

Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

P MCMURDO J

No 1036 of 2009

BRETT JOHN MAHLO

Plaintiff

and

JOHN MICHAEL HEHIR

First Defendant

and

BENJAMIN YURI SASONOW

Second Defendant

and

ANASTASIA JANE SASONOW

Third Defendant

BRISBANE

..DATE 09/08/2011

..DAY 2

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THE COURT RESUMED AT 10.24 A.M.

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MS TRESTON: I need your Honour's leave to recall the evidence of Ceinwen Mahlo. It is not opposed by my learned friend. There are two issues that I didn't raise with her. It's entirely my own fault. One was an issue that arose out of cross-examination. Does your Honour want me to advise you what it is?

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HIS HONOUR: No, if it's not opposed.

MS TRESTON: The other is a short piece of evidence about the whereabouts of her husband, neither of which are opposed by my learned friend.

HIS HONOUR: That's not opposed?

MR NEVISON: No.

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HIS HONOUR: You will be allowed to cross-examine at large of course.

MR NEVISON: Indeed. Thank you.

CEINWEN BARBARA MILFORD MAHLO, RECALLED AND FURTHER EXAMINED:

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MS TRESTON: Mrs Mahlo, sorry to have to call you back. Just two things. The first one is, can you tell us where your husband is?-- He is currently in the Czech Republic.

What's he doing in the Czech Republic?-- Picking up an aircraft. He's ferrying an aircraft.

How long's he been there for?-- He's been there for eight days.

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Is there any issue delaying his return?-- Yes, there was a hold up in the paperwork. He was unable to pick up the aircraft until all the paperwork had been finalised.

When does he get back?-- He should be back Thursday, this Thursday.

Yesterday in your cross-examination by my learned friend you were asked about the conversation with Mr Hehir where you have recorded in your handwritten notes, and also in your affidavit, you gave his Honour oral evidence about it, that Mr Hehir said to you that there was a second Will which Brett was the executor of. Do you remember that?-- Yes, I do.

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And it was suggested to you that perhaps you could have said that to him, that there was a second Will that Brett was the executor of. Do you remember that yesterday?-- Yes, I do.

Can you tell his Honour what if anything you knew about the existence of a second Will at the time of your conversation with Mr Hehir on the afternoon of the 28th of May?-- That was the only time. I didn't know of a Will prior to that. It was in a conversation with John Hehir. That was the only time I ever knew of a Will.

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Of a second Will?-- A second Will, sorry, yes.

Had your husband spoken to you about the existence of a so called second Will?-- No, he hadn't.

I don't have anything more, your Honour.

HIS HONOUR: Do you have any questions?

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MR NEVISON: No, nothing arising, thank you.

WITNESS EXCUSED

MS TRESTON: Your Honour, subject to the issue in relation to Dr Phillips at 1 o'clock today and the-----

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HIS HONOUR: What's his specialty?

MS TRESTON: He is a general practitioner.

HIS HONOUR: He is conducting procedures all morning?

MS TRESTON: That's what I was told, that he was conducting procedures this morning.

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HIS HONOUR: That's your case apart from him?

MS TRESTON: There is the issue in relation to the joint experts which were we were going to do at the end of. Mr Nevison's case.

HIS HONOUR: What about the amended defence?

MS TRESTON: I have communicated to my learned friend that I don't have any issue in relation to the amended defence.

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HIS HONOUR: Leave will be given to amend the defence in accordance with the document which has been marked.

MS TRESTON: We will attempt to contact Dr Phillips this morning but we have been singularly unsuccessful in all our endeavours so far. It's difficult to even get past the

receptionist, as I understand it.

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HIS HONOUR: Yes, a very busy person. Yes, Mr Nevison.

MR NEVISON: Thank you, your Honour. There are two witnesses effectively to give evidence in the case for the first defendant. I might start with the expert who's been referred to. That's Mr Stan Gallo, a computer forensic expert in the employ of KPMG. Mr Gallo has delivered two reports in relation to the subject matter of this proceeding, one dated the 8th of March 2010 and the other dated 20 September 2010.

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MS TRESTON: I don't require an opening of Gallo.

HIS HONOUR: I would like to know what's in them. What is the relevance of his evidence?

MR NEVISON: Yes, thank you, your Honour. You will find the hard copy printed out in the trial bundle in firstly bundle - or volume one at page 204. I propose to formally tender the affidavit of Mr Gallo which is e-court document number 22 in proceeding number 1036 of 2009. I understand that that's not opposed on the basis that he is still available for examination, which he is, and that is the affidavit which then attaches a computer disk containing the two reports of Mr Gallo, but nonetheless to assist in the process, we've printed out, by agreement between the parties, the report and certain of the pages that form the attachments to that report. That's what follows then. At page 208 is the first report dated 8 March 2010.

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Relevantly, if we can go to that report, basically Mr Gallo confirms that on 6 February 2009 he obtained a forensic image of the desktop computer that was then in the possession of the plaintiff's lawyers, so each of the computer experts were in effect looking at a similar image of the computer of the deceased. There is no dispute about that between the parties, that that was the deceased's computer, and it's identified there on page 214.

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Relevantly, Mr Gallo then summarises his approach but at page 218 in paragraph 5 he sets out the findings of his examination and in particular he refers to the various documents that he found relevant to this matter, including various documents known as inheritance estimates, which were Excel type documents, and he deals with the source, as it were, of those documents into the deceased's computer.

At page 9 of the report, that's page 218 of the trial bundle, if you go to the second last paragraph there, you will see that he records - I beg your pardon, just above that - this file came into the computer - about halfway down the page - came into the computer via an e-mail, message 0282, from "john.hehir@FAA.net.au" on 8 May 2008 at 17:19:39 a.m. and contained three attached files at that time. Then he deals with the e-mail - there being a second e-mail from Mr Hehir of 8 May at 8 :34:25 a.m., which contained a single attachment of an inheritance estimate document, and then----

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HIS HONOUR: The second of those attached files, is that in the form of a Will?

MR NEVISON: No, your Honour. I beg your pardon, yes, that's a draft or template Will document.

HIS HONOUR: That's what I meant.

MR NEVISON: Yes, I am sorry, I was thinking-----

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HIS HONOUR: "Template" is the term I should have used.

MR NEVISON: Yes, indeed. I thought your Honour was referring to the second e-mail and the inheritance estimate, which of course is a series of numbers in an Excel spreadsheet dealing with investments and that, which we will come to in due course.

HIS HONOUR: As at that template was e-mailed, do I see somewhere where it would have - as it would have appeared when she opened it? In other words, I am interested in how complete it was.

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MR NEVISON: Yes, you will see that. Yes, indeed.

HIS HONOUR: Where would I see that?

MR NEVISON: I am coming to that.

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HIS HONOUR: All will be revealed.

MR NEVISON: Should we go there now?

HIS HONOUR: Yes.

MR NEVISON: Yes, okay. We will need you to take up volume two. Just bear with me one second, your Honour. Some of the material is not replicated between the - 367. I thank my learned friend. A number of pages once you start printing these voluminous documents out, but at page 367 in volume two is the relevant Will, or template, as e-mailed as an attachment to the e-mail of the 8th of May 2008. The e-mail relevantly at page 364 precedes that, the covering e-mail.

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Relevantly, while we are on the document, at page 369 you will note that there's no date inserted but there's a field, as it were, for the insertion of the date.

HIS HONOUR: Just let me look at the e-mail.

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MR NEVISON: Yes.

HIS HONOUR: Yes.

MR NEVISON: Thank you, your Honour. The reason for my confusion is that there was an earlier copy of the e-mails in the bundle of material from the expert Mr Gallo and there was

a further copy of the Will at page 252 of the computer bundle with the e-mail as well. For present purposes, if we can stick with where we are at in the bundle and if your Honour goes across to page 387 then of the bundle, there you will see the next e-mail that was sent from Mr Hehir at 8.30 a.m., on the 9th of May, attaching the second inheritance estimate Excel spreadsheet.

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HIS HONOUR: That e-mail effectively ends at where? At 396 or-----

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MR NEVISON: Yes, your Honour.

HIS HONOUR: Thank you.

MR NEVISON: As you heard yesterday, the trial bundle was effectively produced just before the trial commencing and was in fact put together the afternoon before the trial on the Sunday, so some of the documents appear to be still slightly out of order. For example, page 397 is one page out of the Power of Attorney, which is obviously misplaced.

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HIS HONOUR: When, in relation to these e-mails, was the attempt which the deceased did make her life before of course the ultimate one? I am talking about the incident where she took a lot of pills. When was that?

MR NEVISON: That was in April.

HIS HONOUR: In April.

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MR NEVISON: On or about the 12th of April I think it was put at.

HIS HONOUR: Yes.

MR NEVISON: Yes. Then you will recall that she went off to Orange. It was probably the Labour Day weekend, on the 3rd of May. The witness Dr Ruhno gave a version of meeting with the deceased and her daughter in Orange that weekend and then she returned. The evidence will be to the effect that these e-mails were sent through on the evening of the 7th of May and then the 8th of May and finally the 9th of May and the evidence appears to be that the real document at least was last modified on the 15th of May, on the deceased's computer.

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HIS HONOUR: The provenance of the document which is the subject of this case is the attachment to the e-mail of 8 May?

MR NEVISON: Yes, your Honour. Yes, 8 May, that's right.

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HIS HONOUR: We know when the last modification was, do we know when the first modification was?

MR NEVISON: I don't think I can assist your Honour with that, no. What we propose to do, with the agreement of my learned friend, is put into evidence Mr Gallo's electronic version of his reports, which are exhibited to his affidavit, but then

provide to you a printed copy of the relevant documents, so that you are not having to sort through because of this laborious exercise, but we will get them in perhaps a better order than we have presently got them in the trial bundle.

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HIS HONOUR: So to get back to the tender, the first report of Mr Gallo is behind his affidavit-----

MR NEVISON: Number 22. E-court document number 22, your Honour.

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HIS HONOUR: That will be Exhibit 13.

ADMITTED AND MARKED "EXHIBIT 13"

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MR NEVISON: Thank you, your Honour. Both reports are exhibited to that affidavit in an electronic form on a CD.

HIS HONOUR: That affidavit with electronic versions of reports will be Exhibit 13.

ADMITTED AND MARKED "EXHIBIT 13"

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MR NEVISON: Thank you, your Honour.

HIS HONOUR: What if anything passed between your client and the deceased after the last of these e-mails? Was there any telephone call or any meeting?

MR NEVISON: I am sorry, I didn't hear your Honour.

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HIS HONOUR: Any meeting?

MR NEVISON: Any meeting? No, your Honour. There was no meeting about the terms of her estate. All that there was was the obviously contentious file note in the FAA files of the 7th of May, which preceded the e-mail being sent, but which Mr Hehir will say records the basis upon the contact - this is at page 551, the last page of the second bundle. This was a phone conversation he had with the deceased which caused him to send the material through in the e-mail of the 8th of May and then there was the further file note, conversation which did occur, and this is at page 547, which was found by the police in the FAA material.

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On the 23rd of May there is a file note: Karen has rang in to discuss some further estate planning issues again. After playing with the inheritance calculator she had me create for

her, she was considering decreasing her MLC insurance policy as she has concerns that she should die, that Anna will not have any desire to ever pursue a career path. She said that she believes that Ben will be fine regardless.

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HIS HONOUR: It's common ground then that that was an accurate file note, it seems?

MR NEVISON: Well, located, yes, yes. Relevantly from our perspective, that's the 23rd of May 2008, a date after-----

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HIS HONOUR: Yes. So what is the particular significance of the one at 551?

MR NEVISON: 551. The purpose of that was really just to show a file note was created at the time that the deceased contacted Mr Hehir and the nature of discussion, what motivated him to send the e-mails of the 8th of May.

HIS HONOUR: But why would it matter? In your case why would it matter?

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MR NEVISON: It's not overly significant but it's a document that relates to what transpired at the time, your Honour, and to the extent that it's significant, the focus - Mr Hehir will say that the focus of the deceased's contact with him, on the 7th of May, was the inheritance by the children and when they were-----

HIS HONOUR: Something must have passed between them about a change to her Will otherwise he wouldn't have sent the e-mails that he did on the 7th, 8th and 9th.

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MR NEVISON: He will certainly say that she was looking at changing her Will.

HIS HONOUR: At the moment I don't see so much attention is being paid to the authenticity or otherwise of his diary note of the 7th of May.

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MR NEVISON: No, we don't understand either, your Honour.

HIS HONOUR: Will Mr Hehir's evidence be that after the e-mails - the last of which I think was the 9th of May, was it?

MR NEVISON: The 9th of May, correct.

HIS HONOUR: Will he say that the only contact he had with the deceased was as he's recorded on the 23rd of May?

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MR NEVISON: No, he wouldn't say that, your Honour. There was contact about other matters. There's e-mail activity about Anna undermining him and that type of contact between them, but not considered relevant, as it were, to the issues on this application.

HIS HONOUR: In other words, neither side considers they are relevant.

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MS TRESTON: I do.

HIS HONOUR: Sorry?

MS TRESTON: I do.

HIS HONOUR: They haven't been tendered, have they?

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MS TRESTON: Not yet, but they will be.

HIS HONOUR: Alright.

MS TRESTON: I haven't had an opportunity to tender them through anyone other than through Mr Hehir, so they will be tendered. To put it into perspective for your Honour, it's obviously an intrinsic part of my case that the deceased's relationship with Mr Hehir was over, which was one of the reasons for the impetus for her to change her Will. So I will be taking your Honour through that correspondence to demonstrate that that relationship was well and truly over.

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MR NEVISON: Yes, and I simply wanted to indicate in answer to your Honour that there was some contact between them and there was certainly some personal contact between them during that period in that Mr Hehir will say that he last stayed at the Kings Beach residence on the 24th of May. That was the last night that he stayed with the deceased. So there was very much continuing contact between them after the deceased's father left on the 19th.

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HIS HONOUR: Sorry, he stayed there on the 23rd?

MR NEVISON: He stayed there on the 24th of May, on the evening of the 24th of May. His evidence will be to the effect that when he left the next morning, as he was leaving he bumped into a good friend of the deceased, a Dr Grant Stone, as he was departing.

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HIS HONOUR: Will he give evidence that he discussed the possible revocation of her Will, that is the Will of the 18th of February?

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MR NEVISON: He will say he knew nothing of her taking any further steps with respect to the Will document that he'd sent to her.

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HIS HONOUR: So that simply wasn't discussed at all.

MR NEVISON: It wasn't discussed. He will say that there was discussion about the inheritance and an insurance policy with MLC which ultimately was intended for the benefit of the children, and consequently that's the nature of the note that was made on the 23rd of May 2008 as well, that there was ongoing discussion about that.

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HIS HONOUR: So was that - discussion about the policy, was that about whether some further policy would be taken or whether its terms would be amended?

MR NEVISON: Or in fact whether the extent of cover would be decreased.

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HIS HONOUR: Increased?

MR NEVISON: Decreased.

HIS HONOUR: Decreased.

MR NEVISON: Yes.

HIS HONOUR: Now, that policy was written through his agency, wasn't it?

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MR NEVISON: I don't know whether I can assist your Honour. It was an MLC policy.

HIS HONOUR: I may have completely misunderstood this, but I had the impression from somewhere that Anna had worked for his organisation as some stage; is that right?

MR NEVISON: That's correct, your Honour, and Mr Hehir will give evidence of the nature of the tasks she undertook there, including general administrative tasks, but also included assisting with the preparation of Will documents.

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HIS HONOUR: What's the relevance of that?

MR NEVISON: That she had a knowledge of Will documents. See-----

HIS HONOUR: Yes, but what's the relevance of the-----

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MR NEVISON: The relevance is that we will submit ultimately that the computer at the deceased's residence was, in effect, an open computer which people had access to, including Anna, on a regular basis. We don't suggest that Anna created the document, it's just that it's another area of suspicion or concern that-----

HIS HONOUR: But it's a possibility you'd ask me to consider?

MR NEVISON: Yes, your Honour.

HIS HONOUR: Sounds like you're suggesting it.

MR NEVISON: Yes. It could have been that the deceased created the document. It could have been that somebody else altogether created the document. It could have been that the deceased was assisted by somebody else to create the document. They're all possibilities that are open, we suspect, on the evidence as it will be finally before the Court.

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May I come back to Mr Gallo's report briefly, your Honour, just to ice off why the first defendant was put on the continuing train of inquiry that he has been, and for his continued concern about the nature of the document on the deceased's computer? Your Honour, would you go to page 220 in volume 1, please, at point 5.3, which deals with the document which was "The Last Will and Testament of Karen Lee Mahlo.doc", and this is the document which the plaintiff seeks to prove as the document embodying the testamentary intention of the deceased. You will see, your Honour, about four paragraphs down that Mr Gallo discovered that the file was subsequently - I beg your pardon, the file was created on the 8th of May 2008 at 8.28.31 a.m. and had a file size then of 18,236 bytes. He concludes that the file was subsequently accessed on the 9th of May 2008 at 11.04.06 p.m., the 9th of May, a few minutes later, at 11.04.15 p.m., and then on the 15th of May at 10.29.21 a.m. he says - in fact in his second report he corrects that error and it is meant to read "p.m.", not "a.m.".

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HIS HONOUR: Yes.

MR NEVISON: The file was modified. So at 10.29.21 p.m. the file was modified and the file size increased to 18,644 bytes. The effect of his evidence is that it cannot be discerned at all what the amendments were to the document. So you've got the original document, it's a certain size, and then you've got the final modified document. But the computer experts are not able to say which words were put in by which keystrokes, when and where.

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He then says there were four further accesses to a file with the same name. One was the 26th of May 2008 at 12.35 a.m., so that is before the death of the deceased, one is at 28 May 2008 at 1.43.09 p.m., which is clearly after the time of death of the deceased, and then 28 May at 1.44.10 p.m., and then 30 May 2008 at 9.55 a.m.. That last entry, your Honour, is consistent with the evidence given yesterday by Dr Ruhno that the document was accessed and attached to then an e-mail which was sent out.

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HIS HONOUR: Do we know the precise time and date of death?

MR NEVISON: Yes, life was declared extinct, I understand, at 5.13 a.m. on the 28th of May 2008 by a paramedic ambulance officer who attended at the scene.

HIS HONOUR: But the deceased may have been dead for some time by then.

MR NEVISON: That's so, that's so. I-----

HIS HONOUR: When was she last seen alive?

MR NEVISON: The deceased had telephone contact with various people during the evening of the 27th.

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HIS HONOUR: Yes.

MR NEVISON: And that is the last contact she had with people in person.

HIS HONOUR: Yes.

MR NEVISON: I understand that she was probably last seen alive by Mr Hehir when he attended at the residence to collect a motorcycle at or around 5.30 to 6.30 p.m. on the 27th of May, but the evidence clearly establishes that the deceased made a telephone call to the mobile of Mr Hehir at or about 3 a.m. on the morning of the 28th of May, which is consistent with her having been at her computer and documents accessed at about 2.47 a.m.. She then made contact at or around 3 or just after 3 a.m.. Mr Hehir's evidence is that he didn't receive that call, or he didn't hear that call, he was asleep, he woke at 4.30, and he found that there was a missed call from the deceased. He immediately began calling the deceased back. He was then at a unit at Cotton Tree on the Sunshine Coast where he had moved to reside. He immediately started to call the deceased. He called the deceased from his unit and asked her to pick up the phone. He did so on a number of occasions. He then travelled in his vehicle to Caloundra to the residence at William Street. He was the first to arrive. He had in the course of his travel dialled triple 0 and requested the ambulance to attend. He arrived at the premises prior to anyone else. He went into the premises and found the deceased on the first floor of the premises obviously deceased. He was in communication with QAS Communications in relation to revival. However, that did not occur. He then went outside the premises and waited for the arrival of the ambulance officers.

