

SUPREME COURT OF QUEENSLAND

CITATION: *Campbell & Anor v T. L. Clacher No. 2 Pty Ltd & Ors* [2019] QSC 218

PARTIES: **SUZANNE CAMPBELL AND WENDY HOOK**
(Applicants)
v
T. L. CLACHER NO. 2 PTY LTD ACN 010 253 979 (AS TRUSTEE FOR THE CLACHER FAMILY TRUST)
(First Respondent)

AND

FLOWON 241 PTY LTD ACN 603 200 102 (AS TRUSTEE FOR THE BLUMKE FAMILY TRUST)
(Second Respondent)

AND

THOMAS LAIDLAW CLACHER
(third respondent)

FILE NO/S: BS No 11662 of 2016

DIVISION: Trial Division

PROCEEDING: Claim

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 4 September 2019

DELIVERED AT: Brisbane

HEARING DATE: 6 and 7 March 2018, 3, 4, 5 and 6 December 2018.

JUDGE: Jackson J

ORDER: **The judgment of the court is that:**

- 1. It is declared that the resolutions made by the first respondent as trustee of the Clacher Family Trust on 14 June 2014, 9 October 2014 and 12 December 2014 were made invalidly and in breach of trust;**
- 2. It is declared that the transfers of the properties, shares and cash identified in the Annexure to these reasons by the first respondent as trustee of the Clacher Family Trust to the second respondent as trustee of the Blumke Family Trust were made invalidly and in breach of trust;**
- 3. It is ordered that the first respondent be removed as trustee of the Clacher Family Trust;**

4. **It is ordered that failing appointment by the Court of an individual as trustee of the Clacher Family Trust within 21 days of this order, the Public Trustee of Queensland be appointed as trustee of the Clacher Family Trust;**
5. **It is ordered that the third respondent is restrained from exercising the powers of removal or appointment of a trustee under clause 22 of the Clacher Family Trust;**
6. **It is ordered that the second respondent execute such documents and do all such things as the trustee of the Clacher Family Trust reasonably requires to enable the properties, shares and cash identified in the Annexure to these reasons that it holds as trustee of the Blumke Family Trust to be transferred to the trustee of the Clacher Family Trust within 7 days of being so requested;**
7. **It is ordered that within 28 days of the appointment of the new trustee of the Clacher Family Trust the second respondent deliver up to such new trustee complete copies of the books and records of the second respondent in its capacity as trustee of the Blumke Family Trust and of the Blumke Family Trust since 16 December 2014;**
8. **The proceeding is otherwise adjourned to a date to be fixed in relation to the grant of further or other relief and the determination of any questions of costs;**
9. **Liberty to apply;**
10. **It is directed that the applicants file and serve an outline of submissions as to costs, together with any supporting affidavits, on or before 9 September 2019;**
11. **It is directed that the respondents file and serve an outline of submissions as to costs, together with any supporting affidavits, on or before 16 September 2019;**
12. **The applicants file and serve any outline of submissions in reply, on or before 18 September 2019;**
13. **The applicants are to deliver a bundle of all submissions to his Honour Justice Jackson's Associate by email by 5pm on 18 September 2019.**

CATCHWORDS: EQUITY – TRUSTS AND TRUSTEES – POWERS, DUTIES, RIGHTS AND LIABILITIES OF TRUSTEES – LIABILITY FOR BREACH OF TRUST – WHAT CONSTITUTES A BREACH OF TRUST – where the third respondent was the sole director and shareholder of the first respondent – where the first respondent was the trustee of a family discretionary trust - where the third respondent as sole director of the first respondent made a number of resolutions as trustee – where the third respondent was subject to

unconscionable conduct – where the resolutions made by the first respondent were not attended by a genuine and proper consideration of the discretionary power – whether the relevant resolutions and transactions were made in breach of trust

EQUITY – TRUST AND TRUSTEES – PROCEEDINGS BETWEEN TRUSTEES AND BENEFICIARIES OR THIRD PARTIES – WHAT REMEDY AVAILABLE – where the third respondent was the sole director and shareholder of the first respondent – where the first respondent was the trustee of a family discretionary trust - where the third respondent as sole director of the first respondent made a number of resolutions as trustee – where the third respondent was subject to unconscionable conduct – where the resolutions made by the first respondent were not attended by a genuine and proper consideration of the discretionary power – whether the relevant resolutions and transactions were invalid and liable to be set aside

EQUITY – TRUSTS AND TRUSTEES – APPOINTMENT, REMOVAL AND ESTATE OF TRUSTEES – RETIREMENT AND REMOVAL – REMOVAL BY THE COURT – GROUNDS FOR REMOVAL – whether the first respondent should be removed as trustee of the Clacher Family Trust

AN v Barclays Private Bank and Trust (Cayman) Ltd (2007) 9 ITEL 630, cited

Attorney-General for the Commonwealth v Breckler (1999) 197 CLR 83, cited

Australasian Annuities Pty Ltd v Rowley Super Fund Pty Ltd [2015] VSCA 9, cited

Australian Securities and Investments Commission v Kobelt [2019] HCA 18, cited

Barclays Bank plc v Kennedy (1989) 58 P&CR 221, cited

Barnes v Addy (1874) 9 Ch App 244, cited

Bester v Perpetual Trustee Co Ltd [1970] 3 NSW 30, cited

Bridgewater v Leahy (1998) 194 CLR 457, cited

Chennells v Bruce (1939) 55 TLR 422, cited

Cock v Smith (1909) 9 CLR 773, cited

Cornerstone Property & Development Pty Ltd v Suellen Properties Pty Ltd [2015] 1 Qd R 75, cited

Curwen v Vanbreck (2009) 26 VR 335, cited

Edge v Pensions Ombudsman [2000] Ch 602, cited

Elder's Trustee and Executor Co Ltd v Higgins (1963) 113 CLR 426, cited

Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2007) 230 CLR 89, cited

Fox v Percy (2003) 214 CLR 118, cited

Gisborne v Gisborne (1877) 2 App Cas 300, cited

Giumelli v Giumelli (1999) 196 CLR 101, cited

Johnson v Buttress (1936) 56 CLR 113, cited

Kakavas v Crown Melbourne Ltd (2013) 250 CLR 392, cited

Karger v Paul [1984] VR 161, cited

Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705, cited

Luddy's Trustee v Peard (1886) 33 Ch D 500, cited

Lutheran Church of Australia South Australia District Incorporated v Farmers' Co-operative Executors and Trustees Ltd (1970) 121 CLR 628, cited

McPhail v Doulton [1971] AC 424, cited

Meehan v Glazier Holdings Pty Ltd (2002) 54 NSWLR 146, cited

Mercanti v Mercanti [2016] WASCA 206, cited

Miller v Cameron (1936) 54 CLR 572, cited

Ministry of Health v Simpson [1951] AC 251, cited

Pilkington v Inland Revenue Commissioner [1964] AC 612, cited

Platzer v Commonwealth Bank of Australia [1997] 1 Qd R 266, cited

re Diplock; Wintle v Diplock [1948] Ch 465, cited

Re Londonderry's Settlement [1965] Ch 918, 936, cited

Smith v Glegg [2005] 1 Qd R 561, cited

Thorne v Kennedy (2017) 91 ALJR 1260, cited

Vatcher v Paull [1915] AC 415, cited

Land Title Act 1994 (Qld)

Powers of Attorney Act 1998 (Qld)

Rules of the Supreme Court 1900 (Qld)

Trusts Act 1973 (Qld)

Uniform Civil Procedure Rules 1999 (Qld)

COUNSEL: R Treston QC and B Reading for the Applicants
D Kelly QC and W LeMass for the First and third
respondents on 6 and 7 March 2018
M Martin QC and D Ferraro for the Second Respondent

SOLICITORS: Thynne & Macartney for the Applicants
Cooper Grace Ward for the First and third respondents
Mills Oakley for the Second Respondent

Jackson J:

- [1] This proceeding was started on 11 November 2016. It arises out of a family drama, that erupted between September 2014 and the end of that year, when an old man decided to cut off two of his daughters and their families from contact with him and from any share in his bounty, leaving it instead exclusively to the benefit of a third daughter and her family. Transactions to give further effect to those decisions were made during 2015 and 2016. All the legal transactions happened without the knowledge of the cut off daughters. The cut off daughters claim relief that the transactions by which they were disowned should be set aside, as invalid, by reason of the combination of circumstances that the old man's cognitive abilities were impaired and the favoured daughter and her husband exercised undue influence over him or engaged in unconscientious conduct in relation to the transactions.
- [2] The proceeding has had an unusual course. The applicants are the two cut off daughters. The third respondent is the old man who is their father. The first respondent is a company of which he is the sole director and shareholder and the trustee of the Clacher Family Trust. The second respondent is a company of which the third daughter and her husband are the directors and shareholders and is the trustee of the Blumke Family Trust. The challenged transfers were made by the first respondent as trustee to the second respondent as trustee. The trial began on 6 and 7 March 2018, to hear the third respondent's evidence before his cognitive powers declined further. It was due to resume in April 2018 but the parties advised that the proceeding was to be settled and requested it to be adjourned. Ultimately, it was agreed between the applicants and the first and third respondents that the first and third respondents would take no further part in the proceeding (except in relation to any question of costs) and the trial proceeded as between the applicants and the second respondent as the only active parties.
- [3] Another unusual aspect of this case is the extent of the direct contradictory statements of evidence as to the relevant events as between the applicants and their witnesses and the second respondent's witnesses, in Janine and Glenn Blumke and the third respondent. Before going further I make three relevant observations that touch upon those contradictions.
- [4] First, part of the second respondent's case was that contrary to the evidence of the applicant's witnesses, up until September 2014 the applicants and their families did not

generally enjoy close and loving relationships with the third respondent. However, so far as the first and third respondents are concerned that fact was admitted as to the past, although they did not admit it persisted until September 2014. In the view I take, the evidence of the second respondent's witnesses to the contrary should not be accepted on that question. It is not necessary to canvass the detail.

- [5] Second, a more substantial part of the second respondent's case concerned numerous statements that Janine and Glenn Blumke swear were made to them by the third respondent that are inconsistent with the applicants and their witnesses evidence of what occurred in relevant conversations and meetings with the third respondent. Although the third respondent gave evidence, those statements were not sworn to by him and they were not admissible as evidence of the truth of the facts represented by him to Janine or Glenn Blumke. However, they were admitted as evidence of the third respondent's state of mind at relevant times as potentially going to his reasons for acting in one way or another. In the course of these reasons. I have cause to expressly reject that a number of those statements were made by the third respondent to Janine or Glenn Blumke. And, beyond that, as will appear, I have rejected the evidence of Janine and Glenn Blumke in many respects. Naturally enough, in the circumstances where I find that I have such grave reservations about their evidence in important respects, it is difficult to pick through all the statements that they say were made by the third respondent, to decide whether any and which of them were made. Instead, my approach has been to focus on those that might have affected the conclusions I have reached.
- [6] Third, in reaching my conclusions to accept the evidence of the applicants and their witnesses in critical respects, and to reject the contrary evidence or hearsay assertions of Janine and Glenn Blumke or those of the third respondent, I have necessarily made assessments of credibility that affect those conclusions and those assessments have been informed in varying degrees by the demeanour of the witnesses. In approaching those questions, however, I have adhered to Lord Atkin's famous aphorism made in 1924 that "... an ounce of intrinsic merit or demerit in the evidence, that is to say, the value of comparison of evidence with known facts, is worth pounds of demeanour", repeated by the High Court with further reference to the scientific research that casts doubt on the ability of judges or anyone else to tell truth from falsehood accurately on the basis of such appearances.¹ Accordingly, I have approached the questions of credibility with emphasis on the documentary evidence, as well as regard to the lengthy sworn written evidence and the transcript of the oral evidence, by poring over the events anxiously over and again. Still, I cannot escape that the poor impression made upon me by Janine and Glenn Blumke, in particular, and the third respondent, to a lesser extent, has affected my views. Nevertheless, I have sought not to make more findings adverse to them than is necessary to fairly expose the reasons for my conclusions and findings.
- [7] It is appropriate to begin by setting out some uncontentious facts.

Uncontentious facts

- [8] The third respondent was born in 1926. He married Pauline Male in 1950 and they remained married until her death in September 2012. The first named applicant ("Wendy"), the second named applicant ("Suzanne") and Janine Blumke ("Janine") are daughters of third respondent and Pauline. Each of the daughters is married and has

¹ *Fox v Percy* (2003) 214 CLR 118, 128-129 [30]-[31].

children, who are the grandchildren of third respondent and Pauline. Wendy is married to Charles (“Mac”) Hook. Suzanne is married to Jon Campbell. Janine is married to Glenn Blumke.

- [9] Wendy was born on 17 June 1957. Suzanne was born on 10 July 1961. Janine was born on 27 April 1966.
- [10] Throughout her teenage years, Wendy resided with her parents and sisters at 17 Melville Court, Wynnum (“the Family home”). It was built by the third respondent and Pauline. The third respondent said to Wendy on numerous occasions that he loved every aspect of that home and that he wanted to live there until his passing.
- [11] The third respondent worked as an optometrist carrying on his own practice. Pauline worked as the receptionist in the practice from its establishment until around 1956. After Wendy’s birth, Pauline remained at home, although she did some book keeping for the practice.
- [12] Wendy worked as a receptionist in the practice from 1973 to 1983, and from 1991 to 1994. Mac Hook was employed as an optometrist in the practice from 1975 to 1994. In 1994, Wendy and Mac Hook purchased the optometry practice from the third respondent. After that, the third respondent worked for Wendy and Mac Hook, on a part time basis, until about 1996. Wendy spoke with the third respondent every day at work at the practice. He was 69 years old when he retired. He was a private person. He would generally spend his time gardening and assisting Pauline around the Family home. He did not become involved in hobbies after his retirement.
- [13] In September 1979, Wendy married Mac Hook. When they purchased a house the third respondent assisted them including, for example, with the painting. The third respondent and Pauline were frequent visitors to Wendy and Mac’s house and vice versa.
- [14] In about 1996, Wendy and Mac Hook moved into a new home at 3 Glenshiel Street, Wynnum West, located close to the Family home. Wendy and Mac Hook were able to visit the third respondent and Pauline on a more regular basis.
- [15] Wendy, Mac Hook and their children joined the third respondent and Pauline for holidays at Maroochydoore. In addition, they played social tennis with the third respondent and Pauline every Friday night. After tennis, they would gather at the Family home for dinner.
- [16] Pauline organised Clacher family gatherings, which were held regularly at Easter and Christmas holidays. The gathering was usually at Wendy’s home or the Family home. As Pauline aged, Wendy, Suzanne and Janine would host Christmas celebrations on a rotational basis. Wendy attended every Easter and Christmas celebration hosted by Pauline, Suzanne or Janine after she moved out of home on being married. The Clacher family would also regularly celebrate family birthdays, Mothers’ Day and Fathers’ Day at either the Family home or Wendy and Mac’s home. Wendy cannot recall specifically missing any birthday, Mothers’ Day or Fathers’ Day celebrations, until after the events of September 2014.
- [17] Pauline and the third respondent featured prominently in the lives of Suzanne and Jon Campbell from when they were married in 1987, supporting them through various ups and downs including health concerns, career-related issues, pregnancies, child rearing,

travel and relocation. Pauline and the third respondent would visit Suzanne and Jon Campbell regularly. Suzanne and Jon Campbell would also visit Pauline and the third respondent, often having dinner, lunch or coffee together.

- [18] Pauline and the third respondent maintained a strong interest in Suzanne's singing career, always attending concerts and listening to recordings. The third respondent also lent Suzanne money to assist with the recording of her first album as a singer.
- [19] Following the birth of Suzanne and Jon Campbell's children, Stephanie and Madeleine, Pauline and the third respondent assisted with babysitting. They also attended birthdays, special occasions, sporting events, musical recitals, grandparents' days and school events and enjoyed listening to Stephanie play the piano and Madeleine play the violin and piano. The children enjoyed listening to the third respondent's stories.
- [20] The third respondent continued to be interested in the lives of Stephanie and Madeleine as they grew older. Suzanne regularly provided the third respondent with updates on her daughters' activities, including their studies, jobs and friends. In early 2014, Stephanie was involved in a near fatal skydiving accident. The third respondent was by Stephanie's side on many occasions while she recovered at home over a two month period.
- [21] As an adult, Wendy spent considerable time with the third respondent. They had a close relationship. She would often confide in him and sought his advice regularly regarding various matters including finance, property and investments. She cannot recall specifically ever having had a large argument with the third respondent. They enjoyed a happy and relaxed relationship.
- [22] Wendy and Suzanne also enjoyed a close relationship. She spent more time with Suzanne than she did with Janine. Wendy and Mac would regularly travel to visit Suzanne and Jon Campbell at their home. However, Janine and Glenn Blumke and their children were always included in the celebrations hosted by the Clacher family over the years. Although Wendy's relationship with Janine was not as close as with Suzanne, she still saw her regularly.
- [23] After Janine moved out of the Family home in 1992, she lived in a house directly behind the Family home which she bought from the third respondent and Pauline. Wendy would therefore regularly see Janine when she visited her parents.
- [24] To the best of Wendy's recollection, before the events of this case, Wendy, Suzanne and Janine did not have significant arguments as adults.
- [25] In about mid-2005, the third respondent spoke to Wendy about an enduring power of attorney so that if he were unable to make decisions on his own, Wendy, Suzanne and Janine could make decisions for him, by majority. At that time, Pauline was having increasing difficulties with her memory. The third respondent said that he wanted the power of attorney implemented sooner rather than later, so that if anything happened to Pauline and he was not able to assist, Wendy, Suzanne and Janine were able to make decisions.
- [26] From late 2007 or early 2008, Wendy was informed by the third respondent that Pauline had been diagnosed with dementia. Thereafter, the third respondent's focus was caring for Pauline.

- [27] Wendy and Mac Hook still visited the third respondent and Pauline regularly during this period. Wendy would speak to the third respondent on the phone at least three or four times per week. In addition, the third respondent and Pauline took a keen interest in Wendy's daughter's work and social activities.
- [28] During this period, while the third respondent was Pauline's primary care giver, Wendy informed him on numerous occasions that she was only one phone call away. She set up his phone so that he could reach her on speed dial. He would often call her to seek advice regarding what he could do to help in certain situations. On occasions, it was necessary for her to visit or call an ambulance to assist Pauline. On the occasions that Pauline was taken to hospital by ambulance, she stayed with them at the hospital while Pauline recovered.
- [29] Between 2008 and 2011, Wendy assisted the third respondent with Pauline's care significantly. In addition to the above, she attended Pauline's various appointments with the third respondent. She would drive the third respondent to the appointments and help Pauline and the third respondent understand the advice being given to them.
- [30] After Pauline's diagnosis, Wendy does not recall any significant arguments between herself, Suzanne and Janine.
- [31] By late 2011, Pauline's dementia became more severe. Wendy observed that it was difficult for the third respondent to manage caring for her on his own, even with the ad hoc assistance of Wendy, Suzanne and Janine. When she visited the Family home, Pauline was largely confined to her bed. She was also informed by the third respondent that Pauline required around the clock care. However, the third respondent rejected any suggestion that Pauline should be placed in a nursing home. Wendy, Suzanne and Janine discussed the matter and agreed that Pauline should be placed in a nursing home. However, they were reluctant to suggest it to the third respondent.
- [32] Around this time, Wendy visited her parents more regularly, particularly if either was unwell. She took time off work to assist the third respondent with Pauline's appointments such as when Pauline's mobile hairdresser would visit the Family home. Wendy discussed with her sisters Pauline's deteriorating health and the inevitable outcome that the third respondent would no longer be able to care for her. Wendy and Suzanne attended meetings with representatives of several nursing homes to discuss availability and the services they could offer. Wendy and Suzanne told the third respondent that they were attending those meetings, however he did not attend with them.
- [33] Wendy was very worried about the impact caring for Pauline was having on the third respondent. Pauline was fainting randomly. The third respondent telephoned Wendy and asked her to come over to assist which she did.
- [34] On 27 April 2012, Pauline was extremely ill. Wendy, Suzanne and Janine were called to the Family home and it was immediately decided that an ambulance should be called. That day, Pauline was admitted to Greenslopes hospital and was subsequently diagnosed with lung cancer. She stayed in hospital for around three weeks. It became apparent that she could not return to the Family home. Shortly after that, a family meeting between the third respondent, Wendy and Mac, Suzanne and Jon Campbell, and Janine and Glenn Blumke was held. It was agreed that Pauline should be transferred from hospital to a nursing home.

- [35] After Pauline moved into the nursing home, Wendy drove the third respondent to visit Pauline at least twice per week. She continued regularly to visit the third respondent at the Family home.
- [36] In late July 2012, Wendy attended a medical appointment with the third respondent. At the appointment, the doctor asked the third respondent a series of questions and informed Wendy that the third respondent was suffering from depression and required anti-depressant medication.
- [37] On 11 September 2012, Pauline died. Immediately after the funeral, the third respondent lived at Wendy and Mac's home. That continued for approximately a week, after which the third respondent said that he wanted to return to the Family home.
- [38] For the next few months, the third respondent was visibly distraught. During this period, Wendy assisted as best she could. She spoke regularly on the phone with the third respondent and visited him often. She also prepared and delivered meals to him from time to time. As well, at some point he arranged to receive Meals on Wheels.
- [39] The applicants allege that after Pauline's death, the third respondent suffered periods of depression, lost confidence in dealing with daily affairs, became reliant to a substantial degree on others for the management of his daily affairs including making and attending doctors' appointments, paying bills, buying presents for family members and licence renewals, became forgetful as to daily matters and had difficulty properly managing his health including his hypertension.
- [40] It is common ground that he regularly stated he did not ever wish to leave the Family home which he had shared with Pauline because it made him feel close to her. Otherwise the second respondent denies all of those matters except whether the third respondent became forgetful as to daily matters, which they do not admit.

Clacher Family Trust and the third respondent

- [41] The third respondent and Pauline managed their investments together. Wendy was aware that they had purchased investment properties including a number of residential units in 188 Shafston Avenue, Kangaroo Point and another investment property located at 8 Johnston Street at West Ipswich.
- [42] The first respondent is a company of which the third respondent and Pauline were directors and shareholders until Pauline's death. After that, the third respondent was the sole director, shareholder and secretary.
- [43] By deed dated 29 June 1981, the Clacher Family Trust was settled with the first respondent as trustee. The Clacher Family Trust was settled for the purpose of assisting and making provision for members of the third respondent and Pauline's family and the other beneficiaries referred to in the deed.
- [44] The Clacher Family Trust was amended by variations made from time to time, including those made by the first respondent on 3 September 2012 and 4 December 2014. Other instruments that may have varied the trust in 2014 are in dispute.
- [45] The Clacher Family Trust defined the beneficiaries to mean any child, grandchild or remoter issue or step child or foster child of the third respondent, any spouse of any child

or grandchild or remoter issue or step child or foster child of the third respondent, and any person or corporation (not being the settlor) nominated in writing by the trustee or third respondent to be a beneficiary for the purposes of the trust deed. By cl 2, it was provided that until the vesting day the trustee shall stand possessed of the income of the trust fund derived by it upon trust absolutely to pay or apply such income to or for the benefit of the beneficiaries then living or any one or more of them exclusive of the other or others of them and in such shares and proportions as the trustee shall in its absolute discretion determine and on other trusts.

