mr Watson-Gandy began by reminding me of the well-known passage in the judgment of Scarman LJ, as he then was, in *Crabb v Arun District Council* [1976] Ch 179. Scarman LJ said at 192-193:

“In such a case I think it is now well-settled law that the court, having analysed and assessed the conduct and relationship of the parties, has to answer three questions. First, is there an equity established? Secondly, what is the extent of the equity, if one is established? And, thirdly, what is the relief appropriate to satisfy the equity?”

248. Mr Watson-Gandy developed his argument by referring *Gillett v Holt* [2001] Ch 210, especially the passage in the judgment of Robert Walker LJ (with whom both Waller and Beldam LJJ agreed) at page 225:

“... it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a "mutual understanding" may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round.”

249. As for what was required by way of a representation, Mr Watson-Gandy submitted that it might be made by words or conduct (including silence, inaction or negligence) or might arise as a result of an agreement between the parties. There could be a definite assurance, or series of assurances, by A, for example that B would have a home for life (as in *Campbell v Griffin* [2001] EWCA Civ 990), or be left property in a will (see *In re Basham, dec'd* [1986] 1 WLR 1498, and *Gillett v Holt*). He accepted that any representation, to found an estoppel, would have to be “clear enough” in the sense explained in their lordships’ speeches in *Thorner v Major* [2009] 1 WLR 776 to which I shall return later in this judgment, and (based on the same authority) that any representations must also be viewed in their context and that the reasonableness of reliance may sometimes need to be viewed through the lens of hindsight.
250. Mr Watson-Gandy drew attention to the increase in the level of planned provision for Mrs Murphy (from 18 months’ accommodation to an outright gift of the Property), and how Mr Rayner sought to safeguard this intended provision in the Powers of Attorney. He reminded me that Mr Rayner accepted that he told Mrs Murphy of the changes he made in planned provision.
251. As for what is necessary to establish detrimental reliance, Mr Watson-Gandy relied in particular on what Robert Walker LJ said in *Gillett v Holt* at page 232:

“The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached by the court as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances”.

He relied also on *Jennings v Rice* [2003] 1 P & CR 100, CA (caring for the deceased without payment), and *Ottey v Grundy* [2003] WTLR 1253 (coping with deceased's alcoholism and putting own career on hold). Further, he submitted, citing *Sledmore v Dalby* (1996) 72 P & CR 196, CA, that relevant circumstances can include the respective needs of the parties. In that case, the appellant sought possession of a house occupied by the respondent who relied on a plea of proprietary estoppel to defeat the claim. The trial judge refused to order possession, finding that an equity had arisen in favour of the respondent. The appellant succeeded on appeal against this decision. Roch LJ (at page 205) emphasised that the trial judge “should have considered the position of the appellant and her needs and balanced those against the present use of the premises made by the respondent and his present need for them.”

He concluded that the judge had not made an adequate assessment of the parties' respective needs, and whether it was still inequitable for the respondent's expectation to be defeated by allowing the appellant to enforce her legal rights. Butler-Sloss LJ agreed with Roch LJ, and Hobhouse LJ in a concurring judgment, also expressed his agreement with it. Mr Watson-Gandy drew attention to the following passage in the judgment of Roch LJ (at pages 204-205) as demonstrating the importance of an assessment of the relevant position of the parties:

“He is a man in employment and therefore capable of paying for his accommodation. Whilst the respondent has lived in this house his elder daughter has married and left home and his younger daughter has reached the age of 27 and is able to maintain herself. On the other hand, the evidence indicates that the appellant is vulnerable in that she is liable to lose her present accommodation and that she has a pressing need for this house which is her property.”

252. On the facts of this case, Mr Watson-Gandy submitted, Mrs Murphy had relied on Mr Rayner's promises to her detriment; I deal with those submissions as to detriment later in this judgment.
253. In all the circumstances, Mr Watson-Gandy submitted, it was unconscionable of Mr Rayner to renege from his promises, given the nature of those promises, the detriment that Mrs Murphy has suffered by relying on them, and the respective needs of the parties, in which account Mr Rayner holds a significantly more advantageous position than Mrs Murphy, who relies on jobseeker's allowance at the age of fifty-six.
254. As to the minimum to satisfy her income needs, Mr Watson-Gandy took Mrs Murphy's rest of life multiplier under the Ogden Tables on a base interest rate of a half per cent, namely 27.42, and her estimate of her needs as £500 per week, implying a claim for £712,920. He submitted, as to accommodation, that to rent something equivalent to the Property (worth, it was suggested, £2.3m) would cost £500-£1,700 per week. Adopting the same approach, based on the Ogden tables, would suggest a capital sum of between around £700,000 to £2.4m would be needed to fund accommodation.
255. Mr Watson-Gandy addressed the question of the nature of relief to be afforded to Mrs Murphy in the event that I should find that she was guilty of fraudulent conduct against Mr Rayner. He suggested that even then she should be entitled to relief by way of a cash sum, though clearly she could not expect to have the full benefit of the

assurances made to her. He contended that it should be based upon a sum to reflect the number of years that she had worked for Mr Rayner, the years ahead during which she would not now be doing so, and make an adjustment accordingly. Alternatively, he suggested, an award should be based on the full value of anticipated benefits, less a deduction for any payments induced by fraud, and a further deduction to reflect Mr Rayner's loss of Mrs Murphy's services during his lifetime.

(ii) Submissions for Mr Rayner, Aeternus and Courtina

256. Mrs Peacocke began her submissions by emphasising the three elements of proprietary estoppel identified in all of the leading cases; first a representation or assurance, secondly, reasonable reliance and thirdly, detriment in consequence of such reliance. She referred me, amongst other authorities, to *Thorner v Major*, *Gillett v Holt*, *Jennings v Rice*, and also to the recent decision of Geraldine Andrews QC, sitting as a deputy judge of the Chancery Division, in *MacDonald v Frost* [2009] EWHC 2276 (Ch). Mrs Peacocke submitted that all the cases demonstrated that a claimant needed to show that it would be unconscionable for a person who made the assurance or representation concerned to go back on it and deprive the promisee of the interest which she had been led to expect.
257. Mrs Peacocke submitted that Mrs Murphy had not made out a case by reference to any of the three elements mentioned, and that the question of unconscionability should be resolved against her. As to an assurance or representation, she argued that a vague, equivocal, inconsistent, contingent or manifestly revocable utterance (including one premised upon the continuation of a relationship) would not, or might not, suffice to be "clear enough" because as Lord Neuberger explained in *Thorner* (at paragraph 74) it might be no more than merely a statement of current intention subject to change with the passage of time, with or without a change of circumstances. In this case, she argued, Mr Rayner's intentions were always premised on Mrs Murphy's continued employment until his death, and this should reasonably have been understood by Mrs Murphy. As *Thorner* demonstrates (in passages which I mention below), what matters is how a statement is reasonably to be understood. Thus it follows, it was argued, that since Mrs Murphy by her conduct undermined the relationship so that her employment did not continue, there could be no question of the application of any assurance; the qualifying hurdle of continued employment until death has not been cleared.

258. Mrs Peacocke maintained further, in this regard, that any assurance or representation must relate to a proprietary interest in specified property, so that a promise of financial security would be inadequate. She relied in particular on passages in *Thorner* (Lord Hoffmann at paragraph 1, and Lord Walker at paragraph 61) and the decision of Scott J, as he then was, in *Layton v Martin* [1986] 2 FLR 227 (especially at page 238).
259. As to reliance, Mrs Peacocke submitted that there could be no reasonable reliance where there had been deceptions practised upon Mr Rayner, because Mrs Murphy knew that on discovery of the deceit Mr Rayner might well change his mind.
260. In respect of detriment, Mrs Peacocke challenged factually the suggestion that that had been detrimental reliance in fact upon any assurances. Even if there were, she submitted, it was not sufficient in law because it was not substantial and did not go beyond what was normally to be expected of someone in the relevant kind of relationship. Mrs Peacocke relied, in part, in this respect upon the decision of Jonathan Parker QC (as he then was), sitting as a deputy judge of the Chancery Division, in *Coombes v Smith* [1986] 1 WLR 808 for the proposition that leaving a husband and keeping house for a defendant, not looking for a job, and allowing all bills to be paid, could not amount to detriment. However, I am not persuaded that the decision is authority for that proposition; from page 820E-F of the report it appears that the deputy judge rejected the plaintiff's case on the facts. The deputy judge found that the reason for the plaintiff's conduct was not reliance on any assurance, but preference for living with the defendant rather than her husband. He did not suggest that if the facts were made out, then such matters would not be capable of amounting to detriment.
261. Mrs Murphy could never prove unconscionability, Mrs Peacocke argued, when any promises made to her had been made at a time when Mr Rayner held false beliefs engendered by her deceptions.

(iii) Discussion of the relevant principles

262. In considering whether a claim of proprietary estoppel has been made out, I take as my starting point the summary of applicable principles contained in Lord Walker's speech in *Thorner* at paragraph 29:

“An academic authority (Simon Gardner, *An Introduction to Land Law* (2007), p 101) has recently commented: “There is no definition of proprietary estoppel that is both comprehensive and uncontroversial (and many attempts at one have been neither).” Nevertheless most scholars agree that the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance: see *Megarry & Wade, The Law of Real Property*, 7th ed (2008), para 16–001; *Gray & Gray, Elements of Land Law*, 5th ed (2009), para 9.2.8; *Snell's Equity*, 31st ed (2005), paras 10–16 to 10–19; *Gardner, An Introduction to Land Law* (2007), para 7.1.1.”

263. *Thorner* represents the most recent and authoritative statement of the relevant principles. Its facts were that Peter and David Thorner were both Somerset farmers. Peter and David's father were first cousins. For a period of nearly 30 years David carried out a substantial amount of work, without pay, on Peter's farm. From about 1990 until his death in 2005 Peter encouraged David to believe that David would inherit Peter's farm, and David acted in reliance on that assurance. The representations were made in fairly oblique terms, but of particular importance was an occasion in 1990 when Peter gave David some life assurance documents, and said, “That's for my death duties”. Peter died without leaving a will. Over the years the farm varied in size considerably. David began proceedings in which he asserted that Peter's estate was estopped from denying that David had acquired a beneficial interest in the farm. He relied on the principle of proprietary estoppel. David succeeded at trial (before Mr John Randall QC, sitting as a deputy judge of the Chancery Division), but the trial judge's decision was reversed by the Court of Appeal (Ward, Lloyd and Rimer LJJ). The basis of the court's decision ([2008] WTLR 1289) was contained in the following passage (paragraph 72) in Lloyd LJ's judgment:

“In the present case, the judge did not in terms consider whether the implicit statement which he found to have been made in 1990, to the effect that Peter intended David to succeed to the farm on his death, was intended to be relied on. Since he was unable to find that the implicit statement was made for the purpose of persuading David not to pursue some other opportunity, it seems to me that there was no material on the basis of which the judge could have found, if he had asked the question, that the implicit statement was intended to be relied on or, in other words, was intended as a promise rather than, at most, a statement of present intention, which might well be maintained in fact (as it was, although not in the event carried through), but as to which there was no commitment.”

264. In the House of Lords all of their lordships (Lords Hoffmann, Scott of Foscote, Rodger of Earlsferry, Walker of Gestingthorpe, and Neuberger of Abbotsbury) agreed

that David's appeal should be allowed, and the trial judge's order restored. The principal issue was the adequacy of assurances given to David, and whether they had to be "clear and unequivocal" to found a reasonable reliance. A further important question was whether the nature of the property was too imprecise to found an estoppel. Each of their lordships delivered substantive speeches. Lord Scott said he was in "broad agreement" with the reasons given by Lords Walker and Neuberger, but he added a number of observations, particularly as to the relationship between proprietary estoppel and constructive trusts and their respective *rôles* in providing remedies where representations as to future interests have been made and relied upon. His conclusion as to this, at paragraph 20, was that he:

"would prefer to keep proprietary estoppel and constructive trust as distinct and separate remedies, to confine proprietary estoppel to cases where the representation, whether express or implied, on which the claimant has acted is unconditional and to address the cases where the representations are of future benefits, and subject to qualification on account of unforeseen future events, via the principles of remedial constructive trusts."

265. Lord Rodger expressly agreed with Lord Walker's speech, saying that what mattered was that what Peter said should be "clear enough" for David to be able to form a reasonable view that Peter was giving an assurance as to inheritance and that he could rely on it. Lord Neuberger also expressly agreed with Lord Walker, but added a number of important observations as to reasonable reliance and certainty as to the extent of the property.

266. As to the adequacy of an assurance as a basis for reasonable reliance Lord Walker said:

"56. I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context. I respectfully concur in the way Hoffmann LJ put it in *Walton v Walton* [1994] CA Transcript No 479 (in which the mother's "stock phrase" to her son, who had worked for low wages on her farm since he left school at 15, was "You can't have more money and a farm one day"). Hoffmann LJ stated, at para 16:

"The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made."

