

SUPREME COURT OF QUEENSLAND

CITATION: *Allsop v Henderson & Others* [2015] QSC 105

PARTIES: **STEVEN CHARLES ALLSOP**
(applicant)
v
**EDWARD JAMES HENDERSON, PETER ALCORN
LILLEY, RICHARD CHARNON ALLSOP (as Executors
of the Estate of the late CHARLES EDWARD ALLSOP)**
(respondents)

FILE NO/S: 5009 of 2013

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 May 2015

DELIVERED AT: Brisbane

HEARING DATE: 23-24 February 2015

JUDGE: Atkinson J

ORDER: **That further and better provision for the applicant, Steven Charles Allsop, be made out of the estate of Charles Edward Allsop, deceased, by reading the Will as if the following clause were substituted for Clause 3(d) of the Will:**

“to my son Steven Charles Allsop the sum of One Million Dollars (\$1,000,000.00) and I direct that such amount is to be paid first from my ready monies and if such funds are insufficient then my Trustees are to exercise all appropriate powers and discretions as my Trustee or as Shareholders or Directors of any company in which I hold shares at the date of my death (whether or not such company acts as a Trustee of any Trust) so that the legacy of \$1,000,000.00 is paid to my son Steven Charles Allsop as a capital payment within 12 months from the date of my death.”

CATCHWORDS: SUCCESSION – FAMILY PROVISION – REQUIREMENT FOR ADEQUATE AND PROPER MAINTENANCE – WHETHER APPLICANT LEFT WITH INSUFFICIENT PROVISION – CLAIMS BY CHILDREN – where the applicant was the adult son of the testator’s first marriage – where the applicant was poorly paid and of limited working

capacity due to injury – where the applicant was married with two young adult children – where the relationship between the applicant and the testator was poor – where the testator had remarried – where there was a son of the second marriage – where the other legitimate claims on the testator’s bounty were his widow and the adult son of his second marriage – where the testator’s widow and second son had provided care for the testator later in life – where the testator had provided well for his widow and second son in life – where the testator had made substantial provision for his widow and second son under the will – where the testator had made little provision for the applicant under the will – where much of the estate’s assets were found to be held in a series of companies and trusts – where the estate was consequently very large – whether adequate provision had been made from the estate for the applicant’s proper maintenance and support.

Succession Act 1981 (Qld) s 40, s 41(1)

Brown v Hill [2012] NSWSC 464, cited
Lajcarova v Todorov [2011] NSWSC 522, cited
Singer v Berghouse (1994) 181 CLR 201, followed
Vigolo v Bostin (2005) 221 CLR 191, cited

COUNSEL: D J Topp for the applicant
C A Brewer for the respondents

SOLICITORS: Colavitti Lawyers for the applicant
Dowd & Co for the respondents

- [1] Charles Edward Allsop died on 15 October 2012. He was survived by the wife of his second marriage, Noppavan Allsop, and two sons, the only child of his first marriage, Steven Charles Allsop, and the only child of his second marriage, Richard Charnon Allsop. As the surname of each of these people is Allsop, I shall refer to them by their given names for the sake of clarity. Provision was made for Steven in Charles’ last Will of 8 December 2008 (“the Will”), but the majority of the estate was left to Noppavan and Richard. Steven made an application to the Court for further provision from Charles’ estate.
- [2] The application for further provision was made under s 41(1) of the *Succession Act* 1981 (Qld) which relevantly provides:

“41 Estate of deceased person liable for maintenance

- (1) If any person (the *deceased person*) dies ... and in terms of the will ... adequate provision is not made from the estate for the proper maintenance and support of the deceased person’s spouse, child or dependant, the court may, in its discretion, on application by or on behalf of the said spouse, child or dependant, order that such provision as the court

thinks fit shall be made out of the estate of the deceased person for such spouse, child or dependant.”

[3] The term “child” in s 41(1) includes an adult child, such as Steven, even if that child is no longer a dependant of the deceased.¹

[4] The first question to be determined by the court is found in the conditional clause at the beginning of s 41(1). The jurisdiction to make an order for further provision from the estate only arises if the court is satisfied that adequate provision has not been made.² The discretion to order such provision referred to in s 41(1) should be exercised in such a way as to ensure objectivity to the greatest extent possible in the judgment inherent in its exercise.

[5] In determining the application, the Court is required to carry out the two-stage process set out by the High Court in *Singer v Berghouse*:³

“The first stage calls for a determination of whether the applicant has been left without adequate provision for his or her proper maintenance, education and advancement in life. The second stage, which only arises if that determination be made in favour of the applicant, requires the court to decide what provision ought to be made out of the deceased’s estate for the applicant.”

[6] Mason CJ, Deane and McHugh JJ said at 209-210:

“The determination of the first stage in the two-stage process calls for an assessment of whether the provision (if any) made was inadequate for what, in all the circumstances, was the proper level of maintenance etc. appropriate for the applicant having regard, amongst other things, to the applicant’s financial position, the size and nature of the deceased’s estate, the totality of the relationship between the applicant and the deceased, and the relationship between the deceased and other persons who have legitimate claims upon his or her bounty.

The determination of the second stage, should it arise, involves similar considerations. Indeed, in the first stage of the process, the court may need to arrive at an assessment of what is the proper level of maintenance and what is adequate provision, in which event, if it becomes necessary to embark upon the second stage of the process, that assessment will largely determine the order which should be made in favour of the applicant.”

[7] It is therefore necessary to consider the past and present circumstances of Steven, Richard and Noppavan, the extent of the estate and the history of the relationships that each had with Charles. Those matters are relevant to the factual question to be answered in the first stage and, if it arises, the discretion to be exercised in the second stage.⁴

¹ *Succession Act* 1981 (Qld) s 40.

² *Lajcarova v Todorov* [2011] NSWSC 522 at [79]; *Brown v Hill* [2012] NSWSC 464 at [114].

³ (1994) 181 CLR 201 at 208-209 (Mason CJ, Deane and McHugh JJ); see also *Vigolo v Bostin* (2005) 221 CLR 191 at 197 (Gleeson CJ), 212, 218-219 (Gummow and Hayne JJ).

⁴ *Vigolo v Bostin* (2005) 221 CLR 191 at 230-231 (Callinan and Heydon JJ).

