

SUPREME COURT OF QUEENSLAND

CITATION: *Helg v Sergiacomi & Another* [2014] QSC 50

PARTIES: **ROSINA MARIA HELG**

Applicant

And

ROBERT SALVATORE SERGIACOMI

First Respondent

PETER GERARD SERGIACOMI

Second Respondent

FILE NO/S: S33/14

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court Rockhampton

DELIVERED ON: 27 March 2014

DELIVERED AT: Rockhampton

HEARING DATE: 17 March 2014

JUDGE: McMeekin J

ORDERS:

1. The application is dismissed.

2. The applicant is ordered to pay the respondents' costs of the application on the standard basis.

CATCHWORDS SUCCESSION - PERSONAL REPRESENTATIVES – PROCEEDINGS AGAINST PERSONAL REPRESENTATIVES – where the applicant is seeking disclosure of documents from the executors of her mother's estate – where applicant is unclear of what documents should be disclosed – where no proceedings currently on foot – whether an order for disclosure should be made.

Land Title Act 1994 (Qld)

Property Law Act 1974 (Qld)

*Uniform Civil Procedure Rules 1999 (Qld)**Helg v Sergiacomi & Anor* [2011] QSC 322 cited

COUNSEL: Applicant in person
 Respondents in person

SOLICITORS: Applicant in person
 Respondents in person

- [1] **McMeekin J:** The Applicant, Rosina Maria Helg, is a beneficiary under the terms of the will of her late mother, Santina Sergiacomi (the deceased). The respondents, Robert Salvatore Sergiacomi and Peter Gerard Sergiacomi are her brothers and were appointed by their mother as the Executors of her Will. While the Originating Application does not say so as it should,¹ they are sued in that representative capacity.
- [2] The deceased died on 21 February 2009. Administration of her estate is all but completed. A tax return for the 2012-13 year remains to be filed.
- [3] After hearing from Mrs Helg and studying her affidavits it is clear that she is concerned that the respondents have not administered the estate according to law and in the interest of the beneficiaries. She had similar concerns in relation to her late father's estate against the same respondents. Many of the issues seem to overlap. I dealt with the complaints that she then made in 2011: *Helg v Sergiacomi & Anor* [2011] QSC 322.
- [4] The applicant is self represented, as are the respondents. Despite listening to Mrs Helg for several hours I am not at all sure what order it is that she expects from her application.
- [5] In her originating application the applicant first refers to r 643 *Uniform Civil Procedure Rules 1999* ("UCPR"), s 81 of the *Land Title Act 1994*, and s 80 of the *Property Law Act 1974* and then the application reads: "I am applying to the court to retrieve all mortgage documentation over property owned by Santina Sergiacomi located at Property Description: Lot 2 RP 221931: County of March: Parish: Urangan: Title Reference: 17212011 – from the executors of my late mother's estate."
- [6] There then follows an assertion of the history of the ownership of the property mentioned – it had been owned jointly by the applicant's parents, was transferred by the respondents (in their capacity as their father's executors) to their mother after their father had passed away, "three weeks before grant of probate of my late father's will", and a mortgage on the property released on 7 March 2007 by the respondents. The property in question is a small house block situated at Urangan Street, Torquay.
- [7] The application then reads: "I am applying to the court for the executors to produce all mortgage documentation relating to the mortgage taken out over this property on

¹ Rule 18 UCPR

22 September 1997, and what assets this loan was taken out for in 1997 and the amount to pay out this mortgage with the National Australia Bank and released from a mortgage on 7 March 2007, two years before my mother passed. Provide all documents Under the Property Law Act: a trust deed dated 1997 should be submitted as a charge was taken out over all assets mortgaged in 7 April 1997 by the ANZ Bank which holds all the assets for my late parents Ernesto and Santina Sergiacomi”.