57. Hoffmann LJ enlarged on this, at paras 19–21:

“19. But in many cases of promises made in a family or social context, there is no intention to create an immediately binding contract. There are several reasons why the law is reluctant to assume that there was. One which is relevant in this case is that such promises are often subject to unspoken and ill-defined qualifications. Take for example the promise in this case. When it was first made, Mrs Walton did not know what the future might hold. Anything might happen which could make it quite inappropriate for the farm to go to the plaintiff.

“20. But a contract, subject to the narrow doctrine of frustration, must be performed come what may. This is why Mr Jackson, who appeared for the plaintiff, has always accepted that Mrs Walton's promise could not have been intended to become a contract.

“21. But none of this reasoning applies to equitable estoppel, because it does not look forward into the future and guess what might happen. It looks backwards from the moment when the promise falls due to be performed and asks whether, in the circumstances which have actually happened, it would be unconscionable for the promise not to be kept.”

267. These words of Hoffmann LJ (paragraph 21 also being referred to with approval by Lord Neuberger in *Thorner*) are of particular relevance here to the Defendants' case that, in the circumstances, there could have been no reasonable reliance on any assurance given by Mr Rayner, and it would not be unconscionable for him not to keep any promise made. In *Thorner* Lord Hoffmann returned to the theme, in a passage (paragraph 8) much emphasised by Mrs Peacocke:

“There was a close and ongoing daily relationship between the parties. Past events provide context and background for the interpretation of subsequent events and subsequent events throw retrospective light upon the meaning of past events. The owl of Minerva spreads its wings only with the falling of the dusk. The finding was that David reasonably relied upon the assurance from 1990, even if it required later events to confirm that it was reasonable for him to have done so.”

268. Lord Neuberger, dealing with the issue of sufficiency of clarity to found reasonable reliance said at paragraph 78:

“Although Lloyd LJ also expressed himself, at para 72, by reference to what Peter intended when he made the statements in question, it seems to me, and I understood Mr Andrew Simmonds QC, who appeared for the defendants, to accept, that, if the statements were reasonably understood by David to have the effect which the deputy judge found, namely an assurance, and David reasonably acted on that understanding to his detriment, then what Peter intended is not really germane. That is supported by a consistent line of authority – see for instance per Lord Denning MR in *Crabb v Arun District Council* [1976] Ch 179 , 187 F , 188 C (citing his earlier observations in *Moorgate Mercantile Co Ltd v Twitchings* [1976] QB 225 , 242; see also

Sidney Bolsom Investment Trust Ltd v E Karmios & Co (London) Ltd [1956] 1 QB 529 , 540–541, quoted by Lord Walker at para 50 of his opinion), and per Oliver J in *Taylor's Fashions Ltd v Liverpool Victoria Trustees Co Ltd* (Note) [1982] QB 133 , 151 H –152 A . It may be that there could be exceptional cases where, even though a person reasonably relied on a statement, it might be wrong to conclude that the statement-maker was estopped, because he could not reasonably have expected the person so to rely. However, such cases would be rare, and, in the light of the facts found by the deputy judge, it has not been, and could not be, suggested that this was such a case.”

269. Dealing with the same topic at paragraph 88 he added:

“88. I should add that, if Peter had changed his mind before he died, the question as to what, if any, relief should have been accorded to David would have been a matter for the court, to be assessed by reference to all the facts. An example of such a case is *Gillett v Holt* [2001] Ch 210, where my noble and learned friend, then Robert Walker LJ, had to consider just such an issue, and did so in a masterly judgment, to which I shall have to revert on the second issue on this appeal.

89. Before turning to that second issue, I should add that, even if Peter's “implicit statement” may have been revocable, as the Court of Appeal thought, I should not be taken as accepting that it would necessarily follow that, once the statement had been maintained by Peter and acted on by David for a substantial period, it would have been open to Peter freely to go back on it. It may be that he could not have done so, at least without paying David appropriate compensation, unless the change of mind was attributable to, and could be justified by, a change of circumstances. It seems to me that it would be arguable that, even assuming that the “implicit statement” was not irrevocable, if, say in 2004, Peter had changed his mind, David would none the less have been entitled to equitable relief, in the light of his 14 or more years of unpaid work on the farm. It is not as if Peter had given any sort of clear indication that statement was revocable. The Court of Appeal considered that it was not clear that the statement was irrevocable, not that it was clear that the statement was revocable. However, that point does not arise for decision in the present case, and I shall say no more about it.”

270. As to the identity of property Lord Walker said in *Thorner* at paragraph 61:

“In my opinion it is a necessary element of proprietary estoppel that the assurances given to the claimant (expressly or impliedly, or, in standing-by cases, tacitly) should relate to identified property owned (or, perhaps, about to be owned) by the defendant. That is one of the main distinguishing features between the two varieties of equitable estoppel, that is promissory estoppel and proprietary estoppel. The former must be based on an existing legal *relationship* (usually a contract, but not necessarily a contract relating to land). The latter need not be based on an existing legal relationship, but it must relate to *identified property* (usually land) owned (or, perhaps, about to be owned) by the defendant. It is the relation to identified land of the defendant that has enabled proprietary estoppel to develop as a sword, and not merely a shield: see Lord Denning MR in *Crabb v Arun District Council* [1976] Ch 179 , 187.”

271. Lord Walker went on to say, at paragraph 62, that both Peter and David were aware of the liability of the extent of the farmland to fluctuate, and that there was no reason to doubt their common understanding that the assurance related to whatever the farm consisted of at Peter's death. He continued:

“64. Mr Simmonds relied on some observations by my noble and learned friend, Lord Scott of Foscote, in *Cobbe's* case [2008] 1 WLR 1752 , paras 18–21, pointing out that in *Ramsden v Dyson* LR 1 HL 129 , 170, Lord Kingsdown referred to “a *certain* interest in land” (emphasis supplied). But, as Lord Scott noted, Lord Kingsdown immediately went on to refer to a case where there was uncertainty as to the terms of the contract (or, as it may be better to say, in the assurance) and to point out that relief would be available in that case also. All the “great judges” to whom Lord Kingsdown referred, at p.171, thought that even where there was some uncertainty an equity could arise and could be satisfied, either by an interest in land or in some other way.

65. In any event, for the reasons already mentioned, I do not perceive any real uncertainty in the position here. It is possible to imagine all sorts of events which might have happened between 1990 and 2005. If Peter had decided to sell another field or two, whether because of an advantageous development opportunity or because the business was pressed for cash, David would have known of it, and would no doubt have accepted it without question (just as he made no claim to the savings account which held that part of the proceeds of the 1990 sale which Peter did not roll over into land). If Peter had decided in 2000 to sell half the farm in order to build himself a retirement home elsewhere (an unlikely hypothesis) David might well have accepted that too (as the claimant in *Gillett v Holt* [2001] Ch 210 might have accepted a reduction in his expectations, had he been asked to do so rather than being abruptly and humiliatingly dismissed: see p 229). But it is unprofitable, in view of the retrospective nature of the assessment which the doctrine of proprietary estoppel requires, to speculate on what might have been.”

272. Lord Neuberger considered that the subject of the assurance was the farm as it existed from time to time; see paragraph 95. Later in his speech, having referred to paragraph 21 in Hoffmann LJ's judgment in *Walton* set out above, he continued:

“... Accordingly, the notion that, where the promise relates to “the farm”, which is a readily recognisable entity at any one time, there is no reason why it should not apply to that entity as it exists at the date “the promise falls due to be performed”, i e as at Peter's death.

102 Of course, there may be cases where the facts justify a different conclusion either because the promise had a different meaning at the time it was made, or because intervening events justify giving it a different effect—or even no effect. ...”

273. In assessing reliance and detriment, and the requirement for a connection between the two, Robert Walker LJ in *Gillett v Holt* said at page 232 D-F:

“The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.

There are some helpful observations about the requirement for detriment in the judgment of Slade LJ in *Jones v Watkins* 26 November 1987. There must be sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded—that is, again, the essential test of unconscionability. The detriment alleged must be pleaded and proved.

As authority for the second of these observations Slade LJ referred to *Spencer Bower & Turner on Estoppel by Representation*, 3rd ed (1977), p 110, which in turn cites the judgment of Dixon J in *Grundt v Great Boulder Pty Gold Mines Ltd* (1938) 59 CLR 641, 674-675 (High Court of Australia) :

“One condition appears always to be indispensable. That other must have so acted or abstained from acting upon the footing of the state of affairs assumed that he would suffer a detriment if the opposite party were afterwards allowed to set up rights against him inconsistent with the assumption. In stating this essential condition, particularly where the estoppel flows from representation it is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it. So long as the assumption is adhered to, the party who altered his situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment. His action or inaction must be such that, if the assumption upon which he proceeded were shown to be wrong, and an inconsistent state of affairs were accepted as the foundation of the rights and duties of himself and the opposite party, the consequence would be to make his original act or failure to act a source of prejudice.”

This passage was not directed specifically to proprietary estoppel, but Slade LJ was right, in my respectful view, to treat it as applicable to proprietary estoppel as well as to other forms of estoppel.

The point made in the passage may be thought obvious, but sometimes it is useful to spell out even basic points.”

It is not necessary that a promise relied upon is the sole inducement for the conduct alleged to amount to the relevant detriment; *Wayling v Jones* [1995] 2 FLR 1029, at 1032. Once it is established that promises have been made, and that there has been

conduct by the claimant of such a nature that inducement may be inferred, then the burden shifts to the defendant to establish that the promise was not relied upon; *Wayling v Jones* at 1032, and the other authorities there mentioned. I also keep in mind Robert Walker LJ's guidance (at page 233H in *Gillett v Holt*) that it is necessary, in making an assessment, to "stand back and look at the matter in the round".

274. From the above I consider that the following principles clearly emerge:

- (1) To establish proprietary estoppel an assurance must be "clear enough", and whether it is sufficiently clear will depend upon context.
- (2) Reliance, if it is to be the basis of an estoppel, must be reasonable.
- (3) Detriment must consist of something substantial. (There must be a causal link between the assurance relied upon and the detriment asserted, but the assurance need not be the sole inducement for the conduct amounting to the relevant detriment.)
- (4) In assessing these matters it is necessary to look backwards from the moment when the promise falls due to be performed, and ask whether, in the actual circumstances which have occurred, it would be unconscionable for the promise not to be kept.
- (5) Changing circumstances, and a change of mind, may be relevant to the relief, if any, which the court is to give. The fact that the assurance has been acted upon will be relevant to such relief, as will the fact that no suggestion of revocability of a promise is made.

The assurance issue

275. I have set out above (at paragraphs 138-170) the evidence and my findings in relation to Mr Rayner's plans for Mrs Murphy's provision, and what he told her and others about them.

Findings on the assurance issue

276. I do not consider that Mr Rayner's vague statements at the time of his visit to Pleydell Avenue in 1996 (to the effect that he and Mrs Murphy would look after each other and that she would be comfortable) were a representation as to the creation of any proprietary interest or expectation. I find that they were not intended or understood as such, nor could they reasonably be understood in that way. Mrs Murphy was, I find, confronted with the breakdown of her marriage. Mr Rayner was looking to persuade her to stay on as his carer, and his statements were designed simply to point out to her that if she remained as such then somewhere to live "came with the job", which would be a comfortable existence compared with the alternative of being out of a job, and out of a home with her husband. At this time Mrs Murphy had worked for Mr Rayner for a matter of months only; she could not reasonably have understood him to be making an irrevocable promise of very substantial provision if she would only return to care for him, especially since there was no equivalent commitment on her part. She was always free to leave, subject at most to any requirement of notice, which could be measured at most in terms of a few weeks.
277. I consider that the later statements made from 1998 onwards as to planned provision were "clear enough" to be capable of founding an estoppel. Other considerations such as unconscionability, change of circumstances, and undue influence apart, what would have made the promises irrevocable would have been detrimental reliance upon them; see *per* Robert Walker LJ in *Gillett v Holt* at 229D-G, and see also the observations of Lord Neuberger at paragraph 89 in *Thorner* cited above. Even so, it was implicit that Mrs Murphy should remain Mr Rayner's carer during his lifetime, so if she decided to leave, or behaved in such a manner that he could fairly require her to leave, she would not be entitled to relief.
278. I have kept in mind that Mrs Murphy's claim relates to distinct interests; first, an interest in the Property, and secondly, an interest in the Investments. The application of the principles could differ in relation to each, though there is substantial overlap. On the facts of the case, however, I do not consider that any materially different considerations have arisen.
279. For the sake of completeness on the question of the adequacy of any assurance or representation, I should add that I do not accept Mrs Peacocke's submission that promises as to a right of rent free occupancy are incapable of founding a plea of proprietary estoppel as only a promise of a proprietary interest will suffice. On that

basis nothing short of the promise of a life interest or outright transfer would suffice. Snell's Equity, 31st ed., at paragraph 10-21 cites examples of cases where an estoppel has been established so as to be the basis of a licence for life (*Inwards v Baker* [1965] 2 QB 29), or a licence to remain on terms (*Dodsworth v Dodsworth* (1973) 228 EG 1115). *Campbell v Griffin*, mentioned above, is another example of a case where a promise of a home for life was sufficient to found an equity, though in that case the court held that it was satisfied by the award to the claimant of a sum of £35,000 charged on the property concerned, but coupled with an order that he must give up possession.