- [8] Charles died after many years of ill health at the age of 79. His first marriage was to Margaret Ann Beresford. Their only child was Steven, who was born in 1966. According to the evidence of Steven's mother, the relationship between Steven and Charles was difficult, as Charles was very interested in his business but not in his son.
- [9] Noppavan has sworn an affidavit in which she said that she met Charles in about 1978 in Bangkok, Thailand. She worked in the advertising section of a newspaper and was also employed as a singer in a club. She met Charles at that club on a number of occasions. She said that he later asked her if she would work for him as an interpreter. She agreed and shortly after that, they developed a romantic relationship. During one of his visits to Thailand in 1979, Charles became ill and Noppavan looked after him for about two months, at which time, she said, their relationship became more serious.
- [10] Margaret and Charles divorced on 1 April 1980. On 4 July 1980, Charles and Noppavan married at the Australian Embassy in Thailand. On 26 July 1980, their son Richard was born in Bangkok. Noppavan had previously been married and had two children of that marriage: a son, Piyathap Muanprasatsavet, and a daughter, Piyawan Muanprasatsavet, both of whom were served with the material in this application but took no part in it.
- [11] In 1981, Charles and Noppavan moved to Australia with their son Richard. They lived in what Noppavan described as the "caretaker house at [Charles'] 'Surescreen' business at ... Geebung...". She said that they lived there for approximately 10 years. At that time, Charles had a partner in the business, however he subsequently purchased his partner's share of the business.
- [12] Charles' business, Surescreen, was very successful. It manufactured filtration equipment for washeries in the mining industry and was a world leader in underground water and oil filtration. It operated from premises at 88 Brickyard Road, Geebung, more particularly described as Lot 3 on Survey Plan 149292, County of Stanley, Parish of Kedron, Title Reference 50648527 ("the Geebung property"). At the height of its operations, it employed 120 people. Richard's evidence was that Charles sold the Surescreen business in mid-1989 for approximately \$5,000,000, but retained the freehold title to the Geebung property.
- [13] Charles, Noppavan and Richard then moved to a house at 70 Neville Road, Bridgeman Downs, more particularly described as Lot 1 on Registered Plan 81791, County of Stanley, Parish of Nundah, Title Reference 12885105 ("the Bridgeman Downs property"). They lived there until they moved to Thailand in 2009.

Steven

- [14] This case is the result of decades of family disharmony. The narrative that follows suggests, as one might expect, that there was fault on both sides. However, the history of the family relationships indicates that, while Charles occasionally showed loving concern for the son of his first marriage, Steven was more often treated with indifference or hostility. At the same time, Charles demonstrated partiality towards the son of his second marriage, Richard.

- [15] Steven commenced working part-time at his father's business, Surescreen, when he was 13 years old. This was at about the time that his parents divorced. He was very upset by his parents' divorce and begged his father not to leave the family home. He was reassured by his father's promise that "everything will be OK."
- [16] Steven attended St Paul's School at Bald Hills until he finished Year 12. He was not an academically able child and did not do well at school. He reported that he was bullied and picked on by students and teachers. He went to and stayed at the school to please his father. From the age of 13, he worked on weekends at Surescreen, first at Zillmere and then when it was relocated to a disused quarry at the Geebung property. On school holidays, Steven would work during the week welding roof trusses for the quarry's factory roof, which needed replacement.
- [17] Noppavan said in her first affidavit of 21 July 2014 that Charles rarely spoke about Steven, but she "could tell that [Charles] loved him because he wanted Steven to go to university."
- [18] After Steven left school at the age of 17, he began a motor mechanic apprenticeship at Surescreen at Geebung and continued in that role until he was 21. His duties were general maintenance of work vehicles, and of stationary plant and equipment. He continued to work on weekends, as he had while he was at school, ridding the factory of rats, pigeons and feral cats. In the fourth year of his apprenticeship, Charles sent Steven to work at a water drilling plant in northern Nigeria. Noppavan said that during his apprenticeship, Steven would often stay with them at the Geebung property, sometimes for weeks at a time.
- [19] At the end of Steven's apprenticeship, an argument arose at work between him and Charles, during which Charles told him, "You'll never make a mechanic's arsehole". This argument was about the quality of Steven's work, but more importantly, Steven said, because Steven wanted to marry his then girlfriend and present wife, Karen.
- [20] Noppavan said that Steven and Karen became boyfriend and girlfriend when Steven was in Year 12. Charles told Noppavan that he did not like Karen, that he thought she was a "gold-digger" and that, if she came to the Geebung property, he "would let the Police take her away".
- [21] Noppavan said that when Steven told his father he wanted to marry Karen, Charles expressed to Noppavan his opposition to the marriage and that he wanted Steven instead to develop an interest in growing and managing the Surescreen business. Steven said that, during the course of the argument at the end of his apprenticeship, his father gave him the ultimatum that if he were to "get rid of" Karen, then he would inherit his father's business, but if not, he was out of the family. Steven said that he chose to leave the workplace and marry Karen.
- [22] Steven then went to work for various motor dealerships and mechanics' workshops. He married Karen in February 1988. He invited his father to the wedding but Charles did not attend. Steven said he continued to telephone his father every three to six months. Sometimes his father would take his call and sometimes not.

- [23] Steven gave an account of how he came to be charged with assault. It is not necessary to go into the details of his account, except to say that in 1988, he and his wife Karen appear to have been given notices to appear in the Petrie Magistrates Court to face assault charges. However, the charges were apparently dismissed, with the Magistrate commenting that they were a waste of his time. Charles had paid for the defence of Steven and Karen.
- [24] Although not ultimately successful, Charles stood for election in the State Election held in December 1989. Steven said that he gave up his own weekends in the second half of that year, as well as the Election Day, to hand out how to vote cards. Noppavan, on the other hand, downplayed Steven's role and said that his contribution was not significant compared with that of other volunteers.
- [25] Early in 1991, Karen became pregnant and Steven called Charles to tell him that he was going to be a grandfather. Charles seemed happy at that news. However, Noppavan said that, during the 1990s, Steven sent Charles letters saying that he did not want to be Charles' son any more. Noppavan said that the letters were not kept. Steven denied writing any such letters. I make no finding that any such letters were sent.
- [26] At this time, Steven had a fulltime job and owned a house at Mango Hill under a mortgage, as well as a car which was subject to a loan. Charles said to Steven that he had some money problems and that he would like Steven and Karen to move into a house he owned for a nominal \$50 per week rent, in return for their maintenance of the house. That was the house at 6 Moselle Street, Carseldine, more particularly described as Lot 351 on Registered Plan 177099, County of Stanley, Parish of Nundah, Title Reference 16169201 ("the Carseldine property") which was subsequently effectively left to Steven in the Will. Steven wanted to keep and let his Mango Hill house, but Charles said that he would have to sell it. With the proceeds of the sale of his Mango Hill house, Steven was able to pay off his car loan. Steven then undertook not only repairs, but also improvements to the Carseldine property. He estimated that he had spent \$40,000 of his own money on renovations to the Carseldine property and had devoted hundreds of hours of his own time to maintaining, restoring and renovating it.
- [27] Richard's version of what occurred is slightly different. As Richard agreed in cross-examination, he was only nine years old at this time. He said that his father was very irritated with Steven as Charles' view was that the Mango Hill house was sending Steven broke. Charles took Richard with him while he inspected seven or eight homes in order to find one for Steven to move into. The financial arrangement was that Steven and Karen would pay \$50 a week in rent, maintain the property and pay the Council rates.
- [28] Steven said that he then set up a business subcontracting his mechanical skills to various workshops in Brisbane and also had a turf and landscaping business in partnership with his wife Karen. He said that he had a number of people working for him as subcontractors, but that the Australian Taxation Office determined after a time that they should be considered employees rather than subcontractors. Steven said that WorkCover then demanded six or seven years' payment for these employees and that he was forced to close the business as a result. He said that he was also in a lot of back pain because of the physical work he had performed over the years. He went bankrupt as he could not

