

Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

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 08/08/2011

..DAY 1

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HIS HONOUR: Call the matter for hearing.

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ASSOCIATE: Mahlo v. Hehir and others for trial.

MS TRESTON: May it please the Court, my name is Treston, initials R M of Counsel, instructed by Thynne & Macartney Solicitors, and I appear on behalf of the plaintiff, Brett John Mahlo M-A-H-L-O.

HIS HONOUR: Thank you.

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MR NEVISON: May it please your Honour, my name is Nevison, N-E-V-I-S-O-N, initials L J. I am instructed by Greenhalgh Pickard Solicitors, and I appear for the first defendant, John Michael Hehir, spelt H-E-H-I-R.

HIS HONOUR: Thank you. Yes, Ms Treston.

MS TRESTON: Your Honour, the second defendant, Benjamin Yuri Sasonow, and his sister, the third defendant, Anastasia Jane Sasonow, are not represented in these proceedings, they're in the back of the courtroom, and I best mention that to your Honour in terms of their involvement in the proceeding otherwise.

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HIS HONOUR: Thank you. Yes, Ms Treston.

MS TRESTON: Thank you, your Honour. I'm not sure whether your Honour - for the record, your Honour wishes the second and third defendants to identify themselves and their-----

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HIS HONOUR: Well, in the circumstances, I think I can act on your say so that that's who they are. You are the children of the-----

SECOND DEFENDANT: Yes.

HIS HONOUR: -----testator. Thank you very much.

MS TRESTON: Just in case - in terms of whether their appearances are to be noted on the record or-----

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HIS HONOUR: Yes.

MS TRESTON: -----otherwise, your Honour.

HIS HONOUR: Yes, thank you.

MS TRESTON: Your Honour, this is an application for a declaration that a document found on the deceased's computer dated 16 May 2008, which document is entitled "This is the Last Will and Testament of Karen Lee Mahlo" is within the meaning of section 18 of the Succession Act a document which purports to state the testamentary intentions of the deceased person, Karen Lee Mahlo, by which document was not executed under the provisions of the Succession Act.

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HIS HONOUR: Now, I have read the pleadings. I thought your

case was that the document was printed from the computer and a hard copy was signed by the testator.

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MS TRESTON: That's - that's a particular that's relied upon as evidence of the deceased's intentions.

HIS HONOUR: Yes.

MS TRESTON: But the document that's sought to be proved is the computer generated version, because that's the version that's still in existence.

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HIS HONOUR: I see.

MS TRESTON: Can I hand up to your Honour a copy of the relevant part of the Succession Act? The relevant part is section 18. The declaration that's sought is that the document forms a Will pursuant to section 18(2) of the Act on the basis that the Court is satisfied that the deceased person intended the document to form that person's Will. In making a decision under section 18, the Court can have regard to any evidence relating to the way the document was executed, and any evidence of the person's testamentary intentions, including evidence of statements made by the person, and that's the importance of the printing. Pursuant to section 18(4), however, the Court is not limited to receiving only evidence of those two matters which are contained in section 18(3).

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I will take your Honour to the Will my client is seeking to prove, and I will hand up for your Honour's convenience a trial bundle which has been put together by the parties, and a copy for your Honour, and in due course I have a copy for witnesses.

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Your Honour, it comprises two volumes because the parties thought it sensible to include for your Honour's convenience in one place all of the pleadings or affidavits that have been filed in related proceedings which will be relied on by one side or the other in this matter, because, as your Honour might appreciate, what happens is an application for probate is made in respect of the 16 May 2008 Will and some documents are filed in relation to that in an attempt to bring the section 18 declaration application brought on in Chambers in effectively an interlocutory way or summary way, but ultimately the matter was determined as to have a large range of issues about the deceased's capacity in relation to the May '08 Will, other issues about undue influence in relation to her earlier Will, et cetera. Ultimately today the only matter in issue is whether a declaration should be made in respect of the section 18 application. There's no issues of capacity, no issues of undue influence or anything of that nature, and I propose to take your Honour through the pleadings so your Honour can see that.

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I don't tender the trial bundle for various reasons, but I will tender some of the documents that are in it.

HIS HONOUR: So some capacity is required under section 18, isn't it, because there must have been an intention, the intention being that the document be or form part of that person's Will?

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MS TRESTON: That's right, your Honour.

HIS HONOUR: But it's not for your client to prove today that she had otherwise a capacity and an understanding [indistinct]-----

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MS TRESTON: Yes, if your Honour's - I'm sorry.

HIS HONOUR: -----what duty she had, et cetera.

MS TRESTON: That's right. If your Honour otherwise is satisfied that it is a document within the meaning of the Act and that the deceased intended it to comprise her last will and testament, then my learned friend's side doesn't raise any issue that the deceased did not have capacity in the testamentary sense to make that Will on that day.

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Now, I'll take your Honour to the pleadings. And, I apologise, your Honour, the bundle was only settled very late last night, so to the extent that I can take your Honour to the page numbers in the trial bundle, I will certainly endeavour to do so.

HIS HONOUR: Yes.

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MS TRESTON: Starting with the amended statement of claim then, your Honour, which is document number 13, commences at page 161. So it's in volume 1 of the trial bundle.

HIS HONOUR: I have it at 164. I just say that in case that affects some other page numbers you are going to give me.

MS TRESTON: No doubt it will, your Honour. My solicitor will attempt to deal with that problem in due course, your Honour. Looking at paragraphs 1 and 2 of the Statement of Claim, they're essentially denied by the defendant in - first defendant in his defence which commences at page - my solicitor will find the page for you - 171. Thank you, Mr Nevison. They're essentially denied on the basis that the Will is not the deceased's last Will. The matters then alleged at paragraphs 3, 4, 5 and 6 of the Statement of Claim are admitted.

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HIS HONOUR: Yes.

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MS TRESTON: The matters in paragraph 7 ultimately relate to the counterclaim which isn't an issue for this trial. The facts in paragraph 8 are essentially admitted in the sense that it's admitted that the second and third defendants are the deceased's children, and the only two children, and that they're the beneficiaries under the May 2008 will, the document that I seek to propound, and also under the deceased's earlier Will of February '08. Paragraph 9 of the

statement of claim and the defence are the critical paragraphs. Now, subparagraphs 9A and 9B are denied for the reasons set out in paragraph 9 of the defence. If I can take your Honour to paragraph 9A of the defence. Your Honour will see that the reasons for the denial in 9A and B of the statement of claim is, firstly, it can't be determined with the requisite degree of certainty that the deceased created the May document for the reasons set out in paragraph 10, which I will come to in a moment, and, secondly, the deceased didn't intend the May document to state her testamentary intentions because her intentions were set out in the February document, and, thirdly, on the basis that the deceased lacked testamentary capacity.

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Now, the allegations in relation to testamentary capacity are not pursued by the first defendant and there will ultimately be an issue about that in terms of costs in the sense that that was notified to my side in late June of this year. We can put that aside.

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HIS HONOUR: Now, I'm sorry - I'm sorry if you have already told me this, but if you succeed in the present case, and there's a declaration made under section 18, does it then follow that you would have a grant of probate for this Will?

MS TRESTON: Yes, your Honour.

HIS HONOUR: Right. You accept that, Mr Nevison?

MR NEVISON: Yes, your Honour.

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HIS HONOUR: Thank you.

MR NEVISON: That concludes the matter.

HIS HONOUR: Yes.

MS TRESTON: So the basis for the denial that the May will is a document within the meaning of section 18(1) and that it purports to state the deceased's testamentary intentions are only contained in paragraph 9A(i) and (ii).

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HIS HONOUR: Yes.

MS TRESTON: So no certainty about creation and no intention. Now, we pause to say here, of course, that expressly if the May 2008 document is proved, it necessarily revokes the February 2008 document. So the latter allegation we would say doesn't really add much to the current state of the pleadings. Otherwise as to paragraph 9C, the first defendant admits that the May Will wasn't executed in accordance with the formal requirements.

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Now, we then go to paragraph 10 of the statement of claim which particularises that the May Will was one located on the deceased's personal computer, located within the deceased's residential premises at Moffatt Beach, and it identifies the place at which the document was located on the deceased's

personal computer being on her C drive at files/Karen'sgeneraldocs/will, et cetera. There's an admission that the document was located by the second defendant on the 28th of May, and there's an admission now that the document was saved as "This is the Last Will and Testament of Karen Lee Mahlo.docs" - D-O-C-S.

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HIS HONOUR: Sorry, are 10A and 10B now admitted?

MS TRESTON: All of paragraph 10 is now admitted.

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HIS HONOUR: I see. There's specifically the admission that the document was created on the deceased's personal computer on the 8th of May '08 at 8:28:31 hours, the file size is specifically admitted.

MR NEVISON: I'm loath to interrupt, but I am confused as to where that admission has arisen. There was a notice to admit facts which is essentially in the same terms as that paragraph from the statement of claim, but it does not cover all of the matters in the statement of claim. So my learned friend might just clarify that issue for us. It doesn't, for example, to my knowledge, deal with the allegation in paragraph 10C that the document was located by the second defendant on 28 May 2008. Page 479 of the bundle is the notice to admit that I have referred to.

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HIS HONOUR: So what do you say is admitted of paragraph 10?

MR NEVISON: Thank you.

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HIS HONOUR: If you go through them one by one. 10A?

MR NEVISON: The items in paragraph 4 of the notice to admit on page 479 of the bundle which was - and I can read them and cross-check them-----

HIS HONOUR: Thank you.

MR NEVISON: -----10A is admitted.

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HIS HONOUR: Yes.

MR NEVISON: Was created on the deceased's personal computer as described, was located on the deceased's personal computer, was created on the 8th of May, so that's A, B and E-----

HIS HONOUR: Yes.

MR NEVISON: -----at this stage, was saved as the last Will, so that's D, was last saved on 15th of May, so that's F, was last written on the 15th of May, that's G, was last written and had a file size of 18,644 bytes, that's H, and was not modified, that's 10I.

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HIS HONOUR: So that's everything but 10C?

MR NEVISON: Yes.

HIS HONOUR: And given those admissions I wonder whether 10C would matter.

MR NEVISON: It's relevant in the overall scheme of things as to who had access to the computer, and how it came to be found and located, such that-----

HIS HONOUR: Yes.

MR NEVISON: -----in the overall context it can be comfortably discerned or distilled that it was intended to be the last Will of the deceased.

HIS HONOUR: Is one of the issues going to be whether it was the deceased who made the document?

MR NEVISON: It's not an issue to the extent that there is arguably some contention about who had access to the computer.

HIS HONOUR: So you're certainly putting the plaintiff to proof-----

MR NEVISON: Yes.

HIS HONOUR: -----that it was the deceased who created the document.

MR NEVISON: That's so. That's how we are - yes, your Honour.

HIS HONOUR: Yes, I understand, thank you.

MR NEVISON: Indeed.

HIS HONOUR: Yes, Ms Treston.

MS TRESTON: I apologise for misstating that position in relation to 10C. In my submission, it will ultimately be my submission - and I can take your Honour to the issue in the pleadings now anyway - that in fact the failure to properly traverse paragraph 10 of the statement of claim in the defence amounted to an implied admission under the rules, in any event, and I will take your Honour to that now, given that the issue has arisen, but I accept that in every respect other than paragraph 10C a formal admission has been made, in any event. If I take your Honour to paragraph 10 of the defence which appears at page 174 of the trial bundle-----

HIS HONOUR: Yes.

MS TRESTON: ----paragraph 10 is denied on the basis the first defendant believes the allegations to be untrue, without specifying any basis for the denial, and, secondly, says that the allegations can't be pleaded to until there's been an inspection of the computer by a forensic independent expert.

Now, so far as paragraph 10C is concerned, in my submission, the denial at 10A simply is not a proper traverse of 10C, it

has never been amended since the proceedings were commenced,
and must amount to an implied admission of 10C.

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HIS HONOUR: Well, Mr Nevison would say that if he has to -
and it seems to me that he does have to - he would apply for
leave to amend his defence so that it pleads a nonadmission of
that, and explains that nonadmission on the basis that having
made inquiries his client remains unsure as to the truth of
that allegation. That's where we are, isn't it?

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MR NEVISON: That's certainly our position, and it's the
position I have made known to my learned friend in our lead-up
to the trial, your Honour, that we can simply amend it, we can
do it in 15 minutes or so, and the particulars we would rely
on as well are that a port was delivered by our computer
forensic expert that dealt with the various issues of the two
reports, and ultimately, your Honour, all of this is
consistent with the plaintiff bearing the onus of satisfying
the Court to the requisite standard that this document should
be admitted, the entitlement of the penultimate Will holder to
put the matter to proof, and the fact that the expert report
was then delivered.

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HIS HONOUR: But what does your expert report say about this
matter?

MR NEVISON: Well, your Honour, there was an initial expert
report by our fellow, and he said there was just no evidence
of the document having been printed, which is part of the
plaintiff's case in the next paragraph of the statement of
claim, and he was asked to go back and have a look further at
that, and he confirmed that opinion, and also found some other
e-mail traffic which is relevant to the overall issues. There
is now a joint expert report that my learned friend will put
in by consent which says there's no evidence, in effect, of
the document being printed, but there are explanations for why
there may be no evidence.

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HIS HONOUR: So how does that bear upon whether it was
discovered by the second defendant on about the date which is
pleaded?

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MR NEVISON: There is other evidence we understand to be led
by the plaintiff as to in fact who found the document, and
it's simply inconsistent with what's pleaded.

HIS HONOUR: Anyway-----

MR NEVISON: Yes.

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HIS HONOUR: -----Ms Treston, the defendant's position is that,
if necessary, the defendant would apply for leave to amend the
defence-----

MR NEVISON: Yes.

HIS HONOUR: -----to plead a nonadmission to the effect that
after inquiry they still don't know. On its face, that

doesn't seem to be anything that ought to take your side by surprise.

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MS TRESTON: Not particularly.

HIS HONOUR: Well, is it sufficient that I say that the case will be conducted on each side on the basis that 10C is the subject of a nonadmission, not a denial as presently appears in the pleading, but a nonadmission?

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MS TRESTON: Yes, your Honour, and it might be - yes, your Honour, I am happy to take it as that.

HIS HONOUR: If you - if you wish, I could require the defendant to provide an amended defence. Perhaps that's as well, but these things cost money.

MS TRESTON: No, no, your Honour.

HIS HONOUR: Thank you.

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MS TRESTON: If that's the effect of the only amendment, is that that's a nonadmission in relation to paragraph 10C.

HIS HONOUR: Yes. Thank you.

MS TRESTON: Thank you, your Honour.

MR NEVISON: Thank you, your Honour.

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HIS HONOUR: So then we go to 11.

MS TRESTON: So then we go to paragraph 11 of the statement of claim, which alleges that on the date the Will bears of 16 May '08, the deceased intended the document to be her Will, she intended it to constitute a revocation of her February Will, and relies on certain particulars set out in that regard. Primarily it will be the plaintiff's case that the deceased showed her father a copy of the document and said to him words to the effect, "This is my Will." At the same time she handed him a copy of the document of May 2008, and he Will say that at that time the document was signed by her but not witnessed by any person.