- [46] Accordingly, each of Wendy and Mac Hook and their children and Suzanne and Jon Campbell and their children was a beneficiary of the Clacher Family Trust. The second respondent contends that they were removed as beneficiaries by a series of resolutions made by the third respondent as sole director of the first respondent, in effect made reiteratively on 27 June 2014, 9 October 2014 and 12 December 2014.
- [47] From about 1995, Wendy was aware of the existence of the Clacher Family Trust, but received only one distribution around that year when she and Mac Hook purchased the practice and business in about 1994.
- [48] As at 30 June 2014, the assets of the Clacher Family Trust, according to the balance sheet in the financial statements for that year, comprised cash in the amount of approximately \$316,981, and financial assets being shares in listed companies and other securities and investments valued at approximately \$2,151,701, and a number of real properties (at cost), including related plant and equipment identified in Annexure A to the Statement of Claim valued at \$1,138,790. The liabilities included a loan from the third respondent of \$245,165, an unpaid present entitlement of the third respondent as beneficiary of \$2,911,275 and unpaid present entitlements of the first respondent as beneficiary of \$824,569.
- [49] The applicants allege that the material assets and liabilities were materially unchanged as at 4 December 2014. That is not admitted by the second respondent but no evidence to the contrary was led.
- [50] As at 4 December 2014, substantial assets were held by the third respondent (in addition to the amounts owed to him by the first respondent as trustee of the Clacher Family Trust). They included:
- (a) land located at 71 Melville Terrace, Wynnum, comprising of a single dwelling which was the Family home, valued at approximately \$980,000 although the value is not admitted by the second respondent;
 - (b) land located at 19 Dixon Street, Morningside comprising 6 residential units valued at approximately \$1,600,000, although the value is not admitted by the second respondent (“the Dixon Street Units”);
 - (c) superannuation benefits of approximately \$724,000, although the second respondent does not admit the value; and
 - (d) land located at Burnett Heads owned as tenants in common with Suzanne, valued at approximately \$300,000.
- [51] From about 2007 Janine, either alone or with Glenn Blumke’s assistance, took an active role in the financial affairs of the third respondent and Pauline and the Clacher Family

Trust, although Janine said in evidence that was focussed upon their real property interests.

- [52] Until about September 2012, and for some time afterwards, the third respondent was in reasonable physical and mental health and managed his day to day finances by himself.
- [53] In about April 2014, Janine informed Suzanne that the third respondent had a tax problem as a result of large investment returns. The second respondent says that was information provided by Chris Burrell to Janine. Chris Burrell had been the third respondent's stock broker for many, perhaps 30, years.
- [54] It was during the following events that the third respondent's relationship with Wendy and Suzanne and their families fractured and he made a number of resolutions and dispositions as sole director of the first respondent that objectively were intended to disown them and their families and, as well, later made similar dispositions in his personal capacity. Surprisingly, as will appear, I do not consider that the third respondent clearly appreciated that he was disowning his grandchildren by Wendy and Suzanne.
- [55] As these reasons will show, in fact the third respondent had no reason to do those things. His actions were brought on by what appears to have been a combination of paranoia and anger based on false allegations that Wendy or Suzanne or Jon Campbell or some combination of them was attempting to take advantage of or pressure him in some unfair way. In this, I have concluded that Janine and Glenn Blumke were both prepared to encourage the third respondent and to take advantage of his irrational fears. It will be necessary, accordingly, to set out the facts in some detail.
- [56] Before doing so, it is useful to summarise some relevant legal principles.

Principles relating to trust powers to exclude beneficiaries and to distribute assets

- [57] It is appropriate to characterise the powers exercised by the first respondent at the instance of the third respondent as sole director to remove beneficiaries, and to transfer the assets of the Clacher Family Trust to others, before proceeding to the basis or bases on which the court may interfere with or declare invalid the exercise of such powers.
- [58] The general rule is that every power that is given to a trustee in virtue of their office is a fiduciary power.² To the extent that there are legal differences that flow from characterising the class or category of the relevant power, a trustee's power to remove a beneficiary is classified as a dispositive power,³ as is a power to distribute trust property to a beneficiary. Each of those powers may be discretionary, meaning that the trustee is under no duty to exercise it. Where the relevant power is conferred upon and held by a company, it is exercisable by the directors, or in the case of a sole director, by that director.⁴ The state of mind of the person exercising the power on behalf of the corporation will be the state of mind of the corporate trustee.⁵

² *McPhail v Doulton* [1971] AC 424, 449 and 456-457; *Jacob's Law of Trusts*, 8 ed, [1607].

³ Tucker et al, *Lewin on Trusts*, 19 ed, [29-012].

⁴ *Elder's Trustee and Executor Co Ltd v Higgins* (1963) 113 CLR 426, 452-453; *Mercanti v Mercanti* [2016] WASCA 206, [171].

⁵ *Australasian Annuities Pty Ltd v Rowley Super Fund Pty Ltd* [2015] VSCA 9, [261]-[266]; *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705, 713.

- [59] There are a number of possible bases on which the court may interfere with the exercise of such powers by finding that the exercise of the power is invalid, but it is appropriate to confine attention to those that may be relevant to the facts of this case.
- [60] In exercising such a power the trustee is under a duty to act responsibly and in good faith,⁶ including that the trustee may not exercise it “irresponsibly, capriciously or wantonly”.⁷ In this context, capriciousness may be equated to irrationality,⁸ but irrationality is to be distinguished from unreasonableness or unfairness, which are not enough.⁹ Although there may not be a bright line distinguishing those concepts as a matter of fact, the distinctions in law are well established.¹⁰
- [61] An overlapping or discrete basis for invalidity is that the trustee took into account an irrelevant matter or committed a fraud on the power. It is suggested that these are related concepts.¹¹ Some cases would prohibit taking irrelevant matters into account;¹² other cases would prohibit an equitable fraud on the power, meaning that the power has been exercised for a purpose or with an intention beyond the scope of the power.¹³
- [62] The exercise of a power of exclusion of a beneficiary is subject to the same constraints as other fiduciary powers,¹⁴ meaning it must not be exercised capriciously¹⁵ and, in particular, not to deny the beneficiary access to information.¹⁶ The same principles apply to a power to distribute trust property.
- [63] These principles are conveniently summarised in two useful statements. First, in *Attorney-General v Breckler*¹⁷ the plurality of the High Court approved the following:

“Where a trustee exercises a discretion, it may be impugned on a number of different bases such as that it was exercised in bad faith, arbitrarily, capriciously, wantonly, irresponsibly, mischievously or irrelevantly to any sensible expectation of the settlor, or without giving a real or genuine consideration to the exercise of the discretion. The exercise of a discretion by trustees cannot of course be impugned upon the basis that their decision was unfair or unreasonable or unwise. Where a discretion is expressed to be absolute it may be that bad faith needs to be shown. The soundness of the exercise of a discretion can be examined where reasons have been given, but the test is not fairness or reasonableness.”¹⁸

⁶ Tucker et al, *Lewin on Trusts*, 19 ed, [29-152]; *Gisborne v Gisborne* (1877) 2 App Cas 300, 305.

⁷ *Lutheran Church of Australia South Australia District Incorporated v Farmers’ Cooperative Executors and Trustees Ltd* (1970) 121 CLR 628, 639; *Pilkington v Inland Revenue Commissioners* [1964] AC 612, 641.

⁸ Tucker et al, *Lewin on Trusts*, 19 ed, [29-153];

⁹ *Attorney-General for the Commonwealth v Breckler* (1999) 197 CLR 83, 99-100 [7].

¹⁰ *Re Londonderry’s Settlement* [1965] Ch 918, 936; *Cock v Smith* (1909) 9 CLR 773, 844.

¹¹ Tucker et al, *Lewin on Trusts*, 19 ed, [29-160]; See *Mercanti v Mercanti* [2016] WASCA 206, [244].

¹² *Edge v Pensions Ombudsman* [2000] Ch 602, 627-628.

¹³ *Vatcher v Paull* [1915] AC 372, 378.

¹⁴ Tucker et al, *Lewin on Trusts*, 19 ed, [30-063].

¹⁵ *AN v Barclays Private Bank and Trust (Cayman) Ltd* (2007) 9 ITEL 630, [47].

¹⁶ *Curwen v Vanbreck* (2009) 26 VR 335, 351 [36].

¹⁷ (1999) 197 CLR 83.

¹⁸ (1999) 197 CLR 83, 99-100 [7].

[64] Second, in *Karger v Paul*¹⁹ McGarvie J said:

“... it is open to the Court to examine the evidence to decide whether there has been a failure by the trustees to exercise the discretion in good faith, upon real and genuine consideration and in accordance with the purposes for which the discretion was conferred. As part of the process of, and solely for the purpose of, ascertaining whether there has been any such failure, it is relevant to look at evidence of the inquiries which were made by the trustees, the information they had and the reasons for, and manner of, their exercising their discretion. However, it is not open to the Court to look at those things for the independent purpose of impugning the exercise of discretion on the grounds that their inquiries, information or reasons or the manner of exercise of the discretion, fell short of what was appropriate and sufficient. Nor is it open to the Court to look at the factual situation established by the evidence, for the independent purpose of impugning the exercise of the discretion on the grounds that the trustees were wrong in their appreciation of the facts or made an unwise or unjustified exercise of discretion in the circumstances.”

Relevance of undue influence and unconscionable dealing

[65] The applicants’ case is pleaded, inter alia, on the basis that the powers to distribute the property of the Clacher Family Trust by the transfers made to the second respondent were invalidly exercised by the first respondent because of the undue influence or unconscionable conduct that Janine and Glenn Blumke exercised upon the third respondent.

[66] In putting the matter that way, the applicants set up the alleged undue influence or unconscionable conduct as the basis for invalidity, presumably on the ground that it satisfies the requirements for invalidity in the exercise of a trust power previously identified. No particular case to that effect was relied upon, although undue influence was considered as a possible basis for invalidity in relation to the exercise of a trust power in 2016 in *Mercanti v Mercanti*.²⁰

[67] The principles as to undue influence are of relatively long standing and have been recently revisited by the High Court.²¹ As to unconscionable conduct, the applicants rely upon the principles identified in recent High Court cases.²²

[68] The applicants also rely upon the presumption of undue influence in relation to a transaction under s 87 of the *Powers of Attorney Act 1998 (Qld)*. However, that section applies to “a transaction between a principal and any one or more of an attorney under an enduring power of attorney or advance health directive” or “a relation, business associate or close friend of the attorney.” The “principal” is the person who authorises one or more other persons to do anything that the principal can lawfully do by an attorney. The first respondent was not the principal under the power of attorney given by the first respondent to Janine. Section 87 does not apply to the transfers made by the first respondent.

¹⁹ [1984] VR 161, 164.

²⁰ [2016] WASCA 206, [276]-[290].

²¹ *Johnson v Buttress* (1936) 56 CLR 113, 134; *Thorne v Kennedy* (2017) 91 ALJR 1260, [31]-[36].

²² *Kakavas v Crown Melbourne Ltd* (2013) 250 CLR 392; *Thorne v Kennedy* (2017) 91 ALJR 1260; and *Australian Securities and Investments Commission v Kobelt* [2019] HCA 18.

- [69] Where a voluntary transfer is made by a child to a parent, the relationship of parent and child is a per se presumptive relationship of undue influence.²³ But where a voluntary transfer is made by a parent to a child, the relationship of parent and child is not a per se presumptive relationship of undue influence, for obvious reasons. However, a particular relationship from which the presumption of undue influence arises can be established by proof of the dependence and trust that are sometimes the hallmark of an elderly parent becoming wholly reliant on a child for domestic assistance, company, transport and management of financial and personal affairs, particularly in the absence of contact with other family members and friends.²⁴
- [70] In the present case, there is a further question as to the application of the principles of undue influence or unconscionable conduct to the relevant parties. The transferor of the challenged transactions was the corporate first respondent, not the third respondent, and the transferee was the second respondent, not Janine or Glenn Blumke. As to the first respondent acting by the third respondent, the person influenced or affected need not be the owner of the property. It is sufficient if he or she controls it on behalf of the owner.²⁵ As to the second respondent, it does not appear to matter that the property is transferred to a third party volunteer²⁶ as a result of the undue influence or unconscionable dealing of a defendant and that is also true if the person exerting the undue influence or unconscionable dealing is the agent of the transferee.²⁷
- [71] These summarised principles as to the invalidity of the exercise of the relevant powers are sufficient to proceed to the disputed facts and related issues.

Impugned exercises of power and transactions

- [72] The statement of claim alleges the invalidity of the transactions by the first respondent whereby:
- (a) Units 401, 410, 819, 918, 1015, 1016 and 1020 of the Shaftson Units held as investments by the first respondent as trustee of the Clacher Family Trust were transferred to the second respondent as trustee of the Blumke Family Trust by way of distribution to a beneficiary;
 - (b) 8 and 8A Johnston St West Ipswich held as an investment by the first respondent as trustee of the Clacher Family Trust were transferred to the second respondent as trustee of the Blumke Family Trust by way of a distribution of trust to a beneficiary;
 - (c) The shares in listed companies and trusts held as investments by the first respondent as trustee for the Clacher Family Trust were transferred to the second respondent as trustee for the Blumke Family Trust by way of distribution to a beneficiary;
 - (d) The whole of the cash held by the first respondent as trustee for the Clacher Family Trust was transferred to the second respondent as trustee for the Blumke Family Trust by way of distribution of trust to a beneficiary.
- [73] The transactions by the first respondent are challenged upon the basis that:

²³ *Johnson v Buttress* (1936) 56 CLR 113, 134.

²⁴ *Smith v Glegg* [2005] 1 Qd R 561, 564 [7] and 570 [40].

²⁵ *Chennells v Bruce* (1939) 55 TLR 422; *Luddy's Trustee v Peard* (1886) 33 Ch D 500, 522.

²⁶ *Bester v Perpetual Trustee Co Ltd* [1970] 3 NSW 30.

²⁷ *Platzer v Commonwealth Bank of Australia* [1997] 1 Qd R 266, 290; *Barclays Bank plc v Kennedy* (1989) 58 P&CR 221.

- (a) each of the first respondents' decisions to transfer the relevant property, shares or cash was not made with a real and genuine consideration by the first respondent; or
- (b) independently by the first respondent,

by reason of the undue influence or unconscionable conduct of Janine and Glenn Blumke over the third respondent.

[74] The statement of claim also alleges grounds of invalidity of the transactions by the third respondent whereby:

- (a) the Family home held by third respondent was transferred to himself and to Janine as joint tenants by way of gift to Janine; and
- (b) the Dixon St Units held by the third respondent were transferred to himself and Janine as joint tenants by way of gift to Janine.

[75] However, no relief is sought in respect of those transactions. Janine is not a party to the proceeding.

[76] The statement of claim alleges that Wendy and Suzanne are beneficiaries of the Clacher Family Trust. The defence of the second respondent denies that allegation on the ground that they were removed as beneficiaries by resolutions of the first respondent made on 27 June 2014, 9 October 2014 and 12 December 2014.

[77] The reply denies that any of the resolutions was valid to exclude either Wendy or Suzanne or their families as beneficiaries of the Clacher Family Trust, on the ground that the resolutions were made by the first respondent by mistake as to their purpose or effect and as a result of Janine or Glenn Blumke's undue influence or unconscionable conduct and not upon a real and genuine consideration by the first respondent as trustee.

[78] Additionally, the applicants allege that the 12 December 2014 resolutions were made without the benefit of legal advice, and inconsistently with a will made by the third respondent on 4 December 2014, a special resolution to distribute the trust fund of the Clacher Family Trust, a deed of removal of trustee and appointment of a new trustee of the Clacher Family Trust, an option to purchase and a deed of variation of the Clacher Family Trust all made by the first respondent on 4 December 2014 in circumstances where there was no material change in circumstances between 4 December 2014 and 12 December 2014.

[79] The applicants' case is that before about September 2014 family relationships between the applicants and their families and the third respondent and Janine and Glenn Blumke and their family were close or relatively so, but that from early September 2014 they rapidly spiralled downwards and out of control until December 2014, as the third respondent accused them of wrongdoing, withdrew from their society, and eventually cut them off in all respects, both personally and (as they learned much later) financially.

[80] The second respondent's case is that the applicants were the authors of their own misfortune, because of their mis-behaviours in a number of respects. Because different allegations are made by the second respondent as to the relevant relationships between the third respondent and Wendy, on the one hand, and Suzanne (and her husband Jon Campbell) on the other hand, it is necessary and appropriate to separately consider them.

27 June 2014, 9 October 2014 and 12 December 2014 Resolutions

- [81] However, it is appropriate to put the subsequent discussion in the context of the three sets of resolutions by which the third respondent, acting as the sole director of the first respondent, sought to remove the applicants, their children and the spouses of any of them as beneficiaries of the Clacher Family Trust.
- [82] The first set of resolutions were made on 27 June 2014 (“27 June 2014 resolutions”). The sequence was as follows:
- (a) on 26 June 2014, the third respondent signed a written record of instruction to Glenn Blumke stating that he was unhappy that Jon Campbell had been given information about his tax records and properties purchased and rental income statements and to make it clear that Wendy and Mac Hook, inter alia, were to have no more involvement in his personal tax matters or his company or his family trust. The document recorded that he had informed Janine of his instruction as well;
 - (b) Glenn Blumke says that on 26 June 2014 the third respondent requested him to prepare a trust resolution that Wendy and Mac Hook, inter alia, were to have no involvement in the family trust and he did not want them listed as beneficiaries in the family trust;
 - (c) on 27 June 2014, the third respondent as sole director of the first respondent executed a Deed of Variation of the Clacher Family Trust that qualified the definition of the beneficiaries listed in cl 1(c) by adding the words “unless specifically excluded from being a beneficiary by a decision of the trustee” after the words “any child, grandchild or remoter issue or foster child of the said Thomas Laidlaw Clacher” and in cl 1(d) adding the words “unless specifically excluded from being a beneficiary by a decision of the trustee” after the words “any spouse of any child or grandchild or remoter issue or stepchild or foster child of the said Thomas Laidlaw Clacher”;
 - (d) on 27 June 2014, the third respondent as sole director of the first respondent resolved that henceforth Wendy Hook and Suzanne Campbell are no longer beneficiaries of the Clacher Family Trust, and henceforth any spouse, child or grandchild of Wendy Hook or Suzanne Campbell, or any spouse of any child or grandchild of Wendy Hook or Suzanne Campbell are no longer beneficiaries of the Clacher Family Trust;
 - (e) on 27 June 2014, the third respondent as sole director of the first respondent passed a further resolution or resolutions in the same terms as (d) above, but with the added “Condition of resolutions” that “The invoking of the abovementioned resolutions is subject to confidential legal advice to the trustee, and confirmation of the trustee’s discretion to make the resolutions”.
- [83] The second set of resolutions were made on 9 October 2014 (“9 October 2014 resolutions”). The sequence was as follows:
- (a) on 9 October 2014, the third respondent as sole director of the first respondent resolved that it was confirmed that Wendy Hook and Suzanne Campbell were not beneficiaries of the Clacher Family Trust, that any child or grandchild of Wendy Hook were not beneficiaries of the Clacher Family Trust, that any child or grandchild of Suzanne Campbell were not beneficiaries of the Clacher Family Trust, that any spouse of Wendy Hook and any spouse of any child of Wendy Hook

were not beneficiaries of the Clacher Family Trust and that any spouse of Suzanne Campbell and any spouse of any child of Suzanne Campbell were not beneficiaries of the Clacher Family Trust. It was noted that Wendy Hook and Suzanne Campbell had no unpaid present entitlements or any other monies owing to them under the Clacher Family Trust;

- (b) on 9 October 2014, the third respondent as sole director of the first respondent passed further resolutions identical to (a) above but adding a “Condition of resolutions” in identical terms to the “Condition of resolutions” passed on 27 June 2014;

I also note that on 12 October 2014, the third respondent as sole director of the first respondent resolved to vary the Clacher Family Trust so that cl (iii) of the definitions was replaced by the following: “The Principal means the said Thomas Laidlaw Clacher or in the event of incapacity or death of Thomas Laidlaw Clacher, the Principal means Janine Marie Blumke being a legal personal representative and enduring power of attorney of Thomas Laidlaw Clacher”.

[84] The third set of resolutions were made on 12 December 2014 (“12 December 2014 resolutions”). The sequence was as follows:

- (a) on 12 December 2014, the third respondent as sole director of the first respondent resolved that the “Special resolution to distribute” and “Irrevocable Resolution” made at 2:38pm on 4 December 2014 was thereby revoked;
- (b) on 12 December 2014, the third respondent as sole director of the first respondent resolved and confirmed that Wendy Hook and Suzanne Campbell were not beneficiaries to the Clacher Family Trust, that any child or grandchild of Wendy Hook were no longer beneficiaries of the Clacher Family Trust, that any child or grandchild of Suzanne Campbell were not beneficiaries of the Clacher Family Trust, that any spouse of Wendy Hook and any spouse of any child of Wendy Hook were not beneficiaries to the Clacher Family Trust and that any spouse of Suzanne Campbell and any spouse of any child of Suzanne Campbell were not beneficiaries of the Clacher Family Trust;
- (c) on 12 December 2014, the third respondent as sole director of the first respondent resolved in identical terms to (b) above, except with the addition of the “Condition of resolutions” in identical terms to the corresponding resolutions made on 27 June 2014 and 9 October 2014.

[85] In order to understand paragraph (a) of the 12 December 2014 resolutions set out above, it is necessary to identify the resolutions that were revoked and their context as follows:

- (a) on 4 December 2014, the third respondent as sole director of the first respondent resolved to vary the Clacher Family Trust by the addition of cls 14(ao), 14(ap), 14(aq) and 14(ar) to the trust deed, that included a power to restrict the powers of the trustee in some respects;
- (b) on 4 December 2014, the third respondent as sole director of the first respondent passed a resolution to distribute all of the trust funds of the Trust upon the death of the third respondent, the distribution of such assets to be made within six months of the third respondent’s date of death, as to one third share to each of Wendy, Suzanne and Janine, or in the event that any of them fail to survive the third respondent, then her share to be distributed to such of her children as survive the

third respondent and if more than one, then in equal shares (“Special Resolution to Distribute”);

- (c) on 4 December 2014, it was further resolved that the Special Resolution to Distribute should become irrevocable on the third respondent’s death, if not earlier revoked and that no revocation will be effective unless notice in writing of it has been given to de Groots Guardian Services Pty Ltd before the date of death of the third respondent (“Irrevocable Resolution”);
- (d) on 4 December 2014, the third respondent as sole director of the first respondent executed a “Deed of Removal of Trustee and Appointment of New Trustee” of the Clacher Family Trust, by which the third respondent as appointor appointed the second respondent as the new trustee of the Clacher Family Trust, from the date of death of the third respondent.