The reliance issue

(i) Reasonable reliance

280. For reasons expressed above, I have concluded that Mrs Murphy lied to Mr Rayner in 1996 by telling him that Veena was her daughter. She did so for the purpose of procuring payments from him supposedly for the support of Veena, whether by paying for her education or maintenance, or by way of providing housing for Veena in Bangalore. She calculated, in my judgment, that by presenting Veena as her daughter she would be able to abuse Mr Rayner's generosity, and nurture in him a feeling of deep obligation to Mrs Murphy. This perception of hers was entirely correct. Mr Rayner believed that Mrs Murphy was in England looking after him, while her daughter was far away in India, dependent on other family members for her upbringing. Thus there developed in him a sense of moral obligation to help Veena, and to make the substantial payments which he did over many years, and to provide for Mrs Murphy. Her conduct amounted not only to procuring payments dishonestly and on entirely false pretences; it involved a cynical abuse of the trust reposed in her by a vulnerable man, who looked to her for his care and well-being.
281. At the latest from the moment that Mrs Murphy first procured a payment in respect of Veena from Mr Rayner, Mrs Murphy knew that she had done so as a result of entirely false representations, and her abuse of the trust placed in her. She must have realised from that time that should the deception which she had practised be exposed, then Mr Rayner would almost inevitably wish to bring his relationship with her to an end. Mr Rayner could not reasonably trust her again, nor could anyone reasonably expect him to do so. Thus if the deception were exposed, Mrs Murphy was always likely to have to leave Mr Rayner's employment and the Property. At the least, this was foreseeable. She could not sensibly have thought that in such an eventuality she would continue to be entitled to expect any right to live in the Property on Mr Rayner's death, or during

his lifetime. Neither could she expect to inherit the Property on his death, nor to have any interest in the Investments. In these circumstances Mrs Murphy knew that any assurances to her as to any expectations were impeachable on the grounds of her own dishonesty, and that her expectations were always liable to be defeated by the discovery of the true position concerning Veena. From this it follows that she could not reasonably rely on any assurances made to her. Any reliance by her was at her own risk; the risk of the discovery of her deception.

282. I consider questions of whether Mrs Murphy actually relied on any assurances along with issues as to detriment, to which I turn next.

(ii) Detriment

283. Mr Watson-Gandy submits that there were six different respects in which Mrs Murphy relied on Mr Rayner's promises as to provision for her:

- (1) By not returning to India when she wished to do so, but remaining in Britain as Mr Rayner's carer.
- (2) By allowing her marriage to Mr Murphy to take second place to her care for Mr Rayner.
- (3) By not being employed and placed on a salary.
- (4) By not keeping up her own professional skills as a mathematics lecturer.
- (5) By making no provision for her own accommodation.
- (6) By making no plans for her own retirement.

I shall consider each of these in turn.

(1) Not returning to India

284. Mrs Murphy's evidence was that there were several occasions when she had decided to return to India, and on one occasion she even packed her bags to go. However, she said that Mr Rayner screamed at the suggestion, and told her he would die. In this

context she drew attention to the occasion (in December 1998 mentioned above at paragraph 140) when Mr Rayner recorded that she did not wish to occupy the Property, (she says thereby implicitly suggesting that this was at a time when she wished to return to India). Her case is that following her being prevailed upon to stay, Mr Rayner reinstated the provision for her to be able to live at the Property following his death. Mr Watson-Gandy relied on passages in Mr Rayner's evidence given in cross-examination to demonstrate that Mrs Murphy told Mr Rayner that she was thinking of returning to India, and that she was homesick. Mr Rayner said that such things were mentioned once or twice, but that he had been determined that she should stay because Mrs Murphy looked after him wonderfully.

(2) *Allowing her marriage to take second place*

285. Mr Watson-Gandy reminded me that in cross-examination Mr Rayner himself said that Mrs Murphy had allowed her marriage to take second place to her care for him. He submitted that the evidence demonstrated that she had returned to Pleydell Avenue to try to save her marriage, but had then burned her boats by allowing Mr Rayner to persuade her to return to care for him.

(3) *Not being employed and foregoing a salary*

286. I have dealt with this topic above, and I reject Mrs Murphy's case. She was employed by Mr Rayner, and paid throughout the time she cared for him.

(4) *Not developing professional skills*

287. Mr Watson-Gandy relies on the fact that Mrs Murphy said (in her fourth witness statement) that she used to teach mathematics and science to the Indian Air Force. In her evidence she said that a teacher of those subjects in a British school could earn over £36,000 per annum, possibly up to around £55,000 per annum, with pension and benefits. She said that now she found that she had wasted her life caring for Mr Rayner. The witness statement of Louisa Gerald (who did not give evidence orally) mentioned that Mrs Murphy was a teacher in India.

(5) *No provision for accommodation*

288. Mrs Murphy maintains that she has no assets, and is reliant on family and friends, but does not know for how long they will support her. She described, in her fourth witness statement, what she considered to be the value of the promises made to her in respect of accommodation. The cost of renting comparable property she put at

between £500 and £1,700 per week, and the value of the Property itself she suggested was £2.3m.

(6) *No provision for retirement*

289. Mrs Murphy relies on the fact that she has no pension from salaried employment, that as no National Insurance contributions were made her state benefits have been prejudiced, and that she has no savings as a result of not earning a living. She contrasts this with what she says was the value of what she was promised. She says she can live on £500 per week, and on a twenty six years multiplier for life this would equate to £676,000.

(iii) *Findings as to reliance and detriment*

290. Since I find Mrs Murphy to be a completely unreliable witness, and to have lied persistently about crucially important aspects of this case, I have to approach her assertions as to the motivations for her conduct with the utmost care. I do not accept that her reason for remaining working for Mr Rayner was, as she has suggested, her reliance on promises made by him, rather than her desire to continue to earn, latterly at the rate of £400 per week, with all expenses paid, and a home in Knightsbridge. I find it improbable that there was available to Mrs Murphy a realistic alternative by which she could enjoy the same standard of living if she had ceased to work for Mr Rayner. She has not managed to find anything like equivalent opportunities in the nearly two-year period since she ceased to be employed by him; in fact it seems she has been without work ever since. No doubt Mrs Murphy was very pleased by the prospect that she might be well provided for on Mr Rayner's death, but if the assurances had not been made to her, or if they had been withdrawn, I think it is unlikely that Mrs Murphy would actually have left. She was too comfortably off as things were, and had no realistic prospects of improving her condition.
291. Mrs Murphy's assertion that she was not paid by Mr Rayner permeates much of her case as to reliance and detriment. If she was paid, as Mrs Peacocke submitted, many of the aspects of her alleged reliance and detriment are no more than facets of having paid employment. Thus Mrs Murphy could hardly take up a teaching career, or return to India, if she chose, on economic grounds, to remain working for Mr Rayner. Similarly, if she judged that economically she was better off working for him, and made this financial judgment a priority in her life, it meant that she would have to live in Knightsbridge, and at least for most of the week, away from Mr Murphy, with whatever implications this might have for their marriage. Further, if Mrs Murphy was

paid for her work, and at the level Mr Rayner has suggested, then she could have made provision for her future because all her outgoings were covered by Mr Rayner and her pay was hers to use as she saw fit. The fact of paid employment does not in itself prevent detriment from being established; *Gillett v Holt* was a case in which the plaintiff had consisted worked in paid employment, but where the detriment consisted of devoting the best years of his life to the defendant's business interests, social life and personal wishes; see *per* Robert Walker LJ at page 235B-C. In that case it was established that such detriment was incurred on the strength of clear and repeated assurances of testamentary benefits. There is no evidence at all in this case (unlike in *Gillett v Holt* where in itself it was not a determining consideration) that Mrs Murphy worked for less than market remuneration. Given what is known of her career to date, I find it unlikely that Mrs Murphy could have hoped to be as well off if she left Mr Rayner's employment.

292. However, I do not consider, taken individually, that Mrs Murphy's case on the other matters relied upon bears examination. I found no persuasive evidence of a desire on Mrs Murphy's part to return to live in India. In cross-examination she said that she always regarded herself as free to leave at any time, and that if anybody had taken care of Mr Rayner she would have gone. There was, however, nothing to suggest that she had ever explored this possibility seriously. One might have expected that if she had genuinely wanted to go, and only lack of a satisfactory replacement held her back, that she would have discussed the problem with others who might be concerned, such as Mr Rayner's family members. She could have raised the need to find a replacement, perhaps by using an agency; she could have given a long period of notice so that the best possible arrangements could be made. She did, at one stage in evidence, say that she had looked for someone to replace her but no-one was interested, and so she stayed; what efforts she made, she did not mention. Given Mrs Murphy's perception of Mr Rayner's wealth (repeatedly saying that he was a millionaire), it is simply not credible that she could believe that a suitable carer could not be found and paid for. As to Mr Rayner's note of 21st December 1998, in which he recorded that Mrs Murphy did not wish to use the flat after his death, this does not, in my judgment, reflect an expectation on his part that Mrs Murphy was imminently returning to India. It concerned the position after his death, and it is noteworthy that in the same document Mr Rayner included provision to be made from Courtina's assets; this is hardly consistent with a belief then entertained by him that Mrs Murphy genuinely wished to leave and return to India. Why should he make such generous

provision for a carer who at that time had worked for him, with remuneration, for a relatively short period?

293. As for putting Mr Rayner's care before her marriage, I note that the marriage to Mr Murphy had lasted only about two years before it appears to have broken down. At the time of Mr Rayner's trip to Pleydell Avenue (see paragraphs 73, 162 and 168 above), Mr Rayner had made no planned provision for Mrs Murphy at all; he did not do so until 1998. I accept his evidence as to the limited discussion as to looking after each other that took place at about the time of his trip to Pleydell Avenue. In my judgment, Mrs Murphy went back to the Property because employment there offered her a home, and pay, at a time when things were already strained with Mr Murphy. I am not satisfied that she genuinely had any intention, or opportunity, of returning to live with Mr Murphy, and I do not accept that the kind of vague statements made at this time by Mr Rayner as to mutual support had any impact on her thinking. She was in a difficult situation, and the prospect of a comfortable place to live solved her immediate problems. I consider that her statements in late 1998 (recorded by Mr Rayner in his note of December that year) to the effect that she did not wish to use the Property after his death are indicative of the fact that Mrs Murphy did not regard the Property as a long term home after her service with Mr Rayner had ended.
294. I do not accept that Mrs Murphy had available to her a career in teaching or lecturing. Louisa Gerald's statement makes only passing reference to Mrs Murphy's being a teacher, and there is no satisfactory evidence of a teaching qualification or career before me. I note Mr Murphy's evidence that when he met Mrs Murphy, soon after her arrival in England, she was living in a refuge. On her own evidence she was undertaking only voluntary work at that time. I do not accept that Mrs Murphy ever contemplated a career in teaching as an alternative to working for Mr Rayner. There is nothing to suggest that Mrs Murphy made any efforts to explore the possibility of a teaching career, or did anything to prepare the ground for it. She did not, for example, attempt to improve her position, even as a fall-back, by learning to use a computer or the internet, which is a surprising position for someone who claims to have taught mathematics and science to the Indian Air Force. Such skills might be thought essential for someone seriously wishing to take up, or return to, a career in education, at least in the relevant disciplines, whether such a career was to be explored in Britain or India.

295. Finally, as to making no provision for accommodation or retirement, there is nothing which suggests to me that Mrs Murphy actually gave up anything in reliance upon any assurance by Mr Rayner. On my findings she was remunerated for what she did, and at a level that gave her a substantial disposable income, since she had minimal personal outgoings. I do not accept that she could have replicated this level of provision elsewhere; see my findings above. It is now nearly two years since Mrs Murphy ceased to work for Mr Rayner, yet she protests that she has been reduced to living on the support of family, friends and job seeker's allowance. I appreciate that she has in the meanwhile been concerned with the preparation of this case for trial, but nothing in the intervening period suggests that Mrs Murphy is a person with enterprise and initiative which was being thwarted by continuing working for Mr Rayner. Her loss of dependency claim was advanced on the basis that she will have no income going forward for another twenty-six years; this hardly seems consistent with her case as to her reliance on Mr Rayner's assurances causing her to give up other possibilities for her upkeep and future.

The inducement issue – discussion and findings

296. Mr Watson-Gandy submitted as to the inducement issue (whether any promises of provision had been brought about by deception practised upon Mr Rayner) that Mr Rayner's own case was that the promises were made to encourage Mrs Murphy to continue working for him. He submitted also that any alleged deceptions had not been adequately particularised. As to the latter point, I note that deception was pleaded in paragraph 15 of Mr Rayner's Defence, misrepresentation as to personal circumstances was pleaded at paragraph 28 of the Counterclaim, and this was developed in paragraph 19 (by express reference to Veena) of the Further Information provided on Mr Rayner's behalf.

297. The history of the provision planned for Mrs Murphy, which I have fully described above (paragraphs 138-162), demonstrates that almost from the beginning of Mr Rayner's thinking about these matters, provision for Mrs Murphy was linked to a gift to Veena in the event that Mrs Murphy should predecease him; this can be seen in the Will dated 10th March 1999, the letter of wishes dated 26th August 2001 to Courtina, and the letter dated 5th February 2008 to Courtina. Quite clearly, the instructions would not have been drawn up in this manner had Mr Rayner not believed that Veena was Mrs Murphy's daughter.