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HIS HONOUR: Well, what time did get there?

MR NEVISON: It was approximately - your Honour, I would need to confirm, but it was approximately 5 a.m.

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HIS HONOUR: And so was he able to go into the house?

MR NEVISON: He was. The house was unlocked, lights were on.

HIS HONOUR: And he found the deceased.

MR NEVISON: He found the deceased on her bed on the first floor, yes. I don't think there's any issue between the

parties that there were knives in the location of the deceased, but there was also one knife still in the body of the deceased.

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HIS HONOUR: Now - so at least according - well, presumably the ambulance arrived sometime in the morning of the 28th of May.

MR NEVISON: Very shortly after, probably within five to 10 minutes of him.

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HIS HONOUR: So that the access to that - or the accesses on the afternoon of the 28th of May were after the death of the deceased.

MR NEVISON: That's so, your Honour. Yes. That's so.

HIS HONOUR: Right.

MR NEVISON: And just going back to Mr Gallo's report then, you will see in the second last paragraph he observes on 30 May 2008 at 9.55.40 a.m. an e-mail message sent from Mahlo@flexinet.com.au, and there's no contention, I believe, between us that that is the deceased's e-mail address which was operated from her computer. So Mahlo@flexinet was Karen Mahlo's e-mail address. On 30 May at that time in the morning, 9.55, an e-mail was sent from the deceased's e-mail facility to mail@wadeair.com.au, and I believe it's common ground that that is the e-mail address of Wade Mahlo, the brother of the deceased, and your Honour might recall yesterday the evidence of Dr Ruhno to the effect that she agreed that an e-mail was sent at or about the time that she and Anna were retrieving the document on the computer. It was sent to Wade, Wade Mahlo, and attached various documents, including this Will document.

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HIS HONOUR: So what is the significance of the e-mail to Wade Mahlo?

MR NEVISON: Your Honour, it's just the first time that it appears that that document was accessed on the computer and sent off to Wade Mahlo. We really don't know the significance of it, other than it was sent to that gentleman. He's not giving evidence. We can't ask him what he did with it or anything of that nature.

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HIS HONOUR: All right.

MR NEVISON: He's here in Court. And then, your Honour, Mr Gallo goes on to observe that after then it was accessed a further eight times, the document, but that's probably largely irrelevant, certainly to determining the intention of the deceased with respect to the document, but, nonetheless, it was continually accessed right through until the image was taken.

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HIS HONOUR: So is Mr Hehir the only witness in your case, or-----

MR NEVISON: Mr Hehir is - together with Mr Gallo, of course, yes, your Honour, but Mr Hehir is the only witness, and I can briefly outline to your Honour the evidence that he will give.

I should go on to say, your Honour, with respect to Mr Gallo, just before I move on, that then there was a second report delivered, because what I didn't take your Honour to, but certainly will in the close of submissions, is that Mr Gallo said that - I need to be precise about the words that he used - he dealt with the printing issues in each of these documents, your Honour, and, for example, on page 221 at the end of 5.3, in respect of the Will document, his observation was, "We did not identify any instances of the Will file as having been printed." So he didn't conclude that it hadn't been printed, but he concluded that he couldn't find any evidence that it had been printed.

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HIS HONOUR: What do you see is the point in having the forensic experts here? What are they going to say? And what's the difference, if any, between them?

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MR NEVISON: I don't require them at all, your Honour, I must say.

HIS HONOUR: Do you mind if I ask Ms Treston?

MS TRESTON: No. Thank you, your Honour. Your Honour, my concern in relation to the calling of the forensic experts was this: your Honour indicated to me in the exchange early on in the proceedings, I accept before your Honour was on top of all of the evidence at that stage, that were they able to say with any degree of probability - your Honour didn't use that word, but to any degree of probability what the likelihood was that given that there were various explanations for why there might be no evidence as to the printing of the document, what was the likelihood in fact that it had not been printed. Now, I apprehended that that was a matter that was of concern to your Honour, and therefore I considered that, to do my duty to my case, I ought to have the experts explain to your Honour their evidence in relation to the likelihood or otherwise that it had been printed and they'd not found it. I'm - I don't want to be left with an inference that as a result of the joint experts' report your Honour should form the conclusion that the document was not printed. Can I go to the-----

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HIS HONOUR: Well, I couldn't do that at the moment, but what do you propose to have Mr Atkins say about that, if anything?

MS TRESTON: I simply propose to ask Mr Atkins and Mr Gallo about the testing that they had done, which appears at - in Exhibit 2, which is the joint report. Mr Atkins says that he has done some basic testing to demonstrate that specific documents actually could be printed without any printed entry being recorded in the properties of the document. So, in other words, he was able to replicate the error, and can give an explanation as to how it has happened.

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HIS HONOUR: Yes.

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MS TRESTON: Now, I understand, without giving evidence from the Bar table, that Mr Gallo has been able to replicate a similar error, and I was hoping to ask the pair of them about that issue, in order to put it in context of what the probabilities were that the document had been printed and they simply were unable to locate an entry for it having been printed.

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HIS HONOUR: But your witness originally was Mr Atkins. He's not going to give evidence, by the sound of it, that more probably than not it was printed.

MS TRESTON: No, the - no, as I understand both of the experts, the best that they can say is that it remains a possibility that the document was printed, they can't say affirmatively that it was not. All they can say is, firstly, they could not find evidence to show that it had been, but, secondly, that there were explanations-----

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HIS HONOUR: Yes.

MS TRESTON: -----for the failing to find it.

HIS HONOUR: But if your witness is not going to say that more probably than not it was printed, you don't - well, you've heard what's said by Mr Nevison. He doesn't see any point in having his expert here. So where will the concurrent evidence go? If neither of them is going to say that more probably than not it was or was not printed-----

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MS TRESTON: In my submission, your Honour, neither of them can say that. In the usual way that persons of their persuasion-----

HIS HONOUR: Well, it's not a matter for your submission, they can either say it or they can't, but you're not going to call your expert to say more probably than not that it was printed.

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MS TRESTON: No, I'm not. I'm going to call-----

HIS HONOUR: And Mr Nevison isn't going to attempt a similar exercise. So what's the point in having them here?

MS TRESTON: I was very concerned to allay your Honour's concern, as I apprehended it, that the evidence could be put as highly as that it was almost a certainty, based on the evidence that they had given, that the document hadn't been printed. Now, I understand that's going to be the effect of the submission on the other side, that while there's not a scintilla of evidence that this document has been printed on any of the forensic examinations, and your Honour would be significantly concerned by that, and your Honour would find on balance therefore the document wasn't printed, your Honour should reject the evidence of Mr Mahlo, should reject the evidence of Jenny Ruhno, should reject the evidence of Beverley Mahlo, et cetera.

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HIS HONOUR: Well, that's a fair submission on the evidence I have so far. It is not to say I would accept it, but it is a fair submission. But other than by calling someone to say what Mr Atkins can't say, which is more probably than not it was printed, I just don't see where there's any point in having them here.

MS TRESTON: Well, I'll give reconsideration to the issue, your Honour. For myself, I was initially satisfied, as I said to your Honour on the first day, that Exhibit 2 had put the printing issue to bed, because it was able to be demonstrated that in fact the documents could be printed without there being a record of them, and that the experts were satisfied that there were explanations for that. Now, your Honour then asked me about, "Well, how do I know that, for example, the computer was set up on a home network? How do I know that that's even a possibility that I should take into account?" Well, I wanted to address those sorts of issues to allay your Honour's concerns about the probability, because in my submission your Honour will ultimately make the decision about what's probable in light of the combination of the computer experts and the lay witnesses who will say that the document was printed.

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HIS HONOUR: Well, as I understand it at the moment there is no difference of opinion between the respective experts. They agree that it was possible that the document was printed, they agree that it was possible that it was not printed, and neither of them would venture an opinion beyond that as to relative probabilities.

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MS TRESTON: That's as I understand the evidence.

HIS HONOUR: Now, if that's the position, and Mr Nevison accepts that's the position, that doesn't mean that I ignore their evidence, but that's as much as I can make of it.

MS TRESTON: And if Mr-----

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HIS HONOUR: So, in other words, if I'm minded to accept the evidence of Mr Mahlo, I'd weigh that, of course, against all of the other evidence, including the experts' evidence, but I wouldn't really be assisted in deciding the truth or otherwise of his evidence by the computer experts, would I?

MS TRESTON: No, your Honour, in my submission, you wouldn't.

HIS HONOUR: No. All right. Thanks for that.

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MS TRESTON: If my learned friend is happy with the position that the - as your Honour so succinctly put it - they cannot say that there's - sorry, I will start that again - there's a possibility that it was printed and there's a possibility that it wasn't printed, if he's prepared to accept that that's the state of the evidence, then I would accept-----

HIS HONOUR: And, thirdly, that neither of them is saying

anything about relative probabilities. Do you accept that's the effect of the evidence?

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MR NEVISON: I accept that, yes, thank you, your Honour.

MS TRESTON: In light of that, I will reconsider during the course of the morning.

HIS HONOUR: All right. Thank you.

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MR NEVISON: Thank you, your Honour. I won't bother you at this stage with Mr Gallo's second report then. I'll just move to Mr Hehir and his evidence.

HIS HONOUR: Yes.

MR NEVISON: Mr Hehir, of course, swore an affidavit originally in these proceedings. Your Honour, in respect of all of these affidavits that you're being favoured with, it must be kept in mind that they were largely done at an interlocutory stage, when it was determined whether there was a need for a trial or the matter could be disposed of in Chambers. So to that extent it's somewhat skeletal and within its boundaries readily acknowledges that it does not traverse all of his knowledge, but, nonetheless, it forms the basis for his evidence-in-chief. That affidavit, your Honour, is eCourt document number 27 in proceeding number 7731 of 2008, and he will affirm the contents of that affidavit in his evidence-in-chief today.

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Beyond that, your Honour, he will elaborate on some relevant issues. He will tell the Court about events at the end of March. Did your Honour want to take a minute to review that affidavit?

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HIS HONOUR: Just take a seat for a moment, thanks.

MR NEVISON: Thank you.

MS TRESTON: Your Honour, I have some objections in relation to this affidavit which I flagged with my learned friend. Can I hand them up to your Honour?

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HIS HONOUR: Yes, thank you.

MS TRESTON: They are in printed form, and I understand that none of them are pressed.

MR NEVISON: Yes, I have seen them, your Honour. I have no issue with them.

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MS TRESTON: I hand up two copies of the objections, your Honour.

HIS HONOUR: Thank you. I will have that list of objections marked for identification as MFI3.

MARKED "3" FOR IDENTIFICATION

HIS HONOUR: Paragraph 35-----

MR NEVISON: Yes, your Honour.

HIS HONOUR: No, sorry, I meant to ask Ms Treston. Your objection is to the final two words?

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MS TRESTON: Yes, your Honour.

HIS HONOUR: So that's an objection to the paragraph?

MS TRESTON: I don't mind if the word is "died" - read as "died".

MR NEVISON: Your Honour, may I say in respect to the objections, given that we have only been allotted two days, I simply didn't want to be too precious having lengthy arguments about them.

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HIS HONOUR: No, that's all right.

MR NEVISON: Yes.

HIS HONOUR: I understand they're conceded, so-----

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MR NEVISON: Yes.

HIS HONOUR: -----I just was wondering why only two words were objected to. I will rule out paragraph 35.

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For example, in 43-45 he is responding to an affidavit which is not in evidence. I don't have that affidavit, do I?

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MR NEVISON: No, you don't. So I won't rely on paragraphs 43 to 45.

HIS HONOUR: I will rule them out.

MR NEVISON: Thank you, your Honour. I have just found a similar provision to save your Honour some time with respect to paragraphs 94 to 107.

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HIS HONOUR: Yes, I was about to ask you that.

MR NEVISON: Thank you, your Honour.

HIS HONOUR: So that's 94 through 107?

MR NEVISON: Yes, your Honour.

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HIS HONOUR: So they will be ruled out, as will each of the paragraphs to which there was objection.

MR NEVISON: Thank you, your Honour

HIS HONOUR: On the basis that he will be called, his affidavit can be marked now as Exhibit 14.

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ADMITTED AND MARKED "EXHIBIT 14"

MR NEVISON: Thank you, your Honour. He will give oral evidence to supplement that evidence to the effect that towards the end of March 2008 he and the deceased decided that he would rent a unit and that he would not necessarily stay on every night at the William Street residence. This arose because he was concerned, he will say, at the deceased's drinking and her heavy smoking habits and he will simply say in his own words, he needed some space, and that the two of them started to look together for units for him to rent and to get available information on those units.

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He will say that on the 2nd of April he saw agents and that he had looked at some units and he took one immediately. So it was from the 2nd of April 2008 that he took the unit at Cotton Tree near Maroochydore. He will say that he only took some clothes and things and that the unit already had an inflatable mattress. It didn't have any other furniture at all, not even a fridge, and had no electricity connected. He will say that status continued while he occupied the unit. He didn't furnish the unit because he regularly returned to the Caloundra premises of the deceased to stay

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HIS HONOUR: I take it he had electricity.

MR NEVISON: The instructions we appear to have are that he didn't have the electricity connected at the premises. He did after the death of the deceased continue to reside there and that status may well of course have been changed, but on our instructions it was really just a camp for him.

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He will say that in fact on the 3rd of April he went back and stayed with the deceased at her house and between the 3rd of April and the 11th of April he in fact stayed most nights with the deceased at her house. He will say that the days were essentially unremarkable in terms of the nature of their relationship, which was in some respects volatile. He will say once or twice during this period between 3 April and 11 April he stayed overnight at the unit just to get some space and because the deceased would drink and smoke heavily in his presence. He will say that he makes these comments not in any way to demean the good character of the deceased, but it was something that he found difficult to tolerate.

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He will say that on or about the 11th or 12th of April on that evening he was staying at the unit at Cotton Tree and he received a call from the deceased in the middle of the night and she was asking him to look after her dogs and said that there was nothing he could do because she had taken all the tablets. He stayed on the phone, he will say, while he raced over to her house from Maroochydore down to Caloundra and he tried to keep talking to her but she was drifting off and she stopped talking. When she stopped talking he will say that he called triple-O immediately and asked them for help. He arrived on that occasion before the ambulance and he found the deceased in her bed and she talked to him. He will say that the ambulance then arrived and they started a resuscitation process. He will say that she was conveyed to the Caloundra hospital and then airlifted to the Royal Brisbane Hospital where she remained in intensive care for a number of days. He will say that she was in a coma and she came out of the coma on the Sunday morning.

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He will say that on the following Monday she was transferred from the Royal Brisbane Hospital to New Farm Clinic for rehabilitation for her depressive illness and she stayed until Friday, 18 April, in that facility. He will tell the court that while she was after the New Farm Clinic he used to travel to work and then back to Brisbane every day to see her and she was very upset with him during this time and blamed him for her being there as she wished that she had died.

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He will say that during this time she was also communicating with Dr Stephen Phillips, the general practitioner we will hear from later. On 18 April 2008 he will tell the court that there was a family meeting with the treating psychiatrist and in that meeting the deceased decided that she voluntarily did not want to stay and discharged herself and he conveyed her to her home at William Street in Caloundra where she proceeded to drink alcohol all weekend.

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He will then tell the court about the events between 18 April and 22 April 2008. He will say that during this period the

days were essentially unremarkable, although he will say that he stayed most nights with her at the William Street premises. He will say that he's a little fuzzy in his recollection but at or around this time the deceased's son Ben called him at his work and discussed with him the worry that he had about his mother and as a consequence of this phone call Mr Hehir left his work, returned to the residence and the deceased was very angry with him, that he had come down to check on her as a consequence of Ben's call to him.

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He will then say that on or about the 30th of April the deceased and her daughter Anna travelled to orange to visit her parents, taking the Mini Coupe motor vehicle with them. He will say that during that period he stayed the entire time at the William Street property at Caloundra, the property of the deceased, and he did jobs such as sanding back the front entry decking during that weekend while they were away.

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He will tell the court about the employment of the deceased's daughter Anna Sasonow in his business FAA, which is a financial planning business conducted at Maroochydore in Queensland. He will say that he tried as best he could to encourage Anna in her employment and subsequently when she decided to terminate her employment with him, to assist her to find alternate employment with people that he knew. He will say that he was often troubled by Anna and her conduct and that he often discussed this with the deceased. He will say that in the course of her employment Anna was responsible for a number of administrative type tasks, including the preparation of Will documents from a template that had been prepared in the conduct of the business for the benefit of clients.

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He will talk about the time after the deceased returned from Orange on that long weekend in early May. He will say on Monday, the 5th of May, 2008 the deceased cooked a nice dinner for them both and that he stayed overnight on the 5th of May. He will say that a lot of the conversation that evening was about Anna and how worried the deceased was about her and her employment prospects and whether she'd ever get a career. He will say that the discussion was to the effect that Anna had grown up significantly during her employment with FAA, but there was a concern about her going off the rails. They laughed and shared a few funny stories.

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He will say that he was concerned about Karen's situation still and, as he calls it, the debacle with Queensland Health and that Karen consistently continued to talk about dying. He will say that on 7 May 2008 Karen rang him while he was at work, further to that conversation, and asked that he create a calculator to identify how much Anna would be getting if she died and he didn't agree to do that immediately because he thought it would just cause arguments between everyone, but ultimately he decided to do it and sent the correspondence later that evening.

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HIS HONOUR: How old was Anna then?

MR NEVISON: I don't know that I can assist your Honour immediately.

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HIS HONOUR: Yes, go on.

MR NEVISON: "I recall looking for Karen's" - he will say that he recalled, in the preparation of the documents to be sent through to the deceased, that he looked for an electronic version of the deceased's Will of 14 February 2008 but he couldn't find an electronic version. So what he did, he had a copy of that existing Will in the office, or he had the existing Will of 14 February 2008 in the office and he simply retyped it verbatim as a new document and sent that through to the deceased, which he acknowledged was for her to work on to change her Will.

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He will say that he recalls creating the Excel calculator to identify the value of the deceased's estate and how it would be valued in different years depending on the variables, such as when people would effectively take their interest in the estate. He understood that the purpose of this from the deceased was very much about Anna and determining what her entitlement from the estate would be.

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He will then say that on the night before 10 May, so 9 May, he stayed with the deceased and they had spoken about her father visiting and in fact, Mr Hehir will say that he offered to take the deceased's father for a ride on the motorbike, the BMW motorbike, because he knew that the deceased's father liked engines and motorbikes, but the deceased did decline that offer. He will say that on 10 May the deceased dropped some ironing to his unit that she had done for him and she was on her way to the airport to pick up her father. He will say that he did not stay at the deceased's residence, at William Street, Caloundra during the time that the deceased's father stayed there.