[86] There are some remarkable features of each of the 27 June 2014 resolutions, 9 October 2014 resolutions and 12 October 2014 resolutions. Looked at objectively, in circumstances where the applicants and their husbands and children for many years had been in a continuing and close relationship with their father, father-in-law and grandfather, and were beneficiaries under his family trust, they were a means by which an aging man apparently sought to disown them, without any prior communication to any of them of his intention to do so or, in the case of the 27 June 2014 resolutions, any prior or contemporaneous expression of any dissatisfaction to any of them.

[87] Second, during the period from September 2014 to December 2014 the third respondent had two sets of lawyers and an accountant as advisors, but there is no suggestion that he informed any of them of these resolutions at the time. In fact, his dealings with them were not consistent with the content of the resolutions in some respects.

[88] Third, in giving evidence in this proceeding, the third respondent himself showed no real appreciation of the circumstances in which, or reasons for which, he passed these resolutions, or of the extent of their effect.

[89] Fourth, the only witness who claimed any knowledge of these resolutions at the time when they were made or to have been involved in their making was Glenn Blumke. He drafted them (and the two deeds of amendment of the trust deed) even though he is not a lawyer, and did not obtain or seek any legal advice before doing so, or suggest to the third respondent that he obtain legal advice before doing so. Another remarkable suggestion is that neither the third respondent nor Glenn Blumke informed Janine that the resolutions were to be made or had been made.

[90] Fifth, in between the 9 October 2014 resolutions and 12 December 2014 resolutions, the third respondent attended upon the solicitors who acted for him in connection with his estate, including the disposition of the assets in his family trust, and with their assistance (but not that of Janine or Glenn Blumke) on 4 December 2014 made a will that included dispositions and passed resolutions of the first respondent as trustee of the Clacher Family Trust (the Special Resolution to Distribute and the Irrevocable Resolution) inconsistent with any intention to disown the applicants or their husbands or children at that time.

[91] Sixth, the proceedings of 4 December 2014 were completely undone, in effect, by the third respondent, again with the assistance of Glenn Blumke, by the 12 December 2014 resolutions. Notwithstanding the double volte-face involved over a period of 8 days, the

third respondent did not seek any legal advice for the 12 December 2014 resolutions and neither Janine nor Glenn Blumke suggested that he should do so. At the trial, the circumstances that explain how all that came about were not clearly elucidated by any evidence that I accept, except to say that the third respondent changed his mind yet again, and I will deal with this question in greater detail later.

- [92] It is impossible to avoid the objective circumstances that many of the decisions embodied in these resolutions were made in secret, were not made with the assistance of legal advice, were made with the sole assistance of the husband of the principal remaining beneficiary, who was a beneficiary himself and, as will appear, were not made for reasons that were objectively apparent, despite the second respondent's attempts to show that they were.
- [93] That may not be enough to carry the applicants to success, but it is as well to measure the disputed events canvassed by the evidence without leaving out of account the extraordinary nature of the three sets of resolutions made on 27 June 2014, 9 October 2014 and 12 December 2014 and the context of the uncontested events in this case.

Wendy and the third respondent

- [94] Wendy considered that after Pauline's passing, her relationship with the third respondent grew stronger. She supported and grieved with the third respondent. They both travelled to visit Pauline's grave on a regular basis. The third respondent regularly visited Wendy to have a cup of tea and a chat. Wendy observed that the third respondent had lost some confidence in terms of making arrangements for matters such as doctor's appointments or prescriptions. He relied on her to drive her to medical appointments and to accompany him during the consultations.
- [95] She attended to other things for him, including purchasing clothes and groceries and presents for family occasions that he could give to his grandchildren. She made it a priority to visit him on her day off every week.
- [96] The third respondent continued to attend Clacher family gatherings, including Wendy's daughter's wedding in Maroochydore, Christmas, Easter and birthday celebrations, either at Wendy's house or Suzanne's house.
- [97] On 7 April 2014, Wendy was admitted to hospital as a result of a collapsed lung following a biopsy. She remained in hospital until 14 April 2014.
- [98] On 12 June 2014, Wendy was admitted to hospital for surgery to remove a malignant tumour.
- [99] On 17 June 2014, Wendy was discharged from hospital. It was her birthday. The third respondent gave her a birthday card which read, "To my wonder woman Wendy, with all my love Dad".
- [100] During the following approximately eight weeks, Wendy was off work and recovered from the surgery. The third respondent spent a lot of time with her during this period, going to her house regularly on a day by day basis. On a few occasions, he took Wendy out for coffee. He offered financial assistance to Wendy and Mac Hook, which she declined.

- [101] 7 September 2014 was Fathers' Day for that year. Wendy and Mac Hook, their daughter Sally and her husband David, Suzanne and Jon Campbell, their daughters Stephanie and Madeleine, and Janine and Glenn Blumke and their son James visited the third respondent at the Family home. The evening before, Suzanne had informed Wendy in a telephone conversation that the third respondent was upset about a report that Jon Campbell was preparing and during a conversation had said to Suzanne that Wendy had said to him that she could sell the Family home pursuant to her powers under the 2005 power of attorney, without his knowledge or consent.
- [102] This was the first occasion that Wendy heard about any question relating to the 2005 power of attorney. She decided not to raise the subject matter at the Fathers' Day gathering of the Clacher family on the following day. She waited until 10 September 2014 to do so, when she visited the Family home to speak with the third respondent.
- [103] This was the beginning, so far as Wendy or Suzanne or Jon Campbell was aware, of any deterioration in the relationship between Wendy and the third respondent.
- [104] The second respondent submits, through affidavits of the third respondent, Janine and Glenn Blumke that the third respondent was unhappy with Wendy in some respects. The third respondent said in his affidavit that:
- (a) he had received little assistance from Wendy and her family;
 - (b) Wendy had been disrespectful towards him and had tried to exploit him at various times;
 - (c) Wendy began to seek information about his financial affairs;
 - (d) Wendy was upset with him about not accepting Chris Burrell's advice to transfer \$450,000 to each of his children;
 - (e) he tried to get the message across to Wendy that he did not want her involved in his financial affairs;
 - (f) he decided after many hours of private thought and reflection to pass on all of his assets and financial resources to Janine and her family trust to the exclusion of Wendy and Sue;
 - (g) that he did so in consultation with his solicitors Luke Comino and Dr John de Groot.
- [105] I do not accept any of that evidence from the third respondent. All or nearly all the objective evidence points against it, in my view. I bear in mind that the affidavit was made within a couple of weeks of his giving oral evidence before me. When he gave oral evidence, the third respondent was apparently cognitively impaired. He was argumentative and suspicious. He challenged documents that bore his signature (for example the authorities he signed addressed to his accountant and stockbroker for Jon Campbell to make inquiries of them to prepare a report and the 27 June 2014 resolutions excluding the applicants and their children as beneficiaries of the Clacher Family Trust) on the ground that he did not recognise them and it did not look to him like his signature, when the signatures look just like that on his affidavit. Tellingly, he did not seem to comprehend that by the 27 June 2014 resolutions and 9 October 2014 resolutions he (as sole director of the first respondent) excluded the applicants and their children as beneficiaries or remember why he had done so.

- [106] In forming those views I have not overlooked the report of Dr Anthony French. He saw the third respondent on 9 November 2017 for geriatric medicine review of his cognition and function and spent about 1.5 hours speaking to him. The third respondent was accompanied by Janine, who provided unidentified information about “background context... including regarding [the third respondent’s] involvement in a court action”. There is no evidence that Dr French had any awareness of the actual events of this case. Some of the matters addressed in Dr French’s affidavit and report go to the question of capacity, which is not in issue in this proceeding and may be put to one side. Of greater relevance is the opinion expressed by Dr French that the third respondent is “at a very significant disadvantage in his cognition and function in relation to matters concerning the court case given its emotional impact on him and his reaction to the subject matter. He is therefore far less likely willing or able to defend himself when he is challenged regarding these matters because he becomes overwhelmed, distressed and pressured.”
- [107] Whatever may be the basis for Dr French’s opinion, that opinion does not reflect how the third respondent behaved in the witness box. He was not unwilling to defend himself. He was suspicious of the questions he was asked and at times combative. He was not unable to “defend” himself, assuming that means able to give evidence in his case, other than by his reduced cognitive capacity. That reduction was not confined to giving oral evidence. It is evident from the terms of his affidavit, prepared with the assistance of his lawyers presumably without any time pressures or constraints. It is also consistent with his behaviour during the contested events of the case. Some of his accusations of wrongdoing against the applicants and Jon Campbell were the product of him having forgotten things he had done.
- [108] Janine swears that on 5 June 2014 she had a conversation with the third respondent in which he said a number of things to her about his dissatisfaction with the involvement of Wendy, Suzanne and Jon Campbell in his affairs. Among the matters to which she deposes was that the third respondent said that he had been having arguments with Wendy and that Wendy had said that the \$450,000 Chris Burrell had proposed be distributed from the Clacher Family Trust was her money and she should have it. I reject that the third respondent said those things to Janine. I reject that the third respondent spoke to her, looked straight at her and his tone was stern and emphatic or that she felt chastened. Her conduct towards her sisters at that time, to whom she said nothing of this, is inconsistent with those assertions.
- [109] Up to the time of her discharge from hospital, on 17 June 2014, there is no other suggestion from the third respondent that Wendy engaged in any conduct that displeased the third respondent or triggered any change of attitude by him towards her or her family.
- [110] As I have found, in the succeeding weeks, the third respondent attended closely and regularly upon Wendy to assist in her recovery from cancer surgery. Yet, the second respondent’s case is that she somehow caused the third respondent to pass the 27 June 2014 resolutions, disowning Wendy and her family as beneficiaries of the Clacher Family Trust.
- [111] Janine swears, in effect, that she was not aware of the instruction given and resolutions made by the third respondent as director of the first respondent on 26 and 27 June 2014, with the assistance of Glenn Blumke, removing Wendy and Suzanne and their families as beneficiaries of the Clacher Family Trust. That could have happened only if neither the third respondent nor Glenn Blumke told her that the resolutions were being made or

had been made. In the typewritten instruction to Glenn Blumke dated 26 June 2014, that was prepared by Glenn Blumke, the third respondent stated, inter alia, that Wendy and Mac Hook were to have no further involvement in his family trust and that he had informed Janine of that instruction. As well, in correspondence signed on 17 September 2014, the third respondent stated the extent of the reliance that he placed on Janine throughout this period. I find it most unlikely that neither the third respondent, nor Glenn Blumke, told Janine of the 27 June 2014 resolutions and I reject her evidence to that effect.

[112] In June 2014 (and afterwards) there were outwardly normal relationships being conducted between the three families (the Hooks, Campbells and Blumkes) and between them and the third respondent.

[113] Janine also swears that in late August 2014, the third respondent telephoned her and said that Wendy had been questioning him on how much she got paid to look after his properties, that Wendy had said she wanted to take over doing management work on his properties, that she had the power to sell his home if she wanted to, but she never would, and that he said that if what she was saying was right he would have that part of his “EPA” wiped. First, I find that Wendy did not say those things to the third respondent. Second, I reject that he said those things to Janine then or that she “forgot about it for a couple of weeks”.

[114] Janine further swears that, after a couple of weeks, the third respondent asked her about it again and she got out his 2005 power of attorney and informed him that it was exercisable by a majority of two of the three attorneys and he said that was what he had been saying for the last three weeks and he was going to get it wiped. I reject that the third respondent said that to Janine. I also reject that Janine made a calendar entry perhaps a day or two later that the third respondent phoned her on 24 August 2014 at 1800 hours to 1900 hours and said that Wendy told him she could sell his house with her power of attorney.

[115] The analysis so far leads to the following conclusions as to the third respondent’s relationship and his challenged decisions concerning Wendy.

[116] First, there was no issue or concern that had arisen between the third respondent and Wendy as at 26 or 27 June 2014 so as to give rise to any concern by the third respondent as to Wendy interfering in his affairs in any way. No basis has ever been given by the third respondent for any concern up to that time that Wendy had any involvement in his personal tax or financial matters, or about the first respondent or the Clacher Family Trust. No request had been made by Wendy to see the first or third respondent’s business or tax records or for copies of his financial, tax or rental information.

[117] In reaching that conclusion, I am fortified by the fact that the evidence of Janine and Glenn Blumke on some occasions includes a suggestion that Mac Hook was also the subject of some dissatisfaction by the third respondent. Yet, there is not a single event identified as conduct by Mac Hook of that kind.

[118] Accordingly, so far as Wendy is concerned:

- the written instruction from the third respondent to Glenn Blumke dated 26 June 2014;

- the request by the third respondent to Glenn Blumke on 26 June 2014 to prepare a trust resolution that Wendy and Mac, inter alia, were to have no involvement in the family trust and he did not want them listed as beneficiaries in the family trust;
- the resolution of the third respondent as sole director of the first respondent made on 27 June 2014 to vary the Clacher Family Trust to confer power on the trustee to exclude beneficiaries;
- the resolution of the third respondent as sole director of the first respondent made on 27 June 2014 that Wendy and her family, inter alia, were no longer beneficiaries of the Clacher Family Trust; and
- the further resolution of the third respondent as sole director of the first respondent made on 27 June 2014 to the same effect with the added condition that the resolution was subject to confidential legal advice (which had not occurred) and confirmation of the trustee's discretion to make the resolution (whatever that may have meant to the third respondent),

all came out of the blue (in fact she learned of them only after her first affidavit in this case had been filed) and were made without any apparent reason. As well, the third respondent in no way, shape or form communicated any concern that he may have had to Wendy at that time. In short, his conduct towards her (and Mac Hook and her children) in removing them as beneficiaries of the Clacher Family Trust lacked any basis and was wholly irrational.

- [119] The first difference or dispute I find that arose between the third respondent and Wendy stemmed from his accusation, first made to Suzanne on 6 September 2014, so far as the applicants are aware, that Wendy said or threatened that she could sell the Family home. I reject that Wendy said or threatened that to the third respondent. At the best for the third respondent, the allegation was something suggested to him by someone else or imagined by him. Another possible but less flattering explanation is that it was something he made up to justify to himself and others actions by him that he knew were unwarranted and unjustified by any conduct on Wendy's part.
- [120] I accept Wendy's evidence that 10 September 2014 was the first occasion when she discussed with the third respondent her alleged threat to sell his house. She went to see the third respondent at the Family home and raised it with him. She said to the third respondent that she had never threatened to sell the Family home and that the 2005 power of attorney would require either Suzanne or Janine to agree before that could be done. He said to her that he did not believe that she would sell his home. However, he needed to guard against that risk and he did not want her to have that power over him. He said that he never wanted to leave his home and that he would like a person to live with and help him. Wendy said that she could assist with organising that.
- [121] The following day, 11 September 2014, was the second anniversary of Pauline's death. Wendy telephoned the third respondent a number of times before she got through to him. He said to her that he had been speaking to Janine. He said that he and Janine had been (that day) to see a solicitor to amend his 2005 power of attorney. He said that this was necessary so that Janine had the same power as Suzanne and Wendy (a statement that inaccurately implied that Janine did not already have the same power as each of them). He said further that he could not have anyone saying that he was not capable (although it is not alleged that at that stage Wendy or anyone else had said the he was not capable)

and Wendy would get a letter in the mail from his solicitor explaining the changes. Wendy said that the 2005 power of attorney was fair because it required a majority (of Wendy, Suzanne and Janine) to agree and nothing untoward had occurred since it was executed.

- [122] From that point the downward spiral in the relationship between Wendy and the third respondent accelerated.
- [123] On 12 September 2014, Wendy received a letter from the office of Luke Comino, Solicitor, dated 11 September 2014 stating that the third respondent had executed a new power of attorney, that the new power stipulated that his attorneys would only have power once a medical certificate was presented from his doctor to the office of Luke Comino Solicitor stating that he was no longer capable of running his affairs, Wendy was required to attend Luke Comino Solicitor's offices to sign the new power, Wendy was requested to bring the 2005 power of attorney to those offices as soon as possible and that the new power of attorney would be held in Luke Comino Solicitor's safe custody.
- [124] On 15 September 2014, in the morning, the third respondent called Wendy to congratulate her upon her 35th wedding anniversary with Mac Hook. Wendy said to the third respondent that things were a mess. She was very upset and began to cry. The third respondent said he hoped it was not anything that he had done. She said that she wanted to visit him to discuss what she was upset about.
- [125] On that afternoon, Wendy visited the third respondent at the Family home. She reiterated that she had never said that she would sell the Family home. She said that she knew he loved living there. She said that she felt betrayed that he had visited Luke Comino Solicitor regarding a new power of attorney without her involvement. He said that he could not take the risk of her selling the Family home and that he was frightened. He repeated that she had threatened to sell the Family home. She said she would seek legal advice regarding the new power of attorney. He said he did not recall instructing Luke Comino that she was not permitted to have a copy of the new power of attorney. During the conversation, the third respondent appeared to Wendy to be confused, repeated himself, and appeared to have difficulty recalling what he had previously said to Wendy. He said there was something he was worried about.
- [126] Also during this conversation, Wendy said that she could not sign the new power of attorney if she felt that the third respondent did not trust her. He asked whether she was going to wipe him. She said no. She asked why he still wanted her to be one of his attorneys. He responded that he did not want to remove her completely, just ensure that she could not act on her threat. If the third respondent had any awareness at all of the 27 June 2014 resolutions, that was a misleading statement.
- [127] On 18 September 2014, the third respondent called Wendy and told her that he had been to see a Dr Saleh who had assessed him as competent to run his own affairs and that the consultation had something to do with the new power of attorney.
- [128] Between 15 September and 27 September 2014, Wendy spoke on the telephone with the third respondent on several occasions about inconsequential matters.
- [129] On 28 September 2014, Wendy went with Suzanne to see the third respondent at the Family home to discuss the new power of attorney. The third respondent said that his

solicitor had told him that if they did not sign the new power of attorney it would mean that they were up to something. He did not say what that was. He said that Janine had said to him that Wendy and Suzanne had not assisted him over the years but that now they were showing an interest because money was involved. At some point during the conversation, Janine telephoned the third respondent. Wendy heard the third respondent ask Janine if she could calm down enough to speak with them all. For whatever reason, the call became disconnected shortly thereafter.

- [130] Janine swears that she heard Wendy say that “Its come to a legal battle and it is you and Janine versus Sue and I.” I reject that was said by Wendy or heard by Janine. In addition to Wendy and Suzanne’s denials, at that stage Wendy had not consulted any lawyer, although she did so three days later about the subject of the new power of attorney.
- [131] This meeting on 28 September 2014 was the last time that Wendy saw the third respondent until he gave evidence at the trial.
- [132] On 1 October 2014, Wendy and Suzanne went to see Kylie Tate solicitor about the new power of attorney.
- [133] On 2 October 2014, Luke Comino, Solicitor, wrote a further letter to Wendy informing her that the third respondent had revoked the 2005 power of attorney and requiring Wendy to deliver it to his offices. Significantly, the letter no longer proposed that Wendy (or Suzanne) would be the third respondent’s attorney under a new power of attorney.
- [134] On 9 October 2014, the third respondent as the sole director of the first respondent made the 9 October 2014 resolutions, without informing Wendy or Suzanne then, or later, that he had done so.
- [135] On 10 October 2014, the locks were changed on the Family home. This was arranged by Janine without any mention to either Wendy or Suzanne. It prevented Wendy or Suzanne from being able to enter the Family home with the keys they had been given and used previously. They did not know of this until about seven weeks later.
- [136] On 10 October 2014, Kylie Tate telephoned Luke Comino, Solicitor, to discuss the power of attorney issue. The third respondent went to see Luke Comino later that day.
- [137] Between 12 October and 28 November 2014 Wendy telephoned the third respondent on six occasions. He had stopped calling her. She recorded her calls, except for one. A full reading of the transcripts is illuminating, but for the purposes of these reasons a summary of some relevant points is:
- (a) on 12 October 2014, the third respondent said that there was a worry he could not talk to her about, that his solicitor was worried, that it would all come out and that certain inquiries were being made to protect him. He said that he did not start the lawyer stuff (which was untrue). She asked him who did and he said that he could not tell her but it was someone close to her (again an untrue statement) and that somebody had done something pretty horrible and that he had to be protected (there is no credible evidence that Wendy or anyone else did anything towards the third respondent that could be viewed rationally as horrible);
 - (b) on 19 October 2014, the third respondent said that Wendy knew very well what she had done (but did not say what). Wendy said that she had not done anything wrong

and the third respondent replied “you must have a twin”. He said that the matter was in the hands of his solicitors who had uncovered something that Wendy had done. Again he did not say what, and nothing of that kind was ever identified. The third respondent informed Wendy that he did not want to speak to her again and that she should speak to him through Janine in the future. I find that this extraordinary severing of relations with his eldest daughter, with whom he had always had good relations in the past, was entirely without a rational basis;

- (c) on 9 November 2014, the third respondent said that Wendy was very evil. She asked if they could talk about it and he said she should ring Janine, that he could not believe the things she was doing to him (she had not done anything since his statement that he did not want to speak to her again). He said that someone had been forging his signature (which was not true)²⁸ and that she had put all false charges against him (another untrue assertion). Wendy said she did not know what he was talking about;
- (d) on 23 November 2014, the third respondent said that he was confused why Wendy had not spoken to him for months (which was not true). He stated that Wendy was attempting to transfer him into a home (which was also not true but seems to have been a suggestion either made to him or encouraged by Janine and Glenn Blumke); and
- (e) on 27 November 2014, the third respondent repeated the sting of the accusation that somebody was going to try to put him into a home and said that he had discussed a form found in his home about that subject with Wendy before. She said that he had not and she knew nothing about it, which he seemed to accept, and she ended the conversation on the basis that she would speak to him soon;
- (f) on 28 November 2014, he said that he knew exactly what evil things Wendy was doing and that she had been at it for a while. He said that she needed to withdraw the case she had against him (no case had been threatened at that time). He said that his solicitors had informed him about the case. Wendy said that she did not have any case against him (as then was the fact) and whoever was telling him that was lying. He said that Wendy was going to go ahead with something more horrific and that his solicitors had already asked her solicitors to withdraw. He said that he had been given this information by Janine who had told him that he had to believe it. He said that he did not want to be put in the madhouse but that Wendy was fighting to achieve this (another untrue statement). Wendy said that she wanted him to stay in the Family home. The third respondent said that he wanted to believe that but he could not in the light of all the evidence (of which, in fact, there was none).