298. Whilst Mr Watson-Gandy is correct when he submits that the promises made by Mr Rayner were intended to encourage Mrs Murphy to remain as carer, I find that the false representations as to Veena were material and successful in procuring his actions. They induced Mr Rayner to make the plans which he actually did, as the references to Veena demonstrate. This is sufficient to establish the causative connection between the representations and the action taken in reliance upon them; see the decision of the Court of Appeal in *Downs v Chapple* [1997] 1 WLR 426 at 433 (*per* Hobhouse LJ, as he then was), recently applied by the Court of Appeal in *Dadourian Group International Inc v Sims & others* [2009] EWCA Civ 169 at paragraph 107. Those authorities demonstrate that once it is shown that there has been reliance on a dishonest representation (as it has), it is unnecessary to speculate as to how the representee might have behaved had he been told the truth.

The unconscionability issue – discussion and findings

299. Independently of my conclusion on the inducement issue, I do not consider it in the least unconscionable for Mr Rayner to refuse to adhere to the previously intended provision, in any form, for Mrs Murphy. Having been deceived about Veena, and having paid out very considerable sums in consequence, he is perfectly entitled to adopt the position that he is discharged from any obligation to provide further for Mrs Murphy. Viewed in contractual terms he would be entitled to treat her conduct as a serious repudiatory breach of her duties towards him, which he could accept and thereupon terminate her engagement. Mr Watson-Gandy submitted that any deception did not arise under the contract of employment, assuming for that purpose that such a contract existed. I reject that submission. There was undoubtedly an implied obligation of mutual trust and confidence; see *Mahmud v Bank of Credit and Commerce International SA (in Liquidation)* [1998] AC 20, in particular *per* Lord Steyn at page 46E. Mrs Murphy's conduct was about as clear a breach of that obligation as it is possible to imagine, since it was calculated to destroy any trust or confidence. However, even if I am wrong as to the contractual analysis, this will not assist Mrs Murphy. This is a claim in equity. Whether or not Mrs Murphy is entitled to succeed does not depend upon its being established, one way or the other, that contemporaneously with the termination of the relationship between the parties, a contractual obligation had been breached, or not breached, giving rise, or not giving rise, to a right to treat it as repudiatory of a contract and to treat such contract as discharged.

300. The matters discussed above in relation to reasonable reliance are relevant here, and need not be repeated. Someone whom Mr Rayner had trusted had betrayed that trust, exploited and abused his confidence in her, and obtained substantial sums by deception. In addition she removed personal papers from the Property without any permission to do so. This deception began, and led to payments for Veena's education being made, soon after the Bangalore trip in 1996, and before Mr Rayner communicated any specific plans for provision in 1998. There was therefore never a time following the practice of the deception, but after the making of any assurance or representation as to provision, when Mrs Murphy's engagement by Mr Rayner was not liable to be terminated. In *Windeler v Whitehall* [1990] 2 FLR 505, to which Mrs Peacocke referred in closing, the female plaintiff made a claim to an interest in the defendant's home. Millett J, as he then was, rejected the claim on a number of grounds, observing at page 516:

“Even if she had been encouraged to believe that she would inherit property from him if she should continue to live with him until he died, she herself destroyed the contingency on which her claim depended.”

These words are directly applicable to this case. Mrs Murphy completely undermined her relationship with Mr Rayner; it would be inappropriate to expect him to keep to his expressed intentions in the light of her conduct.

The change in circumstances issue – discussion and findings

301. Since Mr Rayner let Mrs Murphy know of his plans for her provision, circumstances have changed radically in that the deceptions described above, and the unauthorised removal of his papers, have come to light. In those changed circumstances, and where Mrs Murphy is no longer his carer, it would be inappropriate to award her any compensation on any basis. A further consideration in this regard is that it is hardly likely that she would have remained Mr Rayner's carer from 1996 for a period of more than twelve years, if Mr Rayner had learned of the deceptions earlier.

302. In his helpful submissions on this point Mr Watson-Gandy realistically acknowledged that it was always implicit in any assurance given by Mr Rayner that it was on the basis that Mrs Murphy would remain his carer until his death. It follows that any assurance was always implicitly revocable if Mrs Murphy did anything to undermine the relationship such that it could not reasonably be expected to continue. She did so undermine it.

303. I should, before concluding on this point, add that just as in *Thorner* it was unnecessary to consider what effect on any equity other changes of circumstances, which did not actually occur, might have had (see especially the speeches of Lord Walker at paragraph 65, and Lord Neuberger at paragraph 102), it is unnecessary in this case to consider what effect there might have been on any equity (if she could have established one) if, for any other reason, the anticipated continuation of the relationship had broken down; for example, in the event that Mrs Murphy had become too ill to care for Mr Rayner, or for family reasons she had been obliged to return to India.

The undue influence issue

304. I have described above the provision planned at various times by Mr Rayner for Mrs Murphy, and what he told her and the family members about it. I have described above, at paragraphs 76-107 the evidence in respect of the relationship between Mrs Murphy and Mr Rayner; my findings with regard to it are at paragraph 109. On his behalf it is submitted that a further reason for not giving effect to any promises made to Mrs Murphy was that such promises were procured by undue influence. Conduct which would amount to the practice of undue influence on the part of Mrs Murphy is of course highly relevant to the issue of whether an equity has arisen at all in her favour. For reasons considered above, and without reference to the undue influence issue, I have found that no equity has arisen in her favour. The undue influence issue was, however, fully investigated at trial, both in evidence and in submissions, and therefore it is appropriate that I should deal with it.

(i) The evidence

305. Mr Rayner said in his written evidence that Mrs Murphy's threats about leaving were always present, but that they became more frequent and harsher, she saying that if she left she would make sure that Krishna also left so that Mr Rayner would be totally alone. Mr Rayner said he believed this and that Mrs Murphy was the only person who could look after him.

306. Mr Watson-Gandy cross-examined Mr Rayner in detail about the differing provision made for Mrs Murphy over the years. Mr Rayner was consistent in his account that he had been placed under extreme pressure by Mrs Murphy to provide for her. Thus in relation to the earlier arrangements made in 1998, he said that Mrs Murphy had been putting pressure on him and giving him "*absolute hell about it*". Again he said that

she “*pushed*” him to change the period during which she could live at the flat after his death to five years, and similarly in respect of the change to ten years.

307. He mentioned one incident (denied by Mrs Murphy) when he was ill and collapsed, and it appeared to him that both Mrs Murphy and Krishna thought he was about to die; he had a vague recollection of their demanding money on this occasion. Whilst I do not believe that Mr Rayner was putting forward a false recollection of this incident, I do not consider that I can rely upon his recollection. He accepted that it was only vague, and it was of a time when he concedes he had collapsed.
308. As to the plans laid late in 2007, to give Mrs Murphy an outright interest, he said that he was under terrific pressure from Mrs Murphy all the time, that she was going to leave, and so he did anything he could to relieve that pressure. He told her of the intended change to relieve the pressure, otherwise the point in making the change would have been lost. He said that whilst he had seen Mr Collin who witnessed the letters to Aeternus and Courtina in January and February 2008, Mrs Murphy had been present. This of course was another reason for why Mrs Murphy would have known of the intended provision. He said that Mr Collin had done the drafting, and he had contributed himself. He could not explain why he had not told his lawyers at any stage of the pressure of which he complained, save that he said he probably thought he could handle the matter himself. He accepted that the purpose of including phrases such as that there had been no “*undue pressure*” in the documents was to shore up the wishes expressed.
309. Mrs Murphy’s evidence was that she never behaved improperly or unfairly towards Mr Rayner. She said Mr Rayner was secretive about his property, could not be controlled and did what he wanted to do. When he was working in his office no-one was allowed in without knocking first. She described an occasion when £285 was missing in connection with a banking transaction. Mr Rayner’s attention to detail was such that he checked the cash, realised something was missing and succeeded in getting it from the bank; I accept her description of that incident. Mrs Murphy said that procedures were put in place so that Mr Rayner could control everything. In short, Mrs Murphy did not accept that she was in a position to influence Mrs Rayner, or that she did anything inappropriate in her dealings with him.
310. I have described Mr Collin’s evidence concerning Mr Rayner’s execution of the documents and his state of mind above at paragraphs 157-158. I do, however, accept

Mr Rayner's evidence that Mrs Murphy was present during discussions with Mr Collin.

(ii) Submissions as to undue influence

311. As to the relevant principles to be applied, both counsel referred me to the decision of the House of Lords in *Royal Bank of Scotland v Etridge (No 2)* [2003] AC 773. That report concerned a number of cases in which wives sought to impugn banking transactions into which they had entered allegedly as a result of their respective husbands' undue influence. Their lordships' speeches were much concerned with issues as to whether the bankers concerned had notice of any such influence, but consideration was given also to the underlying principles applicable to establishing whether a transaction was procured by such influence. Those principles were discussed in particular in the speech of Lord Nicholls of Birkenhead, which Lord Bingham of Cornhill said, at paragraph 3, commanded the unqualified support of all members of the House (the other members being Lords Clyde, Hobhouse of Woodborough, and Scott of Foscote). Both counsel referred me to Lord Nicholls' speech, but emphasised different passages.
312. The principles described by Lord Nicholls are of course of general application, but I set out in full those passages in his speech which are of particular relevance to this case:

“6 The issues raised by these appeals make it necessary to go back to first principles. Undue influence is one of the grounds of relief developed by the courts of equity as a court of conscience. The objective is to ensure that the influence of one person over another is not abused. In everyday life people constantly seek to influence the decisions of others. They seek to persuade those with whom they are dealing to enter into transactions, whether great or small. The law has set limits to the means properly employable for this purpose. To this end the common law developed a principle of duress. Originally this was narrow in its scope, restricted to the more blatant forms of physical coercion, such as personal violence.

7 Here, as elsewhere in the law, equity supplemented the common law. Equity extended the reach of the law to other unacceptable forms of persuasion. The law will investigate the manner in which the intention to enter into the transaction was secured: “how the intention was produced”, in the oft repeated words of Lord Eldon LC, from as long ago as 1807 (*Huguenin v Baseley* 14 Ves 273, 300). If the intention was produced by an unacceptable means, the law will not permit the transaction to stand. The means used is regarded as an exercise of improper or “undue” influence, and hence unacceptable, whenever the consent thus procured ought not fairly to

be treated as the expression of a person's free will. It is impossible to be more precise or definitive. The circumstances in which one person acquires influence over another, and the manner in which influence may be exercised, vary too widely to permit of any more specific criterion.

8 Equity identified broadly two forms of unacceptable conduct. The first comprises overt acts of improper pressure or coercion such as unlawful threats. Today there is much overlap with the principle of duress as this principle has subsequently developed. The second form arises out of a relationship between two persons where one has acquired over another a measure of influence, or ascendancy, of which the ascendant person then takes unfair advantage. An example from the 19th century, when much of this law developed, is a case where an impoverished father prevailed upon his inexperienced children to charge their reversionary interests under their parents' marriage settlement with payment of his mortgage debts: see *Bainbrigge v Browne* (1881) 18 Ch D 188 .

9 In cases of this latter nature the influence one person has over another provides scope for misuse without any specific overt acts of persuasion. The relationship between two individuals may be such that, without more, one of them is disposed to agree a course of action proposed by the other. Typically this occurs when one person places trust in another to look after his affairs and interests, and the latter betrays this trust by preferring his own interests. He abuses the influence he has acquired. In *Allcard v Skinner* (1887) 36 Ch D 145 , a case well known to every law student, Lindley LJ, at p 181, described this class of cases as those in which it was the duty of one party to advise the other or to manage his property for him. In *Zamet v Hyman* [1961] 1 WLR 1442, 1444-1445 Lord Evershed MR referred to relationships where one party owed the other an obligation of candour and protection.

10 The law has long recognised the need to prevent abuse of influence in these "relationship" cases despite the absence of evidence of overt acts of persuasive conduct. The types of relationship, such as parent and child, in which this principle falls to be applied cannot be listed exhaustively. Relationships are infinitely various. Sir Guenter Treitel QC has rightly noted that the question is whether one party has reposed sufficient trust and confidence in the other, rather than whether the relationship between the parties belongs to a particular type: see Treitel, *The Law of Contract*, 10th ed (1999) , pp 380-381 . For example, the relation of banker and customer will not normally meet this criterion, but exceptionally it may: see *National Westminster Bank plc v Morgan* [1985] AC 686, 707-709 .

11 Even this test is not comprehensive. The principle is not confined to cases of abuse of trust and confidence. It also includes, for instance, cases where a vulnerable person has been exploited. Indeed, there is no single touchstone for determining whether the principle is applicable. Several expressions have been used in an endeavour to encapsulate the essence: trust and confidence, reliance, dependence or vulnerability on the one hand and ascendancy, domination or control on the other. None of these descriptions is perfect. None is all embracing. Each has its proper place.