afford to pay WorkCover's accelerated demand, then became depressed and had a nervous breakdown.

- [29] Steven and Karen have two children, Ben and Ashleigh. Steven said that in order to try to have a relationship with his father, he often visited Charles on his birthday and at Christmas. Despite his efforts, he was told many times over the intercom that Charles did not want to see him or the children. Noppavan, on the other hand, said that Steven mostly came to their home to ask for financial help from Charles or to yell at him. She confirmed that Charles refused to allow Steven into their home, even when he brought his children with him. Noppavan said that the last time that Steven visited their home was in the late 1990s. She said that Charles told her that Steven had asked Charles to help his first wife, Steven's mother Margaret, financially. Charles had refused. Charles told Noppavan that Steven had referred to Noppavan as a "whore".
- [30] Richard said that Charles did not have a good relationship with Steven. Charles had told Richard that if Steven arrived at the Bridgeman Downs property with his children, Charles would not allow them entry because he, Charles, was on his own. Richard recalled that on one occasion when he was a teenager, he, Richard, asked Steven to leave the Bridgeman Downs property as he was trespassing on private property. He said that he did this because Steven appeared to be more aggressive than usual.
- [31] Ben and Ashleigh gave evidence as to the relationship that they and their father, Steven, had with their grandfather, Charles. Ben suffers from Type 1 diabetes. He remembered being taken by his father with his sister Ashleigh to see their grandfather when he was about 10 years old. He said that Charles refused to see them about seven or eight times after that. He said he ended up "almost frightened" by his grandfather Charles because of the way Charles spoke to Steven. Ben said that he never received birthday or Christmas presents from Charles. Some years Charles would send cards but not others. When Ben turned 15, his grandfather bought him a set of kitchen knives for his birthday because Ben then wanted to become a chef. Ben thanked his grandfather in person. He remembered this as one of only a couple of occasions on which he saw his grandfather inside his grandfather's house.
- [32] Ashleigh remembers being upset by their grandfather Charles refusing to see them when they called at his house, because she wanted to give him birthday and Christmas cards that she had made for him. She only remembers seeing her grandfather at his house once, when she was about seven years old. On that occasion, all he said to her was "Hello".
- [33] Steven said that his father was more interested in being a grandfather to Ben than to Ashleigh. Steven said that when he tried calling his father on the telephone, Charles would put him on to Richard rather than speak to Steven himself. Steven said that he tried for many years to have a relationship with his father but felt he was "banging [his] head against a brick wall". It was only in the year leading up to Charles' death that Charles was more pleasantly talkative to Steven and would ask after Ben in telephone conversations. At that time, Charles had moved to Thailand. In spite of his attempts to establish contact, Steven had not been able to see his father in person for about 10 years before Charles left Australia to live in Thailand.

- [34] Steven said that he continues to have back problems, as his L4 and L5 discs have collapsed and he has had several severe disc slips and nerve damage in his spinal column. This gives him, he said, problems in working as a mechanic for more than three hours continuously. He continues to suffer from back pain while working in his present job as a maintenance fitter at a ten pin bowling alley.
- [35] Steven's first injury to his back happened, he said, in a workplace accident when he was working for his father. When this happened, Charles refused to allow Steven to make a WorkCover claim, saying it was "a sign of weakness".
- [36] In his affidavit sworn on 26 June 2013, Steven disclosed that his present assets have a total net value of \$20,000, being the value of his tools of trade. His present income is about \$600 a week as a casual employee at a ten pin bowling alley. His gross income for the year ended 30 June 2010 was \$34,715 and for the year ended 30 June 2011 was \$35,183. Steven's wife, Karen, suffers from lupus but works 25 hours a week at Bunnings. Her gross income for the year ended 30 June 2010 was \$26,407 and for the year ended 30 June 2011, \$26,698. Steven said in his affidavit that his superannuation balance was \$1,469.88 and that Karen's superannuation balance was \$5,176.05.
- [37] Steven was cross-examined about his failure to disclose in that affidavit that his income for the year ended 30 June 2012 had been \$52,014 and for the year ended 30 June 2013, \$46,000. He was also asked questions as to why the amount of superannuation he had was stated incorrectly in that affidavit. His explanation for those failures was that he was not good with figures, he was not asked for that information, and the higher income for that year was not indicative of his usual annual income. He said that these higher earnings lasted for only a short period, as he had taken on heavier work to earn more to pay for his children's education, but had suffered a back injury doing that work which forced him to stop.
- [38] While the failure to disclose that information in his affidavit does him no credit, it was corrected by a letter sent on his instructions by his solicitors to the respondents' solicitors on 24 July 2014. That letter responded to a request for updated information as to Steven's financial position. He revealed that his assets were two motor vehicles worth approximately \$18,000, home contents worth \$30,000 and tools of trade worth \$15,000. As at 30 April 2014, he owed \$14,198.70 on his car loan and as at 23 July 2014, he owed \$12,349.60 on his credit card. Steven's wife Karen had the following superannuation savings as at 30 June 2013: \$2,642.27 in QSuper and \$35,862.80 in REST. In addition, as at 30 June 2013, Steven had \$17,168.40 in SunSuper and as at 31 December 2013, had \$1,676.04 in Australian Super. Steven's solicitors set out his taxable income for the year ended 30 June 2013 as \$52,014; for the year ended 30 June 2013, \$46,043; and for the year ended 30 June 2014, \$32,757. The letter also revealed that Karen's taxable income for the year ended 30 June 2012 was \$25,049; for the year ended 30 June 2013, \$24,277; and for the year ended 30 June 2014, \$27,845. Steven's solicitors ended the letter by saying, "should you wish for me to draft this into a signed affidavit or statement please advise, however I deliberated on the matter and thought that immediate advice on the subject was more important than formality."
- [39] In an application made to the court for reduction of the setting down and hearing fees, Steven swore on 19 November 2014 that he was then, as he is now, employed as a

maintenance fitter at Aspley Ten Pin Bowl. His fortnightly wage was \$2,369 and household expenditure, \$2,275. His then current bank balance was \$1,450.