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Can I pass over 11D and E, those particulars for the time being? As to the allegations at paragraph 11 of the amended statement of claim, the first defendant simply denies those allegations on the basis that they're untrue for the reasons set out in paragraphs 9 and 10. So your Honour will recall that the only issues raised in paragraph 9 are, one, that they can't be certain that the document was created by the deceased, and, two, that the document didn't constitute her testamentary intentions because she had an earlier Will. There's nothing further then that arises out of paragraph 10 that in any way traverses the allegations in paragraph 11, in my submission. So that's the only basis for the denial of the pleading at paragraph 11.

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HIS HONOUR: But from what Mr Nevison has just said, he has evidence to the effect that such a document was not printed.

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MS TRESTON: There is evidence to the effect from Mr Gallo that there is no evidence that the document was printed, but the joint report of the experts in relation to the printing evidence is that there is an explanation or explanations for the failure to find on the computer evidence of the printing. So my submission ultimately to your Honour will be that in circumstances where in fact there are two pieces of evidence that demonstrate that the Will was printed, that is, one, the evidence of the deceased's father who will say that he saw that document on that date, and, secondly, the evidence of the deceased's best friend, Ms Jenny Ruhno, R-U-H-N-O, who has given an affidavit, which I will take your Honour to shortly, who will say that she was present in the house on the 30th of May, saw the document on the computer, asked the third defendant, Anna Sasonow, how it is that she went about printing it because it was an unfamiliar version of Outlook to Ms Ruhno, that Ms - the third defendant showed her how to print it, and Ms Ruhno in fact printed the document, saw it come out of the printer on that day, then Ms Ruhno and the deceased's mother, Beverley Mahlo, will say that they then took the document to my instructing solicitors on the 3rd of June.

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So there's two compelling pieces of evidence, in my submission, that the document was printed, from Ms Ruhno and Mr Mahlo, and then the third piece of evidence from Mrs Mahlo, and that, in conjunction with the expert's report that says in fact there is an explanation for the failure to find the evidence of printing, demonstrates to your Honour that the forensic computer evidence is just one piece in the puzzle.

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HIS HONOUR: But as to what the issues are, Mr Nevison has said that there is an issue as to whether it was printed, and he has referred to his intention to rely upon some expert evidence. Now, I suspect that he will say that the joint expert report does not put paid to that argument.

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MS TRESTON: I am not sure that he will say that, your Honour.

HIS HONOUR: Well, will you be making the argument that more probably than not it wasn't-----

MR NEVISON: Printed.

HIS HONOUR: -----printed?

MR NEVISON: That's my argument, yes.

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HIS HONOUR: And although I haven't read the expert reports-----

MR NEVISON: Yes.

HIS HONOUR: -----should I think that - am I right in thinking that you will say about the explanation for the absence of

evidence of printing-----

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MR NEVISON: Yes.

HIS HONOUR: -----that it's one thing to be considered, but you will be arguing that I shouldn't - I shouldn't accept that as the most probable position?

MR NEVISON: Correct, your Honour, and in fact when you look at the tick box of all the things you might look to for some certainty, that's just another area of concern that your Honour might be left with at the end of the evidence, and also our position is quite clearly that the evidence about the printing of this document that will be led by the plaintiff will be tested very carefully and scrutinised.

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HIS HONOUR: Well, that's the basis for the denial, although again that isn't pleaded.

MR NEVISON: No. Well, it - it's shallow, it's shallow and skeletal, with respect, but it's denied because it's not true, and it was in reliance then on the expert reports which were coming and produced, your Honour.

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HIS HONOUR: I think that the pleadings should have been amended after the expert report-----

MR NEVISON: Yes.

HIS HONOUR: -----upon which you will rely had been produced, and I think that the current state of your client's pleading in this respect is perhaps in more serious need of remedy-----

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MR NEVISON: Yes.

HIS HONOUR: -----than the matter we last discussed, which was the nonadmission. I think it is important that this be pleaded.

MR NEVISON: Yes.

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HIS HONOUR: So will you be able to attend to that by-----

MR NEVISON: Over lunch.

HIS HONOUR: -----this afternoon?

MR NEVISON: The lunch break.

HIS HONOUR: By 2.30?

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MR NEVISON: Yes, your Honour.

HIS HONOUR: And at the same time you can incorporate the-----

MR NEVISON: Nonadmission.

HIS HONOUR: -----pleading about the nonadmission.

MR NEVISON: Yes, your Honour.

MS TRESTON: In light of that exchange that's fallen from your Honour, I might have to reconsider the need to call the expert witnesses, because I had understood that the position now was that given that they jointly had prepared a report saying that there was an explanation for the failure to find the documents that it wasn't to be seriously contended that the document wasn't printed. Now, if I have misapprehended that, I have misapprehended it, but that was certainly the position that I understood this morning. So I will have to take some instructions in relation to that and-----

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HIS HONOUR: Yes.

MS TRESTON: -----I am not blaming Mr Nevison or myself in relation to that miscommunication, but if it has arisen, it has arisen, and partly as a result of the failure to plead it because originally I did propose to say to your Honour that I objected to Mr Gallo's reports going in entirely in relation to the printing issue because there was no issue raised on the pleadings. I thought it had been put to bed by the joint expert report. I see now that I was wrong about that.

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MR NEVISON: I am just concerned whether there is still perhaps some misunderstanding amongst us all and perhaps brought about by the nature of the pleadings. The pleadings or the position from our side is this: We do not assert a positive case that the document was not pleaded. We have no evidence to so assert. We simply will ask the court, in the myriad of considerations that will be taken into account, to view the evidence about the document being printed, that is the oral testimony of those involved in the act, balanced against the expert reports. The experts are essentially in agreement about it; that there is no evidence that it was printed. That's their evidence and we can't take it much further than that. We say it's a factor. So I don't want it to be elevated to some case that we don't pursue.

HIS HONOUR: But you do intend to deny that the document was printed?

MR NEVISON: Yes.

HIS HONOUR: Yes, well, then that denial will be justified I had thought on the basis of your original expert report.

MR NEVISON: Yes.

HIS HONOUR: But we will have to see.

MR NEVISON: Yes. Thank you, your Honour.

HIS HONOUR: Were you going to call one of these experts?

MS TRESTON: Well, I wasn't proposing to, based on the joint experts' report, but I might now have to.

HIS HONOUR: You are going to make inquiries about that?

MS TRESTON: If that's to be the case I might want to ask your Honour to give consideration as to whether, given that they have now given a joint report, whether the appropriate course is for them to give their evidence jointly and at which point in the case they might do that, whether it might be at the end of my case or at the end of Mr Nevison's case, given that they are experts and they will give it jointly.

HIS HONOUR: How long will your case take otherwise?

MS TRESTON: I am really in Mr Nevison's hands. I would have thought it will finish - well, I am not sure. I don't know how long he proposes to-----

HIS HONOUR: How many witnesses do you have?

MS TRESTON: I have got six witnesses, including four lay witnesses, one police officer and one medical practitioner and then if I need to call the experts, I will.

HIS HONOUR: So that evidence will take most of the day I suppose.

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MR NEVISON: I would have thought so, yes, your Honour.

HIS HONOUR: Is there any prospect we would get to the experts before tomorrow?

MR NEVISON: I wouldn't have thought so, your Honour. I had tipped if we need to, for it to be the first thing in the mornings perhaps. I would anticipate the plaintiff should be able to conclude his case today notwithstanding the number of witnesses, but it's still a moving feast.

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HIS HONOUR: I think it is desirable, although I say this without having read the reports, that the experts give their evidence concurrently.

MR NEVISON: Yes, thank you.

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MS TRESTON: Can I hand up to your Honour - I will do it a little more logically. Can I first then tender document number 12 from the trial bundle which is the affidavit of Robert Scott Atkins, A-T-K-I-N-S, who is the forensic computer consultant engaged on behalf of the plaintiff and his affidavit with the report annexed is e-court document number 2 in proceeding number 1036/09.

HIS HONOUR: That will become Exhibit one, that affidavit.

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ADMITTED AND MARKED "EXHIBIT 1"

MS TRESTON: I then tender, subject to either an agreement in relation to both experts not being required or both of them being required, the joint report of Atkins and Gallo, G-A-L-L-O, addendum report dated 8 August 2011.

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HIS HONOUR: That will be Exhibit 2.

ADMITTED AND MARKED "EXHIBIT 2"

MS TRESTON: Can I take your Honour, without meaning to skip over the substance of the report, to the conclusion of it at page three.

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HIS HONOUR: Just a moment. I need to get it back.

MS TRESTON: Would your Honour like a working copy?

HIS HONOUR: Yes, I would.

MS TRESTON: It's only a copy of the signed joint report because it was done late last night I understand.

HIS HONOUR: You were going to?

MS TRESTON: I was going to take your Honour to the conclusion at page three where the experts are able to identify, in what's called the print spool artifact, that indicates that a file has been printed, demonstrates that the absence of that print spool artifact does not necessarily indicate that the file was not printed, describes that it is possible for a document to be printed without digital evidence being located to support the printing of the document and then goes on at page four to describe the possible explanations for the inability to locate any evidence of the printing.

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HIS HONOUR: As to the third of them, has anyone looked at the printer?

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MS TRESTON: The answer to that is no because the printer is in the possession of the police. There is an ongoing police investigation in relation to ^ Dr Karen Mahlo's death and the printer is with the police. My instructing solicitor corrects me. She thinks perhaps only the computer is in the possession of the police but not the printer, but I can see if I can identify-----

HIS HONOUR: And was there a network or was there just a computer and printer? It was at her house, wasn't it?

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MS TRESTON: It was in her home. There is no evidence one way or the other as to whether it was connected to a network or not. In my submission, the evidence is not that the document was not printed, the evidence is that the experts have been unable to identify evidence of the printing and proffer some explanations as to why that may be the case.

The evidence goes also to not only the oral evidence of the lay witnesses, it goes not only to the printing of the Will, but also to suicide notes, what are called suicide notes, that were found on the printer in the deceased's home on the morning of her death.

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Now, the police officer who is being called to give evidence will give evidence that both of those suicide notes were present on the computer in the early hours of the morning when she attended the house on the 28th of May 2008. The experts are also unable to identify any evidence of those notes having been printed at that time that she found the notes on the printer. They can identify, much later in the afternoon, at about 1.20, one of the suicide notes having been printed and the report goes to explain how the last recorded printing date will override earlier dates. So there is evidence of one of them being printed in the afternoon but no evidence of either of them being printed in the morning.

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Now, she will give evidence that both of those notes were present on the printer when she turned up there and therefore that's yet another piece of evidence, in the puzzle before your Honour, in relation to this printing issue, that would give your Honour cause to concern to conclude on the balance of probabilities that none of these documents were printed and that the computer evidence should be elevated to some status which I will be submitting to your Honour simply doesn't warrant because it's just one other piece in the forensic puzzle.

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HIS HONOUR: Ms Treston, if the printer is available, should the experts not be looking at it to see whether the print spool data is found there? If it's not found there, of course that won't answer the question. If it is found there, it will.

MS TRESTON: I will have to take some instructions about that. I had understood that it was with the police but we can see if we can clarify that issue.

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MR NEVISON: Again I am loathe to interrupt, but just so that we have factually outlined the matters to you correctly, I am concerned that my learned friends are at odds about the effect of the expert report so far as it relates to printing of the suicide notes.

The expert reports demonstrate in fact that there were print logs in what they call the metadata of the files for each of the suicide notes. One was prior to the time of death, the other note was subsequent to the time of death. The effect of the evidence there is that the last time the document was printed will be the recorded print time.

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There is a difference as to what's just been outlined by my learned friend to the extent that I think it was suggested that in fact one of the suicide notes did have no evidence of it being printed. Well, with respect, that's not right and that's demonstrated particularly at pages 410 and 411 of the bundle, which is in the addendum report I will tender in this matter. So, again, it comes back to the necessity to test the evidence that the plaintiff relies on and the uncertainty that the defendant has about it.

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HIS HONOUR: Thank you.

MR NEVISON: Thank you.

MS TRESTON: I don't cavil with the fact that the evidence shows that one of the notes, one of the so called suicide notes, was printed late in the afternoon, one of them was printed late in the morning. My point is that there is clear evidence from the police officer that both of them were there on the morning that she attended the house and the evidence demonstrates only that one of them had been printed at that time and there is no evidence that the other - on the computer records, on the metadata or on the print spools - no evidence that that other one was printed at that time.

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MR NEVISON: So to that extent it's conceded by the first defendant and there is no requirement, I can formally communicate to the court, for the police officer to be called with respect to that evidence.

MS TRESTON: There is another piece of evidence which I have identified to my learned friend this morning and I will get to that in a moment.

HIS HONOUR: Yes.

MS TRESTON: Your Honour, it will be my submission at the end of the trial that the plaintiff will in fact adduce sufficient evidence to demonstrate that it can be demonstrated with a requisite degree of certainty that the deceased created this document of May 2008; it was in fact stored on her personal computer inside her personal residence. At the relevant time that the document was last modified, which was at about 10.29 p.m. on Thursday, the 15th of May 2008, the only persons living in the deceased's home were the deceased herself and her elderly father who was visiting her for about nine or 10 days. Mr John Mahlo, the deceased's father, will tell your Honour he doesn't have any computer skills and he didn't modify the document on the 15th of May 2008.

HIS HONOUR: Where do you say this Will was made then? At 10.29 p.m. on the 15th of May?

MS TRESTON: Yes, my case will be that the last time that the document was ever changed or modified was on the 15th of May. It bears the date the 16th of May. It will ultimately be my submission that your Honour can draw one of two inferences; one that the document was simply misdated or secondly, because it was late at night on the 15th of May that it was completed, it was dated the next day.

HIS HONOUR: When you say it was dated the 16th, is it dated - it's obviously dated on the electronic version on the 16th?

MS TRESTON: Yes, it is. Can I take your Honour to the document which is in the trial bundle?

HIS HONOUR: Yes.

MS TRESTON: It's at, I hope, page four.

HIS HONOUR: Yes.

MS TRESTON: Your Honour will see on the second page on the electronic copy it bears that date, 16th of May 2008. Whilst we are looking at the document, I might just take your Honour to it so your Honour can get a feel for the type of document that it is. It's obviously entitled "The Last Will and Testament". It properly identifies the testator and her address, expressly revokes prior testamentary dispositions, appointing the plaintiff Brett John Mahlo, who is the deceased's brother, as the trustee; and should he be unable to

act, the substitute trustee and executor is her son, Benjamin. Then the Will provides for the payment of debts: At paragraph 3(a), a gift of \$300,000 to her parents, Beverley and John Mahlo at 3(b); then the residuary estate to be divided equally between her only two children. Paragraph 3(d) is then written in terminology that I would suggest to your Honour is the sort of terminology that an educated but nevertheless lay person would make if they were preparing their own Will giving gifts of jewellery and household items. At paragraph 4 the clause makes no provision for the deceased's then husband Robert Wagner, nor his child, and it explains that it was a marriage that was very short lived.

Again, ultimately I will be submitting to your Honour when one compares the terminology of clause 4 to an earlier reference to Mr Wagner in earlier Wills, your Honour will see the way in which the deceased has amended clause 4 using her own words; a direction that she be cremated and otherwise the signing pages.