- [8] The meaning of the phrase “what assets this loan was taken out for in 1997” remains obscure. All that the executors can do is produce documents that relate to the mortgage, assuming that they have such documents in their possession. Whether the documents contain the information that the applicant seeks is another matter.
- [9] Similarly the meaning of the phrase “a charge was taken out over all assets mortgaged in 7 April 1997 by the ANZ Bank which holds all the assets for my late parents Ernesto and Santina Sergiacomi” is obscure. The reference would seem to be to a charge on the assets of Multifield Pty Ltd in the form of a mortgage debenture entered into by Multifield Pty Ltd under the hand of Robert Sergiacomi as director on that date and in favour of the ANZ Bank which is exhibited.² The document does not have anything to do with the assets of Mrs Helg’s parents, save perhaps indirectly to the extent they held interests as shareholders in the company.
- [10] The reference to r 643 UCPR is presumably to signal that Mrs Helg believes that property that ought to have been conveyed to her under the terms of her mother’s will has not been. But no relevant order is sought. By the terms of her application Mrs Helg does not seek to have any estate, legacy or bequest conveyed, transferred, transmitted, paid or handed to her, matters with which r 643 is concerned.
- [11] Similarly I am not at all sure what s 80 of the *Property Law Act* has to do with the application. The section deals with the obligations of a mortgagee to produce documents of title to the mortgagor on request. Mrs Helg is not the mortgagor of the property and the (now former) mortgagee, the NAB, is not a party to the application and no order is sought against it, at least in terms.
- [12] Section 81 of the *Land Title Act* provides for the effect of lodgement of an instrument releasing a mortgage. It too seems irrelevant to the orders sought.
- [13] Putting those matters to one side the application identifies two matters of interest to the applicant – documents relating to a mortgage in favour of the National Australia Bank (“NAB”) over the property mentioned entered into in September 1997, and a trust deed dated in 1997.
- [14] The respondents did not contest that the applicant was entitled to documents that might shed light on her entitlements under her late mother’s will. Their position was that they were unable to ascertain what obligation the applicant considered they had not complied with or determine what order she was seeking. The applicant had obtained, by means of non party disclosure,³ documents from the NAB and the

² Ex G to Mrs Helg’s affidavit filed 14 January 2014

³ While the respondents appear to have taken no objection to the demands made on them, and the disclosure provided has been beneficial to a degree, I am doubtful that the rules relating to non party disclosure are available – by their terms the rules apply only where the issues are identified in pleadings (see r 242(1)(a) UCPR) and there are no pleadings here nor any clear identification of

respondents' solicitors as well as documents from the respondents themselves. The respondents swore that the documents so obtained were all the documents that they were aware of that came within the demand made in the originating application.

- [15] In September 1997 the applicant's father was alive – he passed away on 11 August 2006, nearly nine years later – and presumably then in control of his own property. I mention this as Mrs Helg seemed to assume that the respondents were responsible for the taking out of the mortgage and necessarily cognisant of the matters relevant at the time, a time long before they commenced their duties as executors of their late father's estate. The applicant is suspicious of the exercise of an enduring power of attorney, executed by her father in favour of the respondents, but there is no evidence, as opposed to assertion, that her father ever lacked capacity at any relevant time or that the enduring power of attorney was in fact ever used by the respondents before his death. I have dealt with this in the earlier application.⁴

The NAB Mortgage Documentation

- [16] Mrs Helg has long been aware of the mortgage and the release of the mortgage under consideration. It was mentioned in the "Estate Statement" of Ernesto Sergiacomi provided to Mrs Helg.⁵ She considers this release of a mortgage evidence of a misappropriation of her late mother's property.⁶ I do not understand why. Normally the removal of a charge over property results in an improvement in value not a diminution. And she believes, without offering proof, that the mortgage was not over Lot 2 on RP 221931 but over quite separate real estate.⁷ Again, I do not understand why.
- [17] The documents disclosed by the respondents to the applicant show that Mrs Helg's parents sought and obtained a bank guarantee from the NAB on 18 September 1998 in favour of the local Council, the Hervey Bay City Council, in the sum of \$47,004 for certain headworks needed for a development that they proposed to undertake.⁸ On 21 November 2006 the Council advised it no longer required the security and returned the guarantee to the bank.⁹ The respondents attended to payment of certain fees that the NAB required in early February 2007. They have supplied the bank statement evidencing payment of \$461.42.¹⁰ They assert that upon the release of that security by the Council and the payment of the fees the NAB released the mortgage over the land on 7 March 2007. So no money changed hands.
- [18] While Mrs Helg's arguments were neither cogent nor coherent she is concerned, I think, by two discrepancies in dates – the mortgage was registered a year before the guarantee was executed and, secondly, the release of the mortgage occurred more than three months after the Council returned the guarantee.
- [19] As the respondents point out, the latter point is explained by the need for them to ascertain and then attend to payment of the fees the NAB required. The mortgage

issues. I mention the matter as Mrs Helg seems intent on pursuing some of those respondents further and she may find that she is wasting her time and incurring further costs.