- [40] Steven is, I accept, poorly paid, has little in the way of savings or superannuation and, because of his injuries, is underemployed and unlikely ever to be fully employed in well paid employment. Both Ben and Ashleigh still live with Steven and Karen. As previously mentioned, Ben is a Type 1 diabetic, but pays board as he works fulltime, while Ashleigh is dependent upon her parents, although she does have two part-time jobs. Steven and Karen do not have private health insurance, as they cannot afford it.

Richard

- [41] Noppavan said that Charles and her son Richard had a good relationship and that, after Steven's departure from the family business, Charles involved Richard, often taking him to meetings. Richard attended St Paul's School from Year 5 to Year 12, then Charles paid for him to attend Bond University to study a dual undergraduate degree in business and law. Richard dropped out of the law degree but completed a Bachelor of Business in 2001. Richard lived in an apartment owned by his parents at Broadbeach while he studied at Bond University. He did not undertake any paid work while a student but rather helped his father in his business.
- [42] Richard said that towards the end of 1999, he started working for Hamco Pty Ltd ("Hamco") as trustee for the C and N Allsop Trust.⁵ In that role, he provided services to A&W Holdings Pty Ltd ("A&W Holdings"), which managed the Geebung property. He is now employed as Managing Director of A&W Holdings.
- [43] Noppavan said that in about the mid-1990s, Charles became ill and spent a significant amount of time in hospital. She said Richard was unable to leave home and develop relationships due to his dedication to looking after Charles during his illnesses. She said that Richard cared for Charles, drove him to and from his hospital appointments, organised his medication and ensured that he took it on time, and dressed Charles' wound after an operation.
- [44] In Richard's affidavit of 12 September 2014 ('Richard's first affidavit'), he swore that he had provided 24-hour care and assistance to his father during his illness. Charles was a Type 2 diabetic with severe vascular disease and oedema in his lower limbs. He suffered from severe ulcerations to both limbs, which led to the amputation of his right leg below the knee. He suffered from degenerative eye disease as a complication of diabetes and, as a consequence, had several operations and numerous other forms of treatment. Richard said that Charles also suffered a mild stroke around 1990 that impaired the right side of his body to some degree. Richard said that he provided the following assistance to his father: twice daily wound care; bathing; dressing; transfers to and from bed, chairs, wheelchairs, cars and aeroplanes; toilet needs; meals; medication; transportation; and looking after Charles' general health and welfare.

⁵ The parties usually referred to the C and N Allsop Trust as the C&N Allsop Trust. The trust deed shows it to be the C and N Allsop Trust, so that is the name I will use unless quoting the parties.

- [45] Noppavan said that in about 2002, Charles was advised that his right leg would need to be amputated and that, as a result, she and Richard took Charles to Thailand for stem cell treatment. She said that this treatment helped to delay amputation for about four years. She said that in about 2006, Charles spent four-and-a-half months in hospital in Australia due to ulcers, then in about 2008, spent two-and-a-half months in hospital, during which period he had an operation to amputate part of his right leg. Charles did not allow Steven to visit during his time in hospital, but Noppavan and Richard visited Charles every day and provided him with various assistance.
- [46] Noppavan said that in about 2008, Charles had an operation in Thailand to deal with his deteriorating eyesight. At the same time, diabetes caused him to have mood swings. She said that in about 2009, Charles decided he wanted to stay in Bangkok because it was easier to employ medical assistants such as nurses, and maids. It was difficult for him to get out of bed by himself because of his weight, which had increased during the period of his illness. The family of Charles, Noppavan and Richard lived in Bangkok for the four years prior to Charles' death on 15 October 2012. Noppavan provided Steven and Karen with financial assistance to attend Charles' funeral in Thailand.
- [47] Richard said in his affidavit of 22 February 2015⁶ ('Richard's second affidavit') that his personal assets as at that date were two ANZ bank accounts with balances of \$1,767.62 and \$3,702.10, as well as two motor vehicles in Thailand: a 2006 Range Rover Sport TDV6 worth \$23,000 and a 1987 Volvo 740 worth \$500.

Charles' Will

- [48] Charles' last Will was made on 8 December 2008. He appointed as executors and trustees two professional people, Peter Alcorn Lilley and Edward James Henderson, and his son Richard.⁷ He nominated Mr Lilley, Mr Henderson and Richard as the permanent governing directors of Hamco, and also as the appointors for the C and N Allsop Trust and the Allsop Family Trust.⁸
- [49] The bequests under the Will were as follows. To his wife, Noppavan, he gave all his furniture, plate, plated goods, linen, glass, china, books (except books of account), pictures, prints, clothing, jewellery and all other articles of personal or domestic use or ornament.⁹ He directed his trustees to exercise all appropriate powers and discretions, as his trustees or shareholders and directors of any company in which he held shares at the date of his death, so as to make the provision to Noppavan of an annual amount of not less than \$115,000 (adjusted by the Consumer Price Index ("CPI")) until her death.¹⁰

⁶ On the page where the affidavit is sworn, the date 22 February 2014 is printed as the date of attestation but that date is, from the contents of the affidavit, clearly wrong.

⁷ Clause 2.

⁸ Clauses 11 to 13.

⁹ Clause 3(c).

¹⁰ Clauses 5(a)(i)(1), 7.

- [50] To his son Richard, Charles gave his Jaguar XJRS, registration number XJRS;¹¹ an annual amount of not less than \$57,500 (adjusted by the CPI);¹² and the residue of his estate on and from the death of Charles' wife, Noppavan.¹³
- [51] In clause 14 of his Will, Charles directed his trustees to make provision for the education of the children of his son Steven, requesting "that such expenditure be made to an extent and for a purpose as is commensurate with the ability of each of those children provided that no such child is to receive any educational benefit after attaining the age of Twenty-three (23) years."
- [52] To his son Steven, he gave his Jaguar XJS coupe, registration number 700 PJA,¹⁴ and \$500,000.¹⁵ He directed his trustees to exercise all necessary powers and discretions to have the trustee of the C and N Allsop Trust transfer to Steven an unencumbered title in fee simple to the residence situated at 6 Moselle Street, Aspley, which is understood to refer to the Carseldine property.¹⁶
- [53] Clause 15 of the Will set out Charles' reasons for the limited provision made for Steven as follows:
- "In my Will I have made only limited provision for my son Steven Charles Allsop. This provision has been made after considerable thought and consideration of the duty and obligation I owe to Steven Charles Allsop as one of my children. I consider it would not be in the best interests of the rest of my family or of my Estate if Steven Charles Allsop were to be involved in the administration of my estate or in the management or administration of any company or trust in which I am interested or be left any benefit other than by way of a pecuniary legacy. I consider any other provision for Steven Charles Allsop could be prejudicial to the good welfare of the rest of my family and of my estate. Despite this I acknowledge an obligation to support Steven Charles Allsop which I have done for many years and will continue to do by the provisions in my Will. For many years Steven Charles Allsop has rejected any parental relationship with me. He has shown an inability to manage financial matters, has been bankrupt and he has been involved in an assault charge."
- [54] Probate of the Will was granted on 9 May 2013.
- [55] Richard gave evidence that all parties had signed the documents to transfer the Carseldine property to Steven and that the transfer had been sent to the Office of State Revenue.