So on the face of it, it's a rational document, in the format that one would ordinarily expect, making rational provision for those persons who might have a call on the deceased's bounty.

It's also rational in the face of this evidence. The first defendant and the deceased had been in a relationship for a period of time prior to the May 2008 Will, however, it's the plaintiff's case that the relationship had broken down at about the end of April or early May 2008 and that the deceased was intending to remove, amongst other things, a benefit to the first defendant that existed under her February Will. If I can take your Honour to the February Will which is part of the affidavit of scripts, which is document number 16. I will check the page numbering, your Honour.

HIS HONOUR: I think I did read it when I read the file.

MS TRESTON: Thank you, your Honour.

HIS HONOUR: But if you want to go through it, by all means do.

MS TRESTON: I will take your Honour to it for this reason: your Honour will see the February '08 Will appears at page 185 to 187 of the bundle and when your Honour compares that document to the May 2008 one, your Honour will make a number of observations immediately. The first is that in terms of its typeset, it's an identical document, the use of the roman script at the top line and otherwise the use of the same font throughout the document, the terminology of the Will throughout it generally the same.

HIS HONOUR: So is the explanation for that is that she was assisted in preparing the document of May 2008 by somebody providing her with a template?

MS TRESTON: Yes, your Honour. In fact, the evidence demonstrates that the template was provided to her by the first defendant on the 8th of May 2008.

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HIS HONOUR: Is that evidence as to what's found on the computer on her computer?

MS TRESTON: I beg your pardon? Yes, that's right. It's tracked by virtue of an e-mail coming in to the deceased's computer from an e-mail address belonging to the first defendant.

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HIS HONOUR: Yes.

MR NEVISON: Excuse me your Honour, may I just raise one procedural matter with my learned friend? There was just some change in our approach to how we deal with the trial bundle before your Honour and an issue has just arisen if you don't mind.

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MS TRESTON: My learned friend requires me to formally tender the affidavit of scripts of Margaret Lorrell McNamara.

ADMITTED AND MARKED "EXHIBIT 3"

MR NEVISON: Mrs McNamara is not required for cross-examination in respect of those matters, your Honour.

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HIS HONOUR: Thank you. It's court file 19 I think, isn't it? There is only one affidavit?

MS TRESTON: No, I have it as e-court document number 12.

HIS HONOUR: Number 12. Yes, thanks. What was the modification made to the document at 10.29 on the 15th of May?

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MS TRESTON: That's when the document was last modified.

HIS HONOUR: But is it known what the modification was?

MS TRESTON: The computer experts' reports demonstrate that it's impossible for them to say what the modification was. They are able to demonstrate that the template came in on the 8th of May, that is the template of the February '08 Will; that that document was then saved to the deceased's computer; that subsequently modifications were made to that document and that the last modifications were made to that document on the 15th of May '08.

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Based on that combination of evidence I was telling your Honour about, that which Mr John Mahlo would give evidence about, and perhaps for completeness I should take your Honour now to his two affidavits, in the trial bundle they are document number 7 and document number 9. I will

check the page numbering for your Honour. The first affidavit of Mr John Mahlo starts at page 32 of the trial bundle and goes through to page 35. The second affidavit of Mr John Mahlo is at page 39 and 40. Is your Honour happy to just read Mahlo's affidavit rather than-----

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HIS HONOUR: Yes, I will just read them now. Yes, I have read them.

MS TRESTON: Thank you, your Honour. The plaintiff's case therefore will be that the only reasonable inference is that the document was created by the deceased, having been found on her computer in her home. That leaves only then the real issue on the pleadings that she intended the May document to embody her testamentary intentions.

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In relation to that issue the plaintiff will call a number of witnesses whose evidence I will open shortly but suffice to say there is evidence to show that the deceased intended to change her Will and that was in the context of her relationship with the first defendant having ended.

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Importantly, first of all, in relation to the deceased's intention, Mr John Mahlo's evidence is that the deceased used words to the effect, "This is my Will," when she showed him that document of May '08. To her best friend Jennifer Ruhno she explained, on about the 3rd of May 2008, that she intended to make a Will that appointed one of her brothers as executor. Mrs Ruhno can't remember whether it was Brett or the deceased's other brother Wade; there was to be a cash gift to her parents and the balance to her children, which, in my submission, is precisely what the May '08 Will does.

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HIS HONOUR: On your case, why did she print the Will? Why did she print this document?

MS TRESTON: In my submission, it's evidence of her intention to show it to her father, to demonstrate that it was her intention to make the new Will. In this context perhaps can I say this: there is evidence that Dr Mahlo had made previous attempts on her life prior to May 2008 and her father was up there visiting her because of her somewhat precarious state. Now, I will be asking your Honour to infer that she was intending to get her affairs into order.

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HIS HONOUR: Yes, but why would she not just leave the document as she had last modified it on the computer?

MS TRESTON: Because she intended to show it to somebody so that somebody knew that the document was there. I mean, that's supposition of course, but your Honour is asking to me to speculate why she would have done that.

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HIS HONOUR: It really relates to your case being that the document which she intended to be her Will was the electronic document and not the hard copy, not the paper document. That is your case, isn't it?

MS TRESTON: That she intended the electronic version to be
her last Will? Is that what you are your Honour asks me?

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HIS HONOUR: Well, the question is what is the document about what you want the declaration. I thought you said earlier that that document is the electronic document.

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MS TRESTON: I do seek probate of the electronic document for this reason: the hard copy of the document, in the form that your Honour sees it here, is the - arises from the giving of the hard copy to the solicitor who ultimately seeks the grant of probate. The hard copy otherwise as it was shown to John Mahlo on the 16th of May 2008 I can't produce for your Honour.

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HIS HONOUR: But the hard copy that you were talking about just a moment ago, who produced that hard copy?

MS TRESTON: Well-----

HIS HONOUR: Who printed it?

MS TRESTON: Well, it will be my submission that the only reasonable inference is that the deceased printed it-----

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HIS HONOUR: All right. Now, what - can you help-----

MS TRESTON: -----because Mr Mahlo's evidence is they were the only two people in the house at the time.

HIS HONOUR: Well, I don't know what its provenance is. What's its provenance, the hard copy? How did somebody come by it? Did they find it in her office or-----

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MS TRESTON: Yes, the evidence of Mrs Jenny Ruhno - Dr Jenny Ruhno, who will give evidence in these proceedings, is that she found a copy of it on the deceased's computer on the morning of the 30th of May 2008, and in fact the forensic computer evidence demonstrates that somebody was on the deceased's computer on that morning of the 30th of May, and that the document was accessed then, but not modified, and she will say, "That was me who accessed that document then, and I printed it."

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HIS HONOUR: So she printed it. She printed it.

MS TRESTON: She will say she printed it-----

HIS HONOUR: All right.

MS TRESTON: -----then.

HIS HONOUR: So the one that was shown to Mr Mahlo, its whereabouts is unknown?

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MS TRESTON: Yes, your Honour.

HIS HONOUR: Now, just getting back to it, the document then which is the subject of the application under section 18 is the electronic document.

MS TRESTON: Yes, your Honour.

HIS HONOUR: Which then means that your client seeks to prove that it was that document, the electronic document, which was intended to be her Will rather than a paper document printed from it, and, moreover, one signed by her which was intended to be her Will.

MS TRESTON: Well, it's difficult for me to seek probate of that document, your Honour, because I don't have that document.

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HIS HONOUR: So I am wondering - all right. I do understand the case then, but I am just wondering - and this is a question for the end of the case - why it would have been that she would have printed and signed the Will which she had made electronically.

MS TRESTON: In the sense that it's impossible to sign an electronic copy, is that what your Honour is asking me? Why did she not type in her name into the electronic copy? Is that-----

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HIS HONOUR: Well, of course she is not a lawyer and she wasn't to know that Wills have to be signed and they have to be attested.

MS TRESTON: Well, my learned friend will cavil with that, of course, because she had an earlier Will which she had signed and attested.

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HIS HONOUR: But assuming she didn't know that, she thought that you can make a Will by making an electronic document, that's your case, that by 10.29 on the 15th of May, she had made her Will.

MS TRESTON: That's right, your Honour.

HIS HONOUR: Why then would she have made a paper copy and moreover signed that paper copy? She had already made her Will.

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MS TRESTON: Perhaps - my submission to your Honour will be because she wanted somebody to know about it. She was talking to her father about it. Her evidence - his evidence, rather, demonstrates that she had said to him words to the effect, "I'm making a new Will.", she had spoken to Jenny Ruhno about her intention for the structure of her Will, and then I will subsequently take your Honour to the evidence of that which we say that the first defendant knew about the intention to make a new Will as well, but your Honour is asking me to speculate as to why she would have printed it and signed it, which involves me speculating on her nature as to why she might have done that, but having thought that she made her Will and saying the words to her father, "This is my Will.", or words to that effect, "This is my Will.", short of taking him into the computer room and showing him the version on the computer screen, it would be my submission to your Honour that the ordinary course for most people would be to print that

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document if they wanted someone to know about it, to show it.

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HIS HONOUR: Well, this will be discussed at the end of the case, but thanks very much. I think you had already made clear what your case was, but I'm just a bit slow catching up, and I had to ask you again.

MS TRESTON: Not at all, your Honour.

HIS HONOUR: So I think I had interrupted you at the point that you had told me about Mr Mahlo Senior's evidence.

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HIS HONOUR: Yes.

MS TRESTON: That will be - he is being required for cross-examination, I take it.

MS TRESTON: Yes, he is, your Honour. So I will tender his affidavits at that point.

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HIS HONOUR: Yes.

MS TRESTON: I have briefly opened the evidence of Jennifer Ruhno, and I will take your Honour to that affidavit. It's document number 5 in the trial bundle at page 20.

HIS HONOUR: Just before you go there, we should have each of these files in Court, shouldn't we, for the affidavits to be drawn from them as these people are called?

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MS TRESTON: Yes, your Honour.

HIS HONOUR: Is there only one other file I need to get which is 7731 of '08?

MS TRESTON: Yes, your Honour. Your Honour, before I leave Mr John Mahlo's evidence, there is one other piece of oral evidence he will give which I haven't yet opened, and that is he will say that there is one other thing that his daughter said to him. When your Honour looks at the first of Mr Mahlo's affidavits where he is describing the events of the afternoon of what he thinks was Friday, the 16th of May-----

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HIS HONOUR: Yes.

MS TRESTON: -----where he is in the hammock in the garden-----

HIS HONOUR: Yes.

MS TRESTON: -----and his daughter says to him words to the effect she is making a new Will, he says there is one other piece of evidence which he will give, your Honour, and that's this, that on that occasion his daughter said to him that she was going to make her brother Brett the executor of her Will. He will say that what she said to him were words to the effect, "The three of us are the smartest people in this family.", meaning herself, John Mahlo and Brett Mahlo, and that's why she wanted Brett Mahlo to be her executor.

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Mr Mahlo will say to your Honour that he never mentioned that to a soul until he mentioned it to me late last week because he felt for himself that the family didn't need to know that Karen thought that Brett was smarter than everybody else, and for reasons of family harmony he never thought that it was an important piece of evidence until I explained to him that it was. In my submission, your Honour will make an assessment of Mr Mahlo that's most favourable in that regard, and your Honour will receive that evidence and understand the context in which it's given.

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I then move to Jennifer Ruhno and her affidavit at page 20. Is your Honour content to read her affidavit-----

HIS HONOUR: Yes.

MS TRESTON: -----rather than have me open it? Can I, before I go to her, your Honour, hand up this document? The affidavits were prepared at a time where there were a large number of matters in issue. I have communicated to my learned friend that I only propose to rely on certain paragraphs of the affidavits and I have attempted to identify them in a document which I'll hand up to your Honour now, the contents of which were communicated to my friend, Mr Nevison.

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HIS HONOUR: All right. I will have that marked for identification as MF11. Thank you.

MS TRESTON: Thank you, your Honour.

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MARKED "1" FOR IDENTIFICATION

HIS HONOUR: Just take a seat and I will read those parts-----

MS TRESTON: Thank you, your Honour.

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HIS HONOUR: -----of Dr Ruhno's affidavit. Yes, I've read those parts.

MS TRESTON: Thank you, your Honour. Your Honour, in terms of any additional oral evidence which Ms Ruhno will give, she will say that she - Anna rang her from the police station on the morning of Dr Mahlo's death, she arrived at Moffatt Beach late in the evening of the 29th of May, she went straight to Karen Mahlo's house. She will say that she saw a copy of the called suicide note to Anna and Ben, a printed version of it, on that Thursday, the 29th. She will say there was no discussion about Karen Mahlo's Will on that evening.

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On Friday, the 30th of May, she will say sometime between 9 and 10 a.m. - she can't be any more certain about the time - she was looking through the deceased's computer, seeing what she could find. She located a copy of the deceased's Will. She said - she will say she had to ask Anna how to print it

out because there was an icon in the top left-hand corner which you had to click on in order to access the print version, and it was a version of Microsoft she wasn't familiar with.

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HIS HONOUR: She didn't need a password?

MS TRESTON: No, nothing, it was not password protected, and she then printed that document. She will say that by the time Beverley Mahlo arrived at the house on the 30th, she had already printed out that document, and she will say that she was present with Anna, the third defendant, and Ms Beverley Mahlo when they went to see - the three of them went to see my instructing solicitor, Mrs McNamara, on the 3rd of June 2008, and at that time a copy of the printed version of the May 2008 document was provided to the solicitors.

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So at that point, your Honour, I interpolate there to say that there's positive evidence from two witnesses at that point to say that they saw a printed copy of the Will by that date which feeds into the reports of the experts that demonstrate that the document, for example, was accessed on the 30th of May 2008 at about the time that Mrs Ruhno says she was accessing it, but no evidence in the metadata or the print spools to show that it was in fact printed then.

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The plaintiff will then call the evidence of Mrs Beverley Mahlo, and your Honour will see that her affidavit in the trial bundle is document number 4 of proceeding 7731/08, and it starts at page 9, and I've handed up to your Honour the paragraphs which I propose to rely upon in relation to Mrs Mahlo's affidavit.

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HIS HONOUR: Just take a seat and I will read those parts. Thanks.

MS TRESTON: Thank you, your Honour.

HIS HONOUR: Yes, I've read that.

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MS TRESTON: Thank you, your Honour. Mrs Beverley Mahlo will also say that she was present at the meeting between her granddaughter, Anna, Dr Jenny Ruhno, herself and Mrs McNamara on the 3rd of June 2008 when a copy of the May 2008 Will was handed to Mrs McNamara.

Can I take your Honour then to page 488 of the trial bundle, which is a notice to admit facts in relation to certain facts communicated to medical practitioners? Your Honour can ignore the fact at paragraph 1 of the notice to admit. It was not admitted and it's not pressed. Paragraph 2 of the notice to admit facts being that on the 26th of May '08, the deceased told Dr Fredericks that she had separated from her de facto partner, John, et cetera, that fact is admitted. It's made on the basis that my learned friend doesn't admit the truth of the contents of the fact, that is that they had in fact separated, but admits that the deceased told Dr Fredericks that. So Dr Fredericks isn't required to be called. As to

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paragraph 3 of the notice to admit facts, my learned friends do not admit that fact, and Dr Stephen Phillips will be called in my case solely to prove that on that date of 22 May 2008 the deceased told Dr Phillips that her relationship with John Hehir was terminated, and Dr Phillips probably will be called shortly before 1 o'clock today, depending on how long my learned friend thinks he is going to be with him. Two minutes, I am told, so we will do him at your Honour's convenience shortly prior to the lunch break.