⁴ See *Helg v Sergiacomi & Anor* [2011] QSC 322 at [22], [118]

⁵ See Ex 1(g) to the affidavit of Mrs Helg filed 10 March 2014 and paragraph 14 of that affidavit

⁶ See paragraphs 100 to 105 of Mrs Helg's affidavit filed 14 January 2014

⁷ See paragraph 102 of Mrs Helg's affidavit filed 14 January 2014

⁸ Ex RPS2 to the affidavit of the respondents at p 13/16

⁹ Ex RPS2 to the affidavit of the respondents at p 9-10/16

¹⁰ Ex RPS2 to the affidavit of the respondents at p 11-12/16

was released within weeks of that payment being made. They did so from an account in their, by now, deceased father's name, that being the account previously used to pay the guarantee facility fee. It was necessary that they first put the account in funds. Mrs Helg is puzzled by a reference to the release in her father's "Estate Statement" that was provided to her¹¹ as the property by the time of the release belonged to her mother. Presumably the use of that account explains the reference.

- [20] The first discrepancy is fully explained by the disclosure undertaken by the NAB. The NAB has responded to the notice of non party disclosure by providing copies that the bank has of a mortgage and release of the mortgage over the subject property. The mortgage¹² records that the mortgage is over Lot 2 on RP 221931 and shows that stamp duty was paid on a principal security of \$18,700.¹³ The mortgage was executed by Mr and Mrs Sergiacomi (ie Mrs Helg's parents) on 22 and 23 September 1997 respectively. The NAB also disclosed their copy of a Bank Guarantee executed on 23 September 1997 in the sum of \$18,675 naming the Hervey Bay City Council as beneficiary and identifying the relevant agreement as "Contribution to upgrade Bideford Street intersection; construction of footpath and bond against nuisance during construction".¹⁴ The agreement referred to in the Bank Guarantee disclosed by the respondents (which is for a greater amount) is in identical terms save that the words "contribution to water supply headworks & stormwater drainage & contribution to sewerage headworks" is added.
- [21] The coincidence of the dates of execution and of the amounts (\$18,675 for the required guarantee and \$18,700 being the principal security) makes plain that the mortgage was originally taken out to secure the performance of the bond required by the Council.
- [22] Further documents disclosed by the NAB show that there was a subsequent change in the Council requirements and that it was necessary to increase the amount of the bank guarantee. A file note of 9 April 1998 records a request for increased funding to \$34,774 and "security is by way of mortgage over property situated at 55-57 Urangan Street, Torquay".¹⁵ A file note dated 14 September 1998 disclosed by the NAB records that Mrs Helg's parents were advised by the Council that their advice as to the required contribution for the rezoning application was incorrect and the amount of \$12,230 had to be added to the existing bank guarantee such that the new guarantee would be for \$47,004. That file note records under "quality of securities" that the facility was secured by "R/M Deeds" – I assume registered mortgage deeds.¹⁶
- [23] The final document disclosed is an email from a bank officer addressed to Mrs Helg in which he states: "These documents support my earlier view that prior to the time of the NAB's release of its mortgage the only facility that had been secured against the property was a bank guarantee."¹⁷

¹¹ See Ex 1(g) to the affidavit of Mrs Helg filed 10 March 2014 and paragraph 14 of that affidavit
¹² Dealing number 702248377

¹³ Ex 1(a) to the affidavit of the applicant filed 10 March 2014 at p2/45

¹⁴ Ex 1(a) to the affidavit of the applicant filed 10 March 2014 at pp4-5/45

¹⁵ Ex 1(a) to the affidavit of the applicant filed 10 March 2014 at p18/45. Other documents refer to 57-59 Urangan Street. The discrepancy seems immaterial.