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After the deceased's father left on the 19th of May he will say that he had dinner with the deceased at the Caloundra residence and he purchased takeaway fish from a local shop. He will talk about the events between 19 May and 27 May. He will say on the night of the 24th of May, that was the last night that he spent at the William Street premises with the deceased and that the following day, as he was leaving, he bumped into Dr Grant Stone, a further - or other friend of the deceased, or a mutual friend of them both.

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He will say that on the 23rd of May 2008 the deceased spoke with him on the telephone and she was rather upset from the outset of the call. He considers that the upset was in relation to Anna and that the nature of the discussion he had with the deceased at that time was about reducing the deceased's life insurance and that Mr Hehir will say that in fact he suggested to her that she should also look at amending her Will once she reduces the life insurance component. He will say that the deceased indicated that she could see the logic in that and that the deceased expressed to him that she was very worried that Anna could not have a large sum of money

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when she was gone.

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HIS HONOUR: But on your case, under her Will, which was made in February 2008, Anna would not take until she turned 35.

MR NEVISON: That's so.

HIS HONOUR: Now, you don't know how old she was, but that was certainly more than ten years away.

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MR NEVISON: Yes. She was perhaps in her early 20's. That's speculation but that's what I understand. Yes, it was some time.

HIS HONOUR: Alright.

MR NEVISON: Thank you, your Honour. He will say on the 27th of May he had had an hour long conversation on the phone at about lunch time that day with the deceased; that the deceased had called him to tell him about her assessment earlier that day; and during the course of that conversation they had had a disagreement about the way that the deceased was behaving and they spoke about a lot of other issues. He will say that each of them said them nasty things to each other and that he, in retrospect, does consider that he hurt her by telling her what he thought of her behaviour, her drunkenness, and at the way she treated people.

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He will say, at or about 5.30 p.m., on the 27th of May, 2008 a work colleague of his, a Veronica Wendt, took him to the premises at William Street, Caloundra to collect a motorbike, which was one of the items the property jointly held by them. The motorbike had been in the deceased's name but the evidence is to the effect that they had each contributed financially to it and it had been agreed that possession of the motorbike would be given to Mr Hehir and that the deceased would sign forms to be delivered to the Queensland Department of Transport to transfer ownership to him. So he went there on the afternoon of the 27th of May, on or about 5.30, he will say to collect the motorbike. He will say that he stayed for about an hour with the deceased and they talked about things.

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He will tell the court that he apologised to her for speaking to her earlier in the day the way he did. There was a bit more banter between them in that the deceased had a go at him, that he made her feel bad, and she said to him words to the effect that she didn't want to go back to work and she simply didn't want to be here. He will tell court that at that time she was drinking gin and she showed him a letter that she had received from a person by the name of Terry Meham and Kevin Hegarty in relation to her suspension from work and that she discussed these letters with him.

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Before he left her that afternoon he will say he asked her was she going to be good and she said, "Yes." He then left the William Street premises he will say at or around 6.30 p.m. and he returned to his office to do some work and eventually went back to his unit at Maroochydore at or about midnight and went

immediately to sleep. He will say on 28 May 2008, at 4.30 a.m. on that day, he got up to go to the bathroom, he checked his mobile phone, he will say he saw a missed call from the deceased's home phone. He will say that he telephoned back and left a message on the answering machine asking her to pick up the phone and talk to him. He will say that he got dressed and began to drive to her house and while driving called triple-0, called for an ambulance; he then continued to call her number and left more messages and he really wanted the ambulance to get there first because he feared for the worst he will say. He will tell the court that he was scared of what he would find and he was very worried that finally Karen had carried off the act of suicide. He will say that he arrived at 5 a.m.

He will say that, really, the day is somewhat of a blur but he did assist ambulance officers and assist the police. He was subsequently returned to the premises later in the morning by the police, to his vehicle. He will say that he did not enter the premises; that he certainly got out and walked into the yard but at no time did he enter the premises at William Street on that day. He says he will tell the court that he's in fact only been back to the premises on two occasions to collect minor items of property, once in the presence of a real estate agent and then subsequently with the permission of the real estate agent but well after the property had in fact been vacated by other persons. So he certainly had no access, on his version, to the computer at the deceased's. That is the evidence that will be lead from Mr Hehir.

HIS HONOUR: Before he is called I will adjourn for 10 minutes.

MR NEVISON: Thank you, your Honour.

THE COURT ADJOURNED AT 11.39 A.M.

THE COURT RESUMED AT 11.51 A.M.

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HIS HONOUR: Yes.

MR NEVISON: Thank you, your Honour. I call John Michael Hehir.

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JOHN MICHAEL HEHIR, SWORN AND EXAMINED:

MR NEVISON: Thank you, your Honour. Would you tell the Court your full name and residential address?-- John Michael Hehir, 7 Admiralty Drive in Alexandra Headland.

Yes. And you are the first defendant in these proceedings, Mr Hehir?-- Yes, I am.

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Yes. And you have a disability?-- I am left - deaf in my left ear.

Very well. Thank you. Mr Hehir-----?-- Sorry, in my right ear.

In your right ear. Yes. Okay. Mr Hehir, you've sworn an affidavit already in these proceedings. You recall doing that, do you?-- Yes, I do.

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Yes. Your Honour, if Mr Hehir could see his affidavit. It's now Exhibit 14.

HIS HONOUR: Yes.

MR NEVISON: Would you just have a look at that document, please? You've recently reviewed that document in preparation for this proceeding?-- Yes, I have.

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Yes. Are the contents of that document true and correct?-- Yes, they are.

Yes. Does that document deal with the totality of your knowledge in relation to these matters, or is there some further evidence that you can give about the matters in relation to this proceeding?-- There would be further evidence.

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Right. Okay. Very well. Mr Hehir, if we could just go to the period around March 2008, if you would begin there. Would you outline to the Court your knowledge and circumstances relating to you renting a unit and where that was and how that came about?-- Karen and I had discussed having a unit in Maroochydore, close to the office, and we had looked around on the Internet and made some inquiries and looked at a couple of units.

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Why did you do that?-- At that particular time it was quite - it had been a long period of stress, and there'd been a lot of events, and sometimes I just needed a little bit of space, and I felt Karen was getting to be more safe and secure.

Yes. What do you mean by there was a lot of stress? What do you mean by that?-- Up to that stage Karen had had a couple of suicide attempts. When I used to come home from work, I - as I walked up the stairs, I didn't know whether Karen would be alive or not. It was - Karen was drinking very heavily and there was - there had been a lot of stress up to that stage. Leading to that, Karen had been back at work then, and so a lot of that had been over, and I was just keen to get some space, and it was a unit that either Karen or I could actually go and sleep in. It wasn't intended to be furnished.

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Well, tell the Court and his Honour about the unit that you found. Do you recall the date at all that you found the unit?-- No, I don't. It would have been in the week - the last week of March. We looked at two units, one in particular that was closer to the beach in Alexandra Headland, but it was more in a complex of holiday letting, and this unit was in Cotton Tree, and it was more of a quiet and secure location.

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So you took that unit in Cotton Tree?-- Yes, I did.

Yes. Would you tell the Court where that was?-- Unit - I forget the address. It was unit 11, and it was on the esplanade - I forget the name of the address of the unit, to be honest.

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Yes. Very well. And did you subsequently take up occupation in the unit?-- I signed up for the unit on the 2nd of April and I stayed there that night. That unit for about eight months never had the power on, never had a fridge in it, never had any furniture, no cutlery, no crockery.

What did it have in it?-- A few clothes and a blowup air bed.

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And that was the 2nd of April, you say?-- Yes.

Yes. Can you tell the Court what happened the next day, on the 3rd of April?-- I stayed in that unit on the 2nd of April. On the 3rd of April I didn't stay there. I stayed at Moffat Beach. During the day I don't recall any significant event. I would have spoken to Karen. I spoke to her on the 2nd at night and I don't recall any significant event on the 3rd.

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Yes. Okay. Well, going forward then to the next fortnight or so, what was the situation with your place of domicile? What did you do?-- I was predominantly staying still at Moffat Beach. I think there was another night that I stayed there, and - till the 11th. On the 11th I was - do you want me to go through and explain on the 11th or-----

Yes, please?-- You've asked for that period through. I came

home from work. I got home and it was around 6.30, 7. Karen was on the phone speaking with Brett and Ceinwen.

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MS TRESTON: Objection. Is Mr Hehir saying that the home that he went home to was Moffat Beach and that he was a party to this conversation, that he heard it?

HIS HONOUR: No, I thought his evidence was that the home was Moffat Beach, but from what he could hear was being said necessarily at that end of the phone it appeared to be a conversation with those people.

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MR NEVISON: Yes.

MS TRESTON: I beg your pardon, I thought he was saying he had gone home to the unit at Cotton Tree.

HIS HONOUR: No.

MR NEVISON: No.

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HIS HONOUR: This is Moffat Beach?

MR NEVISON: Yes, that's what I understood, your Honour.

HIS HONOUR: But you'd better clarify the basis for his evidence that-----

MR NEVISON: Yes.

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HIS HONOUR: -----that the phone conversation was with those other people.

MR NEVISON: Thank you, your Honour, yes. What led you to understand that the deceased was talking to Brett and Ceinwen?-- Karen told me she was.

Very well. Yes, thank you. So just continuing on then about the 11th of April, you've returned home, she was on the phone, what happened?-- Whilst Karen was on the phone I went down, bought some fish and chips and came back. By the time - when I got back Karen was just ending her conversation and we sat down in the lounge and ate our dinner. We watched some TV after that. Karen was drinking - starting to drink fairly heavily. I stayed till about 10 o'clock. At that particular time I was - we were about to go to bed together, and when Karen drinks a lot, she becomes quite argumentative, and I said to her, "Karen, this is one of those nights why we have the unit.", and I said I was going to go to Moffat - go to Cotton Tree, which I did, and that was approximately 10 to 10.30.

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And that was on the 11th of April?-- Yes, it was.

Yes. While you were staying at the unit then, at that time, what can you tell the Court about a telephone call you received from Karen?-- I had only just been - I'd only got to bed and I was just lying there reflecting on the events of the

last couple of days, and as I was lying there the phone went off at about midnight, right on midnight, and it was Karen telling me that - asking me if I could look after the dogs, and I particularly remember that, and she was saying - ringing to say she loved me and goodbye.

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Yes?-- And she told me there was nothing I could do, she had taken all her tablets, and there was nothing I could do. I kept talking to her, got dressed. I remember getting dressed while I had the phone in my hand, and I - she drifted away, and I think I lost contact. I rang triple 0 and got them to go there. I don't recall whether I was able to get in contact with Karen again on the way back to the house or not. I remember making a number of phone calls between triple 0 and Karen. I got to the house. She was - she was conscious. I spoke to her. She acknowledged me, and it was very soon after the ambulance come there, and I think she lost consciousness either just before they got there or just after.

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And what happened from there?-- The ambulance officers tried working on Karen for quite a long time there. It seemed an eternity. They decided that they needed to be taking her to the hospital. Obviously she needed to go there. They wanted to get her down the stairs. I remember moving some of the - a picture off the wall. The fire brigade came. So there were some firemen, I think approximately four. Between them and the ambulance officers, because they couldn't get a stretcher up into that room, around the staircase, and so the stretcher - they carried Karen down, put her on a stretcher at the bottom of the hallway, and put her on the stretcher there, and from there they took her to the hospital.

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Yes. And what happened after she went to the first hospital? Where ultimately did she end up and in what condition?-- Well, on the way to the hospital I rang Anna and advised - and told her what had happened. I asked how she was and where she was. She was out at a nightclub, and she wasn't in a condition to be coming with me. So as I went to the hospital and I waited there, I forget the doctor's name, but he knew Karen, because Karen worked - she was medical superintendent and worked with many of the doctors in the regional hospitals there, and this particular doctor just worked frantically on Karen. I remember him telling me that he was pumping her out. I waited in a small little room while there was many people working on her, and it seemed forever, and eventually she - they felt she was stabilised, they thought they had lost Karen a couple of times that night, and they made it - they were trying to get a hospital where they could take her to. There seemed to be a struggle to find an intensive care unit that was able to. Eventually they airlifted her to the Royal Brisbane Hospital, and at that stage I went home, got some clothes, threw in a bag for Karen of clothes for - hopefully for when she came out, because she had no clothes.

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When you say home, what do you mean? You said you went home and got some clothes. What do you mean?-- To Moffat Beach.

Thank you. Yes. Okay. So she was transferred to Brisbane?--

Yes.

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What hospital did she end up in?-- The Royal Brisbane Hospital.

Yes. And just tell the Court as briefly as you can about the stay there, and then what happened, where was she transferred?-- She went to the intensive care unit at the Royal Brisbane. I think it might have been the Royal Women's, or the Royal Brisbane anyway, part of that complex. I spoke with Anna. I think she rang me late morning, around lunchtime, and I described to her what had happened through the night. She said she was coming down, which she did. Then she - so we were there in the room with Karen. Then Anna went on to the Gold Coast and picked up Ben and came back. I stayed with Karen throughout. They told me there was no point staying overnight. I - about 10 or 11 o'clock I went home for a few hours' sleep - or I went back to my daughter's place, Amy, who lives in Brisbane, for a few hours' sleep. From there I came back very early in the morning, around 6 o'clock or 7 o'clock, and at that stage they had woken Karen up from a coma, they had attempted to a few days earlier, and as she came out of a coma her throat was incredibly sore, and she was - stayed in that - in that condition and Anna and Ben come later on that day, and we stayed all that day, and I think it was the next day, on the Monday, that Karen was released in my care to take her to a hospital, to a rehabilitation clinic. During that day, when I was speaking with the doctors, it might have been the first day, actually, when I was speaking with the doctors, I explained who Karen's GP was, that it was Steve Phillips. Steve is also a family friend, been a very close friend of Karen's forever.

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And who was her consultant psychiatrist? Do you recall his name?-- The consultant at the time was Clive Fraser.

Thank you. Just go back now to where you were. You were being transferred - or Karen was being transferred to the New Farm Clinic?-- Steve had - Clive Fraser was not involved at that stage in trying to get the referral. I don't think - or I didn't get to speak with Clive. I spoke with Steve. Steve didn't want to see Karen on the Sunshine Coast and so I think he liaised with Clive.

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MS TRESTON: Objection.

MR NEVISON: Yes, well, we won't go there.

HIS HONOUR: Well, this is hearsay, but, anyway-----

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MR NEVISON: Yes.

HIS HONOUR: -----you're wanting to get to the point-----

MR NEVISON: Indeed.

HIS HONOUR: -----that she went to the New Farm Clinic.

MR NEVISON: I think this is just padding?-- Okay.

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So we will just move forward. Could we just move forward, Mr Hehir? Karen was at the New Farm Clinic then for a few days in rehabilitation?-- Yes.

Yes. And ultimately there came a day where there was a meeting about her situation and her release. Could you just tell the Court briefly about that, please?-- That was on the last day, and I forget her psychiatrist at the clinic's name, but she called a family meeting and asked for all - everybody to be there. Anna and I travelled down from the Sunshine Coast, Ben came from the Gold Coast, and we met and had this meeting at the clinic, and after that Karen discharged herself.

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Yes. And what happened then? What did you do?-- Karen and I travelled up together from Brisbane to the Sunshine Coast. Anna and Ben travelled together. They came separately. And-----

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Did you all go to William Street?-- Yes, we did.

Yes. And what did Karen do once she got home that weekend?-- It was a heavy - it was a heavy weekend of drinking.

Yes. Did you stay there on that occasion?-- On the first night I did, not the second night.

Yes. Okay. Well, just moving forward then, in the days following, do you recall having a conversation around this time with Ben, the son of the deceased?-- Ben rang me up really concerned one day, and I think it was early afternoon, and he'd just had a conversation with Karen, and Karen was consistently talking about how she didn't want to live any more. She was extremely annoyed and angry at me for going there and her being saved and-----

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MS TRESTON: I'm sorry, I have to object to this. Is this evidence of what Ben told him that Karen said?

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HIS HONOUR: Sounds like it.

MR NEVISON: Yes. Very well.

WITNESS: No, it isn't, sorry. Ben didn't tell me that.

HIS HONOUR: I see?-- Sorry.

Well, would you-----?-- Yeah, I'll clarify.

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Would you try to pay attention to this, to identify who told you these things-----?-- Okay.

-----one by one, because that matters.

MR NEVISON: Thank you, Mr Hehir, if you'd continue?-- Ben rang me and his words or words to the effect were that he had

had a conversation with his mum, that she no longer wanted to live, or words to that effect. Ben rang me, and I raced to William Street. Karen wasn't there when I got there. I was just about to leave and she turned up at that stage, and she was incredibly angry at me again, and she was angry at Ben for ringing me and having me go there.

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Right. Well, moving forward to the 30th of April, did Karen and her daughter go to Orange? Do you recall that?-- Yes, I do.

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Yes. For the weekend?-- Yes.

Yes. Would you tell the Court briefly what you did while they were away?-- The front porch, it's a wooden decking out into the street, and I stripped all that back, sanded that down and resealed it.

Yes. Righto. And they returned?-- Yes.

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Yes. And do you recall what happened on the night that they got back?-- On the night they got back, basically as soon as they got back in, Anna only stayed for a - literally a minute, and Anna then went. And, I'm sorry, no, I can't recall that night.

And just perhaps on that point, could you just tell the Court the situation with respect to Anna residing at the house at William Street? Did Anna reside there for a time when you had moved in?-- From when I initially moved in----

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Which was in - when did you initially move in?-- 1986 in November.

Could it have been 2006?-- Sorry, yes.

Yes?-- 2006.

Okay. So you moved in in 2006. Was Anna living in the premises then?-- Yes, she was.

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Yes. And for how long, to your recollection, did she continue living there?-- Approximately three months, four months.

And then she moved out?-- Yes.

And where did she move?-- I can't remember the address, but it was literally only about 300 metres away.

Thank you. Right. Okay. Well, coming back to the 5th of May, which was the date that Karen and Anna had returned, Anna had stayed just for a short time and then left, and you were with Karen. What can you tell the Court about dinner and conversation you had that night?-- Karen cooked dinner that night. The - Karen was incredibly worried about Anna. I was more interested in explaining to Karen how she needed to be worried about herself, but she was worried about Anna. Once again there was a lot of talk about death. The main topics of

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conversation in our household for a long time were Anna, Anna and Karen's concern, particularly drugs and everything, and-----

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MS TRESTON: Objection.

WITNESS: -----and death-----

HIS HONOUR: On what basis?

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MS TRESTON: It's got to be irrelevant, for a start.

HIS HONOUR: Well, as long as you don't mind me discussing this in front of the witness, I would have thought it's relevant because, as I see it, there is likely to be a suggestion in the defendant's case, the first defendant's case, that the explanation for this material being sent to the deceased about changing the Will was a concern by the testator as to the provision it had made for Anna.

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MS TRESTON: Yes, your Honour.

HIS HONOUR: Now, whether there was that concern is really the subject of this evidence, and what the testator is said to have said about that I would have thought is relevant in that way.

MS TRESTON: I accept that. I withdraw the objection. Thank you, your Honour.