¹¹ Clause 3(b).

¹² Clauses 5(a)(i)(2), 7.

¹³ Clauses 6, 7.

¹⁴ Clause 3(a).

¹⁵ Clause 3(d) was in the following terms: "to my son Steven Charles Allsop the sum of Five Hundred Thousand Dollars (\$500,000.00) and I direct that such amount is to be paid first from my ready monies and if such funds are insufficient then my Trustees are to exercise all appropriate powers and discretions as my Trustees or as Shareholders or Directors of any company in which I hold shares at the date of my death (whether or not such company acts as a Trustee of any Trust) so that the legacy of \$500,000.00 is paid to my son Steven Charles Allsop as a capital payment within 12 months from the date of my death."

¹⁶ Clause 5(c).

However, no payments have ever been made by the trustees for the education of Steven's children. Ben was born in 1992 and so was 20 when his grandfather died. He turns 23 this year. Ashleigh was born in 1996 and is still undertaking her education. Richard said that he and the other trustees had been too busy preparing for this litigation to make any provision under clause 14 of the Will.

[56] The respondents submitted that the extent of Charles' estate at trial was as follows:

ASSETS

Description of Asset	Value of Asset
4 fully paid class A shares in Morthern Enterprises Pty Ltd	\$1,574.76
5 fully paid ordinary shares in Rotham Pty Ltd	\$NIL
10 fully paid ordinary shares in Hamco Pty Ltd atf The Allsop Family Trust	\$NIL
150,000 redeemable ordinary shares in A&W Holdings Pty Ltd	\$3,800,000
1985 Jaguar XJS Coupe	\$3,250 (estimate)
1993 Jaguar XJR-S	\$22,850 (estimate)
1975 Ford Fairlane	\$5,400 (estimate)
ANZ Cheque Account BSB: 014-209 Account Number 552771663 (Balance as at 20 January 2015)	\$8,870.80
Thai Farmers Bank Account (Balance as at 19 February 2015)	\$11,259 (estimate)
Loan to Hamco Pty Ltd atf the C&N Allsop Family Trust (50% entitlement)	\$766,852
TOTAL	\$4,620,056.56

LIABILITIES

Description of Liability	Value of Liability	
Loan from A&W Holdings Pty Ltd	\$4,000	
Loan from Hamco Pty Ltd atf The C&N Allsop Family Trust (50% share of liability)	\$256,970	
Loan from Hamco Pty Ltd atf The Allsop Family Trust	\$103,127	
Dowd and Company	Legal fees, costs and outlays (including GST) paid to date	\$237,681.83
	Legal fees, costs and outlays billed (including GST) but unpaid	\$14,509
	Estimate of future legal fees, costs and outlays (including GST) to completion of trial and administration of the Estate	\$82,191.20
Estimate of future accountancy fees payable to HLB Mann Judd	\$10,000	
TOTAL	\$708,479.03	

Estimated net value of the Estate: \$3,911,577.53

Other assets

- [57] On Charles' death, Noppavan became the sole owner of the Bridgeman Downs property, which had been owned by Charles and Noppavan as joint tenants from about 1989. An opinion of its market worth given by LJ Hooker Commercial Brisbane on 13 April 2014 and again on 12 February 2015 estimated its value as approximately \$1,000,000 to \$1,500,000. Noppavan also became the sole owner by survivorship of a property which is Unit 181, 15 Victoria Avenue, Broadbeach, more particularly described as Lot 67 on Building Unit Plan 9606, County of Ward, Parish of Gilston, Title Reference 17416070 ("the Broadbeach property"). An appraisal by Ray White, Broadbeach, on 11 September 2014 said its current saleable price was approximately \$400,000 to \$440,000. On 17 February 2015, the current saleable price for the property was said by Ray White to have increased to approximately \$440,000 to \$470,000.
- [58] In addition to the Broadbeach property and the Bridgeman Downs property, Noppavan identified her own assets as including the contents of the Bridgeman Downs property, which she estimated at \$30,000; a house in Thailand which she has owned since about 1980, worth approximately \$280,000; and three bank accounts, two in Australia containing \$12,637.61 in total and an account in Thailand with a balance of approximately AU\$1,178.80. She had various loans to and from Hamco. She estimated her current wealth position as at 22 February 2015 as between \$2,207,097.41 and \$2,737,097.41.
- [59] Noppavan said that she is currently employed as a director of both A&W Holdings and Morthern Enterprises Pty Ltd ("Morthern"). She said that, as a result of these roles, she receives a salary of \$150,000 per annum from Hamco as trustee for the C and N Allsop Trust. In Richard's first affidavit, he said that Noppavan is paid a share distribution/dividend from A & W Holdings in the sum of approximately \$150,000. Under cross-examination, he said that he was wrong and that his mother was correct. However, his prevarication on the topic left me unclear whether the money she receives is a salary or dividend from Hamco, or a distribution from one of the trusts of which Hamco is a trustee. No satisfactory evidence was led on the topic.
- [60] Richard further said that Charles owned three motor vehicles on the date of his death: a 1985 Jaguar XJS Coupe, registration 700 PJA, which has a Red Book valuation of \$3,520; a 1993 Jaguar XJRS, registration XJRS, with a Red Book valuation of \$22,850; and an unregistered 1975 Ford Fairlane with a Red Book valuation of \$5,400. Steven disputed the value of the 1993 Jaguar XJRS because, he said, it had a number of modifications which would increase its value. He said that Charles had told him that the modifications meant that it was a "street legal version of a Wakinshaw [*sic*] racing Jag that won Bathurst one year." The engine, he said, was a 7 litre V12 that "could do 14 seconds over the quarter mile". Charles told Steven that it was worth \$250,000. Richard agreed that the car was fast and probably could do 14 seconds over the quarter mile. He denied it was a "street-legal racing car" and said the V12 engine was six litres rather than seven litres.
- [61] Richard's second affidavit exhibited a document, being an internet print out showing the balance of an ANZ Cheque Account 014209552771663 held by Charles at his death. The balance as at 12 September 2014 was \$9,189.02. The printout showed recent transactions had been made out of that account. By 12 December 2014, the balance had dropped to

\$8,870.08. The withdrawals were shown as payments on an ANZ Visa card. No explanation was provided for that expenditure. In Richard's first affidavit, he said that his father and mother had an ANZ Cheque Account 014209563868356 in joint names which became hers by survivorship. He did not disclose how much was in that account. Richard said his father also had a Thai Farmers bank account containing approximately THB300,000 which was the equivalent of about AU\$11,259 at trial.