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Your Honour will also hear the evidence of Ceinwen, which is spelt C-E-I-N-W-E-N, Mahlo whose affidavit is document number 6 in the bundle. It should appear at page 28, and the paragraph numbers which are relied upon are in Marked for Identification document 1 which I have handed up to your Honour.

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HIS HONOUR: I will just read those paragraphs.

MS TRESTON: Thank you, your Honour.

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HIS HONOUR: Yes, I've read that.

MS TRESTON: Thank you, your Honour. As to the further additional oral evidence which Mrs Mahlo will give, she will describe to your Honour why she remembers this phone call very well, what the nature of it was that was very disturbing. Specifically, as she says in the affidavit, she remembers one of the first things that Mr Hehir said to her was a comment about her brother who had died sometime before in a road accident, how he was meant to die but - he wasn't meant to die, rather, but Karen Mahlo was. She said she thought the whole conversation was most unusual. She will say that to her recollection she had never met Mr Hehir, she doesn't think she had even spoken to him before, and she didn't know very much about him, but the conversation was very familiar and personal, and she recalls it.

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She will say that after she got off the telephone she discussed it with her sister, who was there at the time, about how disturbed she was by the conversation, and as a consequence her sister said to her, "Why don't you make some notes in relation to it?", which Mrs Mahlo then did. The original of Mrs Mahlo's notes are available and I will be tendering them through her. A copy has been made available to my learned friends.

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She will say that after she made the notes - I'm sorry, I will pause there - she will say that when she was making the notes the issue in relation to the Will was no more important to her than any of the other issues that she wrote down in the notes, she just thought the whole of the conversation was odd, so she recorded it about three hours after the conversation took place as best as she could whilst it was still very fresh in her mind. She will say that she then put the notes away in a folder and basically forgot about them. When she gave the affidavit in November 2008 she does not think that she had access to the notes and does not think that she told anyone

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about the notes. It was not until much later in these proceedings that she became aware that there was an issue in relation to what Mr Hehir knew or didn't know about the Will of May 2008 and she then produced a copy of them at that point.

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Finally, the defendant will call the police officer, Jodie Allan. I have mentioned already her evidence which I understand my learned friend accepts that the suicide notes were both on the printer early in the morning of the 28th of May 2008.

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The second issue which Officer Allan proposes to give evidence about is this. Can I take your Honour to the trial bundle, to the - page 4 of the index is headed "Nonparty disclosure by FAA". Now, FAA is the first defendant's financial advising business, and a notice of nonparty disclosure was served on that entity in August of 2009. Certain documents were produced in response to that notice, and they are exhibited - they form part of documents 33, 34 and 35.

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Late last week, however, the last page in your Honour's bundle in volume 2, page 551, was produced by the first defendant and provided to my instructing solicitors. It's a file note that purports to be made on the 7th of May 2008 as a result of a telephone conversation between Mr Hehir and the deceased, and it goes, on the face of the document, to a request being made by the deceased for certain information from the first defendant. It talks about this document that's called a basic calculator, calculator of inheritance, and says - attributes to her that she's trying to work out what her children's inheritance would be at various ages. Now, as I say, that document wasn't disclosed in response to the nonparty disclosure. Police Officer Allan will give evidence to your Honour that she was provided with - sorry, that she executed a search warrant on FAA, Mr Hehir's business, on the 20th of January 2011, and she seized at that time all hard copy documents relating to Dr Karen Mahlo, all computer electronic versions of documents relating to Dr Mahlo, including USB sticks, a laptop, things of that nature.

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She will tell your Honour that last night she was provided with a copy of this file note of 7 May 2008 at page 551 of the trial bundle. She will say this morning she has conducted an examination of all the documents that were seized in January 2011 and she will say that document does not appear in any of the documents from FAA's files be it a hard copy or an electronic version. She's looked for it this morning and it is not in the documents that were seized in response to the search warrant.

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Your Honour, otherwise, the only other evidence which I might need to call will be in relation to the joint experts.

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HIS HONOUR: I might take a break now for 10 minutes.

MS TRESTON: Thank you, your Honour.

THE COURT ADJOURNED AT 11.31 A.M.

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THE COURT RESUMED AT 11.45 A.M.

HIS HONOUR: Yes Ms Treston.

MS TRESTON: Thank you, your Honour. Before I call John Mahlo, John Walter Mahlo, could I just raise one issue and I want to make sure that your Honour and I are on the same page in relation to that and that's the presence of the second and third defendants. I want to make it clear to your Honour I don't represent the second and third defendants.

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HIS HONOUR: I understand that.

MS TRESTON: To the extent that they appear for themselves before your Honour, they might make their own decisions down the track as to whether they give evidence or don't give evidence.

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HIS HONOUR: I see. I had assumed that they weren't going to take any part in the trial. Could I ask them just to come forward just so that their answers can be recorded. Now, I will ask Mr Benjamin Sasonow - forgive my pronunciation. Is that right?

SECOND DEFENDANT: No, that's fine, your Honour.

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HIS HONOUR: Do you intend to take any active part in this case, that is, to ask questions of any witnesses?

SECOND DEFENDANT: I do at this stage, but not insofar as cross-examining. Just perhaps in having a statement at the end, near the end.

HIS HONOUR: Before I come back and say something about that, your sister Anastasia Sasonow, what's your position? Do you intend to say anything in the case?

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THIRD DEFENDANT: I am not sure yet. I just want to have a look and see how it starts to pan out first. I am not gonna - perhaps, yes. Yes.

HIS HONOUR: You are entitled to do that of course because you are parties and, within the rules of evidence, you are entitled to ask questions of any of the witnesses. You are also entitled to call evidence yourselves and to address me at the end of the case, but I should tell you this: that there is a difference between evidence and what's said at the end of the case by way of addresses.

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The evidence is what I receive in the form of documents, or affidavits, or what witnesses say from the witness box. That is the collection of information upon which I decide the case. The addresses at the end of the case are not evidence. So if you tell me something at the end of the case, it isn't something I have learnt in the evidence, I can't have regard to it.

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THIRD DEFENDANT: Understood.

SECOND DEFENDANT: I believe in that case that we may be called by the plaintiff to give evidence at some point.

HIS HONOUR: As parties to the case I would let you sit at the Bar table, which is the table there where the barristers are sitting. You don't have to do that. If you are going to ask questions I will have to have you sit there. One reason being that you will have to be recorded and there are microphones there, although there are other forms of recording also. Do you understand? So it's a matter for you as to where you wish to sit.

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SECOND DEFENDANT: Back at the stands I think, your Honour.

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HIS HONOUR: Thank you.

MS TRESTON: I call John Walter Mahlo.

JOHN WALTER MAHLO, SWORN AND EXAMINED:

MS TRESTON: You can sit down, Mr Mahlo. Mr Mahlo, is your full name John Walter Mahlo?-- Correct.

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And you live at - what's your address that you currently live at?-- Say again?

Where do you live, Mr Mahlo?-- In Orange.

Can you give the court your address, please?-- 31 - the street you live in all the time.

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We can come back to your street address?-- The worry has got me - my mind completely blocked.

Okay. Do you live at 13A Roselawn Drive, Orange?-- That's where I used to live.

That's where you used to live?-- Used to live, yes.

10

Do you still live in Orange now?-- In Orange, yes. Bing Street.

Pardon?-- Bing Street.

Bin is where you live now?-- Yeah, Bing Street.

How out do you spell that?-- B-I-N-G.

20

Thank you. You are a retired farmer and grazier?-- Correct.

You have given two affidavits in this proceeding. Might I ask the witness to be seen, from proceeding number 773108, the affidavits court document number 21 and document 25.

HIS HONOUR: Yes.

MS TRESTON: Mr Mahlo, I know you are nervous. Can you look at those affidavits. Are they two affidavits that you have given in these proceedings?-- The question is?

30

Are they two affidavits that you've given in these proceedings?-- Appear to be, yes.

Are the contents of the affidavits true and correct to the best of your knowledge?-- Correct.

Okay, thank you. Your Honour, can I tender the two affidavits of Mr Mahlo of 23 October 2008 and 12 January 2009.

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HIS HONOUR: The first will be Exhibit 4, the second Exhibit 5.

ADMITTED AND MARKED "EXHIBIT 4"

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ADMITTED AND MARKED "EXHIBIT 5"

MS TRESTON: Mr Mahlo, can I ask you to think back to a conversation that you had with your daughter Karen in her garden one afternoon; that you were staying with her in May

2008?-- Correct.

1

You say in your affidavit that you had some discussion with her in relation to her making a Will. Do you remember that?-- Correct.

Can you tell his Honour what you recollect about the conversation that you had with your daughter in May 2008 about her making a Will?-- It started while I was resting in a hammock on the eastern side of her home and she sat down alongside me on the grass and she said she was in the process of making a new Will.

10

What did you say in relation to that?-- I was not prepared to say too much because I didn't want to dwell on that sort of point.

Yes?-- And we-----

Why didn't you want to dwell on that point?-- Karen was under a lot of stress at the time and I didn't want to dwell on any thought that may make her feel more stressful.

20

Other than telling you that she was in the process of making a new Will, did she say anything else to you about what was to be in the Will?-- Only that she was going to rewrite the Will and she was going to appoint my younger son as executor.

Who is your youngest son?-- Brett Mahlo.

30

You don't mention in your affidavit that she said anything about appointing Brett as the executor of the Will. Why did you not put that in your affidavit?-- Well, she did say to me that - do you want my full explanation?

Yes, yes, Mr Mahlo?-- She did say to me that - and I did not put that in there because I thought it was - excuse me - it wasn't fair to the family but she said that, "You and Brett and I are the most intelligent people in our family and I am going to put Brett on as executor." I have never said that before.

40

Now, why were you worried about saying that to anyone before?-- I thought it was not fair for the family generally, to repeat it at all.

When did you first tell anyone about that piece of evidence?-- Only when you asked me did I have anything to add.

Now, Mr Mahlo, in that time, you say in your affidavit that you went up to stay with Karen in May of 2008 for about nine or 10 days. Do you remember that?-- Correct.

50

In the time that you were there, who was living in the house at Moffat Beach?-- Only Karen and myself, no-one else.

Can you tell his Honour whether you have any computer skills? Have you ever used a computer?-- No, I don't use one at all,

no.

1

Do you have any ability to go into a computer and work on documents?-- No, the only thing I - Karen used to bring up information on, say, Sterling engines for me because I couldn't do it and I used to look at what was printed on the screen, nothing else.

What's Sterling engines?-- It's a patented - it's hot energy engine invented in England in the 1800's somewhere. Patented. It was quite interesting.

10

Oh, okay, it was something you were interested in?-- That's all.

You say that when Karen brought up with you this issue about her Will, you didn't really want to discuss it with her. Why were you reluctant to discuss her Will with her?-- Well, you know, I believe that it was her and her two children, would be beneficiaries, and I see no reason why I should talk to her about it at all really. It was - and I wasn't - trying not to amplify the situation, that, you know, a Will is preparing for death and so forth. So I just let the matter drop as soon as I could.

20

Had she discussed with you some issues about her death?-- Say-----

Had Karen discussed with you some issue about her dying?-- I can't recall that she talked about - no, I can't recall that she said that she was going to die at all, no.

30

Thank you. I don't have anything more from Mr Mahlo in evidence-in-chief.

CROSS-EXAMINATION:

40

MR NEVISON: Mr Mahlo, you mentioned in your evidence just a minute ago about your interest in Sterling engines. You recall that?-- Yep.

And Karen would look things up for you?-- Yep.

On her computer?-- Correct.

50

Did that occur while you were visiting her on the occasion that you have just given evidence about?-- In that period of time, yes.

Do you recall her being on the computer and looking up information for you?-- Correct.

Was that at or about the time you say that you had the conversation about her estate or Wills?-- The day before.

1

The day before?-- Day - day - a number of days before.

That she looked up about Sterling engines?-- Yep, yep.

So according to your evidence, the conversation about the Will occurred after that?-- Correct.

10

The interest in Sterling engines, just to assist our knowledge, does that relate to submarines or hot air engines or something?-- Hot air. I think the Swedes tried it in a submarine. I think the Swedes tried to put one unsuccessfully in a submarine, the engine.

Is it true to say that in fact Karen spent a very considerable time one day researching information on the internet about Sterling engines and hot air engines and submarines for you?-- All she did was - I asked her to bring up on the screen information relating to Sterling engines, she pressed a few buttons and up it came. No more.

20

In fact, could she have been on the computer from 10 in the morning till 5 in the afternoon do you think?-- No.

But you certainly didn't use the computer for that purpose?-- I looked at it for about an hour probably.

Over her shoulder or something?-- No, she left when it came up and I just read what was on the screen.

30

So you didn't go and search web sites?-- No, I wouldn't know how to do that.

I suggest to you that in fact on the 16th of May she spent a considerable amount of time researching those subject matters, Sterling engines, submarines, hot air engines on her computer between about 10 and 5 p.m. What do you say? Is that possible?-- Your question again?

40

I am suggesting to you that on the 16th of May she researched on her computer subjects about the Sterling engine, hot air engines, submarines between about 10 in the morning and 5 in the afternoon?-- No, she didn't discuss that with me at all. I don't know what day it was. I can't recall whether it was - what day it was, the day. I don't know that. She didn't discuss it with me at all. She just brought up what I wanted on the screen, nothing more.

50

In any event, according to your evidence, any discussion you had with her about her Will or estate occurred some days after?-- Correct.

Mr Mahlo, you have sworn the two affidavits in this proceeding. They are Exhibits 4 and 5 now in this proceeding. Perhaps you should see them, please. Would you mind just casting your mind back over those two affidavits and

refreshing your memory about them?-- Well, you know, I don't carry glasses and with this dim light it's very difficult for me to-----

1

You can't see?-- To see them, yeah.

Have you reread them recently?-- Not carefully, no. I have seen the documents.

In preparation for today you have?-- I have seen the documents.

10

Can you tell the court why you made the second affidavit?-- No, not unless it was requested of me.

I suggest to you that in fact it was coincidentally timed with knowledge about the date when the document was last modified on the computer?-- I don't understand what you are talking about.

20

Very well. Your original affidavit suggested that it was the 16th of May when your daughter spoke to you about her Will. Do you agree with that?-- About that time.

Yes, but in respect of your second affidavit you were more ambivalent about the date. Do you agree with that?-- Well, I don't recall dates. I don't - the only way I could recall dates was saying - looking at the airline ticket to see what date was on it, knowing that it was a period of about nine days and somewhere in that nine day period it all took place.

30

What I am asking you to comment on is whether any inference should be drawn from the coincidence that at or about that time Mr Atkins, the computer expert engaged by your son Brett, was considering the evidence and determined that the document was last modified on the 15th of May.

MS TRESTON: I object. This man can't-----

HIS HONOUR: Yes.