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MR NEVISON: Thank you, your Honour, and that's certainly our position. Yes. Please go on to outline the nature of the conversation you had?-- Yes. I can't remember the exact content of - it's three and a bit years ago, but the conversation that night, when Anna got back from Orange, obviously there was discussion about how everybody was, and - but Karen certainly wasn't in a good frame of mind and there was a lot of discussion on death and Queensland Health issues.

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You said discussions about death. What do you mean about that?-- Most - it would happen on a - it would happen at least once or twice or three or four times a day where Karen would talk about committing suicide. She had had three very serious attempts at it and she was incredibly angry at me. She said, "You knew what I wanted to do. You knew. All you had to do was just let me go away," and she was very angry at me for saving her. Karen wanted - she used to describe this line. She'd say, "If I could just have a line there that I could just walk over and go into the distance and not ever be around, it would be just" - you know, just disappear off the planet.

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Very well. Notwithstanding the very serious nature then of those conversations, was there a lighter side to the evening as well that you recall?-- We used to - every time we'd get - Karen would get very serious about this I used to always distract, try to distract her and we joked a lot. I think Anna focused a lot that night in the conversation, but we had a lot of jokes that night and there was a lot of laughter. Karen had a very quick personality. She could laugh a lot. She had a very jovial nature to her, a very nice nature, and you know, we had a discussion that night and laughter about - I think we talked about a few funny things when Anna was at work with us, but it was just - it was easy to have - it wasn't all solemn around Karen. It was easy to have some laughs.

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Briefly, at that point, would you just outline to the court the circumstances relating to your business FAA, what it does and what stands for, and then Anna's involvement in that business with you?-- "FAA" stands for Financial Advisors Australia. It's a financial advising company, predominant source of business is salary packaging. We do a lot of investments from that going forward, we do investments across a range of products, whether it be securitised and property type investments. Is there any further detail required on FAA to that?

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What about the ownership of the entity over time?-- The ownership at that time was in my ex-wife's name, which is now transferred to me.

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Your ex-wife's name is?-- My ex-wife is Jennifer Ann Hehir.

How long had you been married to Jennifer?-- Almost twenty years.

Thank you. Yes, carry on. Anna's involvement. To give Anna a start I employed Anna in a capacity of admin which moved into paraplanning and from paraplanning where you get a client's - client data questionnaire and we produce a number of different scenarios. We started Anna off doing her diploma, Diploma of Financial Planning, paid for that, and so - and I used to also do the Will drafting. So we used to - we have a lot of clients there that have very simple situations and so we have a template type Will and you'd fill in that and Anna was responsible for all that part of it. They were her

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main jobs to do.

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Ultimately she ceased employment with FAA?-- Yes, she did. The very last day Anna worked with us was the day that Anna and I drove down to that family meeting in Brisbane at the rehabilitation centre.

So about the 18th of April 2008?-- Yes.

What assistance did you offer her, if any, after her employment with you?-- Anna spoke to me about - a couple of weeks before about ceasing employment. I talked to her about other opportunities. Hotondo Homes was a company. I had spoken to a guy called Murray Riley there about giving Anna the opportunity and I was going to assist her - sorry?

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No, you're right. It's just borderline relevance, so we will just move on, Mr Hehir?-- Okay.

Could I take you back then. You were going through chronologically to around the period of 5 May. Karen had returned from the weekend away in Orange with Anna?-- Yep.

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You had the dinner. You will recall giving that evidence?-- Yes.

Now can we move forward to you being contacted by Karen with respect to her financial affairs and if you would outline to the court what happened?-- We had had a really nice dinner and we had a nice night the night before. We had gone from what appeared to be quite a negative start to a reasonably good outcome and I got up the next morning, wrote a note to Karen. You know, "Have a great day." We used to often exchange - leave notes, exchange notes most days.

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Was this note written at the Caloundra residence at William Street?-- Yes.

Or was it-----?-- Yes.

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So before you left the premises that day?-- Yes.

Yes?-- And during the day Karen rang me up and it was in the afternoon I think. I am pretty sure. And she asked me about - she wanted to change her Will and I think it was pertaining to a lot of the discussion we had the night-----

MS TRESTON: Objection. He can't speculate about what it was pertaining to, he can only give evidence about what was said.

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HIS HONOUR: I think the problem is probably in the way you expressed it. Are you talking about something which she said to you?-- Yes.

MR NEVISON: Yes. If you could just tell us what was said to you then by the deceased, please?-- Karen asked me if I could find her Will, the existing Will. She wanted to make some changes to it and she wanted to know what the value of these

assets would be at certain dates, in five years, in ten years, in 15 years, and in particular it was about 15 years, which was in Karen's existing Will. That's how long it was until she wanted the assets done. So-----

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HIS HONOUR: What do you mean by that, I am sorry, in her existing Will? I have seen that Will but I don't understand what you mean by "15 years"?-- Karen's Will of the 14th of February has a time line. I think it was about 15 years or when Anna and Ben become 35, that they-----

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Are they twins? Are they twins?-- No, they are not, your Honour. So approximately 15 years. It would be about that stage.

Yes, go on?-- So the Will being - I was to create something that would show a time frame from when she died and what the investments would actually be worth. So I agreed to do that and that was - a lot of that had come from the conversation that we had the night before and Karen asked me to create the - she couldn't find the Will, the 14th of February Will, that was originally a template from the office, that was taken to home and Karen worked on at home. And she couldn't find that Will and she asked me if I could find it. I couldn't find it electronically at the office. We had a hard copy, so I had - I think it was my own Will and I - the base document and I changed that document to reflect exactly the same as it was for Karen to go and amend and change.

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MR NEVISON: Did you make a file note in your company's records at the time of that conversation?-- Yes, I did.

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Would you have a look at this document, please. Is that a copy of the file note that you made following the conversation you had with the deceased?-- Yes, it is.

Just understanding what transpired yesterday, your Honour, I am not sure that document actually made its way into evidence. I suspect it didn't, so probably I should tender that. It's page 551 from the trial bundle.

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HIS HONOUR: That will be Exhibit 15.

ADMITTED AND MARKED "EXHIBIT 15"

MR NEVISON: Did you then set about doing things in accordance with the request that had been made to you by the deceased?-- Yes, I made handwritten notes. Every time I am on the phone I make handwritten notes and I haven't got a copy of those notes but usually when I am creating something like that, if it's for a personal nature, which is as I was intending it to be at the time, I just wrote down what I had to create and I created it and I sent it off. So what's in that e-mail - what's in that file note is reflected in the e-mail with the attachments

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that I sent that night.

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Your company FAA was served with a notice of nonparty disclosure?-- Yes.

By the solicitors for the plaintiff?-- Yes.

The company produced documents in response to that?-- Yes.

Would you have a look at these documents, please. These are the documents at pages 512 through 515 in the trial bundle, your Honour. Could you just have a quick look through those documents. Do you identify those as the documents that were produced pursuant to the nonparty disclosure request?-- I didn't produce the documents. The documents were provided to Thynne McCartney from Veronica Wendt.

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Who at that time was your?-- She was the company manager in that particular area.

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Nonetheless, you acknowledge that these are documents of your company's?-- Yes.

Very well. By reference then to the first document, which was at page 513 in the bundle?-- Yes.

Would you just explain to the court what you did and what that document represents, please?-- When I spoke to Karen during the afternoon I wasn't keen to go and provide her with - with tools that - I didn't want to make it easy for Karen to go and - just go and commit suicide and so initially I said, "Karen, you don't want to go there. You don't want to do that," because nearly everything Karen was doing at that time was geared towards committing suicide and preparing for it. But an argument was going to break out if I refused to, so I said that I would actually get it done on the weekend, but I got it done that night. I worked on it that night and I did it then and I sent it to her late that night. I think it was, as you can see, 12.52 a.m. It was done then.

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The document in front of you at page 513 and over the page to 514, which bears your name "John"?-- Yep.

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Is that the e-mail that you then sent to the deceased?-- Yes, it is.

With the attachments that are shown there?-- Yes, it is.

Those attachments in this bundle of documents go through to page 532? Yes?-- Yes.

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Yes, thank you?-- Sorry, I didn't - I thought-----

Going to page 533, did you have occasion to send an updated or a different version of the inheritance Excel spreadsheet?-- Yes, when I had got home I stayed that night at the unit in Cotton Tree and I was thinking about it afterwards and I went to - when I come to work next morning I amended the document

and because I had missed, as I wrote here, a few key ingredients, like mum and dad's inheritance payment and some debt payment and discounting for inflation for 15 years with Anna at age 35. I had put down what the value was but Karen had asked me the day before in the discussion if I could work out what the value would be, which is discounting for inflation. I had forgot to do that, so I did that next morning.

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That was a more accurate reflection of total wealth then?-- Yes, in today's dollars and cents.

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Next page, page 534, what can you tell the court about that e-mail transmission and why it was sent. You may need to go over the page 535 to look at the document that was sent?-- Yep, I had just further automated it to make it easier to reflect what Karen was after and I had sent her another upgraded version.

Very well?-- This doesn't say in response to a conversation, but I had had a conversation with Karen prior to that and from that conversation, that's why I automated it a lot more.

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Would you go then to page 539 and that's a further e-mail about that subject matter, is it?-- Yeah, because Karen was expecting that other document and it hadn't got there. I had sent it, but she had not received it, so I sent it again.

That bears the date Sunday 11 May, 2008?-- Yes.

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If you would go, please, to the document at page 544, or marked 544, 545 and 546 of that bundle. It's purportedly a Will of Thomas Mark Brown. Do you see that?-- Yes.

That has nothing to do with this matter, does it?-- No, it doesn't at all.

You can't explain why it's there?-- No.

No. Thank you. Just put that aside for one moment. If we then go to around the 10th of May. So you have sent these e-mails to Karen. Tell the court what you know about her father coming to visit around that time?-- On the Friday night, as we usually did, we had fish and chips I think, but I think we picked up Ben from the train station at that time. But on that night I'm sure that Ben was in the house and I think Anna was, although she wasn't living there. I don't know whether she stayed there that night or not. And the very next morning Ben was still in bed, Karen and I got up and Karen was just starting to iron some clothes for me?-- I had to meet Peter in Maroochydore late morning.

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Peter is an employee?-- Peter is my son.

Very well. Carry on?-- And Karen finished - she was about - she was - the reason why she didn't finish ironing my clothes, Grant Stone, a good family friend - Grant came around that Saturday morning. So Grant was there and so Karen stopped -

just stopped doing the ironing and Grant was still there when I left. I had to get going. Karen finished ironing my clothes and she bought them in around midday or late morning to the unit and there - because-----

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Where was she going then?-- She was going to the airport to pick up her dad.

Was there some discussion between you and the deceased about her father and a motorbike?-- Karen's dad - Karen used to often talk about her dad a having a BMW motorbike and how he used to - how he used to enjoy that and I said to her, you know, "Let me take your dad up on the hills on the bike. He'll love it." Karen loved to get out on the bike, absolutely loved it. And I talked to Karen about getting a set of headphones but she didn't want to, she just enjoyed the freedom and she said her dad would love the same and we talked about that prior and she said, "No, no, no." She was anti me even seeing her dad and she ironed enough clothes and everything for me that was going to last for the next week and-----

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So you didn't stay there while her father was there?-- Not at all.

Did you have any contact with Karen during that time?-- Oh, every day. We always spoke every day, Many times a day and-----

When Karen's father left then, what happened?-- The night her dad left Karen would ring me and once we - we often had fish and chips and so we had fish and chips that night.

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That was the 19th of May 2008?-- I'm not sure of the date but-----

Very well. Do recall the last night that you stayed at William Street?-- The last night I was there was - I think it was the 24th and we had a conversation on the day before, of the - the day before - the conversation was there about Karen wanted to reduce her inheritance - not her inheritance, sorry, her life insurance.

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So was that the 23rd of May?-- Yes, it was.

Yes, so you had a conversation. Did you make a note of that conversation?-- That conversation was at work. She rang through to work and-----

Did you make a note in your records at work?-- Yes, in the database at work there's a - made a note about that because Karen was wanting - Karen is my partner but she's also a client and so she was wanting to make a reduction in her life insurance policy and we had-----

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Could you briefly explain why that was necessary. What was that all about?-- She didn't want Anna to have as much money at retire - not retirement - if she was to die and I suggested

to her that that could be identified within her Will. That could have been changed there. I said, "Karen, there are other ways." With her history - I explained to her with her history, that if she reduced her insurance, she would never get it again.

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Thank you. Would you pick up the bundle of documents from FAA and go to the page marked 547, please. Is that a copy of the file note you made on the records of FAA?-- Yes, it is.

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I will tender that bundle of documents. It's by agreement with my learned friend, they being the documents that were disclosed by way of third party disclosure.

HIS HONOUR: They begin at page 500 and-----

MR NEVISON: Twelve.

HIS HONOUR: Through?

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MR NEVISON: 550, your Honour.

HIS HONOUR: 550.

MR NEVISON: Yes.

HIS HONOUR: That bundle will be Exhibit 16.

MR NEVISON: Thank you.

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ADMITTED AND MARKED "EXHIBIT 16"

MR NEVISON: We are dealing with the 23rd and you have mentioned that the last night you stayed there was the 24th of May? Yes. Can you share with the court what transpired on that night or the next morning when you were leaving?-- The 23rd - the 24th was - Karen had cooked dinner. Karen used to often cook spare ribs and it was a good night and we had had some discussions on the previous day's insurance. We had discussed that. I left next morning.

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Did you bump into anybody as you were leaving that next morning?-- Grant. Grant Stone used to be - he used to call around most Saturdays, most Sunday's and nearly every Wednesday.

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Who is Grant Stone?-- Grant Stone is a good friend of Karen's who's a doctor and-----

Was he a mutual friend?-- Yes, mutual friend.

Yes?-- Grant is - rides a pushbike and he would go for many rides. So most Wednesdays he used to catch up with Karen. We would often wake up or get up on a Saturday or Sunday morning

and Grant would already be at the kitchen door or there.

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So that was the 25th of May then, the morning of the 25th of May?-- Yes.

Would you now tell the court what transpired on the 27th of May, two days later, please?-- On the 27th was - there was a discussion. Karen rang me up - I think she rang me up - and she was quite upset from when she first spoke with me and I gathered there was - there had been another issue with Anna. There was many and-----

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MS TRESTON: I object. He can only say-----

HIS HONOUR: Was that something she said?-- Yes, because it was - the discussion pertaining to Anna on that particular day was to the control and there was an issue at that particular time as to whether I had - whether I would adversely-----

Would you just confine yourself to saying what she said and you said to her?-- I cannot recall the exact words of what was said, your Honour.

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MR NEVISON: Are you able to recall words to the effect of what was said?-- No, I can't.

You said about control. What do you mean about control? What was said about control? Do you have any recollection? If you can't recall, that's fine?-- I have just gone blank I am sorry.

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In any event, there was a discussion on that day. About what time of day was it?-- It was in the afternoon, early afternoon.

Very well. What transpired as a result of that discussion?-- I don't know whether it was a result of that discussion or whether Karen and I had been talking about it earlier, but Veronica Wendt, who worked with me at work, dropped me off at Moffat Beach, for me to collect the - a motorbike and take that night. So I called in about 5.30 and Karen was - Veronica was there for a few minutes and then left. I stayed for about 30 minutes.

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There was a discussion between you and the deceased?-- Yes.

What was that about? Well, what was said, do you recall?-- I feel embarrassed. I have gone blank. I live this moment many times over with what's happened that night and I honestly have just gone blank right now, I am sorry.

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Was that the last occasion you saw the deceased alive?-- Yes, it is.

Are you able to tell the court about whether the deceased was drinking or that at the time?-- Yes, Karen had been drinking a lot already. Whenever she was drinking a lot she was argumentative.

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Was there any discussion about her employment situation with you at that time?-- At that time Karen had said that she was considering going back to work. That's correct, actually. She had said she didn't feel she could go back to work. She - we had the discussion. It's just come back to me. We had the discussion how where she was sitting at Redcliffe she felt like a junior. She had come from a very senior position and she had no phone, no computer, no - no particular desk allocated to her and she hadn't been there and she had just - the psychiatrist - everything had almost just been ticked off for her to go back to work and she just didn't want to live any more and she didn't want to go back to work and she was nervous as anything about it.

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That's what she said to you?-- Yes. She said she didn't want to go back to work and she didn't want to live.

Did you ask her some questions before you left that gave you some comfort?-- I asked her if she felt safe and it was a terminology at the - the clinic that she went to is, "Do you feel safe," and I asked Karen did she feel safe and she said, "Yes, I'm fine." She - and so I did leave that night thinking that she would be okay.

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And what did you do then when you left there?-- I rode the bike back to the office and I parked it there and went upstairs, and just started doing some work.

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What did you do when you finished your work?-- I went back to the unit at Cotton Tree.

Yes, and about what time was that?-- I don't know. I don't know. It would have been about midnight, before or after.

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And what's-----?-- I worked most - if I wasn't at home, I worked most nights till probably midnight. There's nothing at the unit.

Very well. What's the next thing you recall then, the next day?-- I got up to go to the toilet and there had been a missed call from Karen-----

Yes?-- -----during the night.

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Yes?-- And-----

What did you do?-- Do we have to go through this part of it?

Indeed, please. What did you do when you saw the missed call from Karen?-- I immediately rang Karen. I rang both the home phone and the mobile and I consistently rang her.

And when you got no response, what did you do?-- I left some messages. I remember yelling out - I remember yelling in the answering machine, just yelling it, so if she could hear me she would come. I then rang triple 0, I don't know how many times. It's a bit of a blur, but I think I rang lots of times, and I got dressed and took off. I remember thinking that Karen wasn't going to be there when I got there, or she - when I say - that she would have died, and I remember the time before when I went to Moffat Beach, when I went to home after the last suicide attempt, I remembering just wishing that the ambulance would get there before me. I remember this time just praying that they would get there before me. I remember talking to triple 0 because they knew where the ambulance was and they said, "It isn't there yet."

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When you arrived at the premises, what was the state of the premises?-- I don't know.

Do you recall whether you were able just to walk in or-----?-- I don't - I can't remember.

Was anybody else at the premises when you arrived?-- No.

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Do you recall what you did when you arrived?-- When I first pulled up to the door, there was no ambulance. I drove around the block. I pulled up around the block. Then I rang them again, and they made me go back, and I did, and I went upstairs.

And you found Karen. You found her to be deceased?-- Yes.

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Yes. What did you do then - take a moment if you need to?--
Is this really important?

Yes.

MS TRESTON: Your Honour, I don't consider that this is
relevant. I'm not sure that my learned friend does.

HIS HONOUR: He must see some purpose in this.

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MR NEVISON: Yes. No, thank you, your Honour. I will move
forward, your Honour.

When - you're aware that the proceedings are about the
document on the computer. Following you sending the Will
document through, when did you first see a copy of that
document?-- I'm sorry, I just missed your question totally.

Yes. No, you're right. When did you first see a printed copy
of the document that purports to be the document on the
computer, the Will that's now the subject of these
proceedings?-- The solicitor at the time, Derek Sky, showed
me.

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Yes. That was your solicitor at the time?-- Yes.

Yes. Do you still have your affidavit in front of you?--
Yes.