¹⁶ Ex 1(a) to the affidavit of the applicant filed 10 March 2014 at p12/45

¹⁷ Ex 1(a) to the affidavit of the applicant filed 10 March 2014 at p45/45

- [24] Despite this evidence – and the lack of any countervailing evidence - Mrs Helg remains unconvinced that the guarantee and the mortgage are interconnected. She wrote to her brothers on 25 February last and claimed “It [ie the guarantee] has nothing to do with the Mortgage taken out by our late parents or any documentation that relates to a Mortgage or Release of Mortgage over this property.”¹⁸ She persists in that view to date. I cannot fathom why.
- [25] Mrs Helg seems to draw an adverse inference from the state of her brother’s memory. Her affidavit records that the respondent Peter Sergiacomi was unable to recall delivering the release of mortgage to the estate’s solicitors¹⁹, although their records show that had occurred, nor did he have any memory of the mortgage or its release. I cannot discern what inference reasonably follows from a lack of memory of the delivery of a document seven years ago, assuming that there was such a memory lapse. And Mr Peter Sergiacomi did respond to Mrs Helg’s email detailing his beliefs concerning the Mortgage and its Release in his email of 24 February 2014 exhibited to his affidavit,²⁰ beliefs that accord completely with the documents produced by the NAB and the opinion, independently expressed, of the NAB officer.
- [26] In the end result Mrs Helg now has a copy of the Mortgage, a copy of the Release of Mortgage and copies of several bank guarantees including one that records the final amount of the guarantee required. She has the bank statements from the respondents showing the modest payment out of fees to the NAB. I am unable to discern what other document she thought must be in existence that remains undisclosed relating to the transaction in question.

The Trust Deed

- [27] Express reference is made in the originating application to requiring a copy of “the trust deed dated 1997”. Mrs Helg evidently holds the view that her parents entered into a trust of some sort in 1997, that she was a beneficiary of that trust, and that trust was associated with a charge over her parents assets granted in favour of the ANZ Bank. She considers this trust to be the “key” to her parents’ estates.²¹
- [28] There seems to me to be no evidence to support these beliefs. The matter is complicated because Mrs Helg nowhere explains why she holds these beliefs. I can only speculate.
- [29] That a charge was entered into on the date she alleges, for the amount she alleges (\$1.8M) and in favour of the Bank she nominates is clear. But the document that she exhibits²² does not evidence a charge over her parents’ assets but over the assets of Multifield Pty Ltd. It is a fixed and floating charge over the company’s assets present and future. The charge is in the form of a mortgage debenture. Clause 32 of the mortgage debenture refers to a trust. While Mrs Helg does not say so I assume that it is the existence of this clause that has caused her to believe that a trust exists. I note that by cl 32(c)(iii) the Mortgagor covenants that the Mortgagor “shall not retire as trustee ...or appoint any new or additional trustee” without the prior written

¹⁸ Ex RPS6 to the affidavit of the respondents at p2/2

¹⁹ Paragraph 15 of Mrs Helg’s affidavit filed 10 March 2014

²⁰ Ex RPS5 to the affidavit of the respondents at p1/2

²¹ Paragraph 120 of Mrs Helg’s affidavit filed 14 January 2014

²² Ex G to Mrs Helg’s affidavit filed 14 January 2014

consent of the Bank. I mention this as Mrs Helg notes that the trust she believes exists has such a clause.²³

- [30] But the flaw in this approach is that cl32 does not evidence that a trust exists. Its opening words read: “Where a trust is described in schedule 1”.²⁴ No trust is described in schedule 1. That schedule reads: “Not Applicable”.²⁵
- [31] I have searched Mrs Helg’s affidavit for further evidence without obtaining any clarification. There are various references to trust deeds. There is a reference to “my late father’s Trust deed”,²⁶ to a solicitor delivering a tax invoice on 21 December 2007 in which he charged a fee for reviewing “the Trust Deed” with a comment that the solicitor “deceived me as this trust deed is also false” without enlightening particulars,²⁷ to Mrs Helg not being “privy to the **Trust Deed** which is the true trust deed of my late parents that has been concealed from me”,²⁸ and to her brothers being “fully aware” that her parents “had a Trust Deed set up in 1997 as the ANZ Bank had a copy of the trust deed on file and this too they failed to provide to me” without exhibiting the trust deed that the ANZ Bank is said to have on its file.²⁹ All this is mere assertion without proof.
- [32] I note that Mrs Helg is distrustful of the ANZ Bank, as she is distrustful of everybody who has any connection with this matter, complaining that the ANZ Bank has failed to comply with her demands for non party disclosure “by withholding all relative (*sic* – relevant?) mortgages over their [presumably a reference to her parents] assets that they held with their bank.”³⁰ The other possibility is that the ANZ Bank may not hold relevant mortgages over her parents’ assets. That the bank did so in 2005 is clear enough. But the documents exhibited indicate that the mortgage was released in March 2005.³¹ For present purposes Mrs Helg’s distrust does not provide evidence of the existence of an undisclosed trust deed.
- [33] The most complete reference to the trust issue occurs at paragraphs 152 to 154 of Mrs Helg’s supporting affidavit. She refers, mistakenly, to a charge over “all assets my late father and mother owned on the 7/4/1997” but exhibits the mortgage debenture over the company assets that I have described, and asserts “it was all held in trust for the period of this charge over all mortgaged property”.³² She asserts that the “true trust deed” was submitted with this charge document but says that she was never privy to it and has never witnessed it.³³ Apart from that bald assertion no evidence is proffered of the existence of a trust save that Mrs Helg reveals that she has been supplied with a copy of a trust deed dated 1992 and exhibits that deed.³⁴