40

MS TRESTON: Thank you, your Honour.

HIS HONOUR: I don't think you can ask the witness for his argument.

MR NEVISON: Very well.

HIS HONOUR: Which he may not have. He may just want to tell you the truth. I won't press it any further. So you can't offer any explanation for why you provided the second affidavit then?

50

MS TRESTON: Well, he's answered that. He said he was asked.

HIS HONOUR: He can be asked the question in cross-examination more than once, up to a point.

MR NEVISON: Thank you, your Honour. I won't persist further. So that we are clear then, when you left your daughter on the last occasion that you saw her on the 19th of May, your words were that she was in a good frame of mind and you did not detect any need to be concerned about her?-- Correct.

1

And you adhere to that view today?-- Correct.

That that was your assessment?-- Correct.

10

When you returned home did you discuss that situation with your wife Mrs Beverley Mahlo?-- I can't recall any particular discussion.

Did you confirm with her your observation and view, as to Karen's well-being that is?-- Well, I would have said that we had a good few days together and we - she showed me around the area and we enjoyed the company and I thought everything was very normal.

20

Did you discuss anything with Beverley about Karen's Will or mention that to her?-- No, no.

Going back to early May 2008 when Karen and Anna came down to Orange to visit, do you recall that?-- Yes.

Your assessment then was that things looked fairly rosey?-- Yes.

The mini BMW Coupe vehicle that you refer to in your affidavit, Karen, you say, was excited about it?-- Are you saying was I excited?

30

No, Karen was excited to have the vehicle, that was your observation?-- Observation was she very proud of that vehicle.

She had already owned it for a year at that time?-- I don't know how long.

40

50

I see. In paragraph 7 of your affidavit - I can read it to you if you need the assistance, turn it up, but you recount a conversation you had with your wife Bev where she, in effect, repeated her conversation with Brett, and you said or - in your affidavit, recounted that Brett said that, "Karen is very stressed. I think you should go up and spend some time with her." Do you recall that?-- I do recall that, yes.

1

Yes?-- Yes.

10

Bev said to you, "Karen and I do not see eye to eye on these sorts of problems, and I do not think I am the right person to go up." Do you recall that?-- That's correct.

Yes. "Karen's state of mind is suicidal."?-- Say again.

Karen's state of mind was suicidal?-- She didn't say that to me.

Bev didn't say that to you?-- I don't recall her saying that.

20

No?-- She said she had a problem.

Yes. But that conversation between you and Bev occurred as a consequence of Brett having spoken to your wife, Bev?-- That's correct, yes.

Yes. Not as a consequence of Bev having spoken to Karen?-- I don't recall.

30

No. Is it true to say, Mr Mahlo, that in fact your daughter, Karen, and your wife, Bev, didn't enjoy a particularly good relationship?-- No, I wouldn't agree with that.

I see. They didn't talk for lengthy periods of time; would you agree with that?-- Who talked?

Bev and Karen. From the time that Karen moved up to the Sunshine Coast, there were lengthy periods when they didn't talk?-- No, I can't recall that.

40

I see?-- In fact, she was regularly talking to my daughter on the telephone.

Do you recall the date that you arrived on the Sunshine Coast for your visit with your daughter?-- It was a Saturday morning in May, I think.

Mid May?-- In May, yes, sometime like that.

50

And that's in 2008?-- That would be about right, yes, correct.

And I suggest to you that in fact your daughter had moved up in December 2005 and established herself in January 2006; would you agree with that?-- That seems correct.

Yes. And you hadn't been up in that period, that visit in May

2008 was your first visit?-- Correct.

1

Yes. And in fact the first visit by any member of the family, the immediate family, that's yourself, your wife and your two other sons?-- I don't think anybody had been up there to my knowledge, no.

No. When Karen picked you up from the Sunshine Coast Airport on that day in May 2008 when you arrived, did she tell you that she had just dropped off some clothes at John Hehir's house?-- No.

10

That she had done some ironing for him?-- Didn't tell me anything about - anything like that at all.

In your affidavit you talk about Ben and Anna coming to visit. Do you recall them coming?-- Correct.

Yes. Ben lives at the Gold Coast?-- Say again.

20

Ben lives at the Gold Coast?-- I wasn't sure where he lived at the time.

I see. Did Ben stay over while you were there?-- No.

Not at all?-- No.

Sure about that?-- Didn't stay at the house while I was there. I was the only one that stayed in the house.

30

I see. Now, during your stay Karen discussed with you the problems that she was having at Queensland Health?-- Problems with what?

That she was having at Queensland Health, her employment difficulties?-- Discussed - say - I'm not sure what you're trying to-----

While you were staying with Karen-----?-- Yes.

40

-----did she discuss with you the problems she was having in her employment with Queensland Health?-- No, no.

Not at all? No. I see. And she discussed nothing with you about her suicidal feelings or attempts?-- No, we didn't discuss that, no.

No. Was it raised by her or by you?-- I certainly would have done. She might have referred to something like that, but I wouldn't have - wouldn't have continued the conversation on.

50

Yes. You didn't want-----?-- Didn't want to talk about it.

-----to dwell on those issues?-- No, that's correct.

Did she discuss with you that she was depressed?-- No.

No. How then was the subject of you going to see Dr Fraser

with her broached? Do you know who Dr Fraser is?-- I - that was the psychiatrist, I take it. I don't know the fellow, no, but I - I know what you're talking about, yes.

1

Yes. Did you go with her-----?-- Yes.

-----to her appointment?-- That's correct.

Yes. Were there discussions about the reason she had to see a psychiatrist?-- No.

10

Are you able to assist the Court then, just dealing with dates, why in your initial affidavit you seized on Friday, the 16th of May 2008 specifically?-- Say again.

Are you able to assist the Court by saying why in your affidavit, in paragraph 14 of your original affidavit-----?-- Mmm.

-----you seized on Friday, the 16th of May 2008 as the date that the conversation allegedly occurred with you and Karen about the Will?-- I think I originally said that I wasn't exactly sure of the date, but it was - it could have been a day or so before or a day or so after, but about that time.

20

It wasn't simply a matter of convenience because that's what the document which is sought to be proved as the last Will bore?-- I don't - I don't know anything about that at all.

You've never seen that document?-- No.

30

I see. In terms of this conversation that you say happened either on the 16th of May or around that time with Karen about her Will, what time of day would that have happened?-- Midafternoon.

Midafternoon. So are we to believe that it happened on the 15th of May then? Is that your evidence now?-- I said that I wasn't sure of the day.

40

Right?-- Because I don't recall dates, and therefore I have no recall of whether it's 13th, 14th, 15th. I know it was in about the middle of the period. That's all I could say.

Right. So you still have no recollection of the dates then?-- No, no chance at all.

Do you recall your daughter, Karen, being on her computer every day that you were with her?-- No, I didn't make that statement, no.

50

You didn't see her on her computer every day?-- Not every day, no.

Very well. But you are adamant, are you not, that the conversation about the Will with Karen, when you were in the hammock-----?-- Yeah.

-----occurred three or so days after she researched the engines for you, the Stirling engine?-- Yeah, within two or three days, yes.

1

That's your recollection?-- Yes.

Yes, thank you. In your affidavit you refer to your daughter, Karen, handing you a piece of paper when she said, "This is my Will."?-- That was after I came inside.

10

Yes?-- Yes, correct.

Do you recall what time of day that was?-- It was - I came in well after dark.

Yes?-- And it was shortly - within a half an hour, I'd say, of me coming in that she came into the TV room with the document.

Do you recall if the news was on?-- Say again.

20

Do you recall if the news was on or what-----?-- I had the TV running.

Yes?-- That's all.

Do you recall what was on?-- No.

No. In any event, according to you, your daughter, Karen, handed you a piece of paper?-- On the desk, yes.

30

Yes. On the desk?-- Well, in front of me on the desk, yes.

Was there a table there, was there?-- Table, yes.

Yes?-- Low table.

I beg your pardon?-- A low table.

A low table. And how many pages were there?-- I didn't look through the document closely at all. I just looked at the - what I saw on the front page, and then I tried to move away from that sort of discussion.

40

Well, was there more than one page?-- I didn't recall that, no. I didn't - I didn't - I didn't check.

I see. Well, just so we're clear about this, your evidence, as I understood it originally, was that you were handed a page. You're now not sure?-- Well, either handed to me or put on the desk, either.

50

Right. Well, what was either handed to you or put on the desk in front of you-----?-- Yeah.

-----you're not sure now whether it was one or more pages?-- I never claimed to be sure.

So when you said in paragraph 15 of the first affidavit, "She handed me a piece of paper saying words to the effect, "This is my Will.", I took the piece of paper in my hand and looked at the page.", you're now not sure whether it was one page or more?-- I only looked at the page that was on the front. That's all I recall looking at.

1

Yes. What else did you notice about that document?-- Say again.

10

What else did you notice about that document, Mr Mahlo?-- The thing that caught my eye was that my son's name was listed there in heavy print, Brett Mahlo.

Right?-- And looking down I noticed my grandson's name, and I recognised another name which I - which was my granddaughter who I hadn't known as that name.

Right?-- That's all.

20

This is the first time you knew, according to your evidence, that she was Anastasia?-- Anastasia, yeah, I hadn't known that before.

What else did you observe about the document?-- Only that I recall her scrawly signature on the bottom of it. That's all. I didn't have a closer look at any - any other reading of it.

You never saw your daughter print that document from the computer printer, did you?-- I didn't see her do that, no.

30

Is it your evidence that you read this piece of paper in detail?-- Say again, sir.

Is it your evidence that you read this piece of paper in detail?-- No, negative.

No. You just skimmed across it, as it were?-- Affirmative.

Yes. And you noticed that the document given to you had been signed?-- Say again.

40

You noticed that the document that had been given to you had been signed?-- Had been changed?

Signed?-- Signed.

Signed?-- Yeah, signed.

Yes?-- Yes, I did notice that, yes.

50

And you recognised that signature, according to your evidence, as your daughter's signature?-- Affirmative.

Yes. And she said, "This is my Will."?-- Affirmative.

Yes. But you were somewhat disinterested in engaging on the subject?-- That's correct.

And you wanted to move on?-- That's also correct.

Yes. Can you offer any explanation to the Court then, if I said to you that it was on the 16th of May that your daughter, Karen, undertook research on the Internet about engines, and yet you say that it's some days later that the issue of the Will was raised with you?-- That's correct.

10

Yes. But can you offer any explanation about the timing of that? That would put it out at 18 or 19, just before you left, that you had the conversation?-- Well, there was - the first number of days I was there, I had nothing much else to do, we toured the area, and I was interested in that Stirling engine and she brought it up on the screen for me. That was it.

Yes?-- Hour or so, finished. I never went near the computer again.

20

I see?-- Once and once only.

I see. Did Karen ever discuss with you during your visit in May 2008 when Anna and Ben should receive their gifts from her estate?-- Nothing was spoke to me at all about anything like that. Nothing at all.

So she didn't discuss them getting it at age 30 or-----?-- Not at all. Not at all.

30

Did she talk to you about you and your wife, Bev, getting anything?-- No.

Mr Mahlo, you've seen the document, I suspect, that your son, Brett, wants to prove as the last Will of your daughter, Karen, the document dated 16 May 2008; you've seen that document?-- I've seen it, yes.

Yes. You cannot positively swear, can you, to the fact that that was a copy of the document you say you saw?-- All I can say is it looked very similar in the outlay to what - the one I seen before.

40

Yes. Very similar. That's as high as you can put it?-- I can't say it is the same document, or the same piece of paper, but it looked to be the same.

Very similar.

HIS HONOUR: Looked to be the same piece of paper.

50

MR NEVISON: Yes. I probably can't take it any further. I have no further questions, thank you, your Honour.

MS TRESTON: Thank you, your Honour.

HIS HONOUR: Before you re-examine, I should ask-----

MS TRESTON: Sorry, I beg your pardon, your Honour.

1

HIS HONOUR: I should ask Mr Sasonow and Ms Sasonow, do you have any questions?

SECOND DEFENDANT: No, your Honour, we don't.

MS TRESTON: Thank you, your Honour.

10

RE-EXAMINATION:

MS TRESTON: Mr Mahlo, you told my learned friend that you weren't able to read the documents that's in front of you at the moment in this dim light?-- Correct, correct.

Do you remember that, right at the beginning of your evidence?-- Correct, that's correct, that's correct.

20

Now, how is your eyesight now compared to how it was in May 2008?-- It's degrading slightly every year.

Okay. Degrading slightly every year. All right. When you were shown the document by your daughter you say in May 2008, and she said to you, "This is my Will.", did you have any difficulty reading the document then to the extent that you tried to read it? Did you have any problem?-- I use what they call a pinhole camera effect. By squinting my eyes down, I can avoid some of the distortion, and therefore I can slowly make out some - major part of the detail.

30

Okay. So when she showed it to you in May 2008, did you have any difficulty reading the document then?-- Exactly, because the light wasn't good, and I could very slowly - would take me a long time to read the whole document.

Okay. Well, let's just - let's just go to that. My learned friend asked you some questions about what you actually remember of the document that she showed you on that day in May 2008. Now, you told him that you remembered seeing your son's name in heavy print?-- Correct.

40

Remember that? And you remembered seeing your grandson's name on the document?-- Correct.

And you remembered seeing your granddaughter's name on the document?-- That's the one that surprised me.

50

Okay. Because her full name is Anastasia?-- I didn't know that.

What had you always known her as?-- I just knew her as Anna.

Okay?-- And the spelling, I just didn't even understand the spelling.

1

I see. All right. And you say you recall seeing her scrawly signature on the document?-- Correct.

All right. Now, you don't have the document there in front of you, and do I gather from what you've said there's not much point me showing you the document now because without your glasses, you now can't read it?-- I don't have a prescription.

10

Okay. Can I ask you these questions and you tell me from the document - ordinarily I'd show it to you, but I will read you some parts of it and ask you some questions about it. Do you remember seeing anything in the document about a gift to yourself and your wife?-- No, I don't recall that.

Okay. Do you remember - sorry, you've said you remember seeing Benjamin's name and Anna's name?-- Correct.

Right. Do you remember seeing any provision in the Will about a former husband?-- No, no, not at all.

20

Okay. Do you know the names of the former husbands of Karen's?-- Not really, because she was married and divorced a number of times.

Okay. Did you ever meet a husband called Robert Wagner?

MR NEVISON: Well-----

30

MS TRESTON: I beg your pardon.

MR NEVISON: It's leading.

MS TRESTON: Is there an objection?

MR NEVISON: Well, it's leading the witness, your Honour.

HIS HONOUR: It sounds as if you are leading.

40

MR NEVISON: Yes.

MS TRESTON: Thank you, your Honour. Now, you were asked some questions about the time that Karen did some research for you on the computer about hot air engines?-- Correct.

And submarines?-- Correct.

Right. And you were asked - I'm not sure if you understood the questions, but - my learned friend was putting to you about that research having been done on the computer on the 16th of May. Did you understand that?-- I'm not sure of the date. I couldn't swear to 16th.

50

Okay. Just thinking about the time that it was that you had this conversation in the garden with Karen?-- Yes.

-----about her Will-----?-- Correct.