12 In *CIBC Mortgages plc v Pitt* [1994] 1 AC 200 your Lordships' House decided that in cases of undue influence disadvantage is not a necessary ingredient of the cause of action. It is not essential that the transaction should be disadvantageous to the pressurised or influenced person, either in financial

terms or in any other way. However, in the nature of things, questions of undue influence will not usually arise, and the exercise of undue influence is unlikely to occur, where the transaction is innocuous. The issue is likely to arise only when, in some respect, the transaction was disadvantageous either from the outset or as matters turned out.

BURDEN OF PROOF AND PRESUMPTIONS

13 Whether a transaction was brought about by the exercise of undue influence is a question of fact. Here, as elsewhere, the general principle is that he who asserts a wrong has been committed must prove it. The burden of proving an allegation of undue influence rests upon the person who claims to have been wronged. This is the general rule. The evidence required to discharge the burden of proof depends on the nature of the alleged undue influence, the personality of the parties, their relationship, the extent to which the transaction cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship, and all the circumstances of the case.

14 Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof. On proof of these two matters the stage is set for the court to infer that, in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence. In other words, proof of these two facts is prima facie evidence that the defendant abused the influence he acquired in the parties' relationship. He preferred his own interests. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn.

15 *Bainbrigge v Browne* 18 Ch D 188 , already mentioned, provides a good illustration of this commonplace type of forensic exercise. Fry J held, at p 196, that there was no direct evidence upon which he could rely as proving undue pressure by the father. But there existed circumstances "from which the court will infer pressure and undue influence". None of the children were entirely emancipated from their father's control. None seemed conversant with business. These circumstances were such as to cast the burden of proof upon the father. He had made no attempt to discharge that burden. He did not appear in court at all. So the children's claim succeeded. Again, more recently, in *National Westminster Bank plc v Morgan* [1985] AC 686, 707, Lord Scarman noted that a relationship of banker and customer may become one in which a banker acquires a dominating influence. If he does, and a manifestly disadvantageous transaction is proved, "there would then be room" for a court to presume that it resulted from the exercise of undue influence.

16 Generations of equity lawyers have conventionally described this situation as one in which a presumption of undue influence arises. This use of the term "presumption" is descriptive of a shift in the evidential onus on a question of fact. When a plaintiff succeeds by this route he does so because he has succeeded in establishing a case of undue influence. The court has drawn appropriate inferences of fact upon a balanced consideration of the whole of the evidence at the end of a trial in which the burden of proof rested upon the plaintiff. The use, in the course of the trial, of the forensic tool of a shift in the evidential burden of proof should not be permitted to obscure the overall

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

17 The availability of this forensic tool in cases founded on abuse of influence arising from the parties' relationship has led to this type of case sometimes being labelled "presumed undue influence". This is by way of contrast with cases involving actual pressure or the like, which are labelled "actual undue influence": see *Bank of Credit and Commerce International SA v Aboody* [1990] 1 QB 923, 953, and *Royal Bank of Scotland plc v Etridge (No 2)* [1998] 4 All ER 705, 711-712, paras 5-7. This usage can be a little confusing. In many cases where a plaintiff has claimed that the defendant abused the influence he acquired in a relationship of trust and confidence the plaintiff has succeeded by recourse to the rebuttable evidential presumption. But this need not be so. Such a plaintiff may succeed even where this presumption is not available to him; for instance, where the impugned transaction was not one which called for an explanation.

18 The evidential presumption discussed above is to be distinguished sharply from a different form of presumption which arises in some cases. The law has adopted a sternly protective attitude towards certain types of relationship in which one party acquires influence over another who is vulnerable and dependent and where, moreover, substantial gifts by the influenced or vulnerable person are not normally to be expected. Examples of relationships within this special class are parent and child, guardian and ward, trustee and beneficiary, solicitor and client, and medical adviser and patient. In these cases the law presumes, irrebuttably, that one party had influence over the other. The complainant need not prove he actually reposed trust and confidence in the other party. It is sufficient for him to prove the existence of the type of relationship.

...

INDEPENDENT ADVICE

20 Proof that the complainant received advice from a third party before entering into the impugned transaction is one of the matters a court takes into account when weighing all the evidence. The weight, or importance, to be attached to such advice depends on all the circumstances. In the normal course, advice from a solicitor or other outside adviser can be expected to bring home to a complainant a proper understanding of what he or she is about to do. But a person may understand fully the implications of a proposed transaction, for instance, a substantial gift, and yet still be acting under the undue influence of another. Proof of outside advice does not, of itself, necessarily show that the subsequent completion of the transaction was free from the exercise of undue influence. Whether it will be proper to infer that outside advice had an emancipating effect, so that the transaction was not brought about by the exercise of undue influence, is a question of fact to be decided having regard to all the evidence in the case.

MANIFEST DISADVANTAGE

21 As already noted, there are two prerequisites to the evidential shift in the burden of proof from the complainant to the other party. First, that the complainant reposed trust and confidence in the other party, or the other party

acquired ascendancy over the complainant. Second, that the transaction is not readily explicable by the relationship of the parties.

22 Lindley LJ summarised this second prerequisite in the leading authority of *Allcard v Skinner* 36 Ch D 145 , where the donor parted with almost all her property. Lindley LJ pointed out that where a gift of a small amount is made to a person standing in a confidential relationship to the donor, some proof of the exercise of the influence of the donee must be given. The mere existence of the influence is not enough. He continued, at p 185 “But if the gift is so large as not to be reasonably accounted for on the ground of friendship, relationship, charity, or other ordinary motives on which ordinary men act, the burden is upon the donee to support the gift.” In *Bank of Montreal v Stuart* [1911] AC 120, 137 Lord Macnaghten used the phrase “immoderate and irrational” to describe this concept.

23 The need for this second prerequisite has recently been questioned: see Nourse LJ in *Barclays Bank plc v Coleman* [2001] QB, 20, 30-32 , one of the cases under appeal before your Lordships’ House. Mr Sher invited your Lordships to depart from the decision of the House on this point in *National Westminster Bank plc v Morgan* [1985] AC 686 .

24 My Lords, this is not an invitation I would accept. The second prerequisite, as expressed by Lindley LJ, is good sense. It is a necessary limitation upon the width of the first prerequisite. It would be absurd for the law to presume that every gift by a child to a parent, or every transaction between a client and his solicitor or between a patient and his doctor, was brought about by undue influence unless the contrary is affirmatively proved. Such a presumption would be too far-reaching. The law would be out of touch with everyday life if the presumption were to apply to every Christmas or birthday gift by a child to a parent, or to an agreement whereby a client or patient agrees to be responsible for the reasonable fees of his legal or medical adviser. The law would be rightly open to ridicule, for transactions such as these are unexceptionable. They do not suggest that something may be amiss. So something more is needed before the law reverses the burden of proof, something which calls for an explanation. When that something more is present, the greater the disadvantage to the vulnerable person, the more cogent must be the explanation before the presumption will be regarded as rebutted.

25 This was the approach adopted by Lord Scarman in *National Westminster Bank plc v Morgan* [1985] AC 686, 703-707 . He cited Lindley LJ’s observations in *Allcard v Skinner* 36 Ch D 145, 185 , which I have set out above. He noted that whatever the legal character of the transaction, it must constitute a disadvantage sufficiently serious to require evidence to rebut the presumption that in the circumstances of the parties’ relationship, it was procured by the exercise of undue influence. Lord Scarman concluded, at p 704:

“the Court of Appeal erred in law in holding that the presumption of undue influence can arise from the evidence of the relationship of the parties without also evidence that the transaction itself was wrongful in that it constituted *an advantage taken of the person subjected to the influence which, failing proof to the contrary, was explicable only on the basis that undue influence had been exercised to procure it .*” (Emphasis added.)

26 Lord Scarman attached the label “manifest disadvantage” to this second ingredient necessary to raise the presumption. This label has been causing difficulty. It may be apt enough when applied to straightforward transactions such as a substantial gift or a sale at an undervalue. But experience has now shown that this expression can give rise to misunderstanding. The label is being understood and applied in a way which does not accord with the meaning intended by Lord Scarman, its originator.

27 The problem has arisen in the context of wives guaranteeing payment of their husband’s business debts. In recent years judge after judge has grappled with the baffling question whether a wife’s guarantee of her husband’s bank overdraft, together with a charge on her share of the matrimonial home, was a transaction manifestly to her disadvantage.

28 In a narrow sense, such a transaction plainly (“manifestly”) is disadvantageous to the wife. She undertakes a serious financial obligation, and in return she personally receives nothing. But that would be to take an unrealistically blinkered view of such a transaction. Unlike the relationship of solicitor and client or medical adviser and patient, in the case of husband and wife there are inherent reasons why such a transaction may well be for her benefit. Ordinarily, the fortunes of husband and wife are bound up together. If the husband’s business is the source of the family income, the wife has a lively interest in doing what she can to support the business. A wife’s affection and self-interest run hand-in-hand in inclining her to join with her husband in charging the matrimonial home, usually a jointly-owned asset, to obtain the financial facilities needed by the business. The finance may be needed to start a new business, or expand a promising business, or rescue an ailing business.

29 Which, then, is the correct approach to adopt in deciding whether a transaction is disadvantageous to the wife: the narrow approach, or the wider approach? The answer is neither. The answer lies in discarding a label which gives rise to this sort of ambiguity. The better approach is to adhere more directly to the test outlined by Lindley LJ in *Allcard v Skinner* 36 Ch D 145 , and adopted by Lord Scarman in *National Westminster Bank plc v Morgan* [1985] AC 686 , in the passages I have cited.”

313. Mr Watson-Gandy submitted that in the light of the principles described in *Etridge* and *BCCI v Aboody* [1990] 1 QB 923 the defence of undue influence arises where one party to a transaction, though consenting to it, does not give a free consent because he is exposed to such influence from the other party as to deprive him of the free use of his judgment. Therefore, he argued, Mr Rayner, who alleges undue influence, must prove affirmatively that he made the intended provision not of his own will, but as a result of actual undue influence exerted against him. He must show that:

- (1) Mrs Murphy had the capacity to influence him;
- (2) the influence was exercised;

- (3) its exercise was undue; and that its exercise brought about the planned provision.

314. Thus, Mr Watson-Gandy submitted, questions of undue influence could be dealt with shortly:

- (1) Mr Rayner had shown no cogent evidence of his will being overborne. There was, he submitted, distinct evidence that no pressure was applied to Mr Rayner and that he had made his promises and planned provision freely and deliberately. He reminded me of the letter of advice and explanation of his Will, to Domitilla, dated November 2007 (see above) which specifically said that it was fair for Mrs Murphy to have the intended provision. To similar effect there was the document of similar date headed "*Patrick's Will Advice*" also described above, and the contents of the letter of wishes to Aeternus, dated 8th January 2008. Further, there was nothing extravagant or calling for explanation about the intended provision. Mr Rayner was not without other options. He had other carers, and could obtain other carers. Mrs Murphy was simply the preferred carer. In truth, Mr Watson-Gandy argued, the provision planned showed a degree of care and thought; neither Domitilla nor Desideria needed the Property but Mrs Murphy would need a home.
- (2) Mr Rayner was not someone easily scared or manipulated; he had been a director of a major auction house, an army officer and bob sleigh champion. The evidence from family members suggested that Mr Rayner was obstinate and strong willed. Further, Mr Watson-Gandy asked rhetorically, why did Mr Rayner write a reference dated 22nd July 1996 for Mrs Murphy if he was afraid she might leave?
- (3) Mr Rayner had described himself at one point in his evidence as manipulating Mrs Murphy.
- (4) He had had the benefit of legal advice from Mr Collin, and various firms of solicitors; Withers, Penningtons, Farrars. Mr Collin's evidence was that he had witnessed Mr Rayner's signature to the letters to Aeternus and Courtina in January and February 2008, and that Mr Rayner had written them in sound mind and without any undue influence, and whilst clear in his intentions.

What was more the Lasting Power of Attorney dated 20th November 2008 specifically contained a certificate signed by a representative of Penningtons (who remain Mr Rayner's solicitors in this litigation) that Mr Rayner understood the purposes of the document, and that no fraud or undue pressure was being used to induce him to create it. That same document specifically sought to protect Mrs Murphy's occupation of the Property.

- (5) He had told his family of the intended bequests.
- (6) He could be said to have affirmed the promises made to Mrs Murphy on the basis that in her absence, and with the benefit of advice from lawyers and family members, he had signed the powers of attorney. He confirmed in evidence that he had on such occasion wanted to ensure that Mrs Murphy had a home at the Property. This had not been done off the cuff, but with some thought.