[138] After 29 November 2014, when the third respondent went to stay in Janine and Glenn Blumke’s home, Wendy tried to call him on numerous occasions, until 12 December 2014, but all calls went through to his voicemail. She did not speak to him again after that because he would not take her calls or he was not told of her attempts to contact him.

²⁸ This may have been a reference to the authorities signed by the third respondent dated 19 and 20 May 2014 that Jon Campbell could obtain information from the third respondent’s stockbroker and accountant. If so, it shows that already the third respondent was prepared to make an allegation of forgery to back up his untrue accusation that Jon Campbell had not been given authority.

- [139] Having summarised the actual contacts between Wendy and the third respondent, it is necessary to mention some further factual context. Of course, the third respondent was not talking to Wendy only, and I will in due course refer to his conversations with Suzanne and Jon Campbell, as well as some other events.
- [140] Another point to be made about the 12 October 2014 conversation is that at the end of the conversation she noted that the third respondent said to her that he was not doing anything to hurt her. Yet, as mentioned previously, on 9 October 2014 the third respondent passed resolutions as the sole director of the first respondent that it was confirmed that Wendy and Suzanne were not beneficiaries of the Clacher Family Trust, that it was confirmed that any child or grandchild of Wendy or Suzanne, and that any spouse of Wendy or Suzanne or any spouse of any child of Wendy or Suzanne was not a beneficiary of the Clacher Family Trust. It is noteworthy too that by 12 October 2014 the third respondent had twice consulted Luke Comino, Solicitor, or his staff, and had not sought or received any advice about either the 27 June 2014 resolutions or the 9 October 2014 resolutions, so far as the evidence reveals. Glenn Blumke says that he prepared the 9 October 2014 resolutions, as he did in the case of the 27 June 2014 resolutions.
- [141] Glenn Blumke says that in early October 2014, the third respondent said to him that he was upset because Jon Campbell had said to him that the money from the sale of his Zurich investment was held with Chris Burrell (the first and third respondent's stockbroker up to that time) and Jon Campbell had been rude to him over the phone, so that he wanted to be sure Wendy and Suzanne were not beneficiaries of his trust and had no involvement with his business affairs and he wanted it re-confirmed that they had no role.
- [142] Assuming, for the purpose of analysis, that the third respondent said those things to Glenn Blumke, they make no sense in terms of any rational basis by the third respondent for his decision to pass the resolutions to confirm the exclusion of Wendy or her family as beneficiaries of the Clacher Family Trust. His expressed displeasure was with Jon Campbell. But, in any event, I am not prepared to accept Glenn Blumke's evidence that that was what the third respondent said.
- [143] My rejection of his evidence is informed by conduct by him at the time that I consider to have been dishonest. On 10 September 2014, Suzanne and Janine had argued over the telephone. Glenn Blumke telephoned Suzanne about an hour later. Suzanne recorded the conversation. Summarising, Glenn Blumke attempted to explain a number of things to Suzanne in an effort to smooth things over. By this time, the third respondent's dissatisfaction with Jon Campbell's report and the inquiries he had made for that purpose had been made known by the third respondent and Janine to Suzanne and Jon Campbell. Glenn Blumke sought to lay the blame for the third respondent's mistrust at Chris Burrell's door. However, his comments showed that he was aware that the third respondent did not remember what had previously been discussed about Jon Campbell's proposed report. More importantly even, he sought to reassure Suzanne's concern about what was, or might be, happening by saying about the third respondent:

“I actually think he just, he just gets stressed. He just doesn't fully understand what's going on or what people are doing and he's... You know like if he's talking to you or Wendy about anything Janine's doing or I'm doing... we're doing nothing, we're just doing the same things as we've always ever done.”

- [144] The last sentence was grossly misleading and not true. On 27 June 2014, Glenn Blumke had prepared the deed of variation of trust and the 27 June 2014 resolutions for the third respondent to remove both Wendy and her family and Suzanne and her family as beneficiaries of the Clacher Family Trust, leaving Janine and Glenn Blumke and their children as the sole beneficiaries and he had retained the signed resolutions after that.
- [145] My rejection of Glenn Blumke's evidence is also informed by another aspect of his explanation of the 27 June 2014 resolutions. He says that at the time of their making the third respondent said to him to keep the 27 June 2014 resolutions confidential, that the third respondent could reinstate Wendy and Suzanne and their families again if he wished to, the Clacher Family Trust had no net asset value and the money in the trust would go to his estate and be divided equally between his daughters, so that Wendy and Suzanne would not be affected financially by being removed as beneficiaries.
- [146] I find this evidence by Glenn Blumke to be humbug. First, why the third respondent might have thought it appropriate to remove them at some time in the future to restore Wendy and Suzanne and their families as beneficiaries was not explained. Given that they were only discretionary objects of the Clacher Family Trust in the first place, and had not received any distributions as beneficiaries from it in prior years, what was to be achieved by that strategy? Second, as to the suggestion that the whole exercise of removal was of no substance, because the liability of the Clacher Family Trust to the third respondent would see its assets utilized to pay that debt to his executor to be distributed to his daughters equally under his will, the obvious question is why the third respondent would have gone to the trouble of removing Wendy and Suzanne and their families as beneficiaries by the 27 June 2014 resolutions at all?

New power of attorney

- [147] As appears from the discussion to this point, the subject matter of difference between Wendy and the third respondent was his stated intention to change his 2005 power of attorney. The third respondent told Wendy on 11 September 2014 that he had been to see a solicitor (in fact he saw a "paralegal", also described as a "legal secretary" but who was not said to have any legal qualifications who wrote the letter to Wendy on Luke Comino Solicitor's letterhead dated 12 September 2014 whilst he was on holidays).
- [148] Wendy tried to dissuade the third respondent from the proposed new power of attorney, on the ground that his accusation against her was false.
- [149] On 16 September 2014, the third respondent went to see Dr Saleh to assess his competence. This was the result of the discussions he had with the "paralegal" on 11 September 2014. Dr Saleh had no recollection of the consultation but formed the opinion which he recorded that the third respondent was competent, after administering some testing.
- [150] As previously mentioned, on 17 September 2014, the third respondent wrote a letter to Luke Comino, Solicitor, that was typed and I infer drafted by Janine or Glenn Blumke. The letter stated that as the third respondent had explained at the meeting on 11 September 2014 (which was not in fact with Mr Comino), it was the third respondent's decision to invite Janine to be actively involved in assisting in all aspects of his business, including interactions with his accountant, stockbroker and all of his real estate requirements and

that it was his considered choice that solely Janine work with him on his business related matters.

- [151] This letter was much more than a defensive step against the possibility of Wendy moving (presumably with the assistance of Suzanne) to sell the Family home under the 2005 power of attorney, and the response that a new power of attorney which would require unanimous agreement of all three daughters to any exercise of a power of attorney. There is no suggestion that Wendy (or Suzanne) was told of its contents. It foreshadowed what was to come and, in my view, also puts the lie to any suggestion that the next steps were taken in response solely to an alleged threat by Wendy on 28 September 2014 that she was now in a legal dispute with the third respondent and Janine. I found Janine's answers to questions she was asked about this letter in cross examination to be deliberately evasive.
- [152] After the conversation between the third respondent and Wendy and Suzanne on 28 September 2014, as already mentioned, on 29 September 2014 he went with Janine to see Luke Comino. Luke Comino says that the third respondent said that Wendy and Suzanne said the previous day that they were in a legal dispute with him. I have found that Wendy did not, in fact, say that to the third respondent. Mr Comino was not cross-examined, but that does not alter my view about that finding. I accept that before their conversation with the third respondent on 28 September 2014, Wendy and Suzanne had arranged to get legal advice about their position over the power of attorney. I also accept that they informed the third respondent during the conversation that they were planning to do so. But I do not accept that Wendy said that they were in a legal dispute with the third respondent. It was not true at the time and there was no reason to say so.
- [153] As the transcripts of the conversations between Wendy and the third respondent subsequently show, he had fixed in his mind that they had "brought charges against" him or presented some case against him which he demanded they withdraw. No such case was brought or threatened at the time, although according to what the third respondent said he was informed to the contrary by his solicitors and by Janine. Yet neither of them backed that up at all in their evidence.
- [154] The immediate upshot of meeting with Luke Comino on 29 September 2014 was that the proposal made on 12 September 2014 for a joint power of attorney exercisable by unanimous decision of Wendy, Suzanne and Janine was abandoned by the third respondent. The third respondent instead executed a sole power of attorney in favour of Janine. An unsatisfactory aspect of the evidence is that the affidavit of Mr Comino selectively recounts parts of the 29 September 2014 meeting, whilst purporting to withhold evidence of other parts of the meeting on the ground of legal professional privilege of the third respondent. The affidavit was prepared by the third respondent's solicitors before the trial but by the time it was deployed in the proceeding by the second respondent, the third respondent was taking no further part.
- [155] Mr Comino swears to it not being apparent to him that Janine or Glenn Blumke had any effect on the third respondent adverse to his affairs. But he does not say that he was aware of either the 27 June 2014 resolutions or the 9 October 2014 resolutions. They were most likely kept a secret. By late September 2014, I doubt that the third respondent even remembered the 27 June 2014 resolutions.

- [156] As previously mentioned, on 2 October 2014, Luke Comino Solicitor wrote letters to Wendy and Suzanne, informing them that the 2005 power of attorney had been revoked. He did not say what had been done in its place.
- [157] Also as previously mentioned, on 10 October 2014, Mr Comino received a telephone call from Kylie Tate, a lawyer from Hynes and Co. Mr Comino says a number of things as to the effect of the conversation. One is that Ms Tate said that she had been representing Wendy in a matter concerning the third respondent. I find that was not the fact, as the first consultation of any lawyer by Wendy was on 1 October 2014, and there were no dealings by Ms Tate where she had been representing Wendy before this conversation with Mr Comino. Mr Comino says that Ms Tate on the one hand said that the third respondent did not have legal capacity to execute the new power of attorney and on the other hand that she was not trying to prevent the third respondent from exercising his legal rights. Whatever be the fact of the conversation, it was not the fact that Wendy or Suzanne said that the third respondent lacked legal capacity, as evidenced by the email sent by Suzanne to Mr Comino on 26 September 2014, and her follow up email to him on 1 October 2014, to which he did not respond.
- [158] In any event, the 9 October 2014 resolutions were made on the day before, so nothing about the conversation between Mr Comino and Ms Tate on 10 October 2014 precipitated them. And it does not appear that anyone informed Mr Comino about those resolutions on 10 October 2014. On the contrary, Mr Comino says that on 10 October 2014, he met with the third respondent again and discussed with him the telephone conversation with Ms Tate earlier that day. The third respondent expressed an intention (that is a future intention) to put in place further protections to exclude Wendy, Suzanne and their family members from access to or control of his financial and personal affairs. It is inexplicable that the third respondent, if he was truly in control of those affairs, did not mention to Mr Comino the resolutions of the day before, or those of 27 June 2014, yet they are not mentioned. Mr Comino says that he recommended to the third respondent to consult Dr John de Groot who he knew represented the third respondent in relation to his will and estate matters.

Suzanne and the third respondent

- [159] In order to deal with the facts in dispute in relation to the third respondent's relationship and dealings with Suzanne, it is also necessary to deal with his relationship and dealings with Jon Campbell. Between approximately 17 May 2014 and 4 October 2014, Jon Campbell had relevant contact with the third respondent and dealings with him as well as with Suzanne and to a comparatively minor extent, Janine and Glenn Blumke, that affected events.
- [160] At the outset, it is necessary to refer to serious allegations as to Jon Campbell's past, his past dealings with the third respondent and Pauline, and his dealings and contact with the third respondent between 17 May 2014 and 4 October 2014, made by the third respondent and Janine and Glenn Blumke. I reject all of those allegations and I find that they were made in a deliberate attempt to falsely smear his character and reputation for the purposes of this proceeding. Not one of the serious allegations was ultimately backed up with any substantial evidence. It will be necessary to turn to some specific matters in the course of this section of my reasons.

- [161] Like Wendy, Suzanne enjoyed a close relationship with her parents while both were alive, and with the third respondent until things began to fall apart in early September 2014, so far as she was aware.
- [162] Suzanne and Jon Campbell were married in 1987. At that stage, Suzanne was pursuing a recording career as a singer, and Jon Campbell managed her career. From about 1992, Jon Campbell pursued a career in the administration and management of Blue Care Nursing, and from 2009 was employed as the Chief Executive Officer of Carinity Baptist Community Services (“Carinity”). Carinity operates in the area of aged care, including the provision of nursing home services.
- [163] For a time during the 1990s, Jon Campbell carried on business as a financial adviser. He held a university degree in accounting and other tertiary qualifications that qualified him to do so. During that time, the third respondent made two investments in investment trusts recommended by Jon Campbell. One was profitable. However, the third respondent said that he made an investment of \$100,000 which he lost entirely. I am not satisfied that he did so, although it is possible that he lost money on the second investment. However that may be, it was not a matter raised, as I find, until the affidavit evidence of the respondents prepared in this case for the purpose of traducing Jon Campbell’s reputation and suggesting that the third respondent did not like him. My reticence to accept the third respondent’s evidence in that respect is informed by the other outlandish allegations made by him, including that at some undefined point in the distant past he paid a sum of money to “keep Jon Campbell out of jail”, which was not supported by any objective evidence, was denied by both Suzanne and Jon Campbell and of which no other witness professed any knowledge. It was an allegation that should never have been made.
- [164] Suzanne’s evidence supports Wendy’s evidence as to the closeness of the relationships of the Clacher family until the events of this case. The contrary evidence of Janine is contradicted not only by the affidavit evidence of the applicants’ witnesses but also by documentary evidence in the form of photographs, as well as the apparently friendly tone of numerous text messages that passed between Suzanne and Janine during April, May and June 2014, before any dispute emerged. It is unnecessary to recount those details in these reasons.
- [165] An appropriate starting point for the necessary findings is at April 2014. At that time, Chris Burrell had been the third respondent’s stockbroker for many years. As well, he was Wendy and Mac Hook’s stockbroker. He had given them financial advice about establishing a self-managed superannuation fund. Wendy and Mac Hook intended to do so because of the potential taxation advantages to them if they contributed sums to such a fund from their share portfolio or if they retired and sold the optometry practice.
- [166] In 2013, Suzanne had dealt with Chris Burrell’s firm in relation to the third respondent’s electronic access to information about his share portfolio. The third respondent had asked Suzanne to assist him with that, perhaps not surprisingly for an old man who was not familiar with online platforms provided by stockbroking firms nowadays. However, Jon Campbell had never spoken to or met Chris Burrell.
- [167] Chris Burrell proposed to the third respondent that he should make financial distributions to his three daughters (or possibly entities associated with them) as a method of achieving

greater total wealth than continuing with the then current investment structure and estate plan being followed by the third respondent.

- [168] On 29 April 2014, Chris Burrell and, I infer, his associate Eric Harrison, met with Greg Roberts of Hoffman Kelly, the third respondent's accountant. The proposal that was discussed was reduced to a set of meeting notes that Suzanne forwarded to the third respondent by email on 11 May 2014.
- [169] In April or May 2014, Suzanne informed Jon Campbell of the proposal and that Chris Burrell had recommended that a self-managed superannuation fund be set up for each of his daughters. Suzanne asked Jon Campbell to help by explaining the proposal to the third respondent and Janine.
- [170] On 6 May 2014, there was a meeting at the Family home between the third respondent, Janine, and Chris Burrell and another associate of his. Greg Roberts was at a seminar that day. No decisions were made at that meeting.
- [171] Glenn Blumke says that after that meeting, he undertook research and spoke to Greg Roberts and that the third respondent decided there was no point in making any changes. I do not accept that evidence to the extent that it suggests that the third respondent made any decision of that kind before 19 or 20 May 2014, because it is inconsistent with what happened in the days following 11 May 2014.
- [172] In the week of 11 May 2014, Suzanne spoke to the third respondent, Wendy and Janine separately to ask whether they thought it would be helpful for Jon Campbell to prepare a report for the third respondent to analyse Chris Burrell's recommendations. Each of them agreed.
- [173] On 17 May 2014, Jon Campbell met with the third respondent at the Family home. They discussed the third respondent's investments and tax situation. Jon Campbell suggested that he would report upon his views about Chris Burrell's recommendations and make any alternative recommendations in the form of a written report to the third respondent.
- [174] On 19 May 2014, a teleconference was held between Wendy and Mac Hook, Suzanne and Jon Campbell and Janine and Glenn Blumke. Jon Campbell asked whether everyone agreed for him to prepare the report (being the one he had discussed two days earlier with the third respondent). Jon Campbell said that he would speak to Chris Burrell and Greg Roberts to obtain the third respondent's financial details and would get some information from Janine and Glenn Blumke, who had been managing the third respondent's rental properties as well as dealing on his behalf with his accountants and stockbrokers.
- [175] On 19 May 2014, Janine sent an email to Suzanne attaching financial records of the third respondent for the 2011 and 2012 financial years. The email said that the information may be of some value in answering a few of Jon Campbell's questions, as it at least showed some background as to company structure, etcetera.
- [176] On 19 May 2014, while Suzanne and Jon Campbell were with the third respondent, the third respondent was speaking to Chris Burrell on the telephone about cancelling the appointment made for the third respondent to see Mr Burrell the following day. That was the first conversation that had ever occurred between Jon Campbell and Chris Burrell.

- [177] Originally, it had been proposed by Chris Burrell that he would meet with the third respondent and with Wendy and Mac Hook, Suzanne and Jon Campbell, and Janine and Glenn Blumke. The third respondent did not attend the meeting, and neither did Janine or Glenn Blumke, who had no interest in establishing a self-managed superannuation fund or at least in doing so through Chris Burrell's offices.
- [178] On 19 May 2014, when Suzanne and Jon Campbell visited the third respondent at his home, Suzanne typed an email to Chris Burrell entitled "Authorisation of Jon Campbell" in the third respondent's presence. She printed out the email and the third respondent read it and signed it at the bottom. The email gave permission for Jon Campbell to request information from Chris Burrell.
- [179] On 20 May 2014, Suzanne went to the third respondent's home with a printed copy of a similar letter she had drafted to Greg Roberts, authorising him to give financial information to Jon Campbell. The third respondent signed it. Suzanne Campbell sent it (an unsigned copy) to Mr Roberts from the third respondent's email account.
- [180] The originals of both the authorisations were produced at the trial and made exhibits for identification. The second respondent did not challenge their authenticity by evidence.
- [181] On 20 May 2014, a further teleconference occurred between Wendy and Mac Hook, Suzanne and Jon Campbell and Janine and Glenn Blumke, concerning the proposed report by Jon Campbell.
- [182] Glenn Blumke says that earlier that afternoon he had spoken to the third respondent who said that Chris Burrell's review would not be proceeding and was off the table.
- [183] Glenn Blumke says also that at the teleconference that evening, Jon Campbell did not mention that he intended to do any review of the structure of the third respondent's financial affairs or to prepare any report. I reject that evidence. Glenn Blumke's subsequent conduct in sending by email a number of documents requested by Jon Campbell to prepare his report, such as rental income statements and expense statements, is inconsistent with Jon Campbell not preparing such a report. And it is inconsistent with it having been in effect agreed on 20 May 2014 that there would be no review of the third respondent's finances by Jon Campbell. The further suggestion made by Janine and Glenn Blumke is that Jon Campbell said that he would do an estimate of the third respondent's taxable income for 2013/2014 year. I reject that was what was proposed or discussed at the teleconferences on 19 May and 20 May 2014. In reaching that conclusion, I am informed by Mac Hook's affidavit evidence as to what was discussed which was not challenged as well as the evidence of Wendy, Suzanne and Jon Campbell.
- [184] Suzanne and Jon Campbell met with Chris Burrell on 20 May 2014 before the second teleconference that evening. That was the first time Jon Campbell met with Chris Burrell. He told Chris Burrell that the third respondent and the family had agreed for him to do a review of the third respondent's finances and the family wanted him involved in any discussions or meetings with Chris Burrell and Mr Roberts about any proposals they considered worthwhile. Having regard to what was discussed between Jon Campbell and Chris Burrell at that meeting, it is also quite unlikely that Jon Campbell said at the second teleconference on 20 May 2014 that he was merely doing an estimate of the third respondent's tax position at the 2013/2014 financial year.

- [185] I do accept, however, that the third respondent was unhappy with Chris Burrell, in particular over the quantum of the fees that had been quoted for his firm to do the suggested work on financial restructuring and because he did not want to distribute \$1.35 million to his daughters by realising assets that he or the first respondent as trustee of the Clacher Family Trust held. The third respondent's dissatisfaction with Chris Burrell became the subject of dealings between Suzanne and Janine, evidenced by text messages that passed between them over the draft of a letter to be sent to Chris Burrell informing him that the third respondent did not intend to proceed with his proposals, and a meeting that was held between Wendy, Suzanne and Janine on 27 May 2014 over the third respondent's ongoing issues concerning Chris Burrell.
- [186] On 25 May 2014, having consulted extensively with Janine beforehand, Suzanne sent an email to Chris Burrell in the following terms:

“Dear Chris,

Thank you for meeting with Jon and I on 20 May to discuss your thoughts regarding possible options for restructuring Dad's investment portfolio.

Following family discussions, I am writing to advise you that Dad has decided to defer all further actions pertaining to any restructuring of his investment portfolio, including any distribution of assets to superannuation. Once we have been able to estimate Dad's taxable income for the 2013/14 year and we have had discussions with the accountant, Dad will be in a better position to determine whether there is a need or desire for any restructuring or distribution.

At our last meeting, you agreed that Jon would meet with you and Greg Roberts to discuss various options in preparation for development of written proposals to be discussed at a meeting of the whole family. Given the circumstances, there is no need for any further work to continue in relation to Dad's affairs and therefore no need for Jon and me to meet with you on June 10th.

It is Dad's wish that Wendy, Janine and I are fully across all communications with Burrell Stockbroking so that together we can make informed decisions about family company and financial matters.

As Wendy, Janine and I hold a power (sic) of attorney for Dad with decisions made by majority, any proposals you have to restructure his financial affairs should be directed to all of us by contacting me via phone or email. If there needs to be verbal communication, please phone me directly, and not Dad.

I also request that all reports and portfolio statements sent to Dad by email are also CC'd to myself, Wendy, and Janine. I believe you already have our contact details but please let me know if you require anything further.