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Yes. Would you pick that document up, please? And would you
go to the exhibit marked JMH2? To page 54 of the bundle, your
Honour?-- What page number is it?

It's probably page 4 in the copy you have got, maybe at the
bottom. Is that a copy of the document?-- Yes.

Yes. And what can you tell the Court about that document and
anything shown on that document? Just go to the front page.
Is there some marking on the top of the document that assists
you?-- On the 24th of the 6th, then it's got a phone number,
and Biggs & Biggs.

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And was that the document that was sent through to your
solicitor?-- Yes, it was.

And that's the first time you saw the document?-- Yes, it is.

Yes. Had you heard about Karen making a new Will before you
saw that document?-- Well, I had provided her with the - with
the new document to make.

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Yes. Did Karen tell you that she had made a new Will
following you providing that document?-- No, she didn't.

No. So did any other person discuss with you this document
before you saw the hard copy of it?-- My solicitor knew and
we had discussed this document. He had - he knew that it was

coming I believe prior to that.

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Yes?-- Whether there was a phone call, I don't know, but I believe that I had a discussion with him.

Yes. Did you discuss with Ceinwen Mahlo in a conversation on the 28th of May 2008 that there was a second Will?-- No, I did not.

Yes. Thank you. Yes, I have nothing further, thank you, your Honour.

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HIS HONOUR: Well, now, we have Dr Phillips calling at 1 o'clock?

MS TRESTON: Yes, I've just had a note from my instructing solicitor. She spoke to his assistant, Linda. She's scheduled him to ring in at 1 p.m.. He wasn't back in the office yet. He was going to call if there was a problem. He was doing anaesthetics on a Tuesday morning, but he was hoping he wouldn't be long.

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HIS HONOUR: Well, I think rather than begin any further questioning of - or cross-examination of Mr Hehir at this point, I might stand down until 1 p.m., or whenever it is that Dr Phillips is ready. If there's going to be a delay, if you would let the bailiff know, and then through him I will let you know that I will be resuming at 2.30. But otherwise I will be upstairs and waiting for a message from the bailiff that Dr Phillips has called in.

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MS TRESTON: Thank you, your Honour.

HIS HONOUR: And I will come down then.

So Mr Hehir, you understand you will have to be back here to give your further evidence at 2.30?-- Yes.

HIS HONOUR: Adjourn.

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THE COURT ADJOURNED AT 12.53 P.M.

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THE COURT RESUMED AT 2.31 P.M.

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JOHN MICHAEL HEHIR, CONTINUING:

MS TRESTON: Your Honour, just a couple of house-keeping matters before-----

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HIS HONOUR: Yes.

MS TRESTON: -----I start my cross-examination of Mr Hehir.

HIS HONOUR: Yes.

MS TRESTON: Both my learned friend and I neglected to file our certificate of explanation of the duty of disclosure at the outset. Can we-----

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HIS HONOUR: Yes, of course.

MS TRESTON: -----have your Honour's leave to do that now?

HIS HONOUR: Yes.

MS TRESTON: I'll file mine signed by my solicitor on the 8th of August prior to the commencement of the trial.

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MR NEVISON: If it's convenient, your Honour, I'll hand up mine as well on behalf of my solicitor dated 7 August 2011.

HIS HONOUR: Thank you.

MS TRESTON: Second house-keeping matter is in relation to the notice to admit facts-----

HIS HONOUR: Yes.

40

MS TRESTON: -----which is at page 488 of the bundle.

HIS HONOUR: Yes.

MS TRESTON: The message probably got through to your Honour over the lunch break that my learned friends have now admitted the facts pertaining to Dr Stephen Phillips' evidence which is at page 489-----

HIS HONOUR: Yes.

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MS TRESTON: -----of the bundle.

HIS HONOUR: Yes, I have that message, thanks.

MS TRESTON: Thank you, your Honour. Probably for completeness I then should tender the notice to admit facts but I pause before I do to say this: my learned friend and I

are in agreement that in fact the whole of the bundle could go to your Honour as an exhibit now. However, we're conscious of the fact that a number of the documents in it already are exhibits themselves.

1

HIS HONOUR: I see.

MS TRESTON: If your Honour tells us how you would best like the issue dealt with, we can either go through and number the exhibits that haven't already been tendered sequentially, give to your Honour's associate that list-----

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HIS HONOUR: That sounds a very good suggestion.

MS TRESTON: Rather than-----

HIS HONOUR: If that's not too much work.

MS TRESTON: Happy to attend to that. Otherwise we can tender the bundle but your Honour will have-----

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HIS HONOUR: Yes, things twice.

MS TRESTON: Yes.

HIS HONOUR: So if you could - if you could - I think you've said this - make sure I understand it - you will look at the index of the bundle, you will delete from that index the documents that are already in evidence or any other document you don't wish to separately tender, you will then be left with a balance, and you will attribute an anticipated exhibit number to each of those documents in the order in which they appear in the index.

30

MS TRESTON: Yes, your Honour.

HIS HONOUR: Can we do it that way?

MS TRESTON: Happy to do it that way, so long as that is convenient enough for your Honour in the sense that the bundle which your Honour has now which is effectively a working copy-----

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HIS HONOUR: Yes.

MS TRESTON: -----and the exhibits are all separate in terms of the affidavits. That's a convenient enough way for your Honour to have it?

HIS HONOUR: It is, thank you very much.

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MS TRESTON: Thank you, your Honour.

HIS HONOUR: Anything else?

MS TRESTON: No, they're my house-keeping matters.

HIS HONOUR: All right.

MS TRESTON: Thank you, your Honour.

HIS HONOUR: Well, now - what were you going to say?

MR NEVISON: That was the evidence-in-chief of this witness, your Honour.

HIS HONOUR: Yes.

MR NEVISON: Yes. Thank you.

HIS HONOUR: Now, next in the sequence of things would be the second and third defendants, should either of them wish to cross-examine. Mr Sasonow and Ms Sasonow, do either of you wish to cross-examine this witness?

SECOND DEFENDANT: No, your Honour.

HIS HONOUR: Ms Sasonow, you don't?

THIRD DEFENDANT: No, your Honour.

HIS HONOUR: Thank you. Yes, Ms Treston.

MS TRESTON: Thank you, your Honour.

CROSS-EXAMINATION:

MS TRESTON: Now, Mr Hehir, exhibited to your affidavit in these proceedings which have become an exhibit is a statement that forms part of the police investigation into Karen Mahlo's death; do you remember that?-- Yes.

Have you still got a copy of the affidavit in front of you?-- Yes, I do.

Right. The contents of the statement that you gave to the police were true and correct at the time that you gave them?-- I believe so.

Right. You see-----?-- Yes.

-----you describe in your statement to the police yourself as a separated man; do you remember that?-- No, I don't.

Your Honour, it's in the trial bundle at page 76. Just out of fairness to you, Mr Hehir, if you go to the affidavit that's in front of you. Exhibited to it at Exhibit 3 is the police report and investigations into Karen Mahlo's death - preliminary investigations?-- Okay. I thought-----

And towards the end-----?-- Sorry.

-----of it is a statement of yours?-- I thought you meant the other police statement.

1

What other police statement, Mr Hehir?-- The statement that I made to the police which I believe that you're going to show on a DVD later. So the statement at the time, yes, I do. Correct, sorry, I take that back. I thought you meant something different.

Is there a DVD of you giving your evidence to the police, is there?-- Not at this time, no.

10

Is there in existence a DVD of you giving your evidence to the police?-- Not of this.

No, no, Mr Hehir, just listen to my question. Have you got possession of a copy of a DVD where you gave a statement to the police?-- Yes, I do, which I believe was given to you also.

20

Do you mean a CD just of the audio?-- Yes.

Okay. All right. So when you described yourself as a separated man when you described yourself to the police immediately after Karen's death that was an accurate description of how you saw yourself then, as separated?-- I gather so. It depends on what you consider the terminology "separated".

Well, what - it's your words, Mr Hehir. You told the police that you were separated. That was-----

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MR NEVISON: I am loath to interrupt at this stage, but I am not sure the witness is on the same page, your Honour. I don't know that he actually got to the page of the police report, which is actually I think page 25 indexed in his bundle. It's page 76 in our bundle.

HIS HONOUR: Just a moment. What do you have in front of you there? What do you have with you, Mr Hehir?-- I have the bundle that they gave me before.

40

That's your affidavit, and the annexures to that affidavit?-- Yes, on page 25 I can see what she's talking about now.

All right. Thank you.

MS TRESTON: Right. You've given evidence in proceedings before in Court, haven't you, Mr Hehir?-- Yes, I have.

50

You are familiar with how this process works?-- Relatively. No-one ever gets used to it, though, I don't think.

All right?-- And I haven't done it enough.

So when you described yourself to the police immediately after Karen's death as separated, that was correct, wasn't it?-- From a technical sense, yes.

1

Well, in fact you were separated, you were living somewhere else?-- I considered myself separated at that stage to my ex-wife Jennifer. That is the terminology of separated.

HIS HONOUR: Had you been divorced?-- No.

MS TRESTON: So that where you referred to that you were a separated man, you were referring to your relationship with your wife as opposed to with Karen Mahlo?-- Well, what I would have considered at the time my ex-wife.

10

Well, you describe your wife, Jenny, in this document as an ex-wife; do you remember that?-- I'm agreeing with that now, yes.

When you referred to yourself as a separated man, you were talking about being separated from Karen Mahlo, weren't you?-- I wouldn't consider the terminology "separated" in a de facto relationship.

20

When you gave this statement at the time of Karen's death, and you described yourself as separated, you were talking about being separated from Karen Mahlo, weren't you?-- No, I wasn't.

I see. Even though at page - at paragraph 24 of the - that statement you describe that you moved out of home on the 2nd of April 2008?-- Sorry, what is your question?

30

You still weren't describing yourself as separated in terms of your relationship with Karen Mahlo?-- No, I wasn't.

You also describe in this statement to the police, "My ex-wife and I are the owners of the business which is FAA." Do you remember that?-- I don't remember that, but I'm assuming I said that. You're referring to something.

It's correct, isn't it, that as at the time of Karen Mahlo's death you and your wife were the owners of the business FAA?-- As far as the shareholding, yes.

40

So when you gave the evidence earlier today that your wife owned the business at the time of Karen Mahlo's death but you own it now, that was incorrect?-- Jenny was - Jenny was the sole director at that stage, and, as I reflect now, from a technical perspective, I didn't have any say in the business at that stage, but from a technical perspective in that I owned a share of that business, there are two shares, and I own one of those shares. So technically that is correct.

50

At the time of Karen Mahlo's death are you saying your wife - ex-wife, Jenny, was the sole director of FAA?-- Yes, she was.

But you and your wife were the shareholders of FAA?-- Correct.

Right. So you considered back then that you and your wife

owned FAA?-- If I was to be asked from a technical perspective, yes. If I was to be asked from the perspective of who owns it, I would - as I answered before, usually there's a director and a controlling director.

1

Well, you give estate planning advice, don't you, as part of your business at FAA?-- Not estate planning advice. We-----

You know - you know what the ownership of different - how ownership of different properties is held, don't you?-- Yes, I do.

10

Because that forms part of the advice that you give people when you're giving them estate planning advice?-- Yes, it would.

And FAA does give estate planning advice to its clients, doesn't it?-- It doesn't give estate planning advice. We don't give advice in that particular field. If somebody is after advice, we refer them to a lawyer, but we supply a template type document for simple situations.

20

You draft - FAA drafts wills for clients?-- On the basis of a client data questionnaire that they complete, yes.

Okay. So-----?-- But when it comes to an area of advice, no, we don't actually give that advice.

For example, if you're being asked by a client as to what sort of asset base they might have at a particular point in time, for the purpose of working out what a gift might turn out to be under a Will, don't you consider that estate planning advice?-- I would consider that more financial planning advice.

30

Financial planning?-- Most solicitors that would give that type of advice probably would not be able to discount back for inflation.

Well, don't speculate on what solicitors do, Mr Hehir. You are not a qualified solicitor, are you?-- No, I'm not.

40

HIS HONOUR: You were saying you consider that financial planning advice.

MS TRESTON: You took the unit at Cotton Tree in your own name?-- Yes, I did.

You're the only one on the lease?-- Yes, I was.

50

Yet you said to his Honour this morning that you took the unit, "and Karen and I - either Karen or I could go and sleep there". Do you remember that evidence this morning?-- Yes, I do.

There was never any intention that Karen would be going to stay at the unit at Cotton Tree, was there?-- It was discussed that that could certainly happen, and, yes, it could

have happened.

1

Mr Hehir, she owned, in her own name, a valuable property at Moffat Beach. Why would she go and live in a unit with no electricity, no fridge, no television, and no furniture?-- We didn't have that intention at the time, not to put furniture in it.

I beg your pardon?-- We didn't have at that time the intention not to furnish it. There was an intention from Karen and I to furnish it.

10

There was never an intention that she would ever sleep there, was there, Mr Hehir? It was your unit?-- I have given you my answer once. I told you there was an intention.

Right. You had the security access keys to the house at Moffat Beach since the time you moved in at the end of 2006?-- Yes, it was like a credit card type situation.

20

A sort of swipe card, isn't it?-- Yes.

And you continued to have access to the house at Moffat Beach even after you moved out in April 2008 by access with your swipe card?-- Well, I didn't consider that I moved out, so, yes, I came and went as I pleased.

So even though you used the expression to the police at paragraph 24, "I moved out of the home on the 2nd of April", you are now telling his Honour you didn't move out?-- The majority of nights after that date I stayed at Moffat Beach.

30

Well, we will get to that in a minute. You used your security pass then to access the house at any time you liked after the 2nd of April 2008?-- Correct.

Day or night, you could get in?-- Yes. I said yes.

And even after Karen's death you continued to keep the security cards to access her house?-- That card was only - yes, I did, but I believe because there was a receipt that came through or something come through to the solicitors, there was a bill paid that was - that showed that the security pass had been changed, I think, days later. There's a receipt that came through our solicitor to show that had been done.

40

I see. So you've got a receipt that shows the point in time at which you ceased to have access to the house; is that right?-- Yes, it's actually come from your solicitor. So you have that.

50

From my solicitor. I see. In any event, you had the security card to access the house indeed up until the morning of the 28th of May-----?-- Yes.

-----when Karen died, and for some period of time thereafter that you can't now identify?-- Correct. I had the card and there still may be a card there, but it hasn't been used and I

don't know at what date exactly that they had it changed, but I'm sure you will have that information.

1

When you went there on the 27th of May to collect the motorbike, did you go inside the house on that day?-- Yes, I did.

Karen didn't have a locked door to her study, did she?-- No, she didn't.

10

You could come and go from the study as you chose?-- Yes, I could.

And you could access the computer in her study as you chose?-- Karen had a password on her computer.

Mmm-hmm?-- And I think she had it changed. I don't know. But, no, at that particular-----

When do you think she had it changed, Mr Hehir?-- I can't recall.

20

Up until the time she had her password on her computer changed, you could access it without any trouble?-- Yes. It was our - it was one log in, and we both accessed the same e-mail account.

Okay?-- It was the same.

And she had a filing cabinet inside her study?-- I think it's an internal filing cabinet, I think it's a built-in model, but, yes, a filing cabinet is there. I think it's not a cabinet, I think it's a filing system.

30

Okay. And it wasn't locked?-- No.

And you could have accessed - you could access that at any time-----?-- Yes.

-----during the period of time that you had any access to the house?-- Yes. I hadn't really-----

40

Karen's first Will-----?-- That's okay.

Karen's first Will that's in evidence in these proceedings is one dated the 7th of September 2006. Do you remember that Will?-- I can't recall it if you would ask me any information off that, no, sorry.

All right. That Will-----?-- I'm aware of it but I can't recall any part.

50

All right. That Will was made by Greenhalgh Pickard Solicitors?-- Yes.

At that stage, in September of 2006, they had a commercial relationship with FAA, didn't they, in this sense: as part of FAA taking on clients for the purposes of financial advice and

financial planning, FAA would offer a service out to a firm of solicitors to prepare Wills?-- Yes, we had about three solicitors that we were doing that with, yes.

1

Okay. So - and then in that sense FAA would effectively subcontract out the Will drafting to the firm of solicitors?-- Yes.

And that was the arrangement under which Greenhalgh Pickard prepared Karen's Will of September 2006?-- Yes, I think Brian Pickard actually came and interviewed Karen at FAA office.

10

I will stop you there. Were you part of an interview that took place between someone from the solicitors and Karen in September '06?-- No, I wasn't part of the interview, but I organised it.

All right. Well, we won't talk about it if you weren't there. Between the time that you - sorry, I'll withdraw that. Do you remember, Mr Hehir, that - I'll start that again, your Honour. In the last two months of Karen's life, you were there, you say, sometimes at night, but mostly during the day you were at work?-- Yes.

20

As usual. So there were lengthy periods of time during the day when Karen was at the home by herself?-- Yes.

Okay. You've said to us - his Honour this morning that you hadn't seen the contents of the May 2008 Will until about sometime in June 2008. Do you remember that evidence?-- Correct.

30

Okay. You did know about the contents of the May 2008 Will though, didn't you?-- The contents that I was aware of that were in the 2008 Will were what I prepared for Karen, what I assisted her with, and I sent to her on the - May the 8th.

Well, that's the February 2008 Will though. The contents of the document you're referring to are her - contents of her February 2008 Will?-- Yes.

40

Right?-- Which was the basis. Karen was going to make some changes.

Which was the basis for the May 2008 Will?-- I don't believe that that Will was done by Karen.

I see. You knew about the contents of the May 2008 Will before your solicitor got a hold of a copy of it in June 2008 though, didn't you?-- No, I didn't.

50

As - you've considered yourself from the time of Karen's death, up until you saw that May document, you considered yourself the executor of Karen's estate, didn't you?-- Sorry, can you repeat that, up till the time of?

From the time of Karen's death up until the time that you saw the May 2008 document in June 2008-----?-- Mmm.

-----you considered yourself a validly appointed executor under Karen's earlier Will?-- Definitely.

Right. And you were legally represented all that time, weren't you, from her death up until June 2008?-- Yes, I was.

So - and you understood as part of your duty as an executor you should seek out other testamentary documents that might have existed; you understood that, didn't you?-- I went to Greenhalgh Pickard initially-----

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Mr Hehir, sorry-----?-- I'm answering your question.

-----we will go a lot more quickly if you can answer?-- I am answering your question.

All right?-- I went to Greenhalgh Pickard the day after - I didn't go to them, I spoke to them, and said that it's important that everything is done correctly, and if they could assist in that there - in that particular area, and so-----

20

My question to you was, you understood that it was part of your duty as an executor to seek out other testamentary documents that might have postdated the one of February 2008, didn't you?-- Which is what, yes, I did, which is what I said I did. I went to the solicitor and asked them to assist in that very process.

Okay. But you never took any step to try and get a copy of the May 2008 document from any member of the family before then?-- I didn't know such a document existed.

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I see. Mr Hehir, if we could go to the e-mail of the 8th of May 2008 at 12.47 a.m.. Your Honour-----?-- Are you able to refer-----

I am going to take you - I am going to take you to it, Mr Hehir. Sorry, your Honour, I thought I had the page marked.

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HIS HONOUR: 12.47 on the 8th of May?