315. Mrs Peacocke put her submissions, primarily, on the basis that this case fell within the second form of unacceptable conduct described by Lord Nicholls in paragraphs nine and ten of his speech in *Etridge*, that is to say, Mrs Murphy had abused influence acquired over Mr Rayner, and taken unfair advantage of him. She submitted that the nurse and carer relationship was one which fell within the types of relationship described by Lord Nicholls (in paragraph 10 of his speech), and that Mr Rayner had reposed trust and confidence in Mrs Murphy. She placed particular emphasis on what Lord Nicholls said in the next paragraph of his speech that the principles applicable extended to "where a vulnerable person has been exploited". Mr Rayner, she argued, was a vulnerable person, with an intense degree of dependency upon Mrs Murphy for his daily living, and this was his perception, but it was grounded in the reality that he could not function without someone doing for him what Mrs Murphy did. He feared for his life, as a result of the physical consequences of his stroke, was vulnerable to epileptic fits, and had on one occasion actually thought he was dying. She submitted that from the start Mr Rayner had been vulnerable, not only physically, but also emotionally because of the then recent collapse of his marriage to Laetitia. He had been a man with a high status because of his professional position, and the loss of that position, and the reduction in his powers had a profound effect on him. Mrs Peacocke acknowledged that whilst he had a close relationship with his Italian family, that family lived very far away in Italy; his English family, except for Andrew, lived in

Devon, and Andrew lived overseas. Laetitia, although in regular contact, scarcely met him again until after his admission to hospital in late 2008.

316. Against this background, Mrs Peacocke submitted, and taking into account the scale of the promised provision (which called for an explanation), I should infer that the promises were procured by undue influence. She submitted that there was an absence of any other satisfactory explanation.

317. Mrs Peacocke submitted further, however, that the evidence of pressure to which I have referred above, did bring this case within the first form of unacceptable conduct described by Lord Nicholls, accepting that in such a case Mr Rayner would not be able to resort to what is often referred to as a “presumption of undue influence” in the sense explained by Lord Nicholls, especially at paragraphs 16 and 17 in *Etridge*. Even without the benefit of any such presumption, she submitted, the case of improper pressure was made out.

318. Dealing with Mr Watson-Gandy’s submissions as to the benefit of legal advice and his suggestion that affirmation should be inferred, Mrs Peacocke drew attention to paragraph 20 of Lord Nicholls speech in *Etridge* and distinguished between Mr Rayner’s undoubted understanding of the proposed provision, and his freedom from influence. She said that whilst Mr Rayner had had access to advice from the lawyers identified, as well as Mr Collin (no longer a solicitor following his being struck off), such access and advice that they may have given did not have the “emancipating effect” described by Lord Nicholls, because Mr Rayner believed himself still to be dependent on Mrs Murphy. He was not freed from this belief, and its implications for him, until he finally decided, in the light of Desideria’s and Laetitia’s investigations, that Mrs Murphy must go. What is more, Mrs Peacocke argued, since Mrs Murphy was present when Mr Collin had been in attendance, Mr Rayner was not able to have the benefit of free discussion with him.

(iii) Discussion and findings as to undue influence

319. For reasons touched upon above, this is not truly a case where relief in respect of undue influence arises. As Lord Nicholls explained in *Etridge*, where a transaction has been procured by undue influence, it will not be allowed to stand. In this case, however, there has been no transaction. It is Mrs Murphy who seeks the assistance of the court in order in establishing remedies in respect of both the Property and the

Investments. If her conduct (including conduct which would amount to the practice of undue influence) has been inequitable so as to prevent an equity from arising in her favour, then she will be denied the remedy; no question of setting aside an interest by reason of her undue influence arises.

320. I refer to the findings I have made, at paragraph 109 above, as to the nature and development of the relationship between Mrs Murphy and Mr Rayner. In my judgment Mr Rayner was a vulnerable man when he first encountered Mrs Murphy, and during the course of their relationship, he became ever more vulnerable. Mr Watson-Gandy is right in drawing attention to Mr Rayner's distinguished career as an Army officer, sportsman, and leading authority in his field in precious stones. However, by the time that Mrs Murphy began to work for him all of this was in the past. He needed Mrs Murphy's help because he could not care for himself. His dependency was such that he needed other carers when she was not attending upon him. It is true that he undoubtedly had the means to replace Mrs Murphy, and a family willing to help him with that process. The fact is that he did not do so; he believed that she was a wonderful carer, and that without her he would not manage. As the years went by this dependency increased. I accept the evidence of the witnesses who have described the growing isolation of Mr Rayner socially. He had less to do with his siblings and his Italian family. The latter were made to feel unwelcome by Mrs Murphy,
321. Mrs Murphy's knowledge of Mr Rayner's feelings of dependency gave her the confidence to behave in a completely dictatorial and inappropriate manner with him, and to his embarrassment. Thus she was able to demand how people referred to her, where she should expect to be seated, to be unconcerned at how she behaved even on special occasions of great importance to Mr Rayner, such as at Exeter Racecourse, or at a wedding reception, or engagement party. I consider that she deliberately tried to make relations with family members difficult because she did not welcome their presence; hence her treatment of Domitilla in Padua, and of Giacomo at the Property. Although Mr Rayner was, I find, cross with Giacomo, what that incident demonstrates is how Mrs Murphy felt that she could deal with family members even without reference to Mr Rayner. She knew that Mr Rayner felt unable to stand up to her.
322. Mr Rayner's witnesses have given evidence, which I accept, of a situation in which Mrs Murphy seemed to be always present. This presence was completely

inappropriate on occasions; for example when Julie wanted to speak about her divorce, and when Mr Collin came to deal with instructions for letters to Aeternus and Courtina. Mr Rayner appears to have gone along with this erosion of his independent living; the compensation was the high quality personal care offered by Mrs Murphy, but it left him very susceptible to her demands, reflected in the writing of letters to family members exhorting them to demonstrate their appreciation of her, or even to treat him as though he were dead.

323. I do not, despite these findings, regard this as a case in which it could be said that Mr Rayner put his affairs and interests entirely in Mrs Murphy's hands. He undoubtedly trusted her with very substantial sums of money, over many years, and with great regularity. However, it is clear that he remained in control of his general financial administration. He decided on where to bank, when to move funds, and what investments to realise. He also decided on how he would provide for his family, subject to any provision that he made for Mrs Murphy. Even so, as between him and Mrs Murphy, in the slightly paraphrased words of Lord Nicholls at paragraph 11 in *Etridge*, there was dependence and vulnerability on his side, and ascendancy, domination and control on hers. I consider that a relationship of influence and ascendancy has been established.

324. I then consider whether the planned provision for Mrs Murphy cannot readily be accounted for by ordinary motives of persons in such a relationship as they had, in all the circumstances. In my judgment it cannot be. It is, of course, necessary when considering this question to have regard to a picture which was continuously developing. The provision planned in 1998 was of a different order from that planned ten years later; but then in 1998, Mrs Murphy had worked for Mr Rayner for only a relatively short time, and so the generous provision then planned was not readily explicable by the relationship. Ten years later the relationship had endured for so much longer that a greater level of provision might more readily be understood, but the planned provision had increased very greatly. An obviously relevant consideration in this regard is that Mrs Murphy had worked for Mr Rayner for a salary and her keep, so that what might have been expected by way of generous provision would be correspondingly lower than if Mrs Murphy had worked for nothing. It is Mrs Murphy's case that the market value of the Property was £2.3m in June 2010. The precise current value of the Investments is not clear, but it seems reasonable to infer that it is likely to be substantial, given that they appear to have been the main source of Mr Rayner's income needed to maintain high outgoings over many years, and that

even with the gifts to Mrs Murphy, Mr Rayner still anticipated substantial provision for his family. (In 2001 Mr Rayner thought the Investments were worth around £2.3m; see paragraph 141 above.) However, even if the Investments were of only modest value, the provision planned early in 2008 (with the Property) would have conferred on Mrs Murphy very considerable assets. In my judgment that level of provision is not accounted for by the fact that Mrs Murphy had worked continuously for Mr Rayner as a paid employee for a twelve-year period, albeit providing “wonderful” care.

325. I must, in the circumstances, ask myself whether there is a satisfactory explanation for the proposed level of provision. I do not consider that there is. Thus a *prima facie* case of an abuse of influence, Mrs Murphy’s preferring of her own interests, and her taking of unfair advantage of Mr Rayner, is made out. She has not produced evidence that I accept to counter this inference. I reject her evidence as to her treatment of Mr Rayner, save to the extent of my express findings above.
326. Further, I accept Mr Rayner’s evidence as to the pressure that was placed upon him over the years, and that he made the increasing provision for Mrs Murphy to relieve himself from that pressure, telling her of his plans in order to be relieved of such pressure. Of course, Mrs Murphy was free to leave his employment. If she had discussed the situation with him calmly, explaining her wishes, it would be acceptable for her to seek a commensurate financial compensation for her abandoning any genuine desire that she had to move on, go back to India, take up a teaching career, or make other arrangements in her life. That is not, however, how matters were handled. I do not accept that she genuinely intended to depart from Mr Rayner’s employment. In my judgment she found the remuneration and accommodation far too congenial. Her threats to depart were not part of an arm’s length commercial negotiation, but were designed to exploit Mr Rayner’s known fears. Her threats as to leaving and making sure that Krishna would go also, so that Mr Rayner would be left totally alone (and I find threats were made in these terms) amounted to “excessive pressure, emotional blackmail or bullying” in the words of Lord Scott in *Etridge* (at paragraph 160). What she sought was also completely out of proportion to any reasonable expectation.
327. For the sake of completeness, I add that I would not have found that after twelve or thirteen years’ service, 18 months’ rent free accommodation, or merely an eight per cent share in the Investments, by themselves, would have called for an explanation

and raised a *prima facie* case of undue influence. Nor would I have found that such provision necessarily suggested that improper pressure or coercion had been applied. That however was not the level of provision in contemplation after the late 1990s. Given what has happened since then, and having regard to the rest of the evidence in the case (including the use of wholly inappropriate pressure), I am, however, satisfied that even that early level of provision was the product of undue influence.

328. As to the effect of the access to legal advice, and the fact that advice was given by Mr Collin, I do not accept that this had an emancipating effect on Mr Rayner. First, it is far from clear that any discussion with Mr Rayner actually addressed the question of Mrs Murphy's conduct and its effect. This is not a case in which third party rights, such as those of a lender, are concerned. There the issue will be whether the fact of advice is sufficient to address any notice that a third party might have as to whether a transaction in contemplation has been procured by one party against another by undue influence. Mrs Murphy was not a third party. She knew how she had conducted herself. I am not satisfied that Mr Rayner ever had a discussion with anyone whereby the full circumstances of Mrs Murphy's conduct were considered, and at which Mr Rayner confirmed that he still wished to make the intended provision. Indeed, it would be completely unrealistic to suppose that any such discussion took place on occasions when Mrs Murphy was present. Mr Collin does not suggest that there was any such discussion. There is, however, a further and compelling consideration which was advanced by Mrs Peacocke, and that is that whatever advice may have been available, or even given, until Mr Rayner actually decided to end the relationship with Mrs Murphy, he still perceived himself as dependent on her. Until he decided that he had been let down, and felt, in his own words "outraged" at what he believed Mrs Murphy had done, he faced the prospect of going home from hospital with her continuing to care for him. It was never realistic to suppose that such an arrangement would be viable, with his having told Mrs Murphy that he was resiling from the intended provision. While he contemplated that his future lay with Mrs Murphy, it was not possible for him to break free of her influence. That was a reflection of his dependency and vulnerability. The continued insistence in the Power of Attorney in November 2008, that Mrs Murphy should not be removed from occupation of the Property, does not, as Mr Watson-Gandy submits, disprove Mr Rayner's case. It demonstrates it.
329. In the circumstances, I find that the assurances made by Mr Rayner were a result of Mrs Murphy's abuse of her position and her use of improper pressure, such that if any

concluded transaction had resulted it would have been liable to be set aside on the basis of undue influence. It follows that for this additional reason she has failed to establish an equity in her favour.

The clean hands issue – discussion and findings

330. For the Defendants Mrs Peacocke submits that Mrs Murphy's claim should fail because she has not come to equity with clean hands, and she is not prepared to do equity. She relies on Mrs Murphy's denial that she was remunerated, and the dishonesty in connection with Veena. She submits also that Mrs Murphy advanced a false case as to:

- (a) What money came into her hands;
- (b) How money received from Mr Rayner was used;
- (c) Her own financial position, including evidence as to bank accounts;
- (d) The availability of alternative accommodation;
- (e) The availability of provision from Mr Murphy.

In addition, Mrs Peacocke submits that Mrs Murphy was in breach of fiduciary duty in failing to keep any proper account of monies entrusted to her, and denying (until it was conceded part way through her evidence) that an account should be taken.

331. Mrs Peacocke puts at the centre of her submissions the decision of the Court of Appeal in *Gonthier and Gonthier v Orange Contract Scaffolding Ltd* [2003] EWCA Civ 873. In that case the Gonthiers, landlords of commercial premises, allowed a prospective tenant ("OCS") into possession, following which OCS carried out some improvement works, which the Gonthiers did nothing to discourage. Eventually the parties were unable to agree as to the terms of a lease, in particular whether it should include an option to purchase. The Gonthiers began possession proceedings and OCS counterclaimed, seeking the grant of a lease or restitution in respect of its expenditure on the premises. The trial judge held that although OCS's only director and shareholder, Mr Horrigan, had fabricated documents so as to exaggerate its expenditure claims, it was still appropriate to award a sum in compensation to OCS on the basis of proprietary estoppel, although the sum was reduced to reflect the misconduct. The Gonthiers appealed. The Court of Appeal (Waller and Kay LJJ, and Lindsay J) held that Mr Horrigan's conduct was such as to disentitle OCS from relief in equity.