May I take this opportunity to thank you most sincerely for your suggestions and preliminary advice.

Kind regards,

Suzanne Campbell”

- [187] On 27 May 2014, Wendy and Suzanne met with Janine at a café. I reject that at the meeting, Wendy or Suzanne said to Janine that she had been in control of the third respondent for long enough and the time had come for the three of them to take over all decision making for his wealth and property portfolio and leave him out of it altogether.
- [188] By her “amended” affidavit, Janine said that was what she informed the third respondent that Wendy and Suzanne had said. If Janine told the third respondent that, it was false. If Janine told the third respondent that Suzanne had asked what power Janine had over his properties, that was false. It was also false for Janine to say to the third respondent that Wendy and Suzanne wanted equal control. However, if Janine did say those things to the third respondent, it might go some way towards explaining how he came to make the 27 June 2014 resolutions.
- [189] Between 28 May 2014 and 8 June 2014, a number of texts and email messages were exchanged between Suzanne and Jon Campbell, and Janine and Glenn Blumke as to details of the third respondent’s financial information.
- [190] By 26 June 2014, the third respondent had discussed with Glenn Blumke the third respondent’s dissatisfaction with Jon Campbell’s investigations for the purposes of the report. In his written instruction to Glenn Blumke of that date, he stated that he had never authorised Jon Campbell to speak to his accountant and stock broker. That statement was false. The likely inference is that the third respondent had forgotten that he had done so on 19 and 20 May 2014. It appears that Glenn Blumke made no effort to inform the third respondent about what was discussed in the 19 and 20 May 2014 teleconferences.
- [191] As previously discussed, the next day the third respondent proceeded to make the 27 June 2014 resolutions, by which he also removed Suzanne and Jon Campbell and their children as beneficiaries of the Clacher Family Trust. However, by this time, no suggestion of any dissatisfaction by the third respondent or Janine or Glenn Blumke with Suzanne and Jon Campbell’s conduct had surfaced. Text messages passed between Suzanne and Janine in a friendly fashion over family matters.
- [192] On 4 August 2014, Chris Burrell sent a letter to the third respondent. It seems likely that the letter was sent on the same day as a hard copy of the third respondent’s monthly report as to his share portfolio.
- [193] On 6 August 2014, Janine read the letter from Chris Burrell to the third respondent and spoke to Suzanne. Shortly afterwards, she sent an email to Suzanne complaining that Chris Burrell could not take no for an answer (to his April and May proposals) and did not copy anything to the other family members as he had been asked to do. She continued that:
- “Short of sacking Chris now, Dad is prepared to keep him on for the short term, but only as his stock broker. Here is the response letter that Dad wants to send to Chris to make it very clear as to what his role is limited to.”
- [194] On the same day, Suzanne responded, requesting that the proposed draft response letter not be sent yet. In the afternoon, Janine sent a further draft to Suzanne which she said was “softer and nicer”, but saying that the third respondent wanted Chris Burrell to have nothing more to do with his company arrangements, although he was agreeable to adding a few nice words, if the letter makes Suzanne and Wendy happier. That evening, Suzanne responded saying that the nicer letter, she felt, was still a bit harsh, although she was

cranky about Chris Burrell's letter too. She proposed that any question of termination be kept until any further "strike" by Mr Burrell. She attached a draft of her own. Late that evening, Janine responded with further suggestions.

- [195] On 8 August 2014, Suzanne and Jon Campbell visited the third respondent at the Family home. Jon Campbell saw that a copy of the up to date share portfolio was on the kitchen table. He asked the third respondent whether he could take a copy. The third respondent agreed. The third respondent did not say anything then about Jon Campbell not being welcome to look at his financial information.
- [196] Also on 8 August 2014, Suzanne sent an email to the third respondent enclosing a copy of her email to Chris Burrell sent on 25 May 2014 explaining that the third respondent did not want to proceed any further with restructuring ideas from him and to protect the third respondent from further phone calls from Chris Burrell.
- [197] At 4:31pm on 8 August 2014, an email was sent from the third respondent's email to Chris Burrell in the terms that had been proposed by Suzanne to Janine in Suzanne's email of the previous evening. The upshot was that Mr Burrell was informed that the third respondent's position had not changed from the view expressed by Suzanne's email to Mr Burrell sent on 25 May 2014 and that if he changed his mind at any time, either he or his daughters who were his attorneys would contact Mr Burrell.
- [198] This email is inconsistent with a number of statements made by Janine as to the third respondent's attitude. First, according to Janine's evidence, on 5 June 2014 or thereabouts, the third respondent had expressed anger about the email sent by Suzanne to Mr Burrell on 25 May 2014, among other things, but no mention of that was made on 7 or 8 August 2014 in the email exchanges between Janine and Suzanne. Second, Janine swears that when she read the letter from Chris Burrell to the third respondent dated 4 August 2014, the third respondent said that she should not give the letter to Suzanne and that she did not give it to Suzanne. Yet, the correspondence on 7 August 2014 plainly shows that she had specifically raised with Suzanne a proposed response to the letter and that emails passed between herself and Suzanne and the third respondent, including the further proposed draft by Suzanne that was sent to Chris Burrell on 8 August 2014. Janine's explanation is that the third respondent, after the event, said that he had not realised what was in the email sent to Chris Burrell on 8 August 2014, but there is no explanation as to why there could have been any confusion about that, as Suzanne had sent it to Janine for discussion the evening before and raised the matter with the third respondent in person on 8 August 2014.
- [199] I also reject Janine's evidence that in late August 2014 the third respondent said to her that Wendy said to the third respondent that she wanted to take over doing management work on his properties, or questioned the third respondent on how much Janine was paid to look after his properties. I do not believe that the third respondent said that and I also do not accept that Wendy ever said it to the third respondent.
- [200] On 31 August 2014, Greg Roberts raised and sent an invoice addressed to the third respondent at the Family home. The work description included on 9 July 2014 a telephone call to provide purchase price and dates for each property including research, on 5 August 2014 a meeting with Jon Campbell regarding structure and on 6 August 2014 a telephone call with Glenn Blumke. The amount was \$748.00. Within a week, the third respondent sent a handwritten response to Greg Roberts, as follows:

“Greg,

I have not authorised this work, except for Glenn to discuss Burrell. I will pay that. Please send separate account.”

- [201] Glenn Blumke says that on 8 September 2014, he received a copy of the invoice and the third respondent’s response from Greg Roberts and telephoned Greg Roberts who said that he never saw a signed authority to provide information. Jon Campbell agrees that he did not do so, although he had the authorities, because he was not asked for them and did not think to raise them. In any event, Glenn Blumke says he told the third respondent that Greg Roberts was apologetic. Glenn Blumke did not tell the third respondent, as was the fact and he knew, that from late May 2014 Jon Campbell had been gathering information for his report in accordance with what had been agreed then.
- [202] Glenn Blumke says further that in late June 2014 he did inform Jon Campbell that the third respondent did not want Jon Campbell obtaining any information about his affairs. I reject that evidence. Jon Campbell agrees that Glenn Blumke telephoned him in June or July 2014 to say that the third respondent could not remember what he was doing and asked why Jon Campbell was digging around in his affairs. Jon Campbell said in his affidavit and cross-examination that Glenn Blumke said to Jon Campbell that he had reminded the third respondent and that all was okay. I accept Jon Campbell’s evidence on that point.
- [203] So far as Suzanne was concerned, the first sign of the trouble which resulted in this case came on 6 September 2014. On that day, she called the third respondent to remind him that the following day was Fathers’ Day and there would be a gathering at the Family home. The third respondent said to her that:
- (a) he was unhappy with Jon Campbell asking his accountants questions regarding his financial affairs. He said that Jon Campbell was trying to find out every cent he was worth and the only reason that Jon required this information was so that Jon would know how much would be coming to him in the estate;
 - (b) (after Suzanne had responded that Jon was preparing the report that the third respondent had agreed to) he had forgotten he had agreed to that, that he did not want the report to cause any confusion or family arguments;
 - (c) Wendy had said that she could sell the Family home from under the third respondent and that Wendy had the power of attorney and ability to do it any time. The third respondent could not allow Wendy to think that she had power to be held over his head, and that he would have to wipe that;
 - (d) (in response to Suzanne asking where that information had come from and whether he had been speaking to Janine about it) he speaks with Janine and her husband all the time and that Wendy’s comment was made a couple of weeks ago, when Wendy was sitting at his kitchen table.
- [204] Suzanne assured the third respondent he had nothing to worry about and that they would sort out his concerns. She made a note shortly afterwards, which was the first note of any conversation with her father, because the conversation was unexpected, aberrant and disturbing.
- [205] Jon Campbell heard part of what Suzanne was saying to the third respondent over the telephone. Prior to that phone call, the third respondent had never accused Jon Campbell

of misconduct. Jon Campbell was upset. His financial report was all but complete. He resolved to complete it, so that he could show the third respondent the benefit of what he had been doing.

- [206] Shortly after that telephone call, Suzanne called Wendy and told her what the third respondent had said. Wendy said she had not said anything to the third respondent regarding the 2005 power of attorney or her powers under it. Wendy expressed the view that the issue was just another bee in the third respondent's bonnet. They agreed they did not want to ruin Fathers' Day by raising the issue the next day and Wendy said she would speak with the third respondent during the week regarding what he had said about her, as I have found that she did.
- [207] On 7 September 2014, at the Fathers' Day gathering, Glenn Blumke accused Chris Burrell of being a criminal and a liar and that his advice to the third respondent was false and based on self-interest to generate work for himself. That conversation was heard by Suzanne and Jon Campbell. Jon Campbell said that Chris Burrell was not a criminal.
- [208] On 9 September 2014, Jon Campbell completed the financial report. It is in detailed and unexceptional terms and corresponds to the description of what Jon Campbell said was agreed to by the third respondent on 17 May 2014 and discussed and agreed to between Suzanne and Jon Campbell, Wendy and Mac Hook, and Janine and Glenn Blumke on 19 and 20 May 2014. It recommended a restructuring of the methodology of making distributions of income (not capital) from the Clacher Family Trust that would result in an overall tax saving of approximately \$60,000 in respect of distributions of approximately \$30,000 to each of the daughters that would result in a net after tax difference of approximately \$32,000. It did not recommend a distribution of capital or sale of assets like that proposed by Chris Burrell up to May 2014.
- [209] On 9 September 2014, Jon Campbell telephoned the third respondent to inform him that he had completed the report. The third respondent said that he did not want to see the report and that he was unhappy with Jon Campbell for asking questions of his accountant and that he did not want to change anything. Jon Campbell reminded the third respondent that on 8 August 2014, he had given Jon Campbell the up to date share portfolio document. The third respondent said that he was very happy with Janine and Glenn Blumke looking after his business and that he did not want any trouble. The third respondent agreed for Jon Campbell to visit him. He did not want to see the report, but agreed to have a discussion about Jon Campbell's findings.
- [210] On 9 September 2014, Suzanne and Jon Campbell went to the Family home to discuss the findings. Jon Campbell gave the third respondent an overview of the report. The third respondent asked questions. One of the subject matters discussed was whether a Zurich investment bond should be redeemed in the third respondent's best financial interests. Jon Campbell recommended that. The third respondent said that Janine had said so too. Jon Campbell asked whether the third respondent wanted that done and he said yes.
- [211] Jon Campbell asked the third respondent about the invoice he had received from Greg Roberts for the time Jon Campbell had spent meeting with him. Jon Campbell asked if he could review a copy of the invoice because he had only spent 40 to 45 minutes meeting with Greg Roberts. Jon Campbell and the third respondent agreed to have a family meeting regarding the financial report so that it could be discussed in detail.

- [212] On 10 September 2014, Jon Campbell went to the Family home with the forms to redeem the Zurich investment bond which the third respondent signed.
- [213] Jon Campbell tried to arrange a meeting for Friday, 12 September 2014 to discuss the report. Janine and Glenn and Blumke did not want to meet on that day, and the third respondent did not want the meeting without their presence. Ultimately, the meeting never occurred and a copy of the report was never provided to the third respondent.
- [214] On 10 September 2014, Suzanne telephoned Janine to discuss a time to have the proposed meeting regarding Jon Campbell's report. Janine said that she would be unavailable to attend a family meeting for three weeks. Suzanne queried Janine about the invoice issued by Greg Roberts. Janine said she did not feel comfortable to say anything and did not want to cause family trouble. Suzanne queried Janine about the letter written by the third respondent to Greg Roberts regarding the invoice. Janine responded by querying how Suzanne knew about that.
- [215] Suzanne asked Janine whether she knew anything about the comments that Wendy had supposedly made regarding her powers under the 2005 power of attorney. Janine said that the third respondent had been very upset over the past few days. Janine said that she had advised him that if he wanted to do something to stop her (Wendy) being able to do that, he could either cancel the power of attorney or change it to make it unanimous. Suzanne said that Wendy had not said anything to the third respondent regarding her powers under the 2005 power of attorney, but that even if she had, the power would not permit Wendy to sell the Family home on her own. Janine then said she had to go to collect her son from school.
- [216] After five minutes, Suzanne called Janine a second time. Janine was in her car. During that call, Janine said that she could not talk. Suzanne said that she would hold on. After a minute or so, Suzanne asked if Janine was able to talk. Janine then started yelling and swore at Suzanne. She said that she was "sick of all this" and had never seen a cent of money from the third respondent from all the years she has been looking after his business for him. She told Suzanne to "piss off" and the call was disconnected.
- [217] Suzanne called back. Janine said that she was angry. Suzanne asked her to apologise for swearing at Suzanne. Janine swore at her again and ended the call.
- [218] That was the last conversation between Suzanne and Janine until 10 September 2015.
- [219] On 11 September 2014, after Wendy spoke to the third respondent, she telephoned Suzanne and informed Suzanne of the conversation.
- [220] Suzanne received a letter from Luke Comino Solicitor dated 12 September 2014 in the same terms as the one sent to Wendy.
- [221] On 14 September 2014, Suzanne went to see the third respondent at the Family home. She had heard nothing from the third respondent since 10 September 2014. Suzanne had decided to record her conversations with the third respondent in the light of events. During the meeting:
- (a) Suzanne said that she wanted to speak to the third respondent regarding the events that had occurred over the past week, and in particular, the letter from Luke Comino's office;

- (b) she asked what the third respondent remembered of those events, and he said that he had been to see a lawyer regarding the 2005 power of attorney;
- (c) she asked why he had been to see a lawyer regarding the 2005 power of attorney and he said that he was advised that it required refreshing;
- (d) she asked the third respondent to explain the changes that were being made to the power of attorney, and he said that she would need to ask the lady solicitor because he did not know;
- (e) he said that Luke Comino was Janine's solicitor but that he had also engaged him previously;
- (f) Suzanne said that she was upset that he had visited a solicitor without telling Wendy or her, and the third respondent said that he just felt it should be done;
- (g) Suzanne sought to explain her view of the impracticalities posed by a new enduring power of attorney if any one of Wendy, Janine or she were unavailable and that decisions could no longer be made unless he was assessed as being incapable - the third respondent told her to speak with the nice lady solicitor;
- (h) the third respondent said he would not have amended the 2005 power of attorney if the lady solicitor had informed him or advised him that Wendy did not have the power to sell the Family home unilaterally;
- (i) the third respondent said that the solicitor had advised him that nobody could have a copy of the power of attorney and that the solicitor was holding it for safe keeping.

[222] On 26 September and again on 1 October 2014, Suzanne sent an email to Luke Comino Solicitor regarding the letter she received dated 12 September 2014. She did not receive a response.

[223] At about that time, Wendy and Mac Hook and Suzanne and Jon Campbell discussed seeking independent legal advice regarding the proposed new power of attorney. Jon Campbell organised for them to consult a solicitor at Hynes Legal on 1 October 2014.

[224] Before that meeting, on 28 September 2014, Suzanne and Wendy went to see the third respondent at the Family home. Suzanne did not prepare an independent file note of the meeting as did Wendy.

[225] Suzanne received another letter from Luke Comino Solicitor dated 3 October 2014 in identical terms to that sent to Wendy. She did not understand at the time that by that letter the 2005 power of attorney was not to be replaced by the unanimous power of attorney proposed by the letter dated 12 September 2014.

[226] On 4 October 2014, Jon Campbell went to see the third respondent at the Family home. He recorded the conversation. In all, the conversation canvasses 53 pages of transcript. The second respondent criticises Jon Campbell for having recorded the conversation. On the contrary, in the context and given the extraordinary behaviour of the third respondent and Janine up to that point, and the accusations made against Jon Campbell, in my view, it was a wise precaution. The whole shows Jon Campbell dealing with the third respondent in a sensible and reasonable manner. The conversation ended with him urging the third respondent to have a family meeting to resolve issues that he had fairly put to the third respondent and the third respondent saying that might be the case if they all

agreed to it. Jon Campbell offered to make the third respondent a cup of tea before he left.

[227] The transcript records, *inter alia*, that:

- (a) Jon Campbell challenged the third respondent accusing him of digging around in the third respondent's affairs to find out how much money he (Jon Campbell) would get as being not correct;
- (b) the third respondent said that the point that "set [him] off a bit" was that Wendy said: "I can sell this house - Sue and I. Just like that" and snapped his fingers. Jon Campbell pointed out the third respondent had not previously said that Suzanne was involved in any statement by Wendy. He also pointed out that whether Wendy said that (or not) was not a reason for telling Jon Campbell that he was digging around in the third respondent's affairs to find out what the third respondent was worth, when the fact was the third respondent had asked him to do the report;
- (c) Jon Campbell recounted his understanding of what had been said between him and the third respondent. Jon Campbell further pointed out to the third respondent that he had complained to others that Jon Campbell was running up a bill (with Greg Roberts), but had not raised it with Jon Campbell. He pointed out that Janine and Glenn Blumke knew that he had been doing the work and queried why they had not reminded the third respondent of that. He said that he had spoken to Greg Roberts who said that he had a letter from the third respondent saying that Jon Campbell was not authorised to speak to him;
- (d) Jon Campbell pointed out to the third respondent that there had been an error in the accounts because one of the Shafston units had been omitted. He discussed with the third respondent aspects of the investment returns on the Shaftson units;
- (e) Jon Campbell said that the third respondent had inaccurately disparaged his qualifications in accountancy to give financial advice to others. He pointed out that he had done nothing to deserve the accusation made by the third respondent in his letter to Greg Roberts;
- (f) he said that Suzanne had sent an email to Luke Comino, Solicitor. The third respondent said that it was a "quite a nasty one, wasn't it?" Jon Campbell said it was not nasty at all, and asked who told the third respondent it was nasty. After discussion about the circumstances leading to the proposed change in the power of attorney, the third respondent changed the topic of the conversation to the Zurich investment bond;
- (g) Jon Campbell asked: "Do you remember when I came over and did that (the redeeming of the Zurich investment bond) for you?" The third respondent said the money had never come through. Jon Campbell said it would be in Chris Burrell's account, meaning the third respondent's account with Chris Burrell's firm. The third respondent said he did not know whether it had gone into there. Jon Campbell said that he did not know whether it had either. (It had and in fact there was no difficulty, although Janine appeared to accuse Jon Campbell of some wrong doing about the matter);
- (h) Jon Campbell raised the conversation between Suzanne and Janine when Janine released a tirade of swearing. The third respondent said that there were two different views on that;

- (i) Jon Campbell further challenged the third respondent about the circumstances under which he changed his power of attorney, in effect saying that the third respondent had done so because of Janine's wishes, because Janine was suspicious, but that resulted in the third respondent and Janine acting behind Wendy and Suzanne's backs. Jon Campbell asked why had the third respondent not invited Wendy to go and change the power of attorney with him when he decided to go to the solicitor? The third respondent said that he had told Wendy he was going to go to the solicitor. (I find that he did not do so);
- (j) Jon Campbell said, in any event, he was more interested in his wife Suzanne's position and Suzanne did not know. The third respondent said he did not know if Suzanne knew or not (I find that he did not have any reason to think that she did);
- (k) Jon Campbell pointed out just how confronting it was for Suzanne to receive a solicitor's letter about the change of the power of attorney in the circumstances where the third respondent had not even spoken to her about it, even though he lives just down the road and they talked on the phone regularly. The third respondent said that it was because she (presumably Wendy) had the power to sell the house. Jon Campbell said that she did not have the power to do so. The third respondent said that he had since found that out, but that Wendy thought she did. (I find that is not what Wendy thought);
- (l) about the conversation between Suzanne and Janine on 10 September 2014, the third respondent said that Suzanne asked Janine whether she was "on the take". Jon Campbell said: "Sue had never said that". Jon Campbell reminded the third respondent that he had told Suzanne that he was with Janine when the conversation occurred but that the third respondent was not there because it occurred while Janine was in her car on the way to pick up her son;
- (m) the third respondent said that the reason why Janine was not talking to Suzanne was because Suzanne had said: "I don't want to be your sister anymore". The third respondent asked Jon Campbell whether that was true. Jon Campbell said no. The third respondent said: "I don't think [Janine] would be lying about that";
- (n) the third respondent said that it was hard and the other thing of course was that Janine was the one who does everything for him. **He said: "Everything, you know. She takes me everywhere I've got to go and..."** (emphasis added);
- (o) Jon Campbell interrupted and said: "That is not true. Suzanne's taken you places you need to go, so has Wendy." The third respondent said that Jon Campbell would not convince him that Janine was not honest. The third respondent said that the solicitor had said to him that what Wendy and Suzanne were doing was greedy and they should be ashamed of themselves;
- (p) Jon Campbell asked where the solicitor would have got that information. Jon Campbell said that Wendy and Janine (a slip of the tongue, he meant Suzanne) were being defamed by the third respondent, the solicitor or Janine. The third respondent said, well he was not;
- (q) Jon Campbell asked the third respondent whether he trusted Suzanne as much as Janine. The third respondent replied that he had no reason to distrust Suzanne. He said also that Wendy was honest. Jon Campbell pointed out that if the third respondent's concern was that one of the other attorneys might have sold the family home with Wendy, why did he assume it would be Suzanne? The third respondent replied that he knows Janine would not sign it. Jon Campbell asked why he might

think Suzanne would. The third respondent replied because “she’s better friends” (meaning with Wendy);

- (r) Jon Campbell pointed out to the third respondent that although he described Glenn Blumke as the top auditor in the Queensland Government, he was involved in quality assurance auditing in relation to traffic. He was not a financial auditor at all. Jon Campbell said that he had no interest and he wanted Janine and Glenn Blumke to know that he had no interest in taking over what they were doing for the third respondent. He said: “They can keep doing it.” He said that he wanted an opportunity to present the work that he had done to everybody so that everybody could see what he had done in an open and transparent way so that there were no secrets and there were no opportunities for anyone to say that he was trying to do something that nobody knows about;
- (s) Jon Campbell said he thought there needed to be a discussion about what went on in the conversation between Suzanne and Janine. The third respondent replied that the difference was that Suzanne did not say (that Janine was on the take) but she inferred that she could have been. The third respondent said that Jon Campbell should not think that he was against Wendy or Suzanne. Jon Campbell responded by saying that he was telling the third respondent that they feel that way. The third respondent said: “Well they better not, because that’s stupid”. Jon Campbell said that Suzanne needed to hear that from the third respondent because she thought he had taken Janine’s side in all of the disputes because she believed that the third respondent believed whatever Janine had said and did not believe what Suzanne had said about how that fight occurred.