[62] In Richard's first affidavit, he set out the liabilities of Charles' estate as follows:

Entity	Description of Liability	Amount of Liability
Australian Taxation Office	Estimate of tax payable	\$UNKNOWN
Dowd and Company	Legal fees, costs and outlays (including GST) paid to date.	\$162,025.38
	Legal fees, costs and outlays billed (including GST) but unpaid:	\$30,005.47
	Estimate of future legal fees, costs and outlays (including GST):	
	Litigation	\$40,000.00
	Administration of Estate	\$7,000.00
HLB Mann Judd	Estimate of future accountancy fees	\$10,000.00
	TOTAL:	\$249,030.85

In Richard's second affidavit, he swore, as set out earlier in this judgment, that the liabilities of Charles' estate had increased to \$708,479.03.

A&W Holdings

[63] A&W Holdings is the registered proprietor of the Geebung property. The directors of A&W Holdings are Noppavan and Richard. As at 1 August 2013 and 19 May 2014, ASIC searches show that Charles beneficially held 150,000 ordinary shares, while Hamco held 325,000 ordinary shares of which it was not the beneficial owner. The financial reports record that there were 325,000 ordinary shares issued and 150,000 preference shares. The ASIC searches show, however, that two separate groups of ordinary shares

were issued, the first consisting of 325,000 shares and the second, 475,000. There were also said to have been 150,000 preference shares issued.

- [64] Stuart Benjamin, an accountant and a director of Benjamin & Stephens Chartered Accountants, prepared a valuation report in relation to the shares. In supplementary instructions provided to Mr Benjamin by the respondent's solicitors, it is recorded that there had been some confusion in ASIC's records as to whether all shares were ordinary shares or whether, in fact, 150,000 preference shares had been issued. Nonetheless, it was said that, as at 1 August 2013, an ASIC extract showed that Charles owned 325,000 of 475,000 "ORD1" ordinary shares, and the Allsop Family Trust owned the remaining 150,000 "ORD1" ordinary shares. The 325,000 original ordinary ("ORD") shares and the 150,000 preference shares are said to be identified as in that extract as ceased/former holdings. Mr Benjamin was therefore instructed to value Charles' shares in A&W Holdings on the basis that they were beneficially-owned ordinary shares, which the report indicates he did.
- [65] In Richard's first affidavit, he said that when he referred to the Geebung property, he was also referring to a vacant lot at 64 Brickyard Road, Geebung, more particularly described as Lot 4 on Survey Plan 149292, County of Stanley, Parish of Kedron, Title Reference 50648528. I shall refer to Lots 3 and 4 together as "the Geebung properties". Lot 3 of the Geebung properties contains a number of buildings, some of which are leased to Johnson Screens (Australia) Pty Ltd ("Johnson Screens"). Lot 4 was, according to that affidavit, currently being developed pursuant to a development approval obtained in 2007. As at the date of Richard's first affidavit, he said that 98 per cent of the development works were complete.
- [66] Richard's first affidavit exhibited a valuation of the Geebung properties. The valuation was prepared by McGees Property. Greg Clarke, a certified practising valuer and a director of McGees Property, estimated that the market value of Lot 3 as at 15 October 2012 was \$10,150,000 and the market value of Lot 4 was \$4,500,000. The total value of the Geebung properties as at the date of Charles' death was therefore \$14,650,000 (GST exclusive). He estimated that the net annual income of Lot 3 was \$996,446. Mr Clarke gave the market value of the Geebung properties as at the date of inspection, 11 February 2014, as \$15,000,000. In a letter dated 20 February 2015, Mr Clarke said that there had been no substantial changes in the Brisbane northern industrial precinct market conditions since the valuation which would result in a significant move in his "adopted valuation figures". In Richard's second affidavit, he swore, relying on Mr Clarke's valuations, that the Geebung properties had a current market value of \$14,650,000. In fact, reliance on Mr Clarke's valuations would lead to the conclusion that their current market value was \$15,000,000.
- [67] As at the date of Richard's first affidavit, he said that there was \$482,048.23 in an ANZ Premium Cash Management Account in the name of A&W Holdings. It also owned a 2003 Jaguar XJR with a Red Book valuation of \$34,180.
- [68] Richard exhibited to that affidavit financial statements for A&W Holdings for the years ended 30 June 2011, 30 June 2012 and 30 June 2013. None of the financial statements exhibited were signed by any directors.