²³ Paragraphs 120 and 153 of Mrs Helg’s affidavit filed 14 January 2014

²⁴ Ex G to Mrs Helg’s affidavit filed 14 January 2014 at p29/33

²⁵ Ex G to Mrs Helg’s affidavit filed 14 January 2014 at p33/33

²⁶ Paragraph 49 of Mrs Helg’s affidavit filed 14 January 2014

²⁷ *Ibid* para 70

²⁸ *Ibid* para 114

²⁹ *Ibid* para 120

³⁰ *Ibid* para 119

³¹ Ex C to the affidavit of Mrs Helg filed 14 January 2014 at p4/13

³² Paragraph 152 of Mrs Helg’s affidavit filed 14 January 2014

³³ *Ibid* paras 152-153

³⁴ Ex G(i) to Mrs Helg’s affidavit filed 14 January 2014

This deed (by which the Ernesto Sergiacomi Family Trust was established) she says “has nothing to do with the assets held by the ANZ Bank over this charge.”³⁵

- [34] Given the lack of any evidence that a trust exists, other than the one disclosed, there is no reason to think that the respondents are hiding anything from Mrs Helg or have any documents to disclose.

Other Matters

- [35] Mrs Helg makes numerous complaints in her affidavits about the respondents’ discharge of their duties. She effectively asserts that they have used their powers under the enduring powers of attorney held by them and as executors to transfer all assets away from their parents and into their own hands. She believes that every solicitor engaged, whether by them or by her, has been complicit in this endeavour. No rational evidence is proffered of any such thing.
- [36] As no relevant order is sought in the application I do not propose to deal with these complaints. Indeed, given that there would seem to be numerous issues of fact involved, it is inappropriate to go into these matters on an application. I suspect that without the benefit of evidence from the witnesses involved in the various transactions in a professional capacity over the years it would not be possible to satisfactorily determine or resolve the many concerns that Mrs Helg has.
- [37] If Mrs Helg wishes to pursue these complaints then she should bring proceedings by way of Claim and Statement of Claim. Alternatively she may have a basis for bringing an application under s8 of the *Trusts Act* 1973 in which case she will need to identify with precision each act of the trustees that she calls into question. I do not mean to encourage her to do so but merely explain why I do not deal with the many issues that she raises which seem to me immaterial to the orders that she presently seeks.
- [38] However I will mention one matter. It seems that what has triggered the application and inflamed Mrs Helg’s continuing distrust is the discovery by Mrs Helg that the solicitors acting for the respondents had overlooked registering the respondents as the attorneys of her late mother as required by s 132 of the *Land Title Act* 1994. I assume that this is meant when she refers to “vital documents” and “vital information” coming into her possession.³⁶ The first 100 paragraphs of her affidavit are concerned with this matter.
- [39] Ironically the matter came to light when the respondents endeavoured to transfer to Mrs Helg their mother’s house property on 21 December 2007. Self evidently Mrs Helg was then desirous of obtaining the property and she did so. The respondents’ capacity to transfer the property depended on them being their mother’s duly appointed attorneys. So they were. Their father had originally been. He had passed away by the relevant time. Under the instrument appointing him the respondents were nominated by their mother as the attorneys to succeed him on his death.³⁷

³⁵ Paragraph 154 of Mrs Helg’s affidavit filed 14 January 2014

³⁶ There are numerous references but see paras 1, 4 and 6 of Mrs Helg’s affidavit filed 14 January 2014. In fact it would appear that the relevant documents have been in Mrs Helg’s possession but overlooked by her at least since January 2010: see para 2 of Mrs Helg’s affidavit filed 14 January 2014.

³⁷ See Ex B to the affidavit of Mrs Helg filed 14 January 2014 at pp16-17/61

There is no suggestion of any invalidity in the form of their appointment. Nor was the appointment revoked by the death of their father as Mrs Helg asserts.