[228] On 5 October 2014, Suzanne visited the third respondent at the Family home. She showed him a copy of the email that she had sent to Luke Comino on 26 September 2014, and again on 1 October 2014, that the third respondent had described to Jon Campbell as being “nasty”. The third respondent read the email and said he did not think it was nasty. He asked Suzanne why she had refused to sign the new power of attorney. She said (as was the fact) that she had not refused to sign it, but wanted to review a copy of the document before she signed it. The third respondent stated that he wanted to be absolutely sure that he was never susceptible to Wendy and Suzanne selling the Family home from under him. Suzanne said that if he did not trust Wendy or her, they should not be signing a new power of attorney, in any event. The third respondent then asked Suzanne whether she wanted to sell the Family home from under him. She left, extremely upset. She decided it was best not to speak to him for a while.

[229] On 10 October 2014, Kylie Tate telephoned Suzanne and informed her of her conversation with Luke Comino. She informed Suzanne that the proposed unanimous power of attorney had been revoked in place of a new power of attorney dated 29 September 2014 and that the third respondent had a sole attorney. The third respondent had not previously informed Suzanne of that.

[230] On 12 October 2014, Jon Campbell encouraged Suzanne to reach out to her father. Suzanne prepared fish cakes and salad for the third respondent for lunch. Suzanne asked Jon Campbell to deliver the meal and he agreed to do so.

[231] At approximately midday, Jon Campbell arrived at the Family home and knocked on the door. The house was locked, but he could hear the television, so knocked again. Because there was no answer, while standing on the verandah, Jon Campbell telephoned the third

respondent. The third respondent answered. Jon Campbell said that he had brought some lunch. The third respondent said the he did not want to talk to Jon Campbell. Jon Campbell asked why, and the third respondent said he had been instructed not to talk to anyone and requested that Jon Campbell leave the premises. After a brief conversation where Jon Campbell asked what was going on and who had told the third respondent not to speak to anybody, the third respondent said that “the girls” (presumably Wendy and Suzanne) “are up to no good”. Jon Campbell asked what they were up to. After a very brief further exchange, the third respondent said “Janine is protecting me” and Jon Campbell said to him that he was being manipulated with a pack of lies, but anyway he would leave the food. The third respondent repeated his request to Jon Campbell to leave the premises. Jon Campbell agreed and did so.

- [232] The respondents’ affidavits accuse Jon Campbell, in effect, of stalking the third respondent, by turning up unannounced and spending long periods on his verandah outside the house. I reject those allegations as fanciful and find that they are part of the extraordinary unwarranted attack on Jon Campbell’s character, made by all the respondents, which was completely unjustified.
- [233] After 12 October 2014, Jon Campbell had no further contact with the third respondent or Janine and Glenn Blumke.
- [234] Between 12 October 2014 and 23 November 2014, Suzanne did not speak to the third respondent. Up to then, it was the longest period in her life that she had not done so.
- [235] On 23 November 2014, Suzanne telephoned the third respondent. She recorded the conversation. During the call:
- (a) Suzanne informed the third respondent about Stephanie’s operation (one of many following Stephanie’s parachuting accident in March 2014) that had occurred since she and the third respondent had last spoken;
 - (b) she asked the third respondent if he remembered the conversation from about five weeks before in which he was talking about a court case. The third respondent replied: “Ah, someone was taking me to court, I don’t know”. She reminded him that he was very upset then and asked if he could recall what he had said. The third respondent said: “Who was taking me to court? You and Wendy”. Suzanne said that was untrue and it was only what he thought was happening;
 - (c) The third respondent said that Suzanne was attempting to have him “classed as insane”. Suzanne said that was untrue. The third respondent said that he would be defending it if Wendy and Suzanne took him to court;
 - (d) The third respondent said that he was worried that Wendy and Suzanne were going to take him to court. She said it was untrue and was not going to happen. The third respondent said he did not believe her;
 - (e) Suzanne asked the third respondent who had told him that she and Wendy were going to take him to court. The third respondent said he could not recall. However, after some thought, he said that Wendy and Suzanne had two women lawyers who had combined to take him to court. Suzanne said this was untrue (as was the fact);
 - (f) The third respondent said that he had been advised by a solicitor not to speak with Wendy or Suzanne because of “sub judice”. Suzanne asked whether his lawyers

had actually told him that or whether someone else had. In response, the third respondent said: “I wish I knew”; and

- (g) Suzanne stated that Wendy and she had done nothing wrong and there was no planned or actual court case against him. The third respondent said he certainly loved to hear that. The call ended with the third respondent saying it was nice to hear from Suzanne.
- [236] On 28 November 2014, Suzanne telephoned the third respondent. She said: “Hi Dad, it’s Sue”. The third respondent said that he could not talk to her. She asked why he could not talk to her. The third respondent said: “Cause you’re not on my side.” He then said: “Bye bye” and ended the call.
- [237] Later on 28 November 2014, Suzanne called the third respondent again. She said: “Hi Dad, it’s Sue.” He said that he could not speak to Wendy or Suzanne and that Wendy and Suzanne were horrible people and ended the call.
- [238] That was the last occasion Suzanne spoke to the third respondent until 10 September 2015.

Appointment form – 23 November 2014 to 28 November 2014

- [239] In his conversations with Wendy on 23 and 24 November 2014, the third respondent alleged that someone was trying to put him into a home. The episode surrounding those accusations is significant enough to warrant specific findings.
- [240] It appears from findings already made and from further findings below that I have significant reservations accepting much of Janine and Glenn Blumke’s evidence. Janine swears that in November 2014 she went to the Family home to help the third respondent “clear out his old paperwork”. She says that among “old and worn” papers they found “a document in pristine condition” that was a form relating to information “about (sic) elderly care home”. In fact, the form was an Australian Government appointment form for the nomination by a person already in residential care to deal with the Australian Government Department of Health and Ageing on their behalf, although none of the third respondent, Janine or Glenn Blumke appears to have attached any significance to that fact. Janine says the third respondent said he had not seen it before. She says that she said to him it could have related to “Mum”. I do not believe she said that. She took the form home and gave it to Glenn Blumke.
- [241] Janine made a note that: “it seems that the form has been inadvertently left at Dad’s house, perhaps by Sue and Jon Campbell when they were discussing Dad’s financial affairs (uninvited on the 9/9/14 at 3:00 pm) Dad refused to sign any forms at that meeting, unless Glen and Janine had seen them... Dad had not ordered this form to appoint a nominee to arrange payment for his residential care. The order only form looks quite different from the same form in downloadable version”.
- [242] Glenn Blumke swears that the third respondent told him that the third respondent did not know whether the form related to a time in July or August 2014 when Wendy and Suzanne suggested he leave his home and move into a residence associated with Carinity. I do not believe that Wendy or Suzanne made that suggestion to the third respondent or that he said that to Glenn Blumke. Glenn Blumke also noted that the form is dated September

2011 (and therefore was relevant to the time when Pauline was admitted to a nursing home) but says that he looked online and found that the form was still current.

- [243] From what the third respondent said to Wendy on 23 November and 27 November 2014, there is no doubt that he believed someone was trying to put him in a home or “madhouse”, most likely Wendy, Suzanne and Jon Campbell. From Janine’s actions and note, I conclude that she encouraged the third respondent in that view. I reject Glenn Blumke’s evidence that the third respondent said to him that he thought the form probably related to Pauline. I find that Janine and Glenn Blumke were content to encourage the third respondent in the irrational view that the nomination form was part of some plot by Wendy and Suzanne and Jon Campbell to put him into a home. Neither Janine nor Glenn says that they said to the third respondent that the form did not suggest reasonably any conspiracy to do so. That would not have served their personal interests, which I find they were anxious to promote at the expense of the applicants and their families.
- [244] This was in fact the last significant event before the third respondent went to live with Janine and Glenn Blumke at their home on 29 December 2014, from where he has not since moved.
- [245] After 28 November 2014, the third respondent did not answer any telephone call made to him by either Wendy or Suzanne.

4 December 2014 resolutions

- [246] On 14 October 2014, it appears that the third respondent consulted de Groot Lawyers, and possibly afterwards, although there was no substantive evidence from any of the third respondent, Janine or Glenn Blumke or Dr de Groot about those consultations.
- [247] On 22 October 2014, the third respondent again consulted Dr Saleh as to his capacity in the lead up to executing a new will and other documents. Dr Saleh’s notes about the consultation are in stark contrast to the facts in some respects. He recorded that the third respondent said that he could name the persons that were his major beneficiaries being his three daughters and grandchildren. That may have been an accurate statement as to his existing will, but it overlooked the 27 June 2014 resolutions and the 9 October 2014 resolutions (and the further deed of variation of the Clacher Family Trust made on 12 October 2014). But even more inexplicably, Dr Saleh notes that the third respondent said that he was getting on well with all of them and had not had a falling out. Three days before, the third respondent had told Wendy he no longer wished to speak to her. Less than a fortnight before (presumably with his agreement), Janine had arranged for the locks on the Family home to be changed (although it does not appear that Wendy or Suzanne knew that for over seven weeks). Not four weeks before, the third respondent had said to Mr Comino that Wendy and Suzanne had said they were in a legal dispute with him.
- [248] Apart from the telephone calls previously mentioned, Wendy kept away from the third respondent until the end of November 2014. As would appear from the foregoing, by early December 2014, the relationship between Wendy and the third respondent had completely broken down as the result of his repeated accusations of wrongdoing by her and his apparent decision and statements to her that he would no longer speak to her.
- [249] Yet, on 4 December 2014, the third respondent went to the offices of de Groot Lawyers and executed a series of documents that were fundamentally inconsistent with the 27 June

2014 resolutions and the 9 October 2014 resolutions. The third respondent executed that range of documents to give effect to instructions he must have given to de Groot's Lawyers.

- [250] There is no reference in those documents to the 27 June 2014 resolutions or the 9 October resolutions or the 12 October 2014 deed of variation of trust. The reasonable inference seems to be that they were not produced to de Groot's Lawyers. That is because the Special Resolution to Distribute assumed the power of the trustee to distribute all of the trust fund to Wendy, Suzanne and Janine in equal shares. Such a distribution could only be made if Wendy and Suzanne were beneficiaries, which by the 27 June 2014 resolutions and the 9 October 2014 resolutions they were not. It seems likely that had they been given to those lawyers as part of their instructions the documents executed on 4 December 2014 would have taken a different form.

4 December 2014 to 12 December 2014

- [251] From 29 November 2014, when the third respondent went to live at the home of Janine and Glenn Blumke, he did not return to the Family home.
- [252] As already mentioned, on 4 December 2014, he made a new will and passed resolutions as sole director of the first respondent as trustee of the Clacher Family Trust that were inconsistent with the removal of Wendy and Suzanne and their families as beneficiaries, although that was unknown to the applicants or their families, as were the earlier 27 June 2014 resolutions and 9 October 2014 resolutions.
- [253] After that date, during December 2014, Wendy and Suzanne made attempts to contact the third respondent. They were not met with any response from him until 12 December 2014. It will be necessary to deal with the responses of Janine in some detail.
- [254] By way of initial observation, what is significant is that in the eight days from 4 December 2014 to 12 December 2014, it appears that the third respondent had another complete volte-face upon the question of removal of Wendy and her family as beneficiaries of the Clacher Family Trust. Focussing on Wendy, by the 12 December 2014 resolutions, the third respondent resolved to rescind the Special Resolution to Distribute made on 4 December 2014 and to resolve again and confirm again resolutions that Wendy and her family were not beneficiaries of the Clacher Family Trust in terms identical, in effect, to the 9 October 2014 resolutions. What had happened?
- [255] At the initial hearing over two days, during which the third respondent's evidence was heard and after which the trial of the proceeding was adjourned, I raised with the parties the dearth of evidence dealing with what happened between 4 December 2014 and 12 December 2014 to bring about the third respondent's change of position, yet again. That was in the context where, according to the affidavits, it seemed that no contact was made by Wendy or Suzanne or their families with the third respondent.
- [256] This subject matter was not dealt with in the third respondent's affidavit. In oral evidence, he could not remember why he had made the 12 December 2014 resolutions. I asked him why he had resolved to make Wendy's children, who were his grandchildren, not beneficiaries. He could not remember why. I reminded him of his expressed concern that Wendy had said that she could sell his house. He recalled that. I reminded him of the disputes in the family about changing his power of attorney. He recalled that. I asked him

why he disowned and disinherited (some) of his grandchildren, as opposed to not liking something that Wendy, or Suzanne or Jon Campbell did. He said he could not remember. I asked if he realised that he had disinherited his grandchildren who were their children. He said that he did not realise it but was rather confused about it. I asked him if he ever had any reason to want to disinherit his grandchildren that he knew of. He said: “My grandchildren, no.”

- [257] By the time of the resumed hearing of the trial, months later, the second respondent’s deponents, Janine and Glenn Blumke, had “amended” their affidavits in an attempt to deal with this question further. Accordingly, it is necessary to consider their evidence in some detail. The new will, the resolution passed by the third respondent on 4 December 2014 (and for that matter, the 9 October 2014 resolutions, and the 27 June 2014 resolutions) were matters of which Glenn Blumke and, I find, Janine were aware.
- [258] On 1 December 2014, Wendy, Suzanne and Suzanne’s daughters, Madeleine and Stephanie, drove to the Family home. Earlier that day, or the day before, Suzanne had been there and discovered that her key did not unlock the front door. When they arrived, Janine’s car was there (I find that the third respondent was not there). Neither Wendy nor Suzanne went up to the house. Stephanie and Madeleine walked along the driveway. They were unable to enter the metal gate on the back door of the house or the back door using Wendy’s spare key (as the locks had been changed on 10 October 2014). They knocked and called out but no-one answered.
- [259] Janine swears that on 10 December 2014 she went to the third respondent’s Family home by herself. She went to pay Meals on Wheels with a cheque drawn by the third respondent. As she was preparing to leave, she saw Suzanne walking towards the house. She heard someone on the front veranda and heard Stephanie calling out as well as Suzanne. She says this lasted for about an hour and a half, and they then left and she left.
- [260] I find that did not occur on 10 December 2014. Stephanie gave evidence that the occasion when she went to the Family home was on 1 December 2014, after she had been to two medical appointments earlier in the day. She was with Madeleine when she went up to the house, not Suzanne. There was no older woman with them.
- [261] By her amended affidavit, Janine she says that when she got home on 10 December 2014, she had a conversation with the third respondent. She said that all the phones were ringing: her mobile, the home phone, her son’s phone and the third respondent’s phone. She told him about what had happened while she was at the house. She says that he replied that “you know how I felt while I was living there. You cannot live down there. There’s no peace in that bloody house anymore. I will never be able to go back and live at that house.”
- [262] I do not accept these statements that were introduced by Janine’s “amended” affidavit were made. First, the day of Stephanie and Madeleine calling out on the verandah of the Family home was 1 December 2014, not 10 December 2014. Second, after all, only on 23 November 2014 the third respondent had complained to Wendy that he was confused why Wendy had not spoken to him for months (which was not true although they had only spoken on the phone since 18 September 2014). After he told Wendy on 19 October 2014 that he did not want to speak to her again and she should speak to him through Janine in the future, she decreased her contact with him to four phone calls over the succeeding six weeks. During that time, she did not go to see him at all. The statement

is no more true about Suzanne or Jon Campbell's attendances at the Family home. The last occasion Suzanne visited the third respondent at the Family home was on 5 October 2014. The last time Jon Campbell visited the third respondent at the Family home was on 12 October 2014. It was not until 1 December 2014 that the applicants even realised that the locks on the Family home had been changed, although this had been done on 10 October 2014.

- [263] On 8 December 2014, Wendy and Suzanne sent an email drafted by Suzanne to Janine. They asked a number of questions regarding the third respondent's welfare. The email concluded by asking Janine to respond to their questions and to provide them with an update regarding the third respondent's welfare and health.
- [264] On 9 December 2014, Janine replied by email. She stated that there was no reason for Wendy or Suzanne to be concerned regarding the third respondent's welfare and he had elected to enjoy some holiday time with Janine and her family. She also expressed surprise to have received the email and that it was perplexing. Her response, in the circumstances that she knew about and that she knew her sisters did not know about, was facetious and dripped with sarcasm.
- [265] On 12 December 2014, Wendy received a letter by registered mail at her home addressed to her by the third respondent dated 11 December 2014 that stated as follows:

“Dear Wendy,

As I have asked you politely numerous times over recent months, I would like you to stop phoning me and attending my home at Melville Terrace, unless I first invite you over.

You have not respected my wishes in the past, and this had caused me a lot of stress and duress, as well as a lack of sleep.

As I explained to you many times, I decided to go to my solicitor to seek legal advice, and change my enduring power of attorney, which is my right.

As you have also been informed, I am currently spending some time with Janine and her family. I have informed my fortnightly cleaner that I will not require her services until further notice.

If I wish to talk to you or your family from now on, I will initiate the contact please...”

- [266] I find that the assertion in the letter that the third respondent asked Wendy politely numerous times over recent months to stop phoning him was untrue. I find that the statement that Wendy had not respected his wishes in the past to be untrue. The letter was typed but the third respondent was not in the habit of using a computer to type and format a letter of that kind.
- [267] Glenn Blumke says that he drafted the letter on 11 December 2014 at the third respondent's request and that the third respondent edited the draft before it was finalised and posted. He said that before this, the third respondent was concerned that Wendy, Suzanne or Jon Campbell or other family members would come to their Carina house when Janine and Glenn Blumke were not at home and that he had seen their cars out the front in the street.

- [268] Surprisingly, Janine did not deal with this letter at all in her affidavit or amended affidavit, which was to the effect that the third respondent was preparing to return to the Family home in the days up to 10 December 2014, and that he changed his mind that day. As I have found, there was no episode on 10 December 2014 as Janine would have it. And I reject too that the applicants or their children went in their cars to the street outside Janine and Glenn Blumke's home or that the third respondent said that they did.
- [269] On 12 December 2014, in response to receiving the letter from the third respondent dated 11 December 2014, Wendy telephoned Janine. She asked if she could speak with the third respondent. Janine said that the request was not a good idea. Wendy asked why it was not a good idea. Janine replied to words to the effect: "[I]t might be best if you do not talk to him right now". Wendy insisted that she speak with the third respondent. Janine said that if he wanted to speak to her, he would ring her back and ended the call.
- [270] Also by her "amended" affidavit, Janine says that on 12 December 2014, after she had received an email sent to her at 12:37pm by Michael Gunn of Burrell Stockbroking asking for permission to sell shares, she spoke to the third respondent who said not to answer the email saying: "[T]hey are setting you up. Burrell is working with them. This is so they can say you are running all of the shares." Janine continued: "When he said these words to me, his tone was very authoritative and stern. He was also frowning. I gathered from this he was angry. I did not answer this email."
- [271] I reject that evidence also, as an after the fact attempt to explain or give a reason for the third respondent to make the 12 December 2014 resolutions. I also consider that this evidence partly explains why Janine gave evasive answers about the letter written by the third respondent to Luke Comino, Solicitor, dated 17 September 2014 which referred to her as having involvement with his stockbroker.
- [272] As previously stated, Janine said that she was not aware of the resolutions prepared by Glenn Blumke for removal of Wendy and Suzanne as beneficiaries of the Clacher Family Trust. As to the 12 December 2014 resolutions, she says that she may have seen those documents previously but cannot specifically recall them. In an attempt to explain that extraordinary suggestion, she says that for weeks at a time in 2014, her path and Glenn Blumke's paths rarely crossed. I reject that evidence as well. It is inconsistent, in my view, with her explanation of the way in which the Blumke Family Trust came into existence on 16 December 2014.
- [273] These were the events of the period between 4 December 2014 and 12 December 2014. There was nothing rational in those events to explain why, in the context of what occurred on 4 December 2014, when the third respondent made the new will and resolutions as to distributions from the Clacher Family Trust to be made on his death, he did another complete volte-face on 12 December 2014.
- [274] What is clear, in my view, is that he did so without any contact from the applicants or their families, that he was deliberately keeping or being kept from any contact with them, that the only persons to whom he was speaking about his financial affairs were Janine and Glenn Blumke, who had encouraged him in fanciful accusations of wrongdoing against the applicants and Jon Campbell, and who were, with their children, to become the sole beneficiaries of the third respondent's bounty.

13 December 2014 through Christmas 2014 and the New Year

- [275] On 14 December 2014, Wendy and Suzanne caused another email to be sent to Janine. The email requested a meeting with all of the family to resolve the situation. It stated that Wendy and Suzanne had attempted to make contact with the third respondent, but Janine was not allowing it to occur. It stated, in effect, that Wendy and Suzanne believed that Janine was cutting the third respondent off from the rest of his family and invited her to attend a family meeting some time before 19 December 2014 to discuss the issues. Janine did not respond.
- [276] Christmas was approaching. A time normally spent together by the Clacher family. On 24 December 2014, Wendy and Suzanne sent another email to Janine. The email stated that they had not received a response to their email of 14 December 2014. It expressed concern regarding the motivations behind the events of the last few months. It asked Janine to confirm when the third respondent would be returning to the Family home. It stated that this would be the first year that he had not spent Christmas with all of his family. It invited Janine to meet with them to discuss the issues and asked her to confirm that the third respondent had received the Christmas card they had sent to him.
- [277] Wendy did not spend Christmas 2014 with the third respondent. This was the first time in her life that she had not seen her father over the Christmas period.
- [278] On 4 January 2015, Wendy received an email from Janine, copied to Luke Comino, Solicitor. The email stated that, in Janine's opinion, she was not her father's keeper. She said that he chooses with whom he communicates and there was no need for Wendy and Suzanne to require her confirmation that he had received "the \$4.99 [Christmas] card". Janine said that Wendy and Suzanne's persistent harassment and persecution of the third respondent (an allegation I find to be false) had been noted, that Suzanne's interest in the third respondent's finances only started when she learned of the extent of his assets about nine months ago (another allegation I find to be false), that Wendy had already stated that she had control of the third respondent's investments portfolio and affairs (another allegation I find to be false) and made other allegations (that I do not accept). The letter also asserted that Wendy and Suzanne were attempting to deny the third respondent a holiday, a statement which, in context, was specious.