MS TRESTON: Yes, thank you, your Honour.

HIS HONOUR: That's at 364 of the bundle. I will have that shown to the witness. It's not with his affidavit, or is it?

MR NEVISON: No.

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MS TRESTON: It is not with his affidavit. It is conveniently located in the FAA material, your Honour, if that's easiest. Mr Bailiff, can you just show me which bundle that is so that I know - thank you.

Do you have that e-mail in front of you, Mr Hehir?-- What number - do you know what page number it is?

513?-- 513. Yes, I have it now.

1

All right. Now, you agree that that was a message sent by you at about a quarter to 1 in the morning to Karen on the 8th of May 2008?-- Yes, I do.

Okay. And the message begins, "Hi Karen. I've recreated your Will and EPOA as is currently signed in a Word dot format for you to amend as you wish as a Word document." Do you see that?-- Yes.

10

Now, you might have just answered me, you wrote that e-mail as well as sent it?-- Yes.

Okay. And it attached three documents, the Enduring Power of Attorney of Karen's?-- Yes.

The document which is entitled "Balance Sheet Summary Major Assets"?-- Yes.

20

And a version of Karen's Will?-- Yes.

Okay. Now, looking at the Will, can you turn to that document in that bundle?

HIS HONOUR: That's at 516.

MS TRESTON: Thank you, your Honour.

That document is, word for word, I suggest to you, a precise copy of her February 2008 Will which you had - as you said to his Honour this morning, you had recreated for her, you copied it over-----?-- Yes.

30

-----from her February '08 Will?-- Yes.

That's right. But you say you didn't have access to the template of her February '08 Will because you didn't have that on file at FAA?-- Correct.

40

And you didn't have an electronic version?-- Correct.

So you got another template and just copy typed her Will into that document?-- Yes.

Okay. The only change, can I suggest to you, that you made to the whole document is that on the third page where it says, "In witness whereof I have hereunto set my hand this" blank "day of", and then there's a month, "2008", you actually changed it, physically changed it, from "February 2008" to "May 2008"; do you agree with me?-- I haven't noticed that before. The document I have in front of me says "May 2008".

50

But your evidence this morning was that you copy typed it word for word from the February 2008 Will?-- Mmm-hmm.

Which FAA held in its safe custody or something of that nature at the time in May?-- Yes, and because I was creating it in

May I would imagine that's why I put the month of May in there.

1

Okay. And you did that because you fully expected that she was going to amend her Will in May 2008?-- Yes, I did.

And you otherwise put the document into a Word format so that it would be easy for Karen to amend it as she wished?-- Correct.

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And you did that because she had asked you, some time prior to a quarter to one in the morning on the 8th of May 2008, to send you her will - to send her your Will?-- She-----

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Let's try that again. To send her her Will?-- In the phone call that she requested that I said that I couldn't find it and that I may have to recreate it, so I couldn't actually send her her Will.

Your answer to my question is, yes, she did actually ask for her February 2000 Will to be sent to her?-- Correct.

10

But you weren't able to locate it, so you copy-typed a new one?-- I think we discussed that on the phone. I can't remember exactly.

You think this was part of the discussion which lead to the production of the file note of the 7th of May 2008, which has gone into evidence in these proceedings?-- Yes.

20

So the fact that there's actually not a reference in that file note to Karen asking for her Will doesn't leave you in any doubt that she nevertheless did ask for it?-- I remember having a discussion with Karen and her asking for the Will. I remember the discussion that surrounded it. I remember what she asked me for and creating the Excel template and I remember her asking for the - for the years to be varied and if I - she asked me to create a calculator for her to work out what - how much assets would accumulate and then to discount it back for inflation what that would be worth in today's dollars and cents.

30

She also asked you to send her her enduring Power of Attorney, didn't she?-- Yes, she did.

You knew that she was going to amend her enduring Power of Attorney?-- I don't know that she was going to amend it, but she asked for a copy of that because she never had it. So I sent it to her.

40

Your e-mail of the 8th of May says that you created the Will and the EPOA for her to amend at she wished, suggesting that she had also indicated to you that she wished to amend her enduring Power of Attorney. Do you agree with me?-- There was no discussion in the phone call about amending the enduring - amending the enduring Power of Attorney. There was a discussion - I can only tell you what I remember. There was a discussion about the Will and the reason why I remember that so clearly is because Karen wanted this calculator built, which I did.

50

You don't say in the e-mail of the 8th of May that she's actually asked you for the Excel calculator inheritance calculator, you simply seem to offer it to her, "I've also created an Excel sheet for you to peruse the inheritance value now and in the future."?-- I-----

You say it wasn't an offer by you, it was something that she asked for?-- We discussed it during the day. She told me and I wrote down what it was that she wanted in it and that's why I made the amendments and did the changes, because I didn't reflect first off all the things that she wanted done.

1

Looking further down into that e-mail, you then go on to give her some advice in relation to the drafting of her Will. For example, you say to her, "When changing your Will, don't consider items like the mini as it's currently worth less than the amount owing." So you're giving her advice about the sorts of ways she can go about making changes?-- It was more - it was a discussion also on the mini, so that was to bring it up again to a - because she talked about who she would leave the mini to and I said, "Karen, the cost of it will be actually worth more." So I just reminded her of that.

10

So that was also brought up in this discussion of the 7th of May, who she should leave her mini motor vehicle to?-- She did mention the mini. I cannot remember the exact contents but that was why that was written down there.

20

Well, Mr Hehir, you say that this e-mail of the 8th of May came about because of the conversation on the 7th of May. So I am trying to ascertain what was said on the 7th of May. Now you are telling his Honour for the first time that she actually also asked you about who she should leave her motor vehicle to. Is that your evidence?-- She probably asked me a lot of other things that I can't - that I don't recall that I might bring up now, but yes-----

30

Let's talk about the question that I have asked you then?-- Yes.

Do you say now to his Honour that she also asked you on the 7th of May who she should leave her motor vehicle to?-- Not who she should leave it to, but she discussed - I remember Karen bringing forward the mini. She was talking about the assets and I said to her that it's not really an asset because the liability is greater.

40

So this file note of the 7th of May is a long way from an accurate reflection of what was discussed with you and Karen on the 7th of May, isn't it?-- I wouldn't suggest a long way. It was a file note I made at the time with some things that I was doing for Karen that night.

It's but a snapshot of a discussion that you say you had on the 7th of May?-- I would agree. Most file notes are.

50

You then go on to say, "Please send me a copy of your Will and enduring Power of Attorney for me to peruse." Remember that in the e-mail? Can you see that in the e-mail before you?-- I am not going to doubt that it's in there, so I would assume - I-----

So you asked her to send those two documents for you to peruse to ensure that it will still meet the legal criteria. What is

the legal criteria that you are referring to there?-- I can't tell you without me going back and re-visiting what legal criteria I would be referring to, but the legal criteria to me would be that you can't leave - it's like mentioning about the mini for instance, leaving somebody something that's got a greater liability but-----

1

There is nothing to stop you leaving someone a liability,. Mr Hehir. It's just not very nice?-- Fair comment.

10

So you say that you were going to - solely in the context of giving her financial planning advice, you were nevertheless going to give consideration to her Will and enduring Power of Attorney to see if it still met the legal criteria. That's what you were offering to her?-- Yes.

As both her friend and her financial adviser?-- Yes.

You also asked her to send a copy of those two documents, the Will and Power of Attorney, to ensure that the document reflected her wishes before she resigned it. Do you remember that?-- Yes.

20

You were proposing then that she would do a Will, she would send it to you and you would check it. You would then have a discussion with her about what her true wishes were so that you could ascertain whether her wishes were being reflected in the document; is that right?-- Yes, just like most partners would do between themselves, yes.

30

So this wasn't you giving her estate planning advice, this was you helping her as her partner?-- I believe so.

Even though your document goes on to say that, "We see many Wills in here," meaning at your office FAA, "...that don't reflect client's wishes," and you change them to ensure the wishes are adhered to?-- We do.

You do that and you say you call that financial planning advice?-- A lot of people-----

40

Now, Mr Hehir?-- I am about to answer your question if you would let me to answer.

Do you call that financial planning advice?-- Within the financial planning, yes, it certainly is.

You don't call that estate planning advice?-- From the financial planning degree perspective there is an estate planning area within that. It's not where we do what a solicitor does, it's where we give the estate planning advice particularly pertaining to the assets and liabilities and often to what the value of those assets and liabilities will be at a future date, especially discount it back.

50

In truth, when it came to drafting the Will you were no more qualified to draft her Will than she was?-- Definitely.

You were certainly trying to encourage her to send you a new copy of any new Will that she made so that you could check it, but she never did?-- No, she didn't.

1

Looking towards the bottom of that e-mail of the 8th of May 2008, you say that a conversation about Ben having rung you and you raced over to be with her. Do you see that?-- Yes.

You go on to say, "But it was all churned up and then to be 'shut out' figuratively speaking was conflicting with my emotions at the time." Do you remember that?-- I don't. Can you refer me to the paragraph, please?

10

Yes. Can you look at your e-mail?-- Yes.

That's in front of you, Mr Hehir. Towards the bottom of the first page there's a para that says, "The one thing I do know is that I love you so much". Do you see that?-- Yes.

If you read on through to the end of that paragraph. Do you see the paragraph I am referring to now?-- Yes.

20

You went running over to check on her and she was furious with you, wasn't she?-- Both me and Ben. Absolutely ropeable. Karen was still extremely angry that I had saved her.

She was shutting you out at that stage, wasn't she, on about the 7th of May, when you ran over to see her?-- Karen was shutting me out as far as not wanting to discuss whether she dies or not and, like, that is all - if you read that within context of I think the comment from Ben's words there also within that same text about how his mother - how she was shutting everybody out that she loved.

30

Well, they are not Ben's words, Mr Hehir, they are your words. This is your email, not Ben's?-- Mmm.

In the next paragraph you say, "I just hope so much that when you come through this you will return to the way you were before and love me just the same as" - "love me the same as just weeks ago." Do you see that?-- Yes.

40

She certainly wasn't acting like she loved you in this time in May 2008, was she?-- Karen was very dramatic and it was up and down and topsy turvy all over the place.

I will ask you my question again, Mr Hehir. She certainly wasn't acting to you as if she loved you at this time in May 2008, was she?-- Well, to be honest it would depend on what - which minute of the day you were talking about and which part of a conversation because within - I could go around and be having dinner and Karen would just turn.

50

Mr Hehir, you're recording here that just weeks ago you thought she loved you, but now she doesn't. You are imploring her to return to the way she was before. That is, when she loved you?-- It's not so much for her to love me that I just wish, and I still do to this day, that wish that Karen could

have returned to the way she was with a happy - happy go lucky personality.

1

She had in fact ended her relationship with you, Mr Hehir, hadn't she?-- I certainly wasn't of that opinion, I don't think Karen was. Karen - who was the one that she called?

Your e-mail ends, "I'm tired. It's been a long day. I'm calling it quits." Do you see that?-- Yes.

10

So you are sending it at quarter to one in the morning. It follows, doesn't it, that you weren't staying there at the house at Moffat Beach that night?-- No, I didn't that night.

Of the 7th of May through to the morning of the 8th of May?-- No, but I was there the next night.

She didn't respond to that e-mail at all, did she?-- By phone, not by e-mail.

20

HIS HONOUR: May I ask something about the e-mail that you are about to lead?

MS TRESTON: Yes, your Honour.

HIS HONOUR: You just say towards end of the e-mail "calling it quits for the night, to go to bed now", was this e-mail sent from home or work?-- It was sent from the - from the office. I had no computer at the unit.

30

Thanks Ms Treston.

MS TRESTON: Thank you, your Honour. So your response to me is she did not e-mail back to you to even thank you for sending her those documents but you say she spoke to you the next day?-- I think a number of times, yes.

You think she spoke to you a number of times on the 8th of May?-- If you were to look at Karen's and my phone records you would find that we spoke.

40

Mr Hehir we will go much more quickly in this evidence if you could try and answer my questions. If there's more explaining to do I am sure your barrister - he is very capable - he will pick it up, alright. She didn't respond by e-mail to your e-mail, that e-mail of the 8th of May, did she?-- Without me seeing another e-mail, I'm not sure.

Well, we have had two forensic experts trawl through Karen Mahlo's computer, all her e-mails, all her internet history. There is no e-mail back from her to you responding to that e-mail of the 8th of May?-- So therefore there is no response but for you to ask me as I sit here, I'm trying to answer you as honestly as I can from my memory.

50

You then send her an amended version of that inheritance sheet the very next morning. In the trial bundle, my notes says at page 272.

HIS HONOUR: And 533, was that the one?

MS TRESTON: I beg your pardon your Honour?

HIS HONOUR: At 533 there was an e-mail at 8.36 a.m. on the 8th of May with an updated Excel sheet.

MS TRESTON: Unfortunately there is multiple copies of each document. It's the one that's headed - it's called: V2 updated calc sheet from John Hehir-----

10

WITNESS: Mine is-----

MS TRESTON: I beg your pardon?

WITNESS: That's not 533.

MS TRESTON: "Updated inheritance estimate sheet - John" sent at 8th of May '08 at 8:31:51 A.M.

20

MR NEVISON: I think the issues that's arisen, the witness is looking at the FAA disclosure documents and my learned friend's referring to the documents extracted by the experts. There's a slight time difference in the documents, so that's why my learned friend said 8.31 and the document at page 533, which I believe purports to be the same e-mail, is actually timed 8.36. Just so we are not at cross-purposes.

HIS HONOUR: I see because the experts looked at Dr Mahlo's computer.

30

MR NEVISON: Yes.

MS TRESTON: Yes, they looked at the detail, your Honour. I will try and work from the same one that Mr Hehir has in front of him.

HIS HONOUR: Does he have the FAA?

40

MS TRESTON: He has the FAA document.

HIS HONOUR: I think that's therefore the e-mail at 533, is that right?

MR NEVISON: Yes, that's so.

MS TRESTON: Yes, thank you, your Honour. Do you have the e-mail now-----?-- Yes.

50

-----of the 8th of May at 8.36 a.m.?-- Yes, I do.

If you read that, "Karen, I just sent you an updated Excel sheet." Do you see that?-- Yes.

So you certainly haven't spoken to her by this stage at 8.30 in the morning on the 8th of May?-- No, I would assume not.

You say you were tired last night and you missed a few key ingredients like "your mum and dads' inheritance payments". Do you see that?-- Yes.

1

So you then redo the Excel spreadsheet and you send it again to include some of those things. That's right, isn't it?-- Yes, that-----

Those things were important for Karen in working out what would be the benefit for Ben and Anna in her estate after taking account of the gift to her parents?-- Yes, it-----

10

That's right?-- It came - I remember reading the sheet when I came into work next day, checking it off and seeing that I had missed those couple of things and so I did it for her and I resent it.

We know from the computer examination that she also didn't respond by e-mail to that e-mail of the 8th of May 2008 either. Do you agree with me?-- Yes, I agree.

20

Not even so much as a, "Thank you John. Thanks for your efforts," nothing?-- By phone I had a lot of conversation with Karen that day but no, not by e-mail as it appears.

Well, we don't have a single file note of any of these multiple conversations on the 8th of May 2008, do we?-- Karen was my partner. I - Karen and I may talk lots during the day. In particular when Karen was quite depressed we may have rang - spoken with each other ten or 15 or 20 times during the day.

30

Ten or 15 or 20 times during the day. Around this time on the 7th and 8th of May 2008, that's how often you are speaking to her, is that your evidence to his Honour?-- I'm not sure on this day how much and it's not been questioned of me, I haven't been asked to produce any records to identify it, but there were many-----

I am not asking you to produce records, Mr Hehir, I am asking you to do your best and are you telling his Honour that in response to these two e-mails of the 8th of May you think you spoke to Karen 15 or 20 times?

40

MR NEVISON: No, he didn't say that. I object, your Honour. He didn't say that. He said from time to time-----

HIS HONOUR: Yes, he did.

MR NEVISON: -----he spoke when she was depressed.

50

HIS HONOUR: He didn't say it was on this day. Ms Treston.

MS TRESTON: Do you think that's how many conversations you had with her on the 8th of May, Mr Hehir?-- I don't know how many I had Ms Treston on that day.

Do you know that you had any?-- Mmm?

Do you know that you had any?-- Yes, I did, but I don't recall how many.

1

And you didn't make any file note of any of them?-- There would have been thousands of file notes if I made a file note every time I spoke with Karen.

Except this was particularly about her financial planning though, wasn't it? So that was the sort of thing you would make a file note about?-- If it was a separate issue, definitely. As it was the same issue and there's a record in the file notes of what I have done for her, so a record within Excel spreadsheets and the e-mail, but not every time we ring absolutely every client is a file note generated. That's if it was a client but this here was because Karen was my partner.

10

Mr Hehir, can I hand up to you another bundle of e-mails. For convenience I will open it to the page that I propose to take you to and I ask you to leave it at that page for the time being. Do you understand what I am saying to you?-- Yes.

20

I have a duplicate bundle for his Honour. So having sent these two e-mails on the morning of the 8th of May 2008, you then e-mail Karen again at 6.42 p.m. on that same day. Do you see that e-mail entitled "miss you"?-- Yes.

Can you read that e-mail to yourself?-- Yes.

You have done that?-- Yes.

30

You are sitting here, "here" being at your office, working the night away; is that right?-- Yes.

You really miss so much just coming home to be with her?-- Yes.

You told me that you spent the night there on the 8th of May 2008?-- It was actually the 9th that I spent the night, sorry.

40

You think it was the 9th?-- Yes.

So you weren't sleeping there the night of the 7th and you didn't sleep there the night of the 8th, as this e-mail would suggest?-- Correct.

Are you sure about that?-- No.

You are not sure about that?-- I know I didn't sleep there on the 7th. I don't know about the 8th. I don't know whether I went home later at that - so I'm not sure.

50

You just said in response to me it wasn't the 8th, it was the 9th. Is that not correct?-- I definitely know that I was there on the 9th, but I actually don't know whether I was there on the 8th.

We know from the forensic computer examination that she never responded back to that e-mail entitled "miss you", did she?-- I would imagine most likely it would have been a phone call that followed.

1

Mr Hehir, you don't have any recollection of her phoning you in response to that e-mail entitled "miss you", do you?-- I had so many phone calls with Karen about that, so I can't honestly tell you of any particular - if you only had one or two phone calls with somebody it would be much easier to refer to, but when you have so many it is very difficult to refer to a particular phone call.

10

When you were at the height of your relationship with her though, she never would have let an e-mail like that go by without writing back to you, would she?

MR NEVISON: I object, your Honour. The question is so general it can't possibly be responded to in a meaningful way.

20

HIS HONOUR: I think so.

WITNESS: I think-----

HIS HONOUR: Just a moment.

WITNESS: I could - I'd prefer- I would like to answer that if I can.

HIS HONOUR: No, no, just be quiet you see because I have to deal with a legal matter-----

30

WITNESS: Okay.

HIS HONOUR: -----which is an objection to the evidence and your counsel has objected and I have to rule on that.

WITNESS: Okay.

HIS HONOUR: And I am a bit slow but you will have to be patient with me.

40

WITNESS: Okay.

HIS HONOUR: Ms Treston, I think the objection is well made.