1

-----where in your stay, beginning, middle, end, where in your stay did that conversation in the garden take place?-- I thought it would have to be Thursday, Friday of that week. I don't believe it was Saturday, and it surely wasn't Sunday.

Okay?-- But I think Thursday, Friday. That's my nearest - going on that period of time.

All right. Now, why are you sure it wasn't Sunday?-- On Sunday my daughter drove me to the airport at Brisbane and we had a private aircraft - friend of mine - flight back to Orange.

10

Okay?-- Nothing else.

All right. And the Saturday, could it have been the Saturday or-----?-- I don't recall it being Saturday, no.

Okay. Although you're not very clear about the date upon which it happened, are you - how is your memory in relation to the content of what you discussed in the garden that day?-- Quite clear.

20

How is your memory in relation to the events where she came to you and showed you the document and said, "This is my Will."?-- I was quite surprised because she handed me or put on the desk the piece of paper.

Okay. So how would you describe your memory in relation to those events?-- Very clear, because I was quite surprised, to have that handed to me, "This is my Will." Quite surprised.

30

Okay. In terms of the document that was handed to you, can you explain to his Honour the extent to which you looked through the document, whether you leafed through the pages? How did you look at the document?-- I looked at the surface page, front page only.

Okay. So can you tell his Honour how many pages were there?-- I didn't - didn't even - I didn't bother to look.

40

Okay. Thank you, your Honour, I don't have anything more for Mr Mahlo. Might he be excused?

HIS HONOUR: Thank you, Mr Mahlo. Your evidence is finished. You're excused, thank you?-- Thank you. Thank you, your Honour.

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WITNESS EXCUSED

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MS TRESTON: Your Honour, could I have now Dr Stephen Phillips telephone in?

HIS HONOUR: Of course.

MS TRESTON: I beg pardon. Your Honour, something's happened at doctor's rooms. Can I call Beverley Mahlo instead?

HIS HONOUR: Yes.

10

BEVERLEY ANN MAHLO, SWORN AND EXAMINED:

MS TRESTON: Mrs Mahlo, could you please tell the court your full name?-- Beverley Ann Mahlo.

20

Where do you live?-- 31 Bing Street, Orange.

Thank you. Mrs Mahlo, you are the daughter of Karen Lee Mahlo?-- Yes.

The mother, I beg your pardon, of Karen Lee Mahlo?-- Mother.

I beg your pardon. Mrs Mahlo, you gave an affidavit in these proceedings in August of 2008. Your Honour, might Mrs Mahlo see court document number 17 from file 773108?

30

HIS HONOUR: Yes.

MS TRESTON: Mrs Mahlo, can you look at that affidavit for me. Is that an affidavit that you gave in these proceedings?-- Yes.

Are the contents of the affidavit true and correct to the best of your knowledge?-- Yes.

40

I tender that affidavit of Mrs Mahlo's.

ADMITTED AND MARKED "EXHIBIT 6"

MS TRESTON: Mrs Mahlo, after Karen's death, did you at some stage consult some solicitors?-- Yes.

50

Do you remember when you went to see the solicitors who now act for your son Brett?-- I think it was about a week afterwards, Karen's death.

A week after Karen's death?-- Yes.

Now, you know that in these proceedings there is an issue in relation to a document being a Will dated 16th of May 2008?-- Yes.

1

When you went to see the solicitors can you tell his Honour whether you had a copy of that document with you?-- Yes, I believe I did.

What did you do with the document?-- I think we left it with the solicitors. Yes, I believe so.

10

In what form was the document?-- It was - it was one that had come I think from her computer.

Was it a hard copy piece of paper?-- It was just on-----

Or was it on a computer disk?-- No, it was a piece of paper.

I don't have anything more from Mrs Mahlo, your Honour.

20

CROSS-EXAMINATION:

MR NEVISON: Mrs Mahlo, that meeting with the solicitor was the first time that instructions had been provided on your family's side in respect to this matter, was it not?-- Yes.

30

Just so we are clear who attended, it was yourself?-- Anna.

Anna?-- And Jenny Ruhno who came up to Moffat Beach because she was Karen's best friend.

They were instructions provided to the lady sitting at the far right-hand end of the Bar table?-- Yes.

Mrs McNamara?-- That's correct, yes.

40

She was then with Biggs & Biggs Solicitors?-- That's correct, in the Commonwealth Bank building as I recall.

Who was the client?-- I don't quite understand you.

When you met with Mrs McNamara, who did you understand was the client giving the instructions to her?-- Well, I thought we were acting on behalf of the children.

But Brett became the figure head to act for the children?-- Later - oh, well, I wasn't aware of the legal consequences of this, but Brett was the administrator or whatever you call it of the Will, so I suppose he was, yes.

50

But the real instructions then were coming from yourself on behalf of the children?-- Yes.

And Jenny Ruhno?-- Well, Jenny had nothing to do with it really. She came down with us to kind of be supportive, you know. She was just a friend.

1

So you were the principle person?-- I would be the principle person, yes.

That's what I am getting to I am sorry?-- I am sorry, I didn't understand what you were getting at.

10

You are familiar with court proceedings, aren't you?-- Oh, yes. Or one court case, yes.

Involving your family?-- Yes.

And the Westpac Bank?-- Yes, that's right.

So you knew what was involved in getting evidence ready and that type of thing?-- At that stage - at that stage I wasn't thinking very much about anything to be quite honest.

20

Let's just go back a little bit then to your affidavit which you have in front of you there and please take time if you need to refer to it. At paragraph 9 of that affidavit you acknowledge that the first occasion on which you met Mr John Hehir was on the 5th of November 2006 at a surprise party for your birthday; that's so?-- That's correct, yes.

There is no doubt at that time that your daughter Karen was infatuated with him?-- Oh, yes, they were both very much - they were very much together.

30

In paragraph 10 of your affidavit you refer to your daughter's excellent management style as a medical administrator?-- Exactly, yes. She did a lot of work at Orange and then she was put on to special boards in Brisbane because of the work she had done up there.

Nonetheless, she had trouble in her employment, didn't she?-- Yes.

40

Is it fair to say that an accurate summation of that might be that she was much misunderstood and unfairly maligned in her workplace?-- Well, I thought so, but I mean, I didn't have access to what had happened.

Whether it was organic issue in terms of her makeup or as a consequence of environmental issues in terms of her employment, she suffered badly from depression, didn't she?-- Yes, after - Karen's whole life was her reputation and her job and she was very, very involved in doing the best for hospitals and patients. She was just fanatical about it.

50

There were forces at the Nambour Hospital, I suggest according to Karen, that were trying to bring her down?-- Well, I think it was a little bit of envy of her immediate superiors because she was - had been promoted to these boards because she at Nambour had brought in peer review for doctors and also she

had put in a huge computer system which tracked patients and when all this business out of Bundaberg came up - was it Bundaberg? Oh, the Indian doctor up there, when that came up the powers to be in Brisbane looked at - brought in that this should happen; that there should be, you know, some computerisation following and peer review and they looked around and the only place in Queensland that had done it actually was Karen - was where Karen was operating. So then she was promoted to boards - or to be on different boards in - at the top of the echelon really.

1

10

It's perhaps easy for you to agree with me about this: undoubtedly your daughter Karen was a very, very smart person intellectually?-- She was intellectually. She - yes - she learnt management - I mean, she was very good at university and management, at university. You know, at learning things like that.

This is not a trial about her emotional intelligence though?-- No.

20

You say in your affidavit that it was about 12 months after your daughter started at Nambour Hospital that she was suspended?-- Yep.

Could you have the dates a little bit wrong there? I am just suggesting that in fact it might have been a bit longer?-- Well, I could have. I mean, you know, I wouldn't remember that exactly. It probably was and I am a bit - no, I am not sure of that.

30

In paragraph 12 in fact of your affidavit, on page two, you say, "At this time I was unaware that Karen had extended her financial commitments even further to purchase more houses." Do you see that in paragraph 12 towards the bottom of page two?-- Paragraph 12?

Twelve?-- On 12 I am saying the tone of my daughter's voice.

Yes, that's right, and in the second line-----?-- Oh, yes, more houses.

40

At this time-----?-- Yeah, that's right, I see that now.

-----she was going to purchase more houses and you were saying there that you were unaware that she had extended herself. Do you see that?-- Yes, yes.

If you go back to paragraph seven, earlier in your affidavit at the top of that page you say, "Karen and I were in regular contact with each other. Not long after she had moved from Orange to the Sunshine Coast we had a telephone conversation using words to the effect," and you talk there, in the second paragraph as it were of that conversation, "Karen be careful. If something happened and you couldn't work, how are you going to finance two houses"?-- That's correct. Not two houses did I say.

50

Yes, two houses?-- Oh, well, that was her own house and the one she was buying.

1

I see. So those paragraphs aren't inconsistent?-- No, no, because I thought she - you know, at that stage I always thought she had only bought this one house and I wasn't even - you know, I wasn't happy about that. I had experience with interest rates going up to 17 per cent.

That was the problem with the Westpac Bank?-- That's exactly right.

10

The dispute there. Do you recall being invited to Karen's belated 50th birthday party?-- Yes.

That was put on by John Hehir?-- Yes, that's correct.

The fact of the matter is you wouldn't go to that party, would you?-- Well, it wasn't that I wouldn't go, I was - it was a long way up there and I wanted to go at Christmas time and it just seemed - it just seemed a bit silly to me because I thought she was in - her emotional state wasn't good for a party anyway and I don't know - you know, I wasn't feeling that well to be quite honest.

20

But you were invited?-- Oh, yes, definitely.

And you elected not to go?-- Well, not until the last minute really because we were - you know, Wade was saying, "Well, maybe we will fly up," and - no, it was - it was kind of left in the air really.

30

In fact, nobody on your side of the family-----?-- No.

-----or your sons or daughters-in-law-----?-- No.

-----went to the party?-- No.

Karen, is it fair to say, was upset?-- Yeah, I realised that that night.

40

In fact, after that she didn't speak with you very much by phone, did she? There was a break-down in the communication?-- Well, yes, I suppose there was. I mean, she was definitely upset about it.

Generally would you say that your relationship with your daughter was not a particularly good one?-- No, I wouldn't say that at all.

50

How would you describe the relationship between you and your daughter?-- Well, I'd say it was a good - very good relationship. I mean, she - we rang each other and things like that, but I knew she was upset about this and it was difficult, when Karen was depressed, to talk to her to be quite honest. You didn't get anywhere.

John Hehir was very supportive of your daughter, wasn't he?--
Oh, yes, I was quite - you know, when she told me that he had
- he was looking after her financial things and had been a
tower of strength when going to - different things, I thought
that was wonderful.

1

They were your words, "tower of strength", his support,
weren't they?-- Yes.

In paragraph 15 of your affidavit you talk about an occasion
in or about June 2007 when Karen and John, that's John Hehir,
and your daughter Karen, came to Orange for the funeral of
Andy Mathers. Do you recall that?-- Oh, yes. They were -
Karen and Andy were great mates.

10

They didn't stay with you, did they?-- No. They couldn't
have because I was only in a small unit.

You refer in your affidavit to them visiting you for about an
hour on one occasion?-- Yes, yes.

20

Could I suggest to you that you may have been mistaken there
and that they may have visited you on a few more occasions
than one?-- I don't think so because it was the - Karen was -
or they had - I don't think they stayed that long and you
know, I can't really recall, but I don't think so. I remember
she drove up in the car and - no, I don't think so.

Do you recall them coming and collecting you and taking you
for coffee at a cafe in a park, when they visited?-- I don't
think so. I can't - there was - there's only one - there's no
place that you could have coffee in a park in Orange.

30

Very well. I will suggest to you that that's in fact what
happened on that occasion; they did see you on at least four
occasions?-- Well, they may have but I mean, you know, it's a
long time ago, but there's nowhere in a park that you can have
coffee in Orange. I know Orange well.

Thank you.

40

HIS HONOUR: Was this winter?

MR NEVISON: It was June.

WITNESS: Yes, it would be very cold in Orange.

MR NEVISON: Certainly no leaves on the trees. If you would
go to paragraph 21 of your affidavit?-- Yep.

50

And have a look at that. This is about you telephoning on the
night of the birthday to wish her a happy birthday?-- Mmm.

And she was quite upset that none of the family was at the
party. After speaking to her, you were concerned and
concerned that you should have made an effort, she sounded
very flat and then the next paragraph, paragraph 22, jumps
straight to "after Karen's funeral"?-- Yeah.

There's quite a gap there between 2007, around her birthday party time-----?-- Mmm.

-----and the funeral which occurred in June 2008. Was there really any contact between you and your daughter during that period?-- Oh, yes, there would have been lots of contact.

I suggest to you that in fact the relationship had become so strained that there was in fact virtually no contact at all between you and your daughter?-- No, that's not correct.

10

You refer to Wade putting forward a proposal that a house be purchased by the three of your children, Wade, Karen and Brett for yourself and your husband John?-- Yes, correct.

That's in paragraph 24 over the page. Is it true to say that that was really Wade's idea, he was the one really pushing for that to occur?-- Well, yes, I suppose so, but I consulted with Brett because he's a bit more cautious with money than Wade and he was quite enthusiastic about it, too. House prices in Orange were going up very quickly and selling very quickly and I think they wanted to get me settled somewhere close in and to the shops so you could walk and - I mean, there was a whole lot of reasons at that stage, but it happened very quickly, this business.

20

You give evidence there about Brett having a conversation with Karen about it?-- Yes.

30

But you never had a conversation with Karen about that issue?-- No. No, I didn't.

I suggest to you that in fact Karen and Brett were both opposed to the idea?-- Oh, no, Brett wasn't because Brett and I - I took Brett because he's particularly good with buildings and things and we did two inspections of that house with Brett and I really, you know, quizzed him on what he thought about it.

40

Karen was certainly opposed to it. Did you hear that?-- Not until - not - I didn't think she was opposed to it. I had heard that she was - wanted to put the money in and that she wanted to give more than - because I think the house was 300 and maybe 10 or 15,000 and they only had asked her for 300 - for a hundred.

Did the house purchase go ahead?-- No.

So the children didn't contribute?-- No, I pulled out of it.

50

Because there was descension in the ranks?-- Well, yes. When I had heard Karen was in hospital.

Let's move on to that. In paragraph 26 of your affidavit, about Karen being in hospital, the fact of the matter is that you had been ringing Karen's mobile, hadn't you?-- No, I don't think so. It was Brett - I think it was Brett that rang

Karen and found out she was in hospital.

1

I suggest to you that in fact you heard that Karen was in hospital and you tried to ring her and she simply didn't answer?-- No, I didn't. Brett told me she was in hospital and I think I had rung - I rang - did I ring John Hehir? Yes.

Well, you tell us your version of what happened, please?-- Well, Brett told me she was in hospital. He didn't know why and I think - actually I rang - no - I know what I did, I rang Ben and asked him if he knew where his mother was in hospital and why and he didn't know. He didn't know anything about it. So I was very - you know, I was quite upset about this.

10

It was concern. In your affidavit at paragraph 26 you say, "I immediately telephoned John Hehir at his workplace"?-- That's right.

Are you sure you did that?-- Positive.