The third respondent's vulnerability

- [279] An assessment of the third respondent's vulnerability is relevant to the allegations of undue influence and unconscionable dealing. As summarised by the applicants' submissions, as at and after September 2014 the third respondent:
- (a) was aged 88 and was widowed, having lost his wife in 2012 and struggled with that loss for some time thereafter; and suffered from a number of age related medical conditions, including hypertension, renal impairment and reflux;
 - (b) was suffering from beliefs as to the intentions and actions of the applicants that had been formed without any rational basis;
 - (c) ceased living in the Family home and went to live with Janine and Glenn Blumke, despite having stated on several previous occasions that he never wanted to leave the Family home;

- (d) ceased contact with all the members of his family other than Janine and Glenn Blumke and their children, despite having enjoyed a close and loving relationship with Wendy and Mac Hook and their children and Suzanne and Jon Cambell and their children previously;
- (e) believed that he was entirely reliant on Janine and Glenn Blumke to protect him and that he could not speak to anyone without them;
- (f) had made Janine the third respondent's sole enduring power of attorney;
- (g) terminated the services of his long term stockbroker and became reliant on Janine and Glenn Blumke to arrange and communicate with a new stock broker;
- (h) relied upon Janine and Glenn Blumke to communicate with his accountant and in 2015 terminated the services of his long term accountant; and
- (i) attended upon a solicitor arranged by Janine and Glenn Blumke, who had previously only completed a conveyance for him, but previously prepared their wills and acted as the solicitor for the second respondent and Janine in connection with the conveyancing transfers.

Stripping of the assets of the Clacher Family Trust

- [280] The second respondent was incorporated in the first week of December 2014 as part of the arrangements that were made for the third respondent's new will and the resolutions passed by the first respondent, all on 4 December 2014. The resolutions proposed that the second respondent would become the trustee of the Clacher Family Trust on the third respondent's death, in substitution for the first respondent. Those arrangements were all made by de Groot's Lawyers for the third respondent.
- [281] However, on 16 December 2014, Janine and Glenn Blumke arranged for the settlement of the Blumke Family Trust by another firm of solicitors, with the second respondent as trustee. The Blumke Family Trust was settled with the second respondent as trustee, and Janine and Glenn Blumke as appointors. The primary beneficiaries were Janine and Glenn Blumke and the secondary beneficiaries were their children and the third respondent.
- [282] On 17 December 2014, the third respondent attended on Luke Comino. He instructed Mr Comino to undertake conveyancing work to transfer Units 401, 410, 819, 918, 1015, 1016 and 1020 of the Shafston Units and 6 and 6A Johnston Street, West Ipswich to the second respondent. Glenn Blumke typed the letter identifying the properties to be transferred that was given to Mr Comino for the third respondent. The letter stated that the third respondent was a beneficiary of the Blumke Family Trust and that he wished that the properties be "gifted" to the Blumke Family Trust.
- [283] On 22 December 2014, the third respondent as sole director of the first respondent resolved that the Clacher Family Trust make allocations to the third respondent, to substantially reduce the unpaid present entitlements due to him from the Clacher Family Trust. It was noted that the amount of the unpaid present entitlements were to be reduced by the value of various assets comprising shares and properties to be transferred from the Clacher Family Trust to the Blumke Family Trust. The resolution provided that the allocations would be in accordance with an attached schedule of shares held by the Clacher Family Trust and an attached schedule of properties also held by the Clacher Family Trust. A schedule of shares was attached, however, a schedule of properties was

- not. The resolution noted that all such allocations and transfers were to be completed by 30 June 2015.
- [284] For an unexplained reason, a second resolution in identical terms was also made on the same day but omitting to note that the amount of unpaid entitlements in the Clacher Family Trust of the third respondent were to be reduced by the value of the various assets, shares and properties to be transferred from the Clacher Family Trust to the Blumke Family Trust.
- [285] The third respondent obtained no legal advice or advice from any person other than Janine or Glenn Blumke before making the resolution about the wisdom or risks of making the resolutions.
- [286] On 5 and 6 January 2015, Glenn Blumke typed two letters for the third respondent which stated that the third respondent transferred properties and shares from the Clacher Family Trust to the Blumke Family Trust of his own free will and because he wanted it recorded that he was making the transfers of his own free will as a gift to the Blumke Family Trust. The second letter stated that the third respondent was aware that after his death those assets will not be subject to distribution to Wendy and Suzanne and they will have no claim on them.
- [287] The third respondent obtained no legal advice or advice from any person other than Janine and Glenn Blumke prior to signing those letters.
- [288] On 6 January 2015, Janine and Glenn Blumke held a meeting of directors of the second respondent as trustees of the Blumke Family Trust and resolved to accept all gifts from the third respondent, including properties and shares.
- [289] On 6 January 2015, shares identified in the Annexure to these reasons held by the first respondent as trustee of the Clacher Family Trust were transferred to the second respondent as trustee of the Blumke Family Trust.
- [290] On 13 January 2015, de Groot's Lawyers sent a letter to the third respondent and Janine and Glenn Blumke enclosing a draft resolution by the first respondent tabling a general power of attorney in favour of the second respondent and a draft resolution by the second respondent accepting the appointment. The draft resolutions were intended to complete the arrangements made on 4 December 2014. There is no suggestion that de Groot's Lawyers had been informed of the intention to transfer the shares and properties to the second respondent as trustee for the (subsequently created) Blumke Family Trust.
- [291] On 15 January 2015, Janine and Glenn Blumke held a meeting of directors of the second respondent and resolved that it would accept appointment as attorney for the first respondent under the general power of attorney.
- [292] On 16 January 2015, the third respondent met with Luke Comino, Solicitor, and confirmed his instructions to proceed with the proposed transfer of the properties.
- [293] On 19 January 2015, the Blumke Family Trust received cash from the Clacher Family Trust Assets in the sum of \$231,479.

- [294] On 20 January 2015, shares identified in the Annexure to these reasons held by the first respondent as trustee of the Clacher Family Trust were transferred to the second respondent as trustee of the Blumke Family Trust.
- [295] On 1 March 2015, the third respondent met with Luke Comino, Solicitor, and executed a transfer of the Family home from the third respondent to the third respondent and Janine as joint tenants.
- [296] On 2 April 2015, the third respondent met with Luke Comino, Solicitor, and executed the transfer of Unit 401 of the Shafston Units by the first respondent as trustee of the Clacher Family Trust to the second respondent as trustee of the Blumke Family Trust.
- [297] On 12 May 2015, Wendy and Suzanne sent a letter to the third respondent by registered post. The letter stated that they missed him and wished to see him again. It also stated that they had attempted to communicate with him through Janine, however her responses had been unhelpful. There was no reply.
- [298] On 16 June 2015, Wendy, Suzanne and Suzanne's daughters, Stephanie and Madeleine, gathered over lunch for Wendy's birthday. Stephanie and Madeleine decided to drive to Janine and Glenn Blumke's house, which they did but they were unable to speak to the third respondent.
- [299] On 30 June 2015, Stephanie again attempted to contact the third respondent, but was only able to speak to Janine on her mobile phone. Janine abruptly ended the call when it connected.
- [300] On 30 June 2015, the third respondent executed a transfer of Unit 410 of the Shafston Units from the first respondent as trustee for the Clacher Family Trust to the second respondent as trustee for the Blumke Family Trust. On the same date, the third respondent executed a similar transfer of Unit 1015 of the Shafston Units.
- [301] On 1 July 2015, the third respondent as sole director of the first respondent resolved to make allocations to the third respondent to substantially reduce the unpaid present entitlements and loan due to him from the Clacher Family Trust. It was resolved that the allocations were to be equal to the market value of the real properties and share portfolio held by the Clacher Family Trust and that all such allocations were to be completed by 30 June 2016. A note was made at the bottom of the resolution that the title of the properties and shares will be transferred across to the second respondent as trustee of the Blumke Family Trust in accordance with the decision of the third respondent.
- [302] The resolution was prepared without the third respondent having the benefit of legal advice or any person other than Janine and Glenn Blumke.
- [303] On 2 July 2015, the third respondent telephoned Luke Comino and told him that Wendy and Suzanne would not stop contacting him despite his requests that they not do so. The third respondent gave instructions to Luke Comino to issue a letter to Wendy and Suzanne demanding that they not contact him. In fact, the only contact from Wendy or Suzanne in 2015 was the letter dated 12 May 2015 they sent to the third respondent by registered post.
- [304] On 2 July 2015, Luke Comino Solicitor wrote to Wendy and Suzanne in the following terms (using the form sent to Suzanne):

“We advise we have received instructions from your father, Thomas Laidlaw Clacher, and your sibling Janine Maree Blumke in relation to conduct by you which we consider may amount to domestic violence under the *Domestic Violence and Family Protection Act 2012* (Qld).

The purpose of this letter is to set out how your conduct amounts to domestic violence and to request that you immediately cease such conduct.

Our clients have instructed us that you and your daughter Stephanie Campbell attended the home of your sibling, Janine Blumke, at 13 Monnow Place, Carina on Tuesday 16 June 2015 unannounced. This was followed by several phone calls to your father’s mobile phone, several phone calls to Janine Blumke’s home phone and then several phone calls to Glenn Blumke’s mobile phone. Glenn Blumke answered his phone and spoke to your daughter Stephanie who said she was at his house knocking on the door and no one answered.

At the end of last year your father, Thomas Laidlaw Clacher, felt it necessary to leave his house at Wynnum and move into Janine Blumke’s house due to unannounced visits and telephone calls from you. We have been further advised by Janine Blumke that your daughter Stephanie rang her mobile yesterday and said she wanted to see her grandfather.

We have been advised by your father that he does not want any contact with you or your family. Your father has advised us he will initiate any contact with you and your family. Your father has made his feelings clear in a letter given to you in December last year. We enclose a copy of the letter for your reference. Our client advises he gave a similar letter to your sister Wendy Hook. Our client demands you respect his wishes.

Accordingly, we request that you and your family immediately stop attending Janine Blumke’s property at 13 Monnow Place, Carina and that you and your family stop ringing either of our clients or members of Janine Blumke’s family.

If you do not comply with our request, then we are instructed to file an Application for a Domestic Violence Order naming you and any member of your family who fail to comply with our request... as respondents.

We have been advised by your father if you need to contact him urgently you are to make such contact through our office.”

- [305] First, the accusation that Suzanne attended Janine and Glenn Blumke’s residence was false. Second, the allegation that the third respondent had to leave his residence because of unannounced visits and telephone calls from Suzanne was unjustified and not based in fact, as these reasons show. Third, never before had the third respondent or Janine informed Stephanie he did not want any contact from her. There was no basis in law for the allegation that Suzanne’s conduct amounted to domestic violence. Curiously, Janine did not deal with the letter in her evidence although it states it was written on her instructions as well as the third respondent. In the circumstances of the case, I find that the letter was written to intimidate Wendy and Suzanne, on Janine’s instructions.

- [306] On 30 July 2015, the third respondent passed a resolution as sole director of the first respondent that the Clacher Family Trust make allocations to the third respondent to substantially reduce the unpaid present entitlements due to him from the Clacher Family Trust.
- [307] The resolution records that the amount of unpaid present entitlements held in the trust for the third respondent were to be reduced by the value of the transfers. The transfers were to be made from the Clacher Family Trust to the Blumke Family Trust and that all such allocations from transfers were to be completed by 17 August 2015.
- [308] The third respondent obtained no legal advice or advice from any person other than Janine or Glenn Blumke in relation to that resolution.
- [309] On 31 July 2015, the third respondent sent a letter to Tim Evans, a stockbroker of Morgans Financial Limited, who were engaged by the third respondent after he terminated Chris Burrell's firm's appointment as stockbroker in December 2014. The letter provided:
- “I am looking at rationalising the share portfolios held in the Clacher Family Trust Account and the Blumke Family Trust Account.
- For ease of management I think it is better that ‘like shares’ be bundled together in the Blumke Family Trust Account. I am happy to move the Woolworths shares across as well.
- Would you please arrange for the transfer of all shares held in the following stock codes, to move across from the Clacher Family Trust Account to the Blumke Family Trust Account.”
- [310] The third respondent obtained no legal advice or advice from any person other than Janine and Glenn Blumke before making that resolution.
- [311] On 4 August 2015, shares identified in the Annexure to these reasons held by the first respondent as trustee of the Clacher Family Trust were transferred to the second respondent as trustee of the Blumke Family Trust.
- [312] On 10 September 2015, the eve of the third anniversary of Pauline's death, Suzanne and Madeleine encountered Janine, the third respondent and Janine's son at the cemetery where Pauline's grave is located. The exchange was unremarkable, they only spoke briefly before Janine said words to the effect that she thought that the conversation needed to come to an end and that she and the third respondent were “under legal protection.” That was an absurd statement, unless it was intended to refer to the threat of proceedings for domestic violence.
- [313] I reject Janine's evidence that Suzanne yelled at the third respondent and scared him during the encounter.
- [314] On 11 September 2015, the third respondent met with Luke Comino Solicitor and executed transfers of Unit 1016 of the Shafston Units and 6 and 6A Johnston Street, West Ipswich by the first respondent as trustee of the Clacher Family Trust to the second respondent as trustee of the Blumke Family Trust.

- [315] On 5 January 2016, the third respondent as sole director of the first respondent resolved to make allocations to the third respondent to reduce the unpaid present entitlements due to the third respondent from the Clacher Family Trust. The resolution recorded that the amount of the unpaid present entitlements held in the trust of the third respondent were to be reduced by the value of the transfers, the transfers were to be made from the Clacher Family Trust to the Blumke Family Trust and that all such allocations and transfers were to be completed by 1 March 2016.
- [316] The third respondent obtained no legal advice or advice from any person other than Janine and Glenn Blumke before making that resolution.
- [317] On 20 January 2016, the third respondent as sole director of the first respondent sent a letter to Tim Evans drafted by Glenn Blumke as follows:
- “Further to my letter of July 2015, I am wanting to rationalise the share portfolios held in the Clacher Family Trust Account and Blumke Family Trust Account managed by Morgans.
- For ease of management and accounting I think it is better that the shares be bundled together in one shared trading account. I am a listed beneficiary of both trusts.
- [The letter listed the shares to be transferred and continued]
- All funds held in the Macquarie account relating to account 649010 are to be transferred across to the Macquarie account relating to account 649783.”
- [318] The third respondent obtained no legal advice or advice from any person other than Janine and Glenn Blumke before sending that letter.
- [319] On 4 February 2016, shares identified in the Annexure to these reasons held by the first respondent as trustee of the Clacher Family Trust were transferred to the second respondent as trustee of the Blumke Family Trust.
- [320] On 6 April 2016, the third respondent as sole director of the first respondent resolved that the funds invested with the IOOF Unit Trust be fully withdrawn and paid to a NAB bank account. The resolution provided further that a number of properties were to be transferred to the Blumke Family Trust being Units 819, 918 and 1020 of the Shafston Units. The resolution noted that the transfer of the above properties reduces the unpaid present entitlements owed by the Clacher Family Trust for the third respondent.
- [321] The third respondent obtained no legal advice or advice from any person other than Janine and Glenn Blumke before making that resolution.
- [322] On 8 April 2016, the third respondent met with Luke Comino. During the consultation, the third respondent executed transfers of Units 819, 918, 1020 of the Shafston Units.
- [323] On 10 June 2016, the third respondent as sole director of the first respondent resolved that the ten dollar settlement capital of the Clacher Family Trust be distributed to the third respondent on the vesting of the Clacher Family Trust and that any remaining assets in the Clacher Family Trust (if there are any) were to be distributed to the third respondent on the vesting of the Clacher Family Trust.

- [324] The third respondent obtained no legal advice or advice from any person other than Janine and Glenn Blumke before making that resolution.
- [325] On 30 June 2016, the third respondent as sole director of the first respondent passed a resolution that the income of the (Clacher Family Trust) for the year ending 30 June 2016 be paid, applied or set aside to or for the benefit of the Blumke Family Trust as to 100 percent.
- [326] The third respondent obtained no legal advice or advice from any person other than Janine and Glenn Blumke before making that resolution.
- [327] On 1 July 2016, the third respondent as sole director of the first respondent passed a resolution that on the vesting of the Clacher Family Trust the ten dollar settlement capital was to be distributed to the third respondent and any remaining capital was to be distributed to the third respondent.
- [328] The third respondent obtained no legal advice or advice from any person other than Janine and Glenn Blumke before making that resolution.
- [329] On 7 July 2016, Janine and Glenn Blumke as directors of the second respondent executed a deed of variation of the Blumke Family Trust, inserting a clause purporting to render deliberations of the trustee confidential and to provide that any document recording such deliberations was confidential.
- [330] On 25 or 29 August 2016, the third respondent executed a transfer or transfers of the Dixon St Units from the third respondent to the third respondent and Janine Blumke as joint tenants.
- [331] Consistently with those facts, the Annexure to these reasons lists the transfers of properties, shares and cash by the first respondent as trustee of the Clacher Family Trust to the second respondent as trustee for the Blumke Family Trust that are challenged by the applicants.
- [332] On the six occasions between 1 March 2015 and 29 August 2016, when the third respondent attended on Luke Comino Solicitor and executed a transfer of real property, as sole director of the first respondent, or personally, Luke Comino says that he satisfied himself of the voluntariness and independence of the third respondent's instructions to proceed with the transfer by speaking to the third respondent directly and ensuring that he received his direct confirmation and did not act via an intermediary. That may be so. But in no way do I accept that Luke Comino's affidavit amounts to a statement that he gave the third respondent any advice as to the wisdom of any of the transactions or that he made any assessment as to whether in giving instructions the third respondent may have been subject to undue influence and unconscionable dealing. There is nothing in Luke Comino's affidavit that suggests any real awareness of the true factual context in which these transactions were carried out. I observe that Luke Comino also executed each of the transfers as the solicitor for the transferee, being the second respondent or Janine and that he acted otherwise for Janine and Glenn Blumke, including in the preparation of their wills.

Reasons for the transfers and unconscionable conduct

- [333] Because of the range and number of the third respondent's accusations against Wendy, Suzanne and Jon Campbell, and because of the encouragement of Janine and Glenn Blumke of some or all of the accusations, it is difficult to form an accurate view as to the third respondent's precise reasons for making the challenged transfers. That difficulty is added to by my rejection of much of the evidence of Janine and Glenn Blumke as to what the facts surrounding what the third respondent said and did were.
- [334] Even so, some broad generalisations are possible. First, the third respondent formed a view that Wendy, Suzanne and Jon Campbell were trying to put him into a home. Second, he formed a view that they had mounted some case against him. Third, he formed a view that the way to protect himself from the threat he believed they represented was to transfer all of the property of the Clacher Family Trust and all or most of his property to Janine and Glenn Blumke's Family Trust or to Janine with him as a joint tenant, where he considered it would be safe from any claim by the applicants. Of course, in doing so, the third respondent placed himself completely at the mercy of Janine and Glenn Blumke. They would have it that he did so because he trusted them completely. It seems likely that he did. But, in my view, the third respondent was also acting in retaliation against the applicants because of his delusional beliefs about their actions and intentions. As well, in doing so, he seems to have been incapable of distinguishing between the applicants and Jon Campbell on the one hand and other family members on the other hand, particularly his grandchildren by them, or to have been insensitive to that distinction.
- [335] Although the transactional context was different, in my view, some assistance can be obtained from the circumstances in *Bridgewater v Leahy*.²⁹ In that case, an old man disposed of farm land for the benefit of a favoured nephew (and his wife) by transferring it to them for an undervalue. That had the effect of reducing the value of the old man's estate. After his death, the man's wife and children brought a proceeding against the nephew and his wife. One of the principal issues was whether the man was subject to unconscionable conduct by the nephew, in circumstances where the transactions had been carried out with the assistance of a solicitor acting for the man and where the man's capacity to make the relevant transfers was assessed by a medical practitioner.
- [336] At trial, the plaintiffs failed on alternative causes of action for undue influence and unconscionable conduct. That judgment was set aside on appeal to the High Court by majority. Although they differed on the application of the facts to the case, all members of the High Court agreed as to the applicable principles.
- [337] The discussion of unconscionable conduct in *Bridgewater* emphasises that it may be constituted by no more than passive acceptance of a benefit in unconscionable circumstances, as follows:

“In *Commercial Bank of Australia Ltd v Amadio*, Deane J spoke of unconscionable conduct as occurring where, in the circumstances, it is unconscientious to ‘procure, or accept, the weaker party's assent to the impugned transaction’. It also should be noted that in *Hart v O'Connor*... the Privy Council described unconscionable conduct which provided a basis for

²⁹ (1998) 194 CLR 457.

equitable relief as ‘victimisation, which can consist either of the active extortion of a benefit or *the passive acceptance of a benefit in unconscionable circumstances*’. . . . In any event, it will become apparent from the facts of this case that more was involved than passive acceptance by Neil of Bill's bounty and that, at a crucial juncture, the initiative came from Neil.”³⁰ (footnotes omitted)

[338] As well, the reasons considered the relevant position of disadvantage of the disporor as follows:

“The position of disadvantage which renders one party subject to exploitation by another such that the benefit of an improvident disposition by the disadvantaged party may not in good conscience be retained may stem from a strong emotional dependence or attachment. *Louth v Diprose* was such a case. In his judgment in the South Australian Full Court, a decision which was upheld in this Court, Jacobs A-CJ said (99):

‘It is an oversimplification to say that because the respondent acted as he did with his eyes open, and with a full understanding of what he was doing, he was not in a position of disadvantage, and therefore not the victim of unconscionable conduct.’

There are passages in the reasons of the primary judge which appear to suggest that the existence of such a position of disadvantage necessarily involves physical frailty and enfeeblement with diminished knowledge by the party in question of that party's property and affairs generally. That will not necessarily be the case.”³¹ (footnotes omitted)

[339] Third, the reasons consider the role of independent advice to the disporor as follows:

“As Manning J put it in *Re Levey; Ex parte Official Assignee*, ‘the Court does not allow any person to take advantage of any known weakness of the vendor’ and the Court asks whether that party had ‘the opportunity’ of professional advice as to ‘the effect of what he [was] doing’. This denial of the opportunity to have ‘the assistance of a disinterested legal adviser’, rather than speculation as to what might have followed had it been pursued, is an element in the unconscientious conduct in respect of which equity intervenes to deny the entitlement of the disponee to retain the property in question, unless the disponee shows the disposition to have been ‘fair, just and reasonable’.³² (footnotes omitted)

No real and genuine consideration

[340] Because the first respondent was trustee of the Clacher Family Trust and held the assets on trust for the beneficiaries of that trust, it was not entitled to give away the assets of the trust to a non-beneficiary. By cl 2 of the trust deed, the trustee had discretionary power to pay or apply the income of the trust fund for the benefit of the beneficiaries then living or any one or more of them exclusive of the others, in such shares and proportions as the trustee should in its absolute discretion determine prior to 30 June of the year. As well, by cl 4, the trustee had power from time to time to pay or apply such part or parts of the

³⁰ (1998) 194 CLR 457, 479 [76].