332. Lindsay J (with whom both other members of the court agreed) gave the first judgment. He referred to the trial judge’s findings that the documents had been fabricated so as to suggest that over £50,000 had been expended, whereas the true figure was just £19,500. He observed, at paragraph 33, that there “was thus abundant material for an argument from the Gonthiers that OCS’s hands were far from clean”. In dealing with the implications of such matters for the decision, the learned judge then considered in some detail the earlier decision of the Court of Appeal in *Willis v Willis* [1986] 1 EGLR 62. In the light of the decision in that case, Lindsay J concluded, at paragraph 39, that Mr Horrigan’s hands were “hopelessly muddied”, and that his conduct on OCS’s part was such “as to deny any equitable relief” to OCS. This consideration alone, his lordship held, was sufficient to reverse the trial judge’s order, and set aside the monetary award in OCS’s favour.
333. Before reverting to *Gonthier*, it is therefore appropriate to consider the Court of Appeal’s decision in *Willis* in which a claim of promissory estoppel was set up by the appellants to resist the respondents’ claim for possession of a flat. The appellants’ case was that they had been assured by the respondents that they could live rent free in the flat for as long as they needed, and that on the strength of that promise, they had expended considerable sums on the premises. In aid of their case they relied upon a letter from a third party which gave a wholly fictitious account as to work carried out by him. The appellants plainly knew that they were putting forward a false case supported by a false document.
334. I gratefully adopt Lindsay J’s analysis of *Willis* at paragraph 34 of *Gonthier*:

“Parker L.J., giving the first judgment, said that the inference was inescapable that if the falsity of the Robins’ letter had not been discovered by the respondents’ solicitors it would have been relied upon throughout the proceedings. He said at page 63 *l*:—

“I find it difficult to see how there could be any more serious conduct than that. When a party comes to the Court and seeks to obtain from it equitable relief, it is accepted, as I have said, that he must come with clean hands. I accept also, as was submitted on behalf of the appellants, that not every item of misconduct can possibly be sufficient to deprive a party who seeks equity from being granted the relief he seeks. Some misconduct may be trivial. But when a party acts as these parties have done — and Joanna Willis must be regarded as having been concerned in this, albeit indirectly, in as much as the document was put forward on behalf of both the appellants — it seems to be impossible for this Court to do other than to take the most serious view of it and to decline to grant equitable

relief even if, to which I say nothing because it does not arise on the view I take of this case, they would otherwise have been so entitled.”

Sir John Donaldson M.R. said at page 63 *m*:

“The conduct of the appellants which has been disclosed in this case was such that no Court could, in my judgment, possibly grant equitable relief.”

Parker L.J. had earlier said, of the learned Assistant Recorder's conclusion in that case that the Robins' letter had been wholly fraudulent and that the appellants' defence was rejected, that:

“He was, in my judgment, entirely right so to do, and I would be content to dismiss the appeal on that ground alone. When a person seeks the aid of the Court to obtain the Court's assistance, via the principles of equity, to override somebody's strict legal rights, it is clearly a case for the application of the maxim, as indeed is accepted by the appellants, “that he who comes to equity must come with clean hands”.”

Whilst consideration of “clean hands” is inescapably a matter that is sensitive to the varying facts of the particular case, unless some compelling distinguishing feature emerges such as to have enabled Mr Recorder Thom [the trial judge in *Gonthier*] to have put *Willis* to one side, it is difficult to see how OCS's very considerable shortcomings failed to debar it from the equitable relief which it claimed.”

335. Lindsay J then considered the features which the trial judge had held enabled him not to bar the claim; these were, first, that the concocted documents were made up to justify expenditure which “in broad terms” had genuinely been incurred, secondly, reliance on the decision of Anthony Lincoln J in *Singh v Singh* [1985] Fam LR 97, and thirdly, concern that a refusal of relief would be a disproportionate penalty. Each of these features was considered by Lindsay J, who rejected each of them in turn as having entitled the judge to take the course which he did. As to the first (supporting genuine expenditure “in broad terms”) he held that fabrication of documents could not be excused, particularly where they exaggerated the truth, and where the falsity was hidden until the course of the hearing. As to the second (the decision in *Singh*), the result in that case had been reached because of a need to protect third party interests, and the person with the dirty hands had made a clean breast of the situation before the hearing. As to the third (disproportionality in denying an equitable claim altogether), Lindsay J held that the question to be considered was “not whether an equity had been lost by reason of bad conduct but whether, by reason of bad conduct, the equity had ever arisen”.

336. Mrs Peacocke submitted that the present case is materially indistinguishable from *Gonthier*, whilst she accepted that there was no suggestion, in the present case that Mrs Murphy had created, or relied upon, any falsified documents in support of her case. Mrs Murphy, it was submitted, had knowingly put forward a completely false case as to whether she had been salaried, and this went to the heart of her case as to detrimental reliance, and profoundly affected questions concerning unconscionability.
337. Mr Watson-Gandy, consistently with Mrs Murphy's case as described above, submitted that the equitable maxims relied upon by Mrs Peacocke were of no relevance to this case because his client had not behaved inequitably or in any manner so as to dirty her hands. However, he argued that even if Mrs Murphy had lied with regard to pay, and the other matters relied upon by Mrs Peacocke, then provided that the essential ingredients of her claim in proprietary estoppel were made out, the maxims relied upon by Mrs Peacocke were of no application to this case, and therefore would not preclude a claim by her.
338. Mr Watson-Gandy sought to distinguish *Gonthier*, and relied on other authority to assist him. First, as his starting point, he referred me to *Halsbury's Laws of England* 4th ed., Vol. 16(2) at paragraph 560. He drew attention to a passage stating that the "clean hands" maxim "is not to be applied too rigorously" and another stating that "the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be a depravity in a legal, as well as in a moral, sense".
339. Secondly, Mr Watson-Gandy relied on the case of *Blackmore v Richardson and others* [2006] BCC 276, where the petitioner sought relief under ss, 459 and 461 of the Companies Act 1985, alleging that he had suffered unfair prejudice as a member of a company from which he had been excluded, and in which his position as one of three quasi-partners had been altered to his disadvantage. The trial judge granted relief to the petitioner, notwithstanding the petitioner's reliance upon a forged letter purporting to set out an offer to him from an interested third party to buy his one third shareholding in the company. The letter in question, the judge found, had been forged and relied upon by the petitioner for the purpose of laying the ground for reducing the other two quasi-partners' expectations as to the price likely to be obtained for their shares. This was at a time when he was in the process of making an offer to buy the shareholdings of the other quasi-partners. The fact that the letter had been forged, but not the full extent of the forgery, came to light in the course of the trial (although by

then the petitioner had given false evidence about it). The trial judge found that the petitioner's conduct in forging the letter had no bearing on the reason that the petitioner was entitled to an order for the purchase of his shares, or on why the other quasi-partners treated him as they did.

340. The full extent of the petitioner's forgery was only revealed in the light of new evidence in the course of the appeal, but (*per* Lloyd LJ at paragraph 34) the new evidence did not add "very significantly" to the evidence which the judge had. The Court of Appeal dismissed an appeal from the judge's decision. It held (see paragraph 52) that the forgery had not automatically discharged the obligations of good faith imposed on each of the quasi-partners, but that the petitioner had established unfair and prejudicial conduct to him as a shareholder (paragraph 58). Further the petitioner's conduct did not have the effect that he desired of reducing his quasi-partners' expectations (paragraph 60). The Court of Appeal's conclusion (paragraph 61) on this point was that the petitioner's conduct in relying on the forged letter was neither sufficiently serious nor sufficiently closely related to the respondents' unfairly prejudicial conduct for the court to exercise its discretion against the grant of relief.

341. Mr Watson-Gandy acknowledged that for the purposes of relief under the sections concerned there is no requirement that a petitioner should come to the court with clean hands, and therefore the position differed from that in the present case, which is one concerned with a grant of equitable relief. However, he pointed out, basing his argument on paragraph 53 of Lloyd LJ's judgment (with which both Longmore LJ and the Chancellor agreed), that conduct which in another context might be used to invoke the clean hands doctrine, can also be relevant under s.459 as affecting the relief which the court thinks fit to grant, even to the denial of any relief at all. He drew attention to paragraph 54 of Lloyd LJ's judgment in *Blackmore*, in which consideration was given to both the *Gonthier* and *Willis* cases.

342. Mr Watson-Gandy then placed reliance on paragraphs 55 and 56 in Lloyd LJ's judgment:

55. Mr Hollington showed us *Moody v Cox* [1917] 2 Ch. 71 . There the plaintiff M contracted to buy trust property from the trustees (C and H), H being a solicitor and C his managing clerk, and H's firm (through C) acting for both vendor and purchaser. C failed, in breach of duty, to disclose to M some relevant material. M had offered C a bribe during the negotiations, which C accepted. M sued for rescission on the basis of the non-disclosure and H and C counterclaimed for specific performance. It was held that, by

suing for specific performance, H and C had affirmed the contract, which they might otherwise have rescinded on the basis of the bribe, and the fact of the bribe was no defence, on the clean hands principle, to M's claim for rescission on the basis of the non-disclosure. Scrutton L.J. said, at pp.87–88, that

“equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for.”

56. That is entirely consistent with *Willis* and *Gonthier*, where the misconduct lay in fabricating evidence in support of the claim itself. I deplore the petitioner's conduct as much as the judge did. However, considering the point first on the same material as the judge took into account, it seems to me that, on his finding (see para.116) that it had no bearing on the matters directly in issue, a finding which he was plainly entitled to make, he was right to disregard the forgery, and the petitioner's use of the forged letter, when deciding whether the conditions under s.459 were made out. He was also right to disregard it in relation to the question whether to exercise his discretion to make any, and if so what, order under s.461. The forgery itself had no immediate or necessary relation to the circumstances upon which the petitioner's entitlement, or otherwise, to relief depended. At best it was an episode in the background history. Given the lack of impact it had on Mr Richardson and Mr Wheeler, the judge was entitled to treat it in the way in which he did.

343. Thirdly, Mr Watson-Gandy relied on the decision of Andrew Smith J, in *Fiona Trust & Holding Corp & others v Privalov & others* [2008] EWHC 1748 (Comm). That was a case in which the claimants sought the striking out of passages in a defence, alternatively summary judgment in respect of them. The claimants' case was that a defendant had paid bribes in order to obtain advantageous terms, at the claimants' expense, in respect of a shipping fleet. The claimants sought, amongst other remedies, equitable relief including in respect of the defendant's liability as a constructive trustee, and an account of profits. Passages in the defence raised a "clean hands" denial of relief as to the equitable claims. It was these passages which the claimants sought to strike out. The judge granted the application for summary judgment on the point, holding that there was no realistic prospect that the clean hands defence would succeed. The alleged lack of cleanliness related to a failure to make proper disclosure when seeking a freezing order, in not mentioning the claimants' alleged approval of the impugned transactions, in failing to reveal an audit in which the transactions had been considered but not criticised, and in carrying out unlawful and illegal investigations of their complaints. My attention was drawn in particular to paragraph 20 of Andrew Smith J's judgment:

“20. Mr. Hamblen relies upon three decisions of the Court of Appeal in which claimants have been deprived of equitable relief because of their misconduct in connection with the presentation of their case in the course of the litigation: *Armstrong v Sheppard & Short Ltd.*, [1959] 2 QB 384 ; *J Willis & Son v Willis*, [1986] 1 EGLR 62 ; and *Gonthier v Orange Contract Scaffolding Ltd*, [2003] EWCA Civ 873 . These authorities are examples of cases in which the court regarded attempts to mislead the courts as presenting good grounds for refusing equitable relief, and show that this is so not only where the purpose is to create a false case but where it is to bolster the truth with fabricated evidence: see *Gonthier v Orange Contract Scaffolding Ltd* , esp at para 36. Further, as is clear from *J Willis & Son v Willis* , such misconduct can deprive a party of equitable relief notwithstanding the trickery was detected and therefore not pursued to the trial of the claim. However, in all these cases the misconduct was by way of deception in the course of litigation directed to securing equitable relief. The connection between the misconduct and the claim to equitable relief was far more immediate than that in this case.”

344. However, I consider the following passages also to be of relevance:

“18. As to what constitutes a sufficiently close connection for the maxim to apply so as to deprive an applicant of equitable relief that he would otherwise have been granted, the test commonly cited is that of “an immediate and necessary relation to the equity sued for”, which was propounded by Eyre CB in *Dering v Earl of Winchelsea*, (1787) 1 Cox 818 , 319–320, ER Vol 29 p.1184: “If [the defendant's submission relying upon the plaintiff's misconduct] can be founded on any principle, it must be, that a man must come to a Court of Equity with clean hands; but when this is said, it does not mean a general depravity; it must have an immediate and necessary relation to the equity sued for; it must be a depravity in a legal as well as a moral sense”: see *Moody v Cox*, [1917] 2 Ch 71 ,87 and *Memory Corporation plc v Sidhu (No 2)*, [2000] 1 WLR 1443 , 1457. I confess that for my part I find it difficult to understand what precisely is meant by the stipulation that there must be a “necessary” connection between the misconduct and the equity sued for. As Mr. Popplewell acknowledged during argument, the question whether the maxim should apply to deprive an applicant for relief will often arise when trickery on the part of the applicant designed to promote his case has been detected and so in the event the misconduct does not assist him to advance his case, but nevertheless, leaving aside the question of “clean hands”, he would be granted equitable relief. In such circumstances it cannot be that the applicant needed to succeed in his trickery in order to obtain equitable relief. It might be that the connotation of “necessary” is that the misconduct is *inherently* directed towards the equitable relief sought. But what is clear from the authorities is that there must be a sufficiently immediate relationship between the misconduct and the relief.