20

In fact, could it not have been, and I suggest to you in fact that it was, that John Hehir rang you?-- No, he did not.

I suggest to you that John Hehir rang you at about 8 o'clock in the evening on that occasion?-- Not to my memory. I mean, I don't - I mean, I could make a mistake but I am sure I rang John Hehir - yes, I did ring him because I had to first of all find out his - I remember this now particularly. First of all I had to find out his name and then I had to find out the name of his business and I have forgotten how I did that, but I did rang him through the business and I rang him at his business. Yes, I remember that particularly.

30

Mrs Mahlo, in fact, you didn't even recall his surname, did you?-- No, no, I always spoke to him as just John.

The chronology in your affidavit doesn't quite sit comfortably with that version you have just given?-- Why not?

Because if you go to paragraph 26 it says, "I immediately telephoned John Hehir at his workplace."?-- Well, I-----

40

Over further, and you can comment on this, at paragraph 30 you then had a conversation with Ben about John's name?-- Well, I might have got this in the wrong sequence because when I gave this affidavit I was quite emotional, I was raw actually, but I remember particularly now I didn't - I even have a book at home where I wrote down what his name and the - when I finally found out that she was in Buderim Hospital, I think in ward C, and I had flowers sent to her through Interflora. No, I had to find out John's workplace number to find out where Karen was and I had rung Ben first. I am positive about that.

50

Well, in fact, I suggest to you that John Hehir rang you?-- No, he did not.

When you were trying to ring Karen?-- No, I couldn't have rung Karen in the hospital.

1

John told you that Karen didn't want to talk to you and that she did not want you to know where she was?-- No, I said - I have forgotten what he actually said but he said that she wanted a complete rest and for me to send the flowers to him and he'd deliver them in the hospital and I - I was quite - you know, I thought that was a bit funny.

Well, in fact, you had already established, according to one version here, that your daughter was in the Buderim Hospital?-- Well, I had to find out that. Now, who told me that? I'm not sure who told me that now to be quite honest.

10

I suggest to you that in fact John Hehir didn't tell you to send any flowers to his workplace at all?-- Yes, he did. Oh, I have got it here but I just forgot it for the moment. It was Ben that said his mother was in Buderim Hospital. I mean, this was, you know, a long time ago.

So your recollection is not exactly perfect?-- Not - no, not now.

20

Anyway, going to paragraph 33, you recount a conversation you say you had with John Hehir?-- 33, yes.

I suggest to you that in fact you didn't have the conversation as outlined there but you certainly did make known to Mr Hehir that you wanted nothing to do with going ahead with any house and any contribution by the children?-- I didn't - he quizzed me at that time of why the house was - he was - he was - he quizzed me why the house was being put in our names rather than the children's names seeing they were contributing and I really didn't think, you know, it was very much of his business to be quite honest and then when he said something about it being "our money", that we were - that it was being contributed from Karen, I was not very happy about that, but I started to really worry about Karen contributing this money because I knew she had these - her own home and the other one involved and I just said - I just said to the boys, "I'm getting out of this. I don't want any more to do with it," because, you know, it's - you know, I was pretty - a bit angry and anxious at the time about the whole business.

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40

I am just mindful of the time, your Honour.

HIS HONOUR: How much longer do you think you will be?

MR NEVISON: I will be another half an hour, your Honour.

HIS HONOUR: We will adjourn now. You will have to be back here, Mrs Mahlo, for 2.30?-- Thank you.

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THE COURT ADJOURNED AT 1 P.M. TILL 2.30 P.M.

THE COURT RESUMED AT 2.31 P.M.

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BEVERLEY ANN MAHLO, CONTINUING:

CROSS-EXAMINATION:

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HIS HONOUR: Yes, Mr Nevison.

MR NEVISON: Yes, thank you, your Honour. One house-keeping matter before we begin with the evidence again, your Honour, and that relates to the amended defence of the first defendant.

HIS HONOUR: Yes.

20

MR NEVISON: I seek the leave formally to amend the defence of the first defendant consistent with the discussion had earlier. If I might hand up to your Honour in fact two copies, one the formal file copy and one for the working papers.

HIS HONOUR: You've seen this, Ms Treston?

MS TRESTON: It's just been handed to me before your Honour came in, so I formally oppose leave until I've had the opportunity to give proper considerations to the amendments overnight. So I'd ask your Honour not give leave yet.

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HIS HONOUR: All right. Thank you. I will have it marked for identification as MFI2.

MR NEVISON: Thank you, your Honour.

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MARKED "2" FOR IDENTIFICATION.

HIS HONOUR: Yes.

MR NEVISON: Yes, thank you, your Honour. Now, Mrs Mahlo, if we can go back to the time that Karen was in the Buderim Hospital, that would have been in or about September 2007, would you agree with me?-- I'm not sure about that.

50

You don't have a recollection?-- No.

No?-- No.

Okay. Well, at paragraph 35 of your affidavit, you say, "Karen did not ring me for many months following her discharge from hospital.", right, and then you give a version of a

conversation you had with Karen. Are you able to pinpoint a date when that conversation occurred?-- No, I think we didn't ring each other for maybe two months. I'm not sure of this.

1

Yes?-- Because I was very cross with her for getting me into this pickle, and I was also cross with myself for getting into the pickle, you know, with the house because I had signed up and then had to get out of it, and I really didn't-----

Yes?-- Wasn't happy about that.

10

Yes, so you were both cross with each other?-- Well, I didn't know how Karen felt, but I was - I just didn't - I just thought I'd been put in a very bad position, and I thought she should have realised her - you know, I should have realised about her financial position, and she shouldn't have gone down what she did.

Yes?-- I know it was - you know, she was a generous person, but I thought she should have thought about it more, and I - personally I was blaming myself, too, I should have thought about it a lot more, but it was something that happened over a week, I think, if I remember, I think.

20

In any event, in your affidavit, in terms of the chronology you've outlined for the purpose of the Court, the next event is Wednesday, the 30th of April when you say Karen - 2008 when you say Karen telephoned you?-- No, I think that was - that was about Anna's thing, I think, wasn't it? About Anna had a cyst or something - no, no, that was when Anna - they were coming down. That was - quite a long time after that was when they were coming down for the weekend. I think it was a long weekend in Brisbane and they - Anna and she were coming down and Anna was going to meet friends.

30

Yes, very well. So they were making arrangements?-- They were making arrangements to come down, but that - that was a considerable time after this.

Thank you. And another house-keeping matter, your Honour, just appears to have come to my attention. It would seem that page 7 of Mrs Mahlo's affidavit is missing, and that my page numbers go 14, 15 in the index, but page 7 is missing. So we may need to remedy that, and I don't allocate any blame at all.

40

HIS HONOUR: Yes, it is.

MR NEVISON: Yes. So we will remedy that later, your Honour. So when Karen and Anna came down to see you in early May 2008, they didn't stay with you, did they?-- No, I had no room at the unit.

50

You met them at a restaurant?-- That's right, we had lunch.

MS TRESTON: Your Honour, can I, just for your Honour's purposes, hand up a copy of page 7 that your Honour can pop in your version.

HIS HONOUR: Thank you.

MS TRESTON: So that at least your Honour is working from a full copy. I am sure all the parties have a full copy.

MR NEVISON: I thank my learned friend and - yes.

MS TRESTON: And I'm sorry if that wasn't in the trial bundle.

10

HIS HONOUR: Yes. Yes.

MR NEVISON: Yes, thank you. In any event, going now to page 8, and paragraph 41 - sorry, and just before that, on the page 7, before that, there's talk of conversations with Karen?-- Yeah.

And about the need for John to go to the Sunshine Coast?-- My husband John?

20

Yes?-- That was - that was long after that luncheon.

Yes. Indeed. But what I'm suggesting or going to suggest-----?-- Or sometime after the luncheon, anyway.

Suggesting to you is in fact that arose as a consequence of contact Karen had with her brother Brett, and then Brett spoke to you, didn't he, about it?-- What, about John going to the Sunshine Coast?

30

Yes?-- No. Karen rang me after she went back to Brisbane - she went back - came down in early May and I think she went back on the 4th, and then she rang me on the 7th and told me that she'd - about the suicide attempt and I was horrified, and I immediately asked her would she like one of the family or John or I to come up, and she said, "Perhaps Dad could come up.", because she and John were particularly close and - very, very close because they spoke the same language, actually, they were always interested in mechanics.

40

See, what I am suggesting is in fact that conversation was had by Karen with Brett, not with you?-- No, it wasn't, it was had with me.

Well, notwithstanding that desperate situation, you never went up yourself?-- No, she went - she asked - she asked - particularly asked for John, and I could see why John was the best person to go up, because he wouldn't - he wouldn't - he would just be there for her, whereas, you know, I might - I know I would want to know - I would try to solve her depression for her. She didn't - she didn't want to be mothered. Karen hated to be mothered.

50

Yes. Also I suggest that in fact it was a product of the fact that you and Karen weren't all that close?-- Oh, yes, we were close, very close, but Karen didn't like discussing those things - you know, anything about - personal things with me, you know, not those kind of - she'd discuss work, but she

wouldn't - when she was depressed she wouldn't discuss depression or why she was depressed and those kind of things. It wasn't-----

1

Well-----?-- And she wouldn't discuss it with her father either because she didn't want to discuss it.

Yes?-- She never wanted to discuss it. She wanted to work it out herself.

10

She was very self determined?-- Particularly.

Yes?-- When she was - you know, she was very independent in some ways.

Very well. Well, when John returned, did he discuss with you Karen's situation at all?-- Well, he - he wouldn't have come back if he thought she wasn't getting better. He - I mean, they-----

20

Well, did he discuss it with you?-- Oh, yes, we discussed - first thing I asked is, you know, "How is she?", and, "Has she - what is she doing?", because I wanted to know what she was doing, and - you know.

And were you satisfied then as a result of those discussions that things had settled down perhaps?-- I thought they'd settled down but I still rang her practically every night, just to make sure and see how she was going, because I could always tell by Karen's voice how depressed she was.

30

Yes. And was there any discussion between you and John on his return about Karen's estate or her Will or anything?-- No, no, no.

Very well. In fact, John's position was that she was in a good frame of mind when he returned, wasn't it?-- Well, he thought she was - you know, he thought she was, you know, better. He was a bit worried about her being in that - it was a very large house at night-time and she should have company and he asked Anna to look in all the time, I believe.

40

Yes. Mrs Mahlo, in paragraph 46 of your affidavit, you've set out a conversation you say that you had with Karen the night before her death?-- Mmm.

There's no suggestion that she was suicidal in your mind that evening?-- Not at all, no, no. She was making plans about - actually about another job, too, she told me a couple of things she was thinking about, and she had Anna to take her to the doctor the next day, I remember, and-----

50

Can you pinpoint the time of that call?-- Yes, it was - it was right on mealtime, between 7 and 7.30.

Right. Okay?-- I remember it perfectly.

Yes. And is it fair to say that for all intents and purposes

it seemed like business as usual for Karen?-- Well, Karen was making - starting to - really making plans of what she was going to do in the future, and the plan she was making was not such high powered jobs that she considered before, and I thought this was great, because I thought that her position - I mean, she was fanatical about her positions, and I thought-----

1

She was focused on the future?-- She was focused on the future, yes.

10

Thank you. She spoke to you about sunglasses?-- Yes, yes, I got those the day after I heard she died.

Yes. She talked to you about gifts for other people?-- Gifts?

Watches?-- Oh, yes, that's right, she had a watch for - she'd send a watch for John and she was going to give me one.

20

She mentioned, I think you said, about Anna's appointment about a cyst?-- Yes, she had to have that removed.

She told you that Ben was coming up the following week?-- That's correct.

For all intents and purposes she was looking forward?-- Yes, she certainly was. I was - I was so happy that night.

You were informed of your daughter's death by Dr Jenny Ruhno?-- That's right.

30

Yes. And she's Karen's friend?-- Yes, she was Karen's best friend.

Yes. You weren't telephoned at that time by Anna or Ben?-- No, no.

No. Can we go to the 30th of May when you've flown up from Orange to the Sunshine Coast and-----?-- Yes.

40

Yes. Paragraph 48 of your affidavit I'm up to?-- Oh, yes, yes, yes.

Yes. You'd flown up. You went straight to the house, did you, at William Street?-- Yes, it was a terrible trip up, yes, I went straight to the house.

Yes. Did you fly to Brisbane, did you?-- No, we - we were booked - I was booked to Maroochydhore.

50

Right?-- And I actually collapsed in Mascot.

Yes?-- And I thought I wouldn't get on the plane, and then they put me on the plane when I explained why I had to go on the plane, and they couldn't land, they made two or three attempts at Maroochydhore to get in and high winds, I have forgotten what it was, we had to go back to Brisbane, and then

there was a great delay there because of no buses, and we got on a school bus, and finally got to Maroochydore.

1

Right?-- That was a terrible day.

Was that, to your recollection, the 29th or the 30th? Was it the day before your meeting with Jenny and Anna at the house?-- Well, I've got the 30th of May here and I assume I would have looked up - I - my travel records. I'm not - you know, I can't-----

10

That's reliable enough then, yes?-- I thought it was.

Yes. Do you recall what time of day you arrived at the-----?-- Yes, it was - it was - I'm not sure, it was 7 or 8 - you know, it was late.

In the evening?-- It was in the evening.

I see. And did you immediately have the conversation then that you've outlined in your affidavit in paragraph 48?-- Yes. I was bombarded with everything when I got up there, and I was in no mood to - I just - yes, they told me everything that-----

20

Yes?-- What had happened.

Well, I'm just trying to get it straight in my head. You say, "It was during a conversation with Anna and Jenny in Karen's house that I found out that Karen had made a Will when John Hehir first moved in with her leaving that house to John Hehir and him control of the estate." Now, are you there referring to the February 2008 Will?-- I didn't see that Will at all. It was just told to me.

30

Right. Okay. But that's the Will that was being told to you, the earlier Will that Karen had made out?-- The one she made out in John Hehir's office, yes, I think.

Yes, in John Hehir's office. That's what you were told, is it?-- Yeah, I believe - well, I didn't know it was in his office, but I just knew there was a Will made out.

40

I see?-- I think I heard later on it was made there. I'm not sure about that.

Yes. Was there any further discussion then with you about any documents or Wills relating to Karen's estate at that time?-- Well, they told me that she had written another Will that was up there unsigned, they couldn't - there was one left there unsigned somewhere or other.

50

Right. Did you - did you see a copy of that document at all? Was it shown to you?-- Look, I was pretty hazy about that night, because I wasn't feeling well, but I believe - I'm not sure. There probably was.

Well, was there a discussion about the terms of that

document?-- Only that - look, I - only that it was quite - it was leaving the things - I mean, everything to the children and - you know, it was in general terms. That night was pretty bad for me.

1

Well, do you recall who was doing the talking about the document?-- Well, it would have been - I mean, it was a family discussion, being Anna and - Anna and Jenny were there when I got there.

10

Yes. Was there anyone else there?-- I think Ben came up the next day, if I remember rightly.

And did you remain at the house and stay at the house then?-- Yes.

Yes. And who was occupying the house at that time then?-- Anna and Jenny were there.

Yes. And they stayed at the house that night-----?-- Oh, yes, yes.