MS TRESTON: Thank you, your Honour. On the 9th of May 2008 - your Honour, my pagination to the trial bundle says it's 387.

HIS HONOUR: 534 of the FAA documents, I think. The one you are coming to, an e-mail of the 9th of May from this witness.

50

MS TRESTON: Yes, your Honour. Can you turn back to that bundle of the FAA documents you have got there. Do you see the next one is an e-mail from yourself to Karen on the 9th of May at 8.35?-- Yes.

Can you just read that e-mail over to yourself, Mr Hehir. Do you see that?-- Yes.

1

You sent this third e-mail in relation to the inheritance calculator saying you had still made some errors and you hadn't allowed for the variables to be changed, so you automated the document for her. Do you remember that?-- I don't particularly remember doing it, but the document's here, so I am not going to suggest I didn't do it. I would suggest I did but, no, I can't particularly remember.

10

The automation was a process that goes like this: you could go into a box, for example, how many years the projection was and you could change it from 15 to 5 or to 20 and it would change the variables; is that right?-- Yes.

Or alternatively there's a box where you could change the percentage rate of interest return that you might get on your investment; is that right?-- Yes.

20

One of the other boxes that you automated was the amount of the gift to her mother and father. You automated that as well, didn't you?-- I don't remember. I'm assuming so from what you are saying.

Well, we have got the disk here but if you are concerned about it-----?-- No, I am not.

-----or you would like to see it, I can put the disk into the computer and you could look at it?-- I am agreeing with you, I am not disagreeing.

30

The purpose of automating the variable of the gift to her mother and father was so that she could change the gift to her mother and father in her Will and see what the effect would be on the inheritance calculator?-- That would make sense to me but, no, I don't - I am not going to sit here and lie to you and tell you that I remember doing it because I don't.

That would have been the purpose behind it, though, to allow her to do that?-- Yes, I would agree with that.

40

At that stage, on the 9th of May 2008, even you were contemplating that she might want to change the amount of the gift to her parents in her Will?-- Well, I think you will find on the 7th that she actually told me then and so that's why I changed that, because that was on my note written to do that I had missed the night before and when I came in - so it wasn't on the 9th here. If you have a look at my - the note at about 8 o'clock on the 8th I mention that I had missed that then.

50

My question to you was, it was in your contemplation, on the 8th or the 9th of 2008, that she was going to change the amount of the gift to her parents in her Will?-- Yeah, she told me on the 7th that she wanted to increase it.

She told you on the 7th that she wanted to increase the amount of the gift to her parents?-- Yeah. It was written down in a handwritten note. That's what I told you and-----

1

Well, Mr Hehir, this is the first time you have said anything of the sort?-- I told you just before that.

You are telling his Honour that earlier in your evidence you gave evidence that you knew that Karen was intending to change the amount of the gift to her parents?-- Yes, I said that before. Left me clarify this for you.

10

Please do?-- On the 7th when I spoke with Karen, she mentioned that when I built the calculator that night, right, I missed that, but before I even spoke with Karen the next day, I got to work and I had a look at it, I saw I had missed it, I added it in and as can be seen by the e-mail to her at about 8 a.m. on the 8th.

Mr Hehir, you might not be understanding my question, so I will try to put it a bit more clearly to you. Did Karen tell you that she was going to change the amount of the gift to her mum and dad when she spoke to you on the 7th of May?-- I believe so.

20

At this stage you have sent her the three e-mails on the 8th of May, the two - if I can call them business e-mails and the one entitled "I miss you" - or "miss you" beg your pardon - and now the one on the 9th of May and still no e-mail response back from her at all. Do you accept that?-- Correct. Karen rarely sent me back an e-mail response. There was hundreds and hundreds and hundreds of text. The text that used to go between us - Karen used to have a phone which was a Blackberry which all the text used to scroll through. At the time of Karen's death she didn't have that phone. She hated the new phone that she had because on her existing Blackberry it used to have those. Karen used to send lots of text.

30

40

50

Are you saying to me that she - that you remember that she responded to you by text message-----?-- No, but-----

1

-----on the 9th of May?-- No, but I'm putting it to you that there's a greater likelihood that it would be a response by text, much greater.

Still in those documents from FAA, if you go to page 539, this is your e-mail to her of Sunday, the 11th of May 2008. Now, you send that at 12.15 p.m., so in the middle of the day?-- Yes.

10

And you say to her, "Here is a copy of the Excel sheet that I sent through on Friday 'that you went missing'." Do you see that?-- Mmm-hmm.

So Friday was the 9th of May, wasn't it?-- Yes.

Okay. She went missing on the 9th of May, did she?-- No, it's actually the e-mail that went missing. I sent an e-mail, went missing. Karen didn't go missing on the 9th of May. The e-mail went missing. She has contacted me on the Sunday morning and asked me to send it through again. She said, "It never came through. Would you send it?" So it's just a typo. Karen-----

20

That's a typo?-- Yeah. Karen didn't go missing on-----

"Friday 'that you went missing' "?-- Karen wasn't missing on the 9th. She contacted me that morning and asked me if I could do it. So I went into the office and did.

30

And you say it was that Friday, the 9th of May, that you stayed at the house at Moffat Beach?-- Yes, I did. We had picked Ben up from the - I think-----

That's all right, Mr Hehir, thank you?-- Okay.

When you e-mail her on the 11th of May, you don't say anything like, "Gee, Karen, it was so great to see you yesterday.", nothing of that sort?-- I raced into the office and just sent it to her. Karen contacted us and said she didn't have it, and so she said, "That e-mail hasn't come.", could I do it, and I did.

40

Can I take you back to that bundle that I have given you of e-mails? If you would turn back towards the beginning, Mr Hehir, and it's just the second page in. This is a document of Tuesday, the 6th of May 2008 from your e-mail address to hers?-- Mmm-hmm.

50

The subject, "I love you. Please let me help." Can you just read that e-mail over to yourself? Have you read that, Mr Hehir?-- I am reading it. Yes.

So on the 6th of May at 9.33 p.m. you're sending her an e-mail wishing her a good night's sleep. So you plainly weren't staying at Moffat Beach that night?-- No, I'm pretty sure

this is the same night after I'd gone there during the day.
I'd been there the night before, on the 5th.

1

How do you know that, Mr Hehir?-- I think there's an e-mail
there that reflects that as well.

There's no e-mail there in the contents from the 5th of May?--
I think there is, one that mentions - actually, is it the 5th?
There's - there's an e-mail there that refers to the 5th of
when I - and I think you reported it to us before when I said
- where I mentioned to Karen how she had been - everything was
so good the night before, and then the - you know, I left her
a note that morning, I got up, and went, and - and she had
just turned during - and when I went there during the day,
this was the day I believe that Ben had made the phone call to
us, and Karen was so angry and annoyed that I - that Ben had
rang me and I had gone there that day, and hence this here.
You have no idea what it was like, every day.

10

Mr Hehir, the e-mail that you're referring to where Ben had
contacted you, that's the long e-mail of the 8th of May when
you're sending her the inheritance calculator and the Will and
the Enduring Power of Attorney. So the racing over there the
previous day was the 7th, wasn't the 5th?-- No, it was the
6th. No, because the inheritance calculator was started on
the night of the 7th.

20

Oh, I see. You're saying because you started typing it on the
evening of the 7th, when you're referring to the preceding
day, you're referring to the 6th?-- Yes.

30

But my question to you was you plainly weren't staying there
on the night of the 6th because you're sending this to her at
9.33 p.m. on the 6th?-- No, I didn't stay there the night.
The night that Karen got really grumpy that day that I went
there, I did not sleep there that night.

Okay?-- And as you can see by the contents of this e-mail that
you have just drawn to me, as-----

40

But you think you have got an independent recollection of
having stayed there on the 5th?-- It's actually referred to
within these documents here somewhere, but I'm not going to be
able to go and lay my hands on it right this minute in time.

All right. So between the 6th of May and the 11th of May
we've now got four e-mails to her about her Will, Enduring
Power of Attorney and inheritance sheet, and she hasn't
responded by e-mail to any of them, and then we've got two
separate outpourings of affection, e-mails, and she hasn't
responded to either of those by e-mail either?-- You could
probably find another thousand e-mails over the preceding
year-----

50

Do you agree with me, Mr Hehir?-- -----that she hasn't
responded to either.

Do you agree with me, that that's what the evidence shows?--

Yes, the evidence does show that.

1

Okay?-- But you're not looking at everything there. That's fine.

The situation was that as at about the 11th of May she wasn't responding to your business e-mails, she wasn't responding to your personal e-mails, she was - she had cut off her relationship with you, hadn't she?-- No.

10

Can you go to the third e-mail in that bundle, because undeterred by this chain of events on the 15th of May you send her an e-mail at 1.02 a.m. entitled "Anna's Phone Account". Do you see that?-- Well, the third e-mail in isn't that one, if you follow that bundle. Are you on the right-hand bundle that you gave me?

Mr Hehir, find the e-mail in your bundle of the 15th of May 2008 at 1.02 a.m.?-- It's the fourth one in, yes, I have it.

20

Fourth page in?-- It's the eighth page but-----

Entitled "Anna's Phone Account"?-- Yes.

Right. Can you read that one to yourself? Have you read that?-- Yes, I have.

Now, you specifically ask her in that e-mail to e-mail you back, do you see that, in the second last line, "Just e-mail me back, Karen, with what you want me to do", if you're getting involved; do you see that?-- Yep.

30

And this is now an e-mail that's seeking to bring in some repayment of some bills on behalf of Anna. Do you remember that sequence of events, that led to that e-mail. I am not asking you to go into it, I am asking if you remember it?-- No.

Okay?-- Not in detail.

40

Right. And she actually does e-mail you back, if you turn over the page to the next document. She e-mails you - sorry, I should stop there to say when you sent that at 1.02 a.m., plainly you weren't staying there that night either at the house at Moffat Beach?-- On the Thursday, the 15th, I didn't stay there any night that week. From the 10th on while Karen's dad was there, I didn't stay there at all.

Okay. So she does e-mail you back, according to the next e-mail, at 11.08 a.m. regarding the same re, that is, "Anna's Phone Account". Now, can you read Karen's response to you, just over to yourself? Have you read that?-- Yes, I have.

50

You understood after reading that e-mail of the 15th of May if at no earlier time that your relationship with her was over, didn't you?-- Not particularly.

She points out to you that she sees that the control of her

life and Anna's by you hasn't been good for either of them. She points out that they're not good at having their lives watched over, both on part of the phone, financial advice, job, computer, privacy, Wills, access to everything, "so that I, we, totally lose our independence". Do you see that? Do you see that in the e-mail?-- Yes.

1

She says that Anna in the end is much better at standing up for herself and drawing the line, that is a line between her and you, isn't it?-- It's an expression, but in this case I believe that certainly could be made.

10

She finishes off the e-mail by saying, "I care for you a great" - to be fair there is probably a word missing there, probably "a great deal". "I care for you a great, but I cannot go on like this." There's simply no hope of reconciliation offered to you in that letter, e-mail of the 15th of May, is there?-- When Karen says she can't go on like this, that was often a word or a phrase that she referred to, many, many times where she was going to finish her life.

20

Mr Hehir, I will put my question to you again. There wasn't any hope of reconciliation with Karen being suggested to you in that e-mail, was there?-- No, there isn't in this e-mail a suggestion of reconciliation.

In fact, what she seems to be saying is, "Well, we will just - we will settle up our debts." She says she will cover Anna's debts, just give her the total and the deposit details, she doesn't want you to be out of pocket. So she is settling up her debts with you and calling it off?-- Not her debts, it was actually Anna's debts, and I think there's another e-mail that goes to Peta Statz about the same sort of thing.

30

I am coming to that in a minute. It was plain to you at that point that Karen was settling up Anna's debts with you and getting you out of her life?-- Out of Anna's life?

Out of Karen's life?-- I don't see it that way, but you do.

40

The next document in the bundle is the e-mail between Peta Statz of your office and Karen. Now - because what happened, can I suggest to you, is this: you received Karen's e-mail of the 15th of May '08 at 11 o'clock, and you went and saw Peta Statz and said, "Give Karen the details of what Anna owes me.", something to that effect, and Peta Statz then sent Karen the details of what Anna owed you. Is that what happened?-- I don't recall Anna - I mean, Karen would be likely to have spoken with Peta which would be a more likely scenario.

50

All right. You think the likelihood is that after having sent the e-mail to you on the 15th of May, Karen picks up the phone to Peta Statz and says, "Can you send me the details of what Anna owes John Hehir?"-- If there's not an e-mail to that effect, I would say - suggest that's more likely, but-----

Okay?-- -----I don't - I can't recall. I can't tell you.

All right. So, in any event, Anna - sorry, Peta Statz then sends this e-mail at about half past 4 that afternoon and gives Karen the details of how she can settle up those debts, and a few other bits and pieces about the completion of Anna's employment. Do you see that in that e-mail from Peta Statz to Karen?-- Yes.

1

And she in fact says, "John does not expect to have any money from you. However, I can understand how you feel and you just want this paid for." That was the situation, you weren't asking Karen to give you money, were you?-- No.

10

Nevertheless, Karen wanted to settle up her debts, as she saw it, with you, or Anna's debts, more properly?-- Correct.

Okay. Karen then writes back to Peta Statz on the 15th of May at 6.54 p.m.. Do you see that's the next document in your bundle? And she says that she's transferred a certain sum of money, \$220, to the FAA account. Did you know that had happened?-- I can't recall that, but Peta may have told me at the time.

20

All right?-- She may have sent me an e-mail. I - I can't recall.

The next document in the bundle is another e-mail from you on Saturday, the 17th of May, at 10.03 a.m.. It's entitled - the subject title is "I think that I understand where you are at!" Can you read that one over to yourself? Have you read that over, Mr Hehir?-- Yes.

30

She - Karen never e-mailed you back in response to that e-mail of the 17th of May '08, did she?-- Well, I gather that there was in response to a phone call that we'd been - that we'd had, as it says here, this morning when we were talking-----

Mr Hehir, I didn't ask you what preceded it, I asked you what went after it. She never e-mailed you back in response to that e-mail of yours to her at 10 o'clock in the morning on the 17th of May?-- I don't know why you're asking whether she did, because you're the person who has the record of the e-mails, so I am not going to just-----

40

Mr Hehir, let's not be facetious?-- I'm not being.

She never e-mailed you back, did she, Mr Hehir?-- Without me going and looking, I don't know. And that's what I am saying, you have the records, you have everything in front of you.

Did you know from-----?-- I am not going to tell you that she has or hasn't done something when I don't know.

50

Did you know - I'm sure your barrister will correct me if I get anything factually wrong to you, Mr Hehir. You can be sure he will leap to his feet. Did you know from the computer forensic examinations that this e-mail ended up in her deleted items box?-- No, I didn't know.

Having sent that one at 10 o'clock in the morning on the 17th of May, if you then turn to the next page, you then sent her another e-mail on that same day, this time at 1.32 p.m., and the subject matter for this is "Anna's trust - undermining". Do you want to read that through to yourself?-- If there's an e-mail in between this, because obviously there's been communication in the interim.

1

Mr Hehir, have you read that e-mail of 17 May 2008 at 1.32 p.m.?-- Yes, I have.

10

Okay. You then send that at 1.32, and at 1.43, on the same day, so 11 minutes later, you e-mail her again, this time with the subject message, "One Perfect Day". Do you see that e-mail, Mr Hehir?-- Yes.

Just read it - read that for me to yourself?-- Yep.

You see, you're forwarding her there at 1.43 on the 17th of May a copy of an e-mail that she had sent you in October 2006; do you agree with me?-- Yes.

20

And that was just very shortly after you and she got together at the end of 2006; do you agree with me?-- Yes.

Because you got together about the time of her birthday in '06, according to-----?-- Yes.

-----your affidavit. What was the date of her birthday?-- The 2nd of September.

30

Okay. So this is written about six or seven weeks after you first get together; do you remember that?-- Yes, I do.

Okay. And she doesn't respond, I suggest to you, to that e-mail of the 17th of May at 1.43 p.m. entitled "One Perfect Day", does she?-- Not by e-mail.

No. In fact, it ends up in the deleted items box we know from Mr Gallo's report. Did you know that?-- No, I didn't. Do we actually see when it got put in the deleted items box?

40

I beg your pardon, Mr Hehir?-- Do we actually see when it got put into the deleted items box.

We will let your barrister worry about that. The next day, on the 18th of May, however, she does respond to your earlier e-mail about "Anna's trust - undermining". She sends you an e-mail at 12.29 a.m.. Can you read that one to yourself? You don't have to read the whole part at the bottom, because the whole part at the bottom is your e-mail you've already read, so just her little part at the top?-- Yes.

50

She sends that e-mail with the words, "Take care, K." Do you see that? No, "I love you, John.", or, "I'll be in touch, John.", nothing of that sort?-- Karen usually writes, "Take care, K."

You were in no doubt by the 18th of May 2008 that your relationship with her was over, were you?-- In your opinion.

1

No, I'm asking you in your mind, Mr Hehir, you were in no doubt, based on the series of e-mails that I have sent you through, your relationship with her was over in May 2008, wasn't it?-- It wasn't - in the 18 months prior to this with Karen, there had been so many ups and downs.

But you had never moved out before, Mr Hehir. You moved out in April 2008?-- We got a unit that was never furnished.

10

No, you got a unit. She didn't get a unit, Mr Hehir, the lease is in your name?-- Correct.

You were the only person who ever slept there?-- Correct.

Despite all of that, you write again on the 18th of May 2008 at 11.14 a.m., which is the last e-mail in that bundle, again regarding the re of "Anna's trust - undermining". Have you read that, Mr Hehir?-- Yes.

20

And, for completeness, I suggest to you again that she never responded to that e-mail either by e-mail to you, did she?-- By e-mail, probably most likely not.

And, to use your expression in that letter, actions speak louder than words, don't they? And she never responded back to you, did she?-- By e-mail.

30

You have no independent recollection of any telephone conversation that postdated any one of those e-mails?-- I have - there was - in between those e-mails, there is obviously - and Karen refers to the conversation in between the e-mails, but you're choosing to ignore that.

No, not choosing to ignore anything. There is one reference to one conversation in one e-mail that I've taken you to?-- But I do not have a recollection of all the - of all the either text or phone calls in between, no.

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I tender that bundle of e-mails, your Honour.

HIS HONOUR: That will be Exhibit 17.

ADMITTED AND MARKED "EXHIBIT 17"

50

MS TRESTON: Now, according to your affidavit in these proceedings, Mr Hehir, you only became aware that Karen had made and signed her 14 February 2008 Will after 14 February 2008. Do you see that at paragraph 22 and 23 - sorry, about paragraph 23?-- I can see the paragraph.

Okay. Is that correct, that you only became aware that she

had made and signed the February 2008 Will after that date?--
On February 14th when I came home, Karen put it on the table
and I was not aware that she had completed that document. I
had provided her with a template, but I hadn't - wasn't aware
that she had completed - that she had actually completed it,
and had it signed until she - I got home from work, and she
put it on the table and said, "Throw that in my file."

1

Sorry, she said what, "Throw that in my pile."?-- "Throw that
in my file.", and she put it on the table, and - or the
kitchen bench, and I picked it up and looked at it, and she
said, "I finished it and I got it signed today."