³¹ (1998) 194 CLR 457, 490 [115]-[116].

³² (1998) 194 CLR 457, 485-486 [100].

capital of the trust fund as the trustee, in its absolute discretion, deemed fit to or for the benefit of the beneficiaries or such one or more of them, exclusive of the others and in such shares or proportions as the trustee in its discretion determined.

- [341] By the definition of the “beneficiaries” in cl 1 of the trust deed, a trustee of any other trust, the capital or income of which was or may be held in whole or in part for any one or more of persons referred to in the preceding paragraphs of the definition was a beneficiary, as defined. Paragraph (a) of the preceding paragraphs specified the third respondent was a beneficiary. Accordingly, because the third respondent was a secondary beneficiary of the Blumke Family Trust, on settlement of the Blumke Family Trust the second respondent as trustee became a beneficiary of the Clacher Family Trust, as defined. Therefore, the first respondent had the constitutional power to make distributions of income or capital of the Clacher Family Trust to the second respondent, in accordance with cl 2 and 4 of the trust deed.
- [342] However, in my view, the exercises of power by the third respondent as sole director of the first respondent to make those transfers, were not attended by a real and proper consideration of the discretionary power to make the relevant distributions, because the third respondent as sole director the first respondent was subject to unconscionable conduct by Janine and Glenn Blumke.
- [343] Prima facie, that would lead to the conclusion that the transactions should be set aside. However, the second respondent sets up a number of grounds that it submits would lead to refusing that relief.

Defences

- [344] First, the second respondent alleges that the applicants, Wendy and Suzanne were validly removed as beneficiaries of the Clacher Family Trust by the 27 June 2014 resolutions, the 9 October 2014 resolutions or the 12 December 2014 resolutions, and as a consequence lack standing to bring the proceedings.
- [345] In my view, having regard to the findings of facts previously made, each of the 27 June 2014 resolutions, the 9 October 2014 resolutions and the 12 December 2014 resolutions was invalid because it was not made by a real and genuine consideration of the third respondent as sole director of the first respondent as trustee of the exercise of the power to amend the trust deed or to remove a beneficiary (if the trust deed was validly amended to add that power). It follows that the applicants do not lack standing to bring the proceeding, and it should be declared that each of those resolutions was invalid.
- [346] Second, the second respondent denies that the transfers were invalid by reason of any undue influence, unconscionable conduct or breach of trust. For the reasons previously given, I have determined that they were invalid by reason of unconscionable conduct by Janine and Glenn Blumke towards the third respondent which resulted in the first respondent failing to give real and genuine consideration to the exercise of the powers to distribute either the income or the property of the Clacher Family Trust.
- [347] Third, the second respondent alleges that relief should be refused on discretionary grounds being:

- (a) to grant or set aside the transfers as invalid would make the Clacher Family Trust insolvent because its liabilities comprising the unpaid present entitlements and other loans owing to the third respondent would exceed the value of its assets;
- (b) in any event, there is no prospect of the applicants receiving any distribution from the Clacher Family Trust;
- (c) the third respondent has ratified and confirmed the decision to transfer the trust property by his defence of the proceeding;
- (d) on 23 December 2016, the third respondent executed a will, leaving his entire estate on trust for Janine.

[348] At the trial, no up to date financial statements of the Clacher Family Trust were produced. The most recent financial statements were for the year ending 30 June 2016. As at 30 June 2016, the balance sheet stated the assets as \$18,423.62 in a bank account and preliminary expenses of \$550. The liabilities were stated as \$9,369.97 for a sundry creditor and \$9,593.65 for an amount for unpaid present entitlements. Accordingly, the net assets were \$10. A statement of the beneficiaries profit distribution for the year disclosed that \$265,310.66 was distributed to the Blumke Family Trust.

[349] The financial statements for the Clacher Family Trust for the year ended 30 June 2015 included a balance sheet that showed total assets of \$1,286,222.18 and liabilities of \$5,399.00 for a sundry creditor, \$361,994.58 for a loan from the third respondent, and \$918,818.60 as unpaid present entitlements, leaving net assets of \$10. For that year, the beneficiaries profit distribution was \$114,240.13.

[350] No distribution of capital of the trust was identified in either year.

[351] The resolutions mentioned previously made during 2015 and 2016 for transfers by way of gift from the Clacher Family Trust to the Blumke Family Trust were accompanied, generally speaking, by a note of a reduction of the unpaid present entitlements of the third respondent. That may have been meant to operate by way of release by the third respondent of the debts owed to him personally by the first respondent as trustee of the Clacher Family Trust to that extent, from time to time.

[352] No other documents identifying the amounts of those releases or their calculation is in evidence.

[353] The second respondent's submissions assume, I think rightly, that it would be inequitable to avoid the challenged transfers of the properties, shares and cash under the resolutions of the first respondent without also setting aside any releases given by the third respondent to the first respondent of the third respondent's unpaid present entitlements. The applicants did not contend to the contrary.

[354] Accordingly, it is true to say that by setting aside the relevant transactions, the Clacher Family Trust should be restored to a position where the value of the assets to be retransferred to the trustee of the Clacher Family Trust would be approximately equal to the value of the unpaid present entitlements of the third respondent as a creditor of the trustee of the Clacher Family Trust in at least approximately the same amount. However, I do not accept the second respondent's submission that it is a discretionary reason to refuse the restoration of the status quo before the transfers were made that the trustee of the Clacher Family Trust will be indebted to the third respondent in an amount

commensurate to the value of the restored assets. What happens in respect of the debt owed by the trustee of the Clacher Family Trust to the third respondent is a future matter.

- [355] Second, although the third respondent executed a will on 23 December 2016, leaving his personal estate on trust to Janine, that is not a reason to dismiss the application, in my view. First, the capacity of the third respondent to make a will as at 23 December 2016, or whether he may have been subject to undue influence in making such a will, were not matters in dispute in this proceeding. It would be entirely inappropriate to say anything directed towards such questions. Nevertheless, in my view, it would be equally inappropriate to decide, for the purposes of refusing relief to the applicants in this proceeding, that the will is valid or that it will be the final will and testament of the third respondent. Those too are future matters.
- [356] Lastly, as to the third respondent's defence of its proceeding, I noted at the outset of these reasons that by agreement between the applicants and the first and third respondents, the first and third respondents ceased to defend the proceeding after the first two days of hearing, on the basis that they will abide the decision of the Court, subject to any argument on the question of costs.
- [357] Accordingly, in my view, none of the discretionary grounds relied upon by the second respondent for denying relief to the applicants generally is made out.

Removal of the first respondent as trustee

- [358] Paragraph 4 of the relief claimed seeks an order that Bernard Francis Ponting, the Public Trustee, or such other person as the Court considers appropriate, be substituted with the first respondent as trustee of the Clacher Family Trust. The applicants submit that relief should be granted.
- [359] The second respondent submits that the third respondent retains capacity to direct the first respondent as trustee as the Clacher Family Trust, and that even if the challenged transfers are set aside, there is no evidence that the third respondent will or is likely to exercise his powers and make future decisions in breach of trust such that removal and replacement of the trustee is justified.
- [360] In my view, the persistent pattern of the decisions made by the third respondent as sole director of the first respondent as trustee of the Clacher Family Trust during 2014, 2015 and 2016, not upon a real and genuine consideration of the exercise of the relevant powers, is such that the first respondent should be removed as trustee.
- [361] The court has both statutory³³ and inherent or general jurisdiction³⁴ to remove a trustee and to appoint a new trustee where it is expedient. The jurisdiction to do so is exercised with a view to the interests of the beneficiaries, the security of the trust property and to an efficient and satisfactory execution of the trust, and a faithful and sound exercise of the powers conferred upon the trustee.³⁵
- [362] Having regard to the findings of fact made above, in my view, there can be no doubt that it is expedient to replace the first respondent as trustee. However, I will give the parties

³³ *Trusts Act 1973* (Qld), s 80(1).

³⁴ *Miller v Cameron* (1936) 54 CLR 572 at 580 – 581.

³⁵ *Miller v Cameron* (1936) 54 CLR 572, 580.

an opportunity to nominate an agreed individual, rather than the Public Trustee, by making an order that in default of another individual being appointed as the trustee vis the Public Trustee, to be appointed to replace the first respondent.

Relief against the second respondent

- [363] The applicants claim orders that the second respondent transfer back to the trustee of the Clacher Family Trust each of the trust properties and the shares transferred to the second respondent under the challenged transfers still held by the second respondent free from all encumbrances, and that the second respondent pay an amount equal to the challenged cash transfer to the trustee of the Clacher Family Trust.
- [364] Further, the applicants claim an order that the second respondent transfer all shares obtained directly or indirectly from the property of the Clacher Family Trust to the trustee of the Clacher Family Trust and an order that the second respondent account as constructive trustee in respect of all benefits obtained by reason of the challenged transfers to the trustee of the Clacher Family Trust.
- [365] Neither of the parties made submissions as to the legal basis of the liability of the second respondent, if any, to those orders. On one view, the second respondent is a beneficiary of the Clacher Family Trust that has received distributions that the trustee was not authorised to make because of the invalid exercises of power by that trustee. That is a basis for it to restore or account for the trust property it received.³⁶ On another possible view, it received property by way of gift as a volunteer under voidable transfers and the persisting equitable title of the trustee and beneficiaries of the Clacher Family Trust for the beneficiaries of that trust takes priority to the second respondent's title and may be vindicated by orders following the trust property received by the second respondent and still held by the second respondent and by tracing into any property acquired by use of the original trust property. A third possible view is that the second respondent is to be treated as a "stranger" to the Clacher Family Trust that was a recipient of trust property with notice of the first respondent's breach of trust that is subject to liability under the first limb of the rule in *Barnes v Addy*.³⁷
- [366] Whatever analysis is advanced, the second respondent did not plead or submit that the title it holds to the transferred properties is indefeasible³⁸ or that it is not subject to an order for retransfer on that ground³⁹ or that there is any other defence or reason that would prevent such an order.⁴⁰
- [367] In any event, in the present case, in my view, Janine and Glenn Blumke as directors of the second respondent were aware of the infirmities of the third respondent in making the resolutions and decisions of the first respondent upon the challenged transfers of properties, shares and cash to the second respondent as trustee of the Blumke Family

³⁶ *re Diplock; Wintle v Diplock* [1948] Ch 465, 524; see also *Giumelli v Giumelli* (1999) 196 CLR 101, 112, [3]–[6].

³⁷ (1874) 9 Ch App 244.

³⁸ *Land Title Act* 1994 (Qld), s 184(1) and s 185(1)(a). Compare *Cornerstone Property & Development Pty Ltd v Suellen Properties Pty Ltd* [2015] 1 Qd R 75, [71]–[72].

³⁹ As in *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89, 167–172 [190]–[198].

⁴⁰ For example, whether personal recovery from an innocent beneficiary is subject to first exhausting any remedies against the defaulting trustee – compare, in the case of estates, *Ministry of Health v Simpson* [1951] AC 251, 267.

Trust, so as to repel any legal analysis on the basis that the second respondent is to be treated in equity as an innocent volunteer without knowledge or notice.

- [368] In my view, orders should be made that the second respondent retransfer the property which it still holds that was the subject of the challenged transfers. As well, the second respondent should account for any dealings by it with the property the subject of those transfers that it no longer holds. Depending on the result of that account, it may be appropriate to grant further relief against the second respondent of either a proprietary or personal nature, including relief as against the assets of the Blumke Family Trust.
- [369] The second respondent is, in my view, an accounting party. The question of in what form any further order for an account is required should be deferred until the new trustee is appointed and has obtained the records of the Clacher Family Trust. In particular, it does not presently appear whether the applicants or the new trustee would seek to press a tracing claim to any property into which the property the subject of the challenged transfers has been converted and whether they would claim an account of profits in respect of any dealings with or income earned from that property or a claim for equitable compensation as an alternative thereto.

Relief against the first respondent

- [370] The applicants claim an order that the first respondent account to the applicants for all transfers and other dealings in the trust assets of the Clacher Family Trust by the provision of particulars of transfers and documents recording and explaining the transactions or transfers and an order that the first respondent provide financial accounts of the Clacher Family Trust, including all journals and detailed ledger accounts, tax returns and financial statements for the financial years ending 30 June 2014, 30 June 2015, and 30 June 2016, and all documents varying or amending, or purporting to vary or amend the trust deed.
- [371] A beneficiary is usually entitled to obtain an order for an account against a defaulting trustee and may be entitled to an order that the account be taken on the footing of wilful default,⁴¹ although an order on that basis is not sought by the claim for relief in this proceeding. Under the *Uniform Civil Procedure Rules* 1999 (Qld) an order for an account must specify the transactions of which the account is to be taken, the basis of the account and the period of the account.⁴² Separate provision is made for an account of a trust estate to be assessed and passed.⁴³ The form and verification of the account are provided for⁴⁴ and the account must be filed unless the court orders otherwise.⁴⁵ Provision is made for service of the account on the persons entitled to be heard on the taking of the account⁴⁶ and for a person to challenge the accuracy of the account.⁴⁷ The account is to be taken and the balanced determined, including examination of any witnesses⁴⁸ before a registrar or special referee or the court itself.⁴⁹ These provisions were not invoked by the applicants but inform the orders that might be made.

⁴¹ *Meehan v Glazier Holdings Pty Ltd* (2002) 54 NSWLR 146.

⁴² *Uniform Civil Procedure Rules* 1999 (Qld), rr 527.

⁴³ *Uniform Civil Procedure Rules* 1999 (Qld), rr 645, 648 – 657B.

⁴⁴ *Uniform Civil Procedure Rules* 1999 (Qld), rr 530.

⁴⁵ *Uniform Civil Procedure Rules* 1999 (Qld), rr 531.

⁴⁶ *Uniform Civil Procedure Rules* 1999 (Qld), rr 531.

⁴⁷ *Uniform Civil Procedure Rules* 1999 (Qld), rr 532.

⁴⁸ *Uniform Civil Procedure Rules* 1999 (Qld), rr 534 and 533.

⁴⁹ *Uniform Civil Procedure Rules* 1999 (Qld), rr 536.

- [372] However, having regard to the financial statements for the Clacher Family Trust as at 30 June 2016, at this stage there seems to be no point in granting relief against the first respondent that it provide an account of the dealings by it of the property of the trust. The transfer of all of the substantial assets of the Clacher Family Trust to the second respondent as trustee of the Blumke Family Trust seems not to be a matter of dispute or which now necessarily requires an account to ascertain. Upon appointment of the new trustee, that trustee will be required to get in the trust property and will be entitled to all of the books and records of the Clacher Family Trust as part of that property and will be able to review the appropriate records, to the extent necessary, to ascertain whether there have been any other dealings which may require further relief or claims.
- [373] Further, it seems to me that the relevant order is not, as the applicants claim, that the respondents should be required to account to the applicants. Traditionally, an order for an account required that the accounting party leave the account at the court, in this court by filing it, and for the account to be taken and passed in the court.⁵⁰ In the language of the current rules, that process is for the account to be filed, taken or assessed and passed.
- [374] The applicants' rights are held in the capacity of discretionary objects or beneficiaries of a discretionary trust, prior to vesting. They have no right to the trust assets as such. Their right is simply characterised as an entitlement to have the Clacher Family Trust duly administered and breaches of trust by the trustee remedied. The case law recognises that where a beneficiary brings a claim for breach of trust, an order may be made that the defaulting trustee account to the beneficiary, but in the manner described above. Here, a new trustee is to be appointed. The new trustee will be a necessary party to any taking or assessment of the account.
- [375] Perhaps for a different reason, the applicants submit that they ought not to take on the role of tracing the trust transfers, incomes and outgoings. Whatever the reason, to that extent, I accept the substance of that submission. The applicants submit, however, that it is appropriate that the respondents pay the costs of an independent accountant or auditor to receive the documentation and prepare the account. I do not agree that is necessary.
- [376] In my view, at this stage, the appropriate order as to an account is that the second respondent account to the new trustee in respect of any dealings by the second respondent with any property transferred to it by the first respondent as trustee of the Clacher Family Trust between 1 January 2015 and the present day, including the properties, shares and cash identified in the Annexure to these reasons.
- [377] Otherwise, the question of further relief by way of inquiries or accounts or otherwise in the proceeding that follows from these reasons should be stood over to a future date.

⁵⁰ See, for earlier forms, *Rules of the Supreme Court 1900* (Qld), O 67 rr 1, 15, 19-22, 24-28, 49 and 58 and Forms 328 and 337-340.

ANNEXURE

Property transfers

Date of transfer	Real property	Instrument of transfer
23 April 2015	Unit 401, Shaftson Mansions, 188 Shaftson Avenue, Kangaroo Point, QLD, 4169 More particularly described as Lot 401 on SP142469, County of Stanley, Parish of South Brisbane	Registered instrument of transfer No. 716600268
30 June 2015	Unit 410, Shaftson Mansions, 188 Shaftson Avenue, Kangaroo Point, QLD, 4169 More particularly described as Lot 410 on SP142469, County of Stanley, Parish of South Brisbane	Registered instrument of transfer No. 716600285
30 June 2015	Unit 1015, Shaftson Mansions, 188 Shaftson Avenue, Kangaroo Point, QLD, 4169 More particularly described as Lot 1015 on SP142469, County of Stanley, Parish of South Brisbane	Registered instrument of transfer No. 716600309
14 September 2015	8 Johnston Street, West Ipswich, QLD, 4305 More particularly described as Lots 4 and 5 on RP 51716, County of Stanley, Parish of Ipswich.	Registered instrument of transfer No. 716754942
14 September 2015	Unit 1016, Shaftson Mansions, 188 Shaftson Avenue, Kangaroo Point, QLD, 4169 More particularly described as Lot 1016 on SP142469, County of Stanley, Parish of South Brisbane	Registered instrument of transfer No. 716754938
8 April 2016	Unit 918, Shaftson Mansions, 188 Shaftson Avenue, Kangaroo Point, QLD, 4169 More particularly described as Lot 918 on SP142469, County of Stanley, Parish of South Brisbane	Registered instrument of transfer No. 709494950
8 April 2016	Unit 1020, Shaftson Mansions, 188 Shaftson Avenue, Kangaroo Point, QLD, 4169 More particularly described as Lot 1020 on SP142469, County of Stanley, Parish of South Brisbane	Registered instrument of transfer No. 711765065
8 April 2016	Unit 819, Shaftson Mansions, 188 Shaftson Avenue, Kangaroo Point, QLD, 4169	Registered instrument of

	More particularly described as Lot 819 on SP142469, County of Stanley, Parish of South Brisbane	transfer No. 712912706
--	---	---------------------------

Share transfers

Transfer date	Shares transferred from the CFT to Flowon	Quantity
06/01/2015	AGL Energy Limited FPO	2200
06/01/2015	ALS Limited FPO	2600
06/01/2015	ANZ Banking Group Limited Cnv Pref Shares	600
06/01/2015	NZ Banking Group Limited Convertable Preference Shares CPS3	500
06/01/2015	ANZ Banking Group Limited Unsec Sub FR Notes	400
06/01/2015	Atlas Iron Limited FPO	20800
06/01/2015	Bank of Queensland Limited CPS	300
06/01/2015	BKI Investment Company Limited FPO	14413
06/01/2015	Commonwealth Bank of Australia PERLS VI	600
06/01/2015	Dexus Property Group Stapled Security	4134
06/01/2015	Insurance Australia Group Ltd FPO	5500
06/01/2015	iShares S&P Asia 50 ETF	300
06/01/2015	iShares S&P Europe ETF	280
06/01/2015	Mesoblast Limited FPO	3300
06/01/2015	National Australia Bank Income Securities	630
06/01/2015	National Australia Bank Subordinated Notes	300
06/01/2015	Orica Limited FPO	500
06/01/2015	PanAust Limited FPO	5000
06/01/2015	ResMed Inc CDIs	2750
06/01/2015	Santos Limited FPO	2221
06/01/2015	SPDR S&P/ASX 200 Fund ETF Units	900
06/01/2015	Stockland Stapled Securities	8200

06/01/2015	Trade Me Group Ltd FPO	4200
06/01/2015	Westpac Banking Corporation CPS	500
06/01/2015	Westpac Trust Preferred Security	300
20/01/2015	AMP Limited FPO	13996
20/01/2015	ANZ Banking Group Limited FPO	4477
20/01/2015	Bank of Queensland Limited FPO	4514
20/01/2015	Challenger Limited FPO	5950
20/01/2015	Computershare Limited FPO	3635
20/01/2015	Crown Resorts Limited FPO	2000
20/01/2015	Mirvac Group Stapled Security	22000
20/01/2015	National Australia Bank Ltd FPO	3932
20/01/2015	Newcrest Mining Limited FPO	2400
20/01/2015	Novogen Limited FPO	1100
20/01/2015	Oil Search Limited FPO	3319
20/01/2015	Prana Biotechnology Limited FPO	20000
20/01/2015	QBE Insurance Group Limited FPO	2709
20/01/2015	Rio Tinto Limited FPO	1090
20/01/2015	Russell High Div Aus Shares ETF	1500
20/01/2015	Sims Metal Management Limited FPO	3412
20/01/2015	Sirtex Medical Limited FPO	1000
20/01/2015	SPDR S&P/ASX 200 Listed Property Fund ETF	10200
20/01/2015	Suncorp Group Limited FPO	6290
20/01/2015	Telstra Corporation Limited FPO	11000
20/01/2015	Wesfarmers Limited FPO 1,025.00	1025
20/01/2015	Woodside Petroleum Limited FPO	2680
04/08/2015	AMP Limited FPO	284

04/08/2015	ANZ Banking Group Limited FPO	648
04/08/2015	BHP Billiton Limited FPO	4145
04/08/2015	Medibank Private Limited FPO	1800
04/08/2015	National Australia Bank Ltd FPO	132
04/08/2015	QBE Insurance Group Limited FPO	464
04/08/2015	South32 Limited FPO	4145
04/08/2015	Suncorp Group Limited FPO	301
	Woolworths Limited FPO	1135
04/02/2016	Commonwealth Bank of Australia Limited FPO	1140
04/02/2016	Lendlease Group Stapled Security	2000
04/02/2016	Nanosonics Limited FPO	10,000
04/02/2016	Russell High Div Aus Shares ETF	700
04/02/2016	Westpac Banking Corporation FPO	4504

Cash transfer

The sum of \$231,479.00 which was transferred on 19 January 2015.