20

-----with you? Yes. And did Anna then stay on in the house?-- Yes.

Yes. So when did you first see a printed copy of this document that you were told of?-- Well, I - I believe it was the - I believe it was the first night I went up there, but, you know, I'm - I'm - it could have been the next morning, but I think it was that night.

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You can't recall?-- I'm not - I was not very well.

So going to paragraph 48 of your affidavit then, and we appreciate the circumstances, Mrs Mahlo, but is it fair to say that that's not a completely accurate record of what occurred that evening?-- What's that?

What you've said in paragraph 48 is the conversation that occurred?-- With Anna?

40

Yes?-- I can remember - I remember her saying that she wasn't - she was very upset about the whole thing.

Yes. So your memory is improving. Yes. Go on?-- Well, I mean, there's some things that stand out, and I can remember Anna being terribly, terribly upset.

Okay. Well, what else do you remember now that you've had the advantage of refreshing your memory there about the conversation? Was there mention of an ironing board?-- I don't know when that was mentioned.

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Well, do you want to depart from what you've said in your statement? You've said in your statement that you flew to the Sunshine Coast on Friday, the 30th of May, you went basically to the house, you met there with Anna and Jenny, and you had a conversation about Wills, and then you specifically-----?--

Yeah, well, we - we would have - I mean-----

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Well, do you know?-- Well, I believe it was that night that they were talking, because everybody was telling me everything that night, and Anna was-----

Mrs Mahlo-----?-- -----particularly upset.

MS TRESTON: Let her finish.

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HIS HONOUR: You interrupted her.

MR NEVISON: Yes. Very well. Yes.

HIS HONOUR: Sorry, everyone was telling you everything that night?-- Yes, I mean, they were all telling me what had happened and I was pretty upset, and I believe that the Will was mentioned, and I believe that they said there was one there in the office, because - well, it would have been on the ironing - there is an ironing board in the office, and Anna was particularly upset about the whole thing. So was I, to be quite honest.

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MR NEVISON: Well, was anything mentioned about a computer at that time to you, or you don't know or-----?-- Well-----

Only what you can remember, Mrs Mahlo?-- I don't - I can't really recall now because, you know, I found it very difficult to go over this, because it brought it all back. I read it - I read it before I came down, and I read it last night, but it just brings everything back. It's not, you know - Anna - Anna was upset, I was upset. I believe - I believe they showed me that thing that night, but I'm not - you know. It's-----

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You haven't mentioned in your statement or affidavit that you were shown anything?-- No, well, I mean-----

Can you not - perhaps you're not sure?-- I know I was shown it either then or the next morning. I'm not sure when.

40

Yes. What I'm concerned about is whether what you've said was the conversation there was an accurate statement of what you believe was said by Anna to you?-- Oh, no, Anna was - Anna was very upset and she - she - I mean, she - she - well, to be quite honest, she couldn't stand John, and she wasn't going to be controlled.

Did she say to you these words: "I'm not having that creep controlling my life until I turn 30."?-- Yeah, well, I - I - I remember the - in my memory, at the time when I wrote this, I thought the Will was 30, and I thought that she said 30, but it could-----

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It's not 30 though, is it?-- It's 35.

Yes?-- And I could have made a mistake there.

Yes. So the 30 was just an assumption on your part?-- Well,

she said the time - I mean, she would have said 35, I assume.

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I see?-- But I had 30 in my mind all the time, and, you know, it - it wasn't - it was a long time, and it didn't mean much to me.

Right. I see. At no time did you discuss with your daughter any interest you may have in her estate, did you?-- No. How do you mean interest?

10

Any expectation that you would have from her estate. I suggest to you at no time did you talk to Karen about what you'd get from her estate?-- Oh, no, no, no.

You expected her to live, didn't you?-- Oh, of course.

Yes?-- I knew - I knew about the first Will she wrote in Orange, and she'd left me in control of the children and the house and everything until they were 21, and I knew she - you know, we had discussed that, and she wanted - if she had had a car accident or something, she wanted me to look after the kids and-----

20

And did you hear that that Will had been overtaken subsequently?-- No.

No. There was no discussion?-- No discussion at all.

No. Thank you. In paragraph 59 of your affidavit you say that during the three weeks that you were at Moffatt Beach following Karen's death you searched the house thoroughly for the signed copy of the Will?-- Mmm-hmm.

30

By that what do you mean searched thoroughly? What did you do?-- Well, I went through even the bookcases and the books and all of - I went through all her documents, everywhere I could think of, and I had Brett ringing me and suggesting I went through the boxes that were in the garage and - I went through everything that I could think of.

40

Very well. When you say signed copy of the Will, which document are you referring to?-- I'm referring to the one that she showed my husband which I knew about then.

Which you knew about when?-- John didn't - had told me on the day - I think it was - he probably told the - he told the boys after Karen's death, but I didn't know when I went up there, and the boys rang me, I believe, and told me that there was a signed copy somewhere and that I should look for it.

50

I see. But - yes. So that was your source of knowledge about it being signed, was from John through the boys or something?-- Through the boys, yes.

Was that your only source of knowledge, of it being a signed document?-- Yes, yes.

I see. Your Honour, I have a series of questions that really

are bordering on irrelevant, quite frankly, and I don't want to delay the proceeding. They relate to versions of this witness in the affidavit about what happened subsequent to death at the time of the funeral. They go to some issues about credit and I just simply don't want to be in a position where I haven't put something to the witness, but, quite frankly, I consider that they are very marginally relevant. So I would just perhaps table that at this point and I will desist from any further questions-----

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HIS HONOUR: Do you know what the subject matter is, Ms Treston?

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MS TRESTON: No, I don't, and my learned friend should ask what he thinks is relevant.

HIS HONOUR: Well, he may have actually good reasons in the circumstances that prevail in this case not to put things that he doesn't think are critical to the case. Would you mind just discussing with Ms Treston-----

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MR NEVISON: Thank you, your Honour.

HIS HONOUR: -----what it's about?

MR NEVISON: Thank you. Excuse me, your Honour. I will continue with my questions, your Honour. Mrs Mahlo, would you go to paragraph 53 of your affidavit, please?-- Mmm.

Now, John Hehir rang you and invited you to have coffee to try and come and sort some arrangements out for the funeral, didn't he?-- I don't think - he just - I don't know - he didn't mention - he just said he wanted to have coffee with Jenny and I.

30

Yes?-- It was, I believe, the day before the funeral.

And you refused that request, didn't you?-- I was - there was so much to do, and I explained that to him.

40

Yes. But you refused his request to meet?-- Oh, yes, yes.

To discuss it?-- I said I couldn't. This was a phone conversation I had with him.

Yes. You were pretty cranky with John Hehir, weren't you?-- I tried not to be, but the fact that he hadn't told me about Karen's suicide was really - really upset me.

Yes. That's at the time at Buderim Hospital, you mean?-- No, no, no.

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The subsequent one?-- I didn't know what had gone on at Buderim Hospital. It was the one that - you know, when - that happened that she told me about.

When she was in the coma and airlifted to Brisbane?-- Yes, yes, and I wasn't told, and that really - you know, she could

have died.

1

That happened in April, did it not, of 2008?-- Yes.

Yes. And she was subsequently placed in New Farm Clinic?-- I didn't - I don't know where she went, but I didn't - I wasn't told.

Yes. I suggest to you in fact that you weren't told because of Karen's express request to John not to tell you about these things?-- Well, I don't - I don't know about that.

10

Very well?-- I don't think - you know, I just wasn't told and it was-----

Yes?-- If she was worried that I'd worry too much, well, I don't know.

Very well. Well, without reference to your affidavit in front of you, don't refer to that at the moment, but could you just tell the Court then what transpired in the conversation between you and John when he rang and invited you for coffee to sort the funeral out?--

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Yes, well, I was - I explained to him that there was too much to be arranged and, you know, I didn't want to upset him at the time either and I said, "Well, I just can't - I just haven't got the time, John," and then he started discussing Karen, I have forgotten what he - you know, he had said to me and I said, "Well, you know, I think Karen's" - Karen - it may have brought about something towards her death that she was involved in - financially, you know, she was having trouble financially, worrying about her house and that kind of thing and what she had done and he said, "Oh, no, no, Karen never worried about - didn't worry about the finances," and I said, "No, she - she told me that, you know, she was worrying. And then I said to him, "Look, you know, and she's left me a large amount of money and I - you know, and I said, "Well, I really - I'm 74." I said, "If" - you know, I just don't want - I felt I was profiting from her death really and I said, "Well, I will put that money into the - I will invest that money and the kids can get it." Ben and Anna - it would probably be better they come back later and he said, "Yes." He said, "I know." He said, "She increased it from 150,000 to 300,000." I knew that anyway.

How did you know that?-- Because I had seen the Will that she had written, that she had left on the computer. It was around the house, you know. People had copied it out.

By this time you had seen it?-- Yes.

The hard copy?-- Well, it was - you know, I had seen a copy of it.

That was the first occasion you were told about or you came to know what you were getting out of the estate?-- Oh, no, you know, this was - this was the day before her funeral. I knew that before that.

A couple of days before?-- Well, when I came up there. I don't know whether it was that night as I told you or the next day, but I knew about it.

I suggest to you, Mrs Mahlo, that there was no discussion whatsoever with Mr Hehir about the amount that you would receive from your daughter's estate in that conversation?-- Yes, there was.

I suggest to you-----?-- I remember - I remember particularly because he - the way he said it and it really stung me that he might think that I was benefiting from Karen's death. I-----

In any event, you're leaving whatever you get to your grandchildren, are you?-- Well-----

MS TRESTON: That is irrelevant.

MR NEVISON: I won't press it. I won't press it, your Honour. I suggest to you that in fact John Hehir called you to invite you for coffee to discuss the funeral arrangements, you were

very angry at him and you refused his request?-- That is not correct. Actually, Wade - because he had been - they were talking to him and he was running hot and cold about what he would do, whether we would recognise that other Will, the Will that was on the computer, whether he would recognise that and step out of the way or he wanted control and they said, "Whatever you do," told me, "Don't upset him," and I was trying not to upset him, but, you know-----

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Did you ask him whether he had seen a copy of this document at all, at that time?-- I can't remember that, but I-----

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I suggest to you he hadn't even seen it?-- Well, he - he must have seen it because he knew the amount in it and I knew later on - I don't know when from later on but I knew that he had been - he had been advising her about that and I can't remember when that came up.

You also say that John went to the funeral directors after the funeral to complain about the way it was conducted. You say that, don't you?-- Well, you could check with the funeral directors because they told me-----

20

That's what you say, isn't it?-- Yes, but they're on record because they said - they told me that he had complained because they had - he hadn't - they hadn't - I think, what was it? They hadn't announced that he was having a separate wake at the golf or some club or other and he was very angry with them and they said, "We will take a note of this." "We have taken a note of this," because they were very nice people."

30

I suggest to you that in fact John Hehir never went to the funeral directors after Karen's funeral but he did complain on the day because a funeral provider failed to announce that there was also a wake at the RSL?-- Yes, well, it may have been on the day of the funeral.

So you would accept that?-- I would accept that, yes. I mean - yes, I - you know, that was irrelevant to me, which day.

40

Just going back to the 30th when you arrived up and the discussion about any Will document, was there any discussion with you about who had found any documents on computers at that time?-- No.

No?-- Not that I remember anyway.

So you don't know whether it was Anna or Jenny who found anything on the computer?-- No. It wouldn't have interested me very much.

50

It interested you sufficiently to go to the solicitors on the 3rd of June to provide instructions?-- Well, it was getting - you know, we - my sons had suggested that we seek advice for the kids, Ben and Anna.

Are you the person then responsible for continuing to provide those instructions, or whose giving the instructions now?

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MS TRESTON: Well, I object. How is that possibly relevant? I have told your Honour who I appear for. There's only one party who I appear for and that's the plaintiff in these proceedings and that's from whom I take my instructions.

HIS HONOUR: What are you suggesting is-----

MR NEVISON: The difficulty is - and it does raise a point that I need to put on the record - the plaintiff Brett Mahlo is not being called by the plaintiff to give evidence.

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HIS HONOUR: What evidence could he give?

MR NEVISON: Until he is called I don't really know, but I have a little insight into some things, but we have agreed to an affidavit of Mr Mahlo forming part of the trial bundle because it sets up some of the context of the matter in terms of the application he made for probate and the death certificate et cetera, et cetera.

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Without going there, the court file index will indicate that he has sworn other affidavits in the proceedings, but he is not being called. That may be a matter for submissions at the end, but nonetheless, I'm in a position where I am aware that certain instructions were provided to the plaintiff's solicitor not by the plaintiff and I am trying to determine who's providing the instructions.

MS TRESTON: Well-----

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HIS HONOUR: Just a moment. Instructions as to what?

MR NEVISON: I will be specific, your Honour. I am instructed that the plaintiff's solicitors have maintained that Anna will say that she printed the 16 May 2008 document from the deceased's personal computer on 29 May 2008 in the presence of the Jenny Ruhno. I hear in the opening has been given - I don't want to split hairs too much, but I hear that in fact it was Jenny Ruhno that printed the document, with the assistance of Anna.

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Nonetheless, this is somewhat lately disclosed information and we say also relevant just to the credibility of the evidence that your Honour will accept about this document; because also relevantly in the evidence, ultimately there will be evidence of an e-mail that Anna sent to Wade Mahlo, another brother, and of course he's not giving evidence either about what they found.

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HIS HONOUR: You have used the word "instructions". You don't mean "information"?

MR NEVISON: Instructions, yes.

HIS HONOUR: This is, on its face, quite serious because what you are suggesting is that counsel and her instructing solicitor are appearing today purporting to represent a person

who is not their client. Does it go that far?

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MR NEVISON: I don't go that far.

HIS HONOUR: What do you mean by somebody else giving the instructions?

MR NEVISON: Given that Brett Mahlo is not called for the plaintiff, and he has sworn some affidavits, though, in this proceeding, that touch on the issue of this document, but nonetheless, there is a letter from the solicitors for the plaintiff to my solicitors - and if need be I will call my solicitor to put the letter in - outlining the evidence that will be opened and it's inconsistent with the opening I have heard today.

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HIS HONOUR: Whose evidence?

MR NEVISON: The evidence of both Anna and Jenny.

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HIS HONOUR: I expect that's a matter that you will come to when you come to cross-examine - well, it depends upon whether Anna gives evidence but when you come to cross-examine Dr Ruhno.

MR NEVISON: Yes, indeed. All I am testing with this witness is whether she was in fact the person who was in reality providing the instructions and I was going to ask her if she provided those instructions.

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HIS HONOUR: I think to say in reality she is providing the instructions is to say that your opponents do not take their instructions from the plaintiff on the record. It may be that what you are wanting to suggest is that at a practical level the factual basis for the plaintiff's case is being furnished through Mrs Mahlo. If you want to suggest that, then that will be relevant ultimately to your argument, I would allow you to do so, but I think the problem is in your use of the term "instructions".

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MR NEVISON: Thank you, your Honour. I appreciate the distinction.

HIS HONOUR: Are you content with that, Ms Treston? In other words, I don't think it's really intended to be suggested that Mr Brett Mahlo is just nominally a plaintiff and he