10

All right. So taking that evidence one step at a time then,
it's the case that you would then make an alteration to
paragraph 23 to say that you only became aware that Karen had
made and signed the 14 February 2008 Will on that date, rather
than after that date?-- I'm sorry, I do not understand what
you're saying.

20

Well, you just told me that on 14 February 2008 she put the
Will on the table and said, "Throw that in my pile."

MR NEVISON: File.

MS TRESTON: File?-- Yeah.

I thought he said "pile". Did you say "pile" or-----?--
File. File.

30

File, with and F. Thank you?-- Meaning take it to work and
put it in her file.

Okay. But you just told me that that happened on the 14th of
February '08?-- Yes.

Okay. So you would amend now paragraph 23 to say that you
became aware that she made and signed it on that date?-- Yes,
instead of after that date.

40

Yes?-- Yeah.

Because after that date could be much later?-- Yes.

Okay. So it's on that actual day. I see. But the Will of
February 2008 is a standard template for one of FAA's wills,
isn't it?-- The base is and Karen made the changes to reflect
her wishes.

50

You are saying that Karen prepared the changes to the February 2008 will?-- Yes.

1

Is that your evidence?-- I'm sure you will have that evidence in the computer.

HIS HONOUR: May I ask something about that?

MS TRESTON: Yes, your Honour.

10

HIS HONOUR: As to the changes, who typed your name in that Will? Was that-----?-- Karen would have typed that.

I see. It was simply blank, was it?-- There is another document that was in here that has somebody Brown, which was our template document and I would assume that that has come from Karen's computer. That would have been the template document that Karen worked on to create the February 14 Will.

MS TRESTON: Your Honour, I am not intending to cut across you-----

20

HIS HONOUR: No, I have interrupted you. I will leave it there and leave it to you.

MS TRESTON: Mr Hehir, have you still got the FAA bundle of documents in front of you?-- Yes.

Look on the first page in the bottom right-hand corner that's numbered 512?-- Yes.

30

See that's a letter from FAA to Thynne & McCartney saying, "Here are the documents in response to the notice of nonparty disclosure." They are four e-mails from John Hehir and Karen Mahlo's person email address. There's an FAA standard Will template and a file note of the 23rd of May. Do you see that? Now, Veronica Wendt, who was the office manager, sent the bundle of documents to Thynne & McCartney, which included the Will template of Thomas Mark Brown because that's FAA standard Will template, isn't it?-- It has changed over the period. It obviously was on that day - date.

40

When it was said before that the Mr Brown Will, which is in the bundle, is irrelevant to the proceedings, in fact what it is is it's the document that was disclosed by FAA as FAA's standard Will template, isn't it?-- Most likely, yes.

Well, that's what-----?-- I am not disagreeing.

That is the only reading of Veronica Wendt's letter of that day?-- Yeah.

50

That that's FAA standard Will template. If you compare that document to Karen's February 2008 Will - and I will find the easiest place for your Honour to find it.

HIS HONOUR: I have it here as MLM2 to Miss McNamara's affidavit Exhibit 3. Would you like the witness to see that?

MS TRESTON: Thank you, your Honour. I will stop there. My learned friend reminds me that it's exhibited already to Mr Hehir's affidavit.

WITNESS: 544.

MS TRESTON: As the first exhibit.

HIS HONOUR: It's a different one, Mr Hehir.

10

MS TRESTON: The 14th of February 2008 Will. Have you got a copy of the 14 February '08 Will in front of you? You can give that back to his Honour, Madam Bailiff?-- I believe I do. Yes, I do. Number 156.

If you put to one side of the desk, but you can look at that, and at the same time turn up that standard Will template of FAA's of Mark Andrew Brown and if you look at it, it immediately looks like a similar document from a cursory examination. Do you agree with me?-- Definitely.

20

When you read the substance of the February 2008 Will, it uses much of the same terminology as the FAA template of Mark Anthony Brown?-- Yes.

Can I suggest to you that what happened is that FAA prepared Karen's Will of 14 February 2008 using the FAA standard Will template?-- No, it didn't. On Karen's computer - and you have got the - the expert witness or the documentation to see that but you will find that the - that Will was put on to Karen's computer and she changed that as she saw fit.

30

Mr Hehir, so we are not confused on this issue, the February 2008 Will you say is on Karen's computer in the format of the exhibit to your affidavit?-- I believe so. I gave Karen the template of that Will and she created that herself.

Alright, you gave her not Mr Brown's template, a different template; is that what you are saying effectively?-- I'm not sure which template. It would have been the FAA template and whether that was Mr Brown at the time, I am not sure.

40

It's the case, isn't it, Mr Hehir, that FAA prepared the Will and a copy of it, the February 2008 Will, and a hard copy was given to you to take home and give to Karen to sign?-- No, it is not. That that there should be a matter of proof or fact.

She gave it back to you, you say, and nevertheless told you to take it into your office, to put it on her file and you did take it back to your office and keep the original there?-- Yes. And there was a copy kept at home. Karen actually copied-----

50

Sorry, sorry, Mr Hehir. Just one moment, please. When Veronica Wendt responded to the Notice of Nonparty Disclosure served on FAA, she was acting on your instructions as the owner and operator of FAA-- No, she wasn't. Because of the

sensitive nature of it, I made sure that she didn't.

1

So a Notice of Nonparty Disclosure came into FAA in relation to Karen Mahlo's file and you passed it over to Veronica Wendt to handle?-- It went straight-----

Directly?-- I believe it went straight to Veronica Wendt.

In any event, ultimately she was answerable to you, Veronica Wendt, as the office manager?-- Yes, she was.

10

Did she discuss with you what documents she was going to disclose?-- She went to an - because of the sensitive nature of the document and I didn't want for there be any conflict at a later date and so I got her to make a phone call to the solicitor and only liaise with them because I did not want it to come back and bite me.

Despite the fact that on her letter responding to Thynne McCartney's Notice of Nonparty Disclosure she refers to the four e-mails from you to Karen Mahlo and she says, "We enclose what documents we do have that we believe are relevant to your request. The majority of these documents are from Mr John Hehir." Do you see that in her letter of the 18th of August '09?-- She has access to everything so-----

20

So when she says, "The majority of these documents are from Mr John Hehir," you say that what she really means is they are from his computer and that she's gone in and taken them herself, something to that effect?-- Well, yes, the e-mail log is a full log. Everybody's emails are in there and you can go through and search them.

30

Have you any reason to know how she went about this other than by contacting the solicitors?-- I cannot recall the exact incident, how it happened. My recollection of that is we were concerned because of the sensitive nature of it and I remember asking her to have the discussion with the solicitor, which she did, "...and please just prepare everything in accordance with them."

40

The documents are produced and then Thynne & McCartney write to FAA. If you go to the bundle, in the bottom right-hand corner it's 548. And raises some issues about the documents which have been produced. Did you see that letter?-- I have got the letter. Is there a particular section you would like to refer me to?

Yes, well, the document says the earliest dated document you have provided is one of 8th of May '08 and yet they have got documentation relating to Karen Mahlo's engagement of FAA back in July 2006. So the letter is raising issues about production of all documents relating to estate planning advice from your firm to Dr Mahlo. Do you see that?-- Yes.

50

In response to that, on the next page in the bundle Miss Wendt writes to Thynne & McCartney. I will just get you to read that to yourself in an e-mail dated the 27th of August '09.

Have you read that, Mr Hehir?-- Yes.

1

See the very last paragraph where it says, "There are no documents relating to FAA preparing and holding the Will dated 14 February 2008. FAA did not prepare any part of this Will." Do you see that?-- Correct, yes.

Well, let's take that in two parts. First of all in relation to the holding of the Will, you now say that in fact you took the Will on the 14th - that Karen gave you on the 14th of February 2008 and you put it on her file at FAA?-- The Will was put on Karen's file stored in Veronica's office. Veronica looked after Karen's affairs and it was actually in her office in a filing draw there.

10

So where she says that there are no documents relating to the holding of the Will of 14 February '08, that's just plainly wrong?-- That is incorrect. I agree. What you are saying is correct.

20

The second sentence where it says, "FAA did not prepare any part of this Will," that's also wrong in the sense that you had provided a template which was in all respects very similar to FAA's standard form template, wasn't it?-- Correct. I agree with you.

So that part of that response to the Notice of Nonparty Disclosure is also wrong in that sense?-- Yes, I agree. Well-----

30

MR NEVISON: I object on a number of bases, your Honour. The first is the letter was written by Veronica Wendt. The second is that this-----

HIS HONOUR: It doesn't mean that it's not relevant.

MR NEVISON: Well, quite right, yes and he can comment on it but nonetheless. It's written in 2009. The evidence is to the effect that the February 2008 Will was delivered to the solicitors virtually the morning that the deceased passed away and so to find - or put under such a fine examination the words "holding the Will dated 14 February 2008 as at 2009", all that the document states is there are no documents relating to the holding of the Will. The holding of the Will had ceased in excess of 12 months before.

40

HIS HONOUR: I don't know anything about the practice of so called financial planners in holding wills, but when solicitors hold wills, they're assiduous in keeping records, as we all know, for very good reasons; because it's essential that there be a record of where a Will is and how long it's been there. It doesn't seem to me to be a matter of no importance in this case; that an answer was given by this man's office, wholly asked to infer under his direction, which was wrong and which, it will be argued, might have been intended to throw somebody off the trail of inquiry.

50

MR NEVISON: Yes. Your Honour, I accept-----

HIS HONOUR: I think it's a relevant question and I don't think it's unfair.

MR NEVISON: I won't press it.

MS TRESTON: Thank you, your Honour.

WITNESS: I believe I have-----

10

MS TRESTON: I haven't asked you a question, Mr Hehir.

WITNESS: I answered that question wrongly then though.

MS TRESTON: Oh, really?-- I did because-----

Sorry, which question do you say you answered wrongly? Tell me what it was I asked you?-- Where you asked me first off about the holding the Will. At that stage there was no Will in Veronica's office. When I told you there was at this time, at this date, there wasn't in 2009, but prior to that we held the Will in Veronica's office but when Anna rang up on the morning of Karen's death and asked for the Will it was transferred immediately, to protect it, to there. So it wasn't in Veronica's office as I said it was at that time. It wasn't.

20

Mr Hehir, you're simply saying that because that's what you have just heard your barrister say to his Honour?-- No, I didn't realise the dates. The Will was not there. It was transferred. That's a matter of fact. There is a record of it at Greenhalgh Pickard.

30

I know that, Mr Hehir?-- On the morning. So I'm not just saying it, it's a matter of fact.

Are you telling me that when FAA holds a Will for a client and then subsequently passes it on to someone else to hold, a solicitor or whoever, there is thereafter absolutely no documents in FAA relating to the holding of that Will, no trace of it?-- There's a electronic record of everything being kept there but we try to run a paperless office as much as we can and if we don't hold the original Will, there's an electronic copy kept but not the hard copy in Karen's file.

40

So at the very least there would have been an electronic copy of the February 2008 Will at the time of this Notice of Nonparty Disclosure?-- Yes, there should have been.

In fact, there probably also should have been a file, as you said, in Veronica Wendt's office where the original Will had been previously kept?-- At this stage I think that had all been archived.

50

In August of 2009 you can tell me now, sitting here in the witness box, on the 9th of August 2011, that Karen Mahlo's file had been archived? You can tell me that with certainty, can you, at the time of this letter?-- I can't tell you at

the time of this letter with certainty, but at the time we archived in a period there because there are many, many pages to it. Stacks of pages.

1

There obviously aren't many, many pages to it, Mr Hehir, because only about two dozen of them were disclosed?-- I think in the Christmas - and this is only thinking, it's a recollection - I believe - because at each Christmas my daughter comes in and does enormous amount of scanning and converting documents from hard copy to paper and I do not know whether-----

10

Hard copy to? Do you mean hard copy to paper?-- Sorry, hard copy to electronic. And so we scan them and Amy spends a month scanning documents every Christmas, or more.

Even if the documents are electronically stored, they are still documents to which the Notice of Nonparty Disclosure pertains. They are still documents in FAA's possession, aren't they?-- Yes, they are.

20

Indeed, even if the hard copy of the document has been put into archives, the documents are still in FAA's possession?-- They are. Veronica-----

So all of those documents weren't produced in the response to this Notice of Nonparty Disclosure?-- Veronica Wendt had a discussion with a solicitor at the time.

Well, don't tell me what Veronica Wendt was told by somebody else?-- I am not about to.

30

I see?-- I just said she had a discussion and the documents were disclosed in line with their discussion.

Well, Mr Hehir, you can't possibly know that. You can't possibly know that.

HIS HONOUR: May I ask something else about the February 2008 Will? Do you have that there, Mr Hehir? It's the first exhibit to your affidavit, or a copy? Do you have that?-- Yes, I do.

40

Can you help me with this, please. Do you see clause 3(b)? Now, that's not in the Brown Will. Do you know what I mean by the "Brown Will"?-- I do know what you mean by the "Brown Will". I haven't-----

If you have a look at-----?-- 544.

50

-----544?-- Yes.

On your recollection, is the template which was provided to Dr Mahlo, ahead of her making the February Will, one which did not include any version or draft of what became clause 3(b)?-- I don't recall what was given to Karen to make a draft. I don't recall but that should be a matter of fact; that should be a record of that on the computer records.

So you don't recall whether you have provided her with any assistance in drafting the clause under which you would inherent the house?-- No, I did not assist Karen with that. That was something that we had many discussions on and Karen wanted that.

I am just wondering-----?-- Yeah.

-----if you can help me with who drafted that, because it's not a bad piece of drafting. Doctors are very clever people but I am just curious as to who drafted it?-- Karen was an administrator. She's not so much a medical practitioner. For some years she was - in the last ten years she's been - she executes documents and she works as the executive medical - ETMS, so her job is administrative.

10

May I ask you something else which is probably of no particular relevance but I am curious. The Brown Will, that is the document a copy of which commences at 544 of the FAA documents?-- Yes.

20

Are the Browns real people? Is that a real Will?-- No, I don't believe so. It's a Will template that was created by somebody that covers off many, many different avenues and you just delete all the parts.

It's just curious that as a template it has, for example, a figure in clause 4(a), but I suppose that's just an example, is it?-- It's identical to 3(c) in the previous Will.

30

Whose previous Will?-- In the Will that you mentioned first, the Will of February 14th.

I may have misunderstood this. I thought that the template which was provided to Dr Mahlo in February, or for the February Will, was what we see at 544. Is that not right?-- I would think that would be correct, but what I am suggesting is the part which you would reflect, which is 4(a) in that Will, happens to be almost the same wording in 3(c) of the February 14th Will.

40

Yes, except the Browns have become Mahlo's?-- Yes.

I was just curious about the template. Should I understand that the template that was sent to Dr Mahlo, ahead of her February Will, was one in which, for her purposes, the figure of \$150,000 was inserted or should I understand that the template generally that FAA might have assisted its clients with contained such a figure?-- I don't know. This is a template document that - I don't know where this came from, whether this is the one that Veronica Wendt gave or whether this is the one that came from Karen's computer.

50

MS TRESTON: Well, Mr Hehir we know this is the document that Veronica Wendt gave to my instructing solicitors because it's just been tendered on that basis?-- Okay.

Can I ask you a question in response to something that you just discussed with his Honour? I thought you said to me a moment ago that the Brown Will was not the template for Karen's February 2008 Will?-- No, I have not said that. What I have said is I do not know. We have had a number of templates over the years for the Wills and they have changed and I do not know which template was given to Karen to work on to create her Will. I don't know.

1

But you do say that the forensic analysis has demonstrated a template that was sent to Karen prior to 14 February 2008 from which you say she prepared her own Will?-- I didn't say it has, I said the evidence would be there.

10

Well, I call for that document.

MR NEVISON: We don't produce anything, your Honour. Put in its proper context, there has been a forensic examination by experts in respect of these later documents, the May documents. There's nothing about the February document. I think what the witness is saying is, "The computers are all there, go and have a look for it." I don't have anything that I can produce about the February document and its transition.

20

HIS HONOUR: Yes, that does seem to be what the witness is saying and you have responded to the call.

MR NEVISON: Thank you.

MS TRESTON: Mr Hehir, I understood your evidence to be that it was just a matter of us producing the document to show you. Are you saying it's on Karen's computer but no-one's ever turned it up yet?-- I don't know whether they have or whether they haven't. There's been a lot of forensic work done on it. I don't know whether that has or hasn't been done.

30

Your barrister will pick me up if I am wrong. As I understand the evidence, there's no evidence before this court of any template provided to Karen for her February 2008 Will other than that which was produced by FAA in response to a Notice of Nonparty Disclosure?-- I don't believe this here, this Will, this template was provided on the basis that you have stipulated.

40

I understand that?-- I believe you have requested for our template Will, which was provided to you. Whether that was the template Will that was sent to Karen, I am not aware. I am unable to tell you.

So you don't know what template went to Karen at all?-- Correct.

50

But in the sense that her February 2008 Will bears a resemblance to FAA's template as disclosed in August 2009, it is, in many respects, identical to the Brown template. Do you agree with me?-- I do agree. The Will template has only slightly changed over the years.

You're absolutely satisfied, aren't you, that Greenhalgh Pickard didn't prepare the February 2008 Will?-- Correct. Definitely.

1

Their only connection in any way to the February 2008 is that you had it delivered into their safe custody on the morning of the 28th of May '08?-- Correct.

HIS HONOUR: They had prepared the 2006 Will?-- Yes, they had.

10

When it went to your office to be put on - I think you said Dr Mahlo's file, you didn't think at that stage to let them know that the 2006 Will had been revoked?-- I talked to Greenhalgh Pickard regularly but I don't believe there's a file note to that effect, but generally I would, but I haven't located that, but it would be very possible that I spoke with Brian Pickard but I haven't actually got a file note to that effect. I looked for that. But normally I would.

20

Because at least in hindsight it would have been quite important to let them know that the Will that they had made had been revoked. Would you agree with that?-- Mmm.

Sorry, Ms Treston.

MS TRESTON: No, thank you, your Honour. Just before we leave the issue in relation to FAA's disclosure, when Miss Wendt wrote to Thynne & McCartney on the 27th of August 2009, page 549 of the bundle, she said in the last sentence, the last two sentences, "Our adviser e-mailed a standard template as sent to you". Do you see that, "...as was stated in my earlier correspondence to Dr Mahlo. This is a common practice to e-mail this template to clients wishing to prepare their own Wills." So she's saying that it's common practice to send this template, meaning the Brown template, to clients who wish to prepare their own Wills?-- At that particular time.

30

I see?-- It is very possible that this template could have been amended from the time of Karen doing that Will in 2008 till 2009, but I don't think it really matters.

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HIS HONOUR: Is that a convenient point?

MS TRESTON: Thank you, your Honour.

HIS HONOUR: Adjourn till 10 a.m.

MS TRESTON: Your Honour, we don't strictly have another day. Is your Honour prepared to sit tomorrow to finish this matter?

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HIS HONOUR: Yes, I should have asked you that.

MS TRESTON: Sorry. Thank you. My learned friend and I had already discussed it.

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THE COURT ADJOURNED AT 4.30 P.M. TILL 10 A.M. THE FOLLOWING DAY.

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