- [69] The financial statements showed that the profit before income tax for the year ended 30 June 2011 was \$617,924; for the year ended 30 June 2012, \$527,328; and for the year ended 30 June 2013, \$546,439. This drop in profitability is notwithstanding that there was an extra \$170,000 in gross income received in the year ended 30 June 2013, as compared with the year ended 30 June 2011. The difference is referable to the fact that expenses in the year ended 30 June 2011 were \$476,272, whereas in the year ended 30 June 2013, they had increased to \$719,016. That difference is explained by an extra \$20,000 in accountancy fees, a payment of \$10,597 in consultancy fees, and an increase in the cost of repairs and maintenance from \$66,839 in 2011 to \$232,493 in 2013.
- [70] The Profit and Loss Statement for A&W Holdings for the year ended 30 June 2011 shows that the after tax profit was \$445,169. There were retained profits at the beginning of the financial year of \$1,317,229. Dividends were paid of \$497,500, leaving retained profits at the end of the financial year of \$1,264,898. In the year ended 30 June 2012, the net profit after income tax was \$354,814. A dividend was paid of \$457,500, leaving retained profits at the end of the financial year of \$1,162,212. For the year ended 30 June 2013, the net profit after tax was \$382,464. A dividend of \$519,000 was then paid, leaving retained profits at the end of the financial year of \$1,025,676. The change in the retained earnings meant a reduction in total share capital and reserves from the year ended 30 June 2011 to the year ended 30 June 2013 from \$3,032,093 to \$2,792,871.
- [71] The current assets as at the year ended 30 June 2011 were \$2,214,677. This had been reduced by the year ended 30 June 2013 to \$1,661,098. The reduction in the current assets was generally a reduction in the available cash so that at 30 June 2013, there was \$137,665 cash at bank and \$1,439,521 in the cash management account. The fixed assets, which included the Geebung properties as well as improvements, fixtures and fittings, was said in the financial reports to have a total value of \$3,105,859 as at 30 June 2013.
- [72] In addition, the non-current assets included “Loan – Allsop Family Trust” of \$704,839. The notes to the account said that \$301,519 was pre-4 December 1997 and \$403,320 was “30/06/2011”. The loan to the Allsop Family Trust first appeared in the financial statements for the year ended 30 June 2011, which disclosed a loan of \$529,893.
- [73] The balance sheet for the year ended 30 June 2013 showed that the total assets were \$5,475,796. The current liabilities were \$147,619. There was a non-current liability of “Loan – Morthern Enterprises Pty Ltd” of \$2,535,306, giving net assets of \$2,792,871. Because of a drop in current liabilities, A&W Holdings was only a little over \$200,000 worse off in terms of net assets by the year ended 30 June 2013, as compared to the year ended 30 June 2011.
- [74] In Richard’s second affidavit, he deposed that during the financial year ended 30 June 2014, A&W Holdings did not acquire or dispose of any assets and had incurred capital expenditure in excess of \$900,000 for infrastructure development and repair work at the Geebung properties. He said that A&W Holdings (rather than the executors) was currently funding the legal costs of these proceedings and¹⁷ was therefore likely to distribute a lower dividend to shareholders for the financial year ended 30 June 2014 than

¹⁷ This is yet another demonstration of how the income and assets of A&W Holdings are under the control of the executors.

for the financial year ended 30 June 2013. He added that the primary tenant of the Geebung properties, Bilfinger Water Technologies Pty Ltd (formerly Johnson Screens) had negotiated an annual rent reduction so that from 12 March 2014, its rent had been reduced from \$842,000 to \$685,000. No reason for the rent reduction was disclosed.

- [75] Mr Benjamin estimated that the fair value of A&W Holdings' net assets as at 15 December 2012 was \$16,954,687. His valuation of Charles' 150,000 shares as at 15 October 2012 and 30 June 2014 was \$3,800,000. In an updated report dated 20 February 2015 Mr Benjamin expressed the opinion that there was no significant change in the valuation. The valuation equated to a discounted value of \$25.43 per share, applying a discount rate of 25 per cent to the original share value of \$33.91. The discount was applied primarily because Charles was not the majority shareholder.

Morthern

- [76] ASIC records from 7 November 2013 showed that Morthern was called Surescreen Manufacturing Co Pty Ltd from 30 June 1965 until 26 March 1991. Its registered office was at the Geebung property. Its directors as at 7 November 2013 were shown as Peter Alcorn Lilley, Charles (who was, by then, deceased) and Noppavan. Its shareholders were said to be A&W Holdings, with 6,456 A class shares, and Charles, who held four A class shares.
- [77] In Richard's first affidavit, he deposed that the only current asset of Morthern was a 1997 Jaguar XJR registration 760 DEJ. According to the Red Book valuation, if it is in good condition, it is worth \$16,330. Its value is increased or decreased depending on its condition, which is not revealed. However, Morthern's balance sheet for the year ended 30 June 2012 showed net assets of \$2,543,632 and for the year ended 30 June 2013, net assets of \$2,542,877. Mr Benjamin in his valuation report wrongly recites that Morthern had an issued capital of 6,460 A class ordinary shares, of which 90.9 per cent of the total issued capital were held by Charles and the remaining one ordinary share (9.1 per cent of the total) was held by Noppavan. It appears that this is just a typographical error as the figure on page 11 of his report as to company ownership is correct. In any event, Mr Benjamin is correct in his conclusion that Charles controlled Morthern, as he controlled the majority shareholder, A&W Holdings. An inference may be drawn that Charles controlled Morthern's assets. No explanation was provided as to what had happened to Morthern's substantial assets.

Rotham

- [78] An ASIC search from 7 November 2013 shows that Rotham Pty Ltd ("Rotham") had as its directors Charles and Noppavan. It had six ordinary shares, one owned by Charles' first wife, Margaret, and five held by Charles. Richard said he did not believe it had any assets and had not traded since Charles sold his interest in Surescreen. No financial records for Rotham were exhibited in the affidavits filed.
- [79] The report by Benjamin Stephens as to the value of Charles' shares in A&W Holdings reveals in Exhibit 6 to that report that a settlement was made by Conlaw Pty Ltd as settlor on Rotham as trustee on 29 June 1976 to create the Allsop Family Trust. Mr Benjamin

said that documents indicated that Rotham resigned as trustee and Hamco was appointed trustee of the Allsop Family Trust on 13 September 2001. The beneficiaries of the Allsop Family Trust, which is a discretionary trust, were divided into classes:

1. “Class A” – Charles’ children (who were Steven and Richard);
2. “Class B” – Charles’ grandchildren (at present, Ben and Ashleigh);
3. “Class C” – Charles’ wife or widow (Noppavan); and
4. “Class D” – Charles.

Hamco

[80] An ASIC search from 1 August 2013 showed Charles and Noppavan as the directors of Hamco. Charles was, however, by then deceased. Of its eleven shares, Charles owned ten and Noppavan, one.

[81] A deed of settlement dated 26 July 1991 made Hamco the trustee of a discretionary trust called the C and N Allsop Trust. Richard deposed to his mother and himself being beneficiaries of the “C & N Allsop Trust”. Under cross-examination, he asserted that he and his mother were the only beneficiaries. This was not correct. The Trust Deed showed that there were in fact others, the beneficiaries being divided into classes. The relevant classes were as follows: the Class A beneficiary was Charles; the Class B beneficiary, Noppavan; the Class C beneficiaries, Charles’ children (Steven and Richard); the Class D beneficiaries, Charles’ grandchildren (at present, Ben and Ashleigh); the Class E beneficiaries, any parent, wife, husband, widow, widower, child or other issue of any of the Class A to D beneficiaries; and the Class G and H beneficiaries were any company of which Charles or Noppavan had a beneficial interest in a share or of which they were or had been a director or employee. Richard was well informed as to Hamco’s financial position and had access to all of those documents, so must have known that Steven and his children were beneficiaries. His unconvincing explanation for his incorrect statement was that he did not remember his father ever having made any distributions to Steven or his children.

[82] The financial reports for Hamco “as trustee for the C&N Allsop Trust” showed it as having net assets of only \$20 in each of the financial years ended 30 June 2011, 2012 and 2013. I shall only refer to the financial report for the year ended 30 June 2013, unless there was a relevant change over the three year period.