19. The enquiry whether the maxim is to be applied is, of its nature, fact-sensitive, and there is a danger in making any general statements about the limits of its application. However, the authorities do, I think, justify these observations: that the maxim is directed, at least typically, to conduct that is in some way immoral and deliberate; that not all misconduct deprives an applicant of equitable relief and the misconduct may be too trivial for it to import this consequence; and the court will assess the gravity and effect of

misconduct cumulatively, so that, while the elements of misconduct taken individually might be too trivial for the maxim to be applied, they might be sufficient taken together.

...

23 Although the misconduct is to be considered cumulatively, I take first the non-disclosure allegation. Here, the important considerations are these. First, there is no pleaded allegation that the claimants deliberately withheld information that should have been disclosed, still less of positively misleading the court. Secondly, there is no allegation that the non-disclosure has affected the course of these proceedings in its interlocutory stages. Thirdly, the alleged non-disclosure will not affect the way in which the claim for equitable relief will be pursued and presented at trial, and its nature was such that it never could have done.”

345. Andrew Smith J specifically recorded in his judgment (paragraph 29) that it was not alleged that the claimants ever intended to put perjured evidence or false information forward in support of their claim, or that they had presented the results of any improper investigation in that regard.
346. Mr Watson-Gandy submitted that if any attempted deception of the court were established (contrary to his client’s primary case), then, as in *Blackmore* and in *Fiona Trust*, the alleged wrongdoing did not have an immediate and necessary relation to the equity sued for. He submitted that the position might have been different if, for example, the alleged attempt to deceive went to the representations upon which Mrs Murphy seeks to found her claims as those would be more immediate and necessary to the equity.
347. In my judgment the present case is to be distinguished from *Blackmore* and from *Fiona Trust*. In *Blackmore* whilst the petitioner’s conduct involved not merely forging a document but giving false evidence at trial, such concocted material evidence did not directly affect the issue as to whether the petitioner had been unfairly prejudiced as a member of the company concerned. It did not have a direct bearing on the issue as to whether he had made out his case. In *Fiona Trust* there was no question of false evidence being relied upon at a trial; the conduct criticised was in relation to pre-trial matters, and in any event did not extend to the falsification of evidence or the giving of false testimony. In the present case Mrs Murphy’s false evidence as to whether or not she was salaried goes directly to an essential ingredient of her case, namely whether there was detrimental reliance by her upon assurances given by Mr Rayner. She said that she had worked for years without pay for Mr Rayner in reliance on his promises of provision for her. For reasons expressed earlier

in this judgment, this was completely untrue, as she was paid throughout. Her purpose in giving this false evidence, which she knew to be false, was to help her make out that aspect of her case. Of course it was not the only aspect of her alleged detrimental reliance, but it was a central plank, if not the central plank, of her case on that point.

348. In the circumstances, I find that there was a very close connection between the false evidence relied upon by Mrs Murphy and the equitable relief by way of proprietary estoppel which she seeks; it went to the heart of the case which she sought to make out. It was very serious, since it was persisted in throughout the case, and right through Mrs Murphy's sworn evidence. She was prepared to denounce others as having given false evidence on the issue, and even to suggest (through her counsel) that Mr Rayner had created false documents going to the issue, and that Laetitia had falsely given evidence as to the genuineness of a computerised record which Laetitia knew to be false. She was driven to these lengths because she appreciated just how important to her case was the issue of remuneration. In the words of Scrutton LJ in *Moody v Cox*, there was an immediate and necessary relation between the depravity and the equity sued for.
349. In my judgment it is not essential, before the clean hands principle is in play, that there must be a fabrication of documents. What matters, as the authorities demonstrate, is the seriousness of the conduct under examination, and how directly it bears upon the relief sought. Fabrication of documents will almost inevitably amount to seriously bad conduct, but it is not the only kind of conduct which can attract that label. Persistent lying on a crucial matter (going to detrimental reliance), throughout the course of a case, designed to bolster a claim by which Mrs Murphy sought to establish an interest in Mr Rayner's property (whether in the form of shares or an interest in land) was, in my judgment, very serious misconduct.
350. I then ask myself whether there is any feature of the case which would have entitled me to grant equitable relief to Mrs Murphy. I do not consider that there is. She persisted in her lies as to not being paid throughout the case (as well as lying about the many other matters which do not have the same direct bearing on whether proprietary estoppel is made out), no question of any third party rights arises, and in any event I consider that no equity has arisen for the reasons explained above.

351. In all the circumstances I consider that Mrs Murphy has not come before the court with clean hands by virtue of her lying concerning her alleged non-remuneration, and I would have declined her equitable relief on that ground. However, in the light of other conclusions expressed above, I would reject her claim for such relief independently of this conclusion.
352. For the sake of completeness, I should deal briefly with the other matters which Mrs Peacocke relies upon for the purpose of submitting that equitable relief should be denied. I have mentioned above how Mrs Murphy advanced a false case as to monies that came into her hands (see paragraphs 15 and 16), and the use to which she put those monies, the sustained lack of co-operation as to the disclosure of bank accounts (see paragraph 25), and the availability of alternative accommodation (paragraph 129). In my judgment none of these matters has so direct a bearing on the relief sought as do the lies in relation to absence of remuneration. The untruthfulness of evidence as to monies received and bank accounts, and the lack of candour about accommodation, were concerned more with attempts to deflect the counterclaim, or make out a case for interlocutory relief. I do not consider that these other matters have the immediate and necessary relation to the equity sued for to engage the clean hands principle. As for the lies concerning Veena, and the consequences of those lies, for reasons explained at length above, I have concluded that these have undermined, and been destructive of any equity, without the need to resort to the clean hands principle.
353. As for Mrs Peacocke's submission that Mrs Murphy is debarred from relief because she is not prepared to "do equity", the maxim concerned requires that a claimant, in order to obtain equitable relief, must be prepared to do what is right and fair to the person from whom it is sought. On the facts as I have found them, Mrs Murphy is in breach of her equitable duties in that she retains papers belonging to Mr Rayner, and has not yet accounted to him in respect of monies received from him. Terms can be imposed in an order granting equitable relief, so as to ensure that the person seeking equity discharges his or her obligation to do equity; see, for example, *Lodge v National Union Investment Co Ltd* [1907] 1 Ch. 300. Any relief granted to her would have been subject to terms that she first return such papers, and account to Mr Murphy in respect of any monies received from him. The taking of an account is to be the subject of directions given when this judgment is handed down. However, it does not seem to me, on the facts of this case, that otherwise this particular maxim advances the Defendants' case beyond the "clean hands" principle.

The Aeternus and Courtina issue – discussion and findings

354. In the light of my findings, it is not strictly necessary for me to deal with this issue since no question arises as to how to give effect to any equity in favour of Mrs Murphy. In the circumstances I shall deal with the point briefly.
355. The problem would have arisen if I had been satisfied that an equity had arisen in favour of Mrs Murphy in respect of the Property or the Investments. Mr Rayner is not the direct owner of either. The Property is held by Aeternus, and the Investments by Courtina, but it is not the conduct of either of those companies upon which Mrs Murphy relies to establish an equity in her favour. The relevant conduct was that of Mr Rayner, the owner of the companies concerned.
356. Mr Watson-Gandy submitted that an equity ought not in justice to be defeated because of this interposition of the companies between Mr Rayner and the assets concerned. After all, he is the sole owner of the companies and the evidence established that they would act in accordance with his wishes. He suggested that there were two approaches that could be taken so as to address the problem. First, Mr Rayner's shareholdings could be declared to be held on trust subject to an equity in favour of Mrs Murphy, such that Mr Rayner would be required to procure the companies to give effect to the wishes that he had previously expressed in favour of Mrs Murphy, and communicated to her. This approach would be analogous to that adopted by the Court of Appeal in *Banner Homes Holdings Ltd v Luff Developments Ltd (No 2)* [2000] Ch 372 (see especially the supplemental judgment of Chadwick LJ at pages 401-402 on this point), where a *Pallant v Morgan* [1953] Ch 43 equity was held to have arisen in favour of the plaintiff in connection with certain land dealings, but the land was held by a subsidiary company of the defendant against whom the equity had arisen.
357. The second approach advocated by Mr Watson-Gandy was to look behind the corporate veil of the companies concerned, and to treat them as Mr Rayner's agents. He relied in this regard on the decision of the House of Lords in *Firestone Tyre and Rubber Co Ltd v Lewellin (Inspector of Taxes)* [1957] 1WLR 464.
358. Even if Mrs Murphy had made out a case of proprietary estoppel, for reasons explained below, the satisfaction of the equity would not have required conferring upon her an interest in the Property or the Investments because a monetary award against Mr Rayner would have been sufficient. However, if completely contrary to

this consideration, and to the conclusions set out above, it had been appropriate to give effect to Mrs Murphy's claims by way of an interest in the Property or the Investments, I would have accepted that this could be achieved in a manner similar to that in *Banner Homes*. However, it is completely unnecessary to consider the precise mechanism by which this could have been achieved, since no question of an award in any form arises.

Overall findings on proprietary estoppel

359. I therefore conclude that Mrs Murphy's claims, whether in respect of the Property or the Investments, must fail. In the light of her dishonest conduct towards Mr Rayner, she could not reasonably rely upon any assurances given to her. I find further that there was no reliance on the assurances, and that Mrs Murphy did not act to her detriment by reason of any such reliance. The assurances were induced by Mrs Murphy's false representations. Further, there is no unconscionability in Mr Rayner's resiling from his assurances. Still further, circumstances have fundamentally changed upon the discovery of the true position concerning Veena, and it is equitable to treat assurances which implicitly depended upon Mrs Murphy's continued care for Mr Rayner until his death, as undermined by her conduct. In any event, the assurances given were the product of conduct amounting to undue influence. Finally, Mrs Murphy has not sought equity with clean hands.

360. I should add that even if I had been satisfied that she had made out a case in proprietary estoppel, I would have considered the relief to which she was entitled as being of a wholly different order from what she has claimed, which I consider to be completely unrealistic. First, Mrs Murphy's care of Mr Rayner has come to an end before his death, and so her claims would have to be discounted to reflect this. Secondly, her maximum expectation (and this taken at its highest to reflect the February 2008 plans) was of the Property and an eight per cent interest in the Investments. What would have been appropriate, however, was the minimum equity to do justice. There would be no question of permitting Mrs Murphy to continue to live at the Property; it is Mr Rayner's home, and the relationship between them has utterly broken down. Further, the benefits which she claims are utterly disproportionate to the detriment which even on her case she claims to have suffered. (See the discussion in *Jennings v Rice* especially *per* Aldous LJ at paragraph 36 and Robert Walker LJ at paragraph 56.) I have regard to what Mrs Murphy's alternative prospects might have been had she not worked for Mr Rayner, the benefits which she obtained from her situation with him, and what it might have cost him to engage

alternative care. The extent of an entitlement by reference to the minimum equity to do justice depends on the facts, but if any case had been made out, it would have called for a monetary remedy rather than an interest in the Property or the Investments. Given that Mrs Murphy has failed to make out any case of financial prejudice, or lifestyle prejudice, it would have followed that if there had been any award, it would have been modest in the extreme. I cannot usefully indicate in what amount it might have been, because any award would have been entertained only on the basis of facts very different from what I have determined them to be.

DISPOSAL

361. Mrs Murphy's claims fail entirely and must be dismissed. Directions will be given for the taking of an account, as between Mr Rayner and Mrs Murphy, in respect of monies which have been paid to, and received by, her. I will hear submissions as to the directions for the taking of that account. Mr Rayner is entitled forthwith to damages for the misrepresentations inducing payments made for Veena's education (£25,900), and payments made with a view to assisting with the purchase of two properties in Bangalore (£8,026.60 and £9,015). I will hear submissions as to the interest claimed. With regard to Mr Rayner's claims in respect of other payments made for Veena's education, these will be dealt with when the account is taken. Mr Rayner's claims (including any alternative claim for damages) in respect of the return of precious stones and a box which was formerly the property of the Duke of Windsor fail, and must be dismissed. Mr Rayner's claim in respect of the return of papers belonging to him, and improperly removed by Mrs Murphy, succeeds to the extent that Mrs Murphy or her solicitors have in the course of this litigation disclosed that such papers are held by her or on her behalf. I will hear submissions as to the form of order in this regard.
362. Finally I express my real thanks to both counsel who have greatly assisted me throughout the course of this trial. Their submissions, oral and written, lists of issues and of facts which I have been invited to find, summaries of evidence and detailed chronologies have all been invaluable.