- [40] As Mrs Helg has discovered where successive attorneys are appointed they cannot deal in registered land until the power of attorney is registered: s 132 *Land Title Act* 1994. The solicitors acting for the respondents had failed to file the necessary form – Form 16. The solicitor acting for Mrs Helg in the transaction discovered the omission, brought it to the attention of the respondents’ solicitors and the matter was immediately rectified by the filing of the appropriate form thus permitting the transaction to proceed.
- [41] The realisation and rectification of that oversight brought about the completion of a transaction that both parties then evidently desired. As best I can see there is no suggestion of any disadvantage to the respondents’ mother, in whose interests they were required to act. From various comments that Mrs Helg makes in her affidavit and in oral submissions she seems to believe that she paid too much for the property. But I do not understand how that reflects adversely on the respondents’ performance of their duties as attorneys.
- [42] To most the solicitor’s omission would appear an innocent, if embarrassing, oversight on the part of the respondents’ solicitors. Mrs Helg detects something much more sinister. What I think she overlooks, as she nowhere acknowledges the point, is that the filing of the necessary form is an administrative matter, an important one for the proper dealings in land to be sure, but still administrative in nature. The Registrar had no discretion or power to reject the filing of the Form 16 provided the power of attorney complied with the requirements of the *Land Title Act*: see s30 of the *Land Title Act*. There is no suggestion that it did not.
- [43] Mrs Helg claims, and the respondents deny, that numerous transactions are affected by this failure to file the appropriate form. Given that factual dispute I do not enter upon it save that I observe that registration of the power of attorney was relevant only to the validity of the registration of any instrument dealing in land executed under the power. It was not relevant to the existence of a valid enduring power of attorney. It did not affect the respondents’ capacity to deal with Mrs Helg as their mother’s attorneys.
- [44] I do not overlook that in her written submissions that were handed up when the matter was called on Mrs Helg seeks orders that go beyond those sought in her application. I do not propose to make any of the orders sought. I will briefly explain why.
- [45] One such order is sought against a solicitor who has acted for the respondents in the past. He is not before the Court, as he was not served, and I do not propose to make any order against him.
- [46] Further, in her submissions Mrs Helg seeks that the respondents “supply full details of all assets that were transferred into their names to allow them to administer the estate of my late father as these assets were jointly owned by my late parents and should have transferred to my late mother...”. The order sought presupposes that there were assets jointly owned by their parents and that these assets were transferred, wrongly, by the respondents to themselves rather than directly to their mother. There is no evidence of this occurring. Mrs Helg’s assertion that this has

occurred³⁸ is not proof. What evidence there is suggests that the respondents have complied with their duty. In her affidavit Mrs Helg records that three properties were transferred to her mother before probate of her father's will issued.³⁹ The obtaining of probate of course is not necessary to affect the transfer of jointly owned property. Mrs Helg does not identify those properties but the respondents seem to confirm her assertions.⁴⁰ In the absence of any evidence that any other property exists that was jointly owned there is no basis for a finding, or even a suspicion, that the respondents have not discharged their duties appropriately.

- [47] Mrs Helg also seeks an order that the respondents "supply all documents in relation to the Release of Mortgage dated 14 August 2012 listed in the Estate Statement of Santina Sergiacomi for an ANZ production fee of \$160 paid by cheque number: 55042". The lack of notice has meant that the matter is not dealt with in the material filed – as best I can see by either side. So what documents have already been disclosed and what further documents might reasonably remain to be disclosed is not apparent. If none have been then the respondents would be well advised to explain the transaction. Given the lack of merit in the application so far revealed I am not prepared to make orders without evidence expressly dealing with the matter.
- [48] Before leaving the matter I observe that I have no doubt that Mrs Helg is sincere in her belief that her brothers have taken in excess of \$5million from her parents' estates. But the foundations for her beliefs are either not apparent or, when apparent, plainly misguided or, with respect, simply irrational. A further problem is that many of Mrs Helg's complaints concern matters that occurred long ago, well before the respondents took up their duties as executors and at a time that, so far as the evidence shows, her parents were capable and in charge of their own affairs.
- [49] In the end result I decline to make the orders that I discern are sought in the application. The application is dismissed. While the respondents were not legally represented at the hearing it may be that they incurred costs at an earlier stage, there being mention of solicitors being retained by them then. If they have incurred costs the applicant should pay them.

³⁸ See paras 110-113, 115 of Mrs Helg's affidavit filed 14 January 2014

³⁹ *Ibid* para 112

⁴⁰ Ex RPS2 to the affidavit of the respondents at p16/16 (reference to clauses 110-112)