[83] The income for the year ended 30 June 2013 was said to be \$8,100 from rent received. The expenses for 2013 were \$4,663. In 2011, they had been \$2,026 and in 2012, \$4,625. The difference is due to a new expense found in the 2012 and 2013 financial statements, referred to as “Rental Expenses”, which in 2013 amounted to \$3,886, and a new expense referred to as “Fines & Penalties”, which was \$70 in 2013. In 2013, this left profit for distribution of \$3,437. The balance sheet shows that the profit for each year was

distributed to beneficiaries, leaving the only net asset in the trust fund as the settlement sum of \$20.

- [84] The balance sheet as at 30 June 2013 showed that Hamco as trustee for the C and N Allsop Trust had current assets of \$515,665. These assets comprised cash at bank of \$1,725 and “Loan - Related Parties”, which predated 4 December 1997, of \$513,940. Its non-current assets were said to be \$1,018,059, made up of a beneficiary entitlement under the Allsop Family Trust (referred to as “Trade and Other Receivables”) of \$373,336, motor vehicles (referred to as “Fixed Assets”) of \$413,162, and the Carseldine property (referred to as “Financial Assets”), said to be worth \$231,561. The total assets of Hamco as trustee for the C and N Allsop Trust were said to be \$1,533,724.
- [85] The liabilities were said to be “Loan - Related Parties” of \$1,533,704. The only details in the notes to the financial report showed this loan to be post-3 December 1997. The net assets were then said to be \$20.
- [86] However, in Richard’s first affidavit, he swore that the non-current assets of Hamco as at 30 June 2013 comprised beneficiary entitlements in the sum set out in the financial report, the Carseldine property in the sum set out in the financial report and motor vehicles in the sum of \$31,500. The last figure is quite different from the amount set out in the financial report, where the vehicles are said to be worth \$413,162. Notwithstanding that difference, Richard still swore that Hamco had total non-current assets in the amount of \$1,018,059. That could not be correct if the motor vehicles are worth \$31,500 and not \$413,162 as set out in the financial report. Richard gave no details in either of his affidavits of what is said to be the loan to related parties of \$513,940. However, he said that the loan of \$1,533,704 is from his mother and father, i.e. Charles and Noppovan.
- [87] The Carseldine property referred to in the Hamco financial reports has been owned by Hamco as trustee since 7 September 1981. The respondents presented documents to the Court showing that its “market worth” as at 13 August 2014 and at 12 February 2015 was, according to LJ Hooker Commercial Brisbane, between \$450,000 and \$500,000. This was said to be an estimation, not a valuation. This is considerably in excess of the value it was given as an asset in the Hamco financial statements.
- [88] The report by Mr Benjamin dealt with the fair value of Charles’ shares in A&W Holdings. The value of Hamco’s 325,000 shares can be deduced from that. Not all of the discounting that applied to the valuation of Charles’ minority holding would apply to Hamco’s majority shareholding. If the shares were each worth \$33.91 prior to discounting, the Hamco shares were worth \$11,020,750. If discounted by 25 per cent they were worth \$8,265,562.50. Whatever value is attributed to these shares, they were a significant asset held by Hamco in A&W Holdings and yet they do not appear in Hamco’s financial statements. Charles held ten out of the 11 shares in Hamco, clearly a controlling share.
- [89] Charles could therefore be said at the date of his death to own 150,000 shares in A&W Holdings outright and to own 90.9 per cent of the company which owned 325,000 shares in A&W Holdings. The fair value of the net assets of A&W Holdings as at 15 October 2012 was \$16,954,687. While not all of that could be said to be part of Charles’ assets

when he died, it can be seen that a substantial part of it was. It was a serious understatement of the estate's financial position to attribute to the estate only the value of Charles' minority shareholding in A&W Holdings and not the value of Charles' majority shareholding in Hamco which, as trustee, held the majority shareholding in A&W Holdings. As majority shareholder and director of Hamco, Charles controlled the trusts of which Hamco was the trustee.

- [90] The financial position of the estate was therefore considerably in excess of that deposed to by the respondents. It is not necessary to put a precise figure on the financial position of Charles' estate except to say that its net position was understated by as much as \$10,000,000.

Conclusion

- [91] In answering the factual question determining whether or not the provision made for Steven was inadequate for his proper maintenance and support, I have had regard to, *inter alia*, the factors referred to in *Singer v Berghouse*.¹⁸ As can be seen from the foregoing, the applicant's financial position and earning capacity are poor, while the size of the estate is very large and was understated by the respondents. The relationship between the applicant and his deceased father was very troubled, but fault cannot be attributed to the applicant for the emotional suffering caused to him by his father throughout his life. The other persons who have a legitimate claim on the deceased's bounty are his widow and the son of his second marriage. They are well provided for under the Will and are otherwise in very comfortable circumstances because of financial entitlements provided for them by Charles during his lifetime. The applicant and his family are in very poor financial circumstances.
- [92] As noted at the beginning of these reasons, the first question to be answered in a family provision case is whether, in all of the circumstances, adequate provision has been made from the estate for the applicant. An analysis of all of the circumstances set out in these reasons leads me to the conclusion that it was not.
- [93] It is therefore necessary to determine, in the exercise of my discretion, what provision should be made out of the estate for the applicant. He was left a car, a house and \$500,000. In my view, an additional \$500,000 would appropriate. That would enable the entire amount of \$1,000,000, if invested at current term deposit rates of two to three per cent per annum, to generate annual income of \$20,000 to \$30,000. That would be adequate provision for Steven from Charles' estate. It is by no means equal to the provision for Richard, who will receive the whole of the residuary estate on his mother's death, but it is not the role of the court to rewrite the Will to make it fairer or to assuage the damage caused to a fractured family relationship by hurt and unequal treatment.

¹⁸ (1994) 181 CLR 201.

Order

[94] I therefore order that further and better provision for the applicant, Steven Charles Allsop, be made out of the estate of Charles Edward Allsop, deceased, by reading the Will as if the following clause were substituted for Clause 3(d) of the Will:

“to my son Steven Charles Allsop the sum of One Million Dollars (\$1,000,000.00) and I direct that such amount is to be paid first from my ready monies and if such funds are insufficient then my Trustees are to exercise all appropriate powers and discretions as my Trustee or as Shareholders or Directors of any company in which I hold shares at the date of my death (whether or not such company acts as a Trustee of any Trust) so that the legacy of \$1,000,000.00 is paid to my son Steven Charles Allsop as a capital payment within 12 months from the date of my death.”

[95] I will hear submissions as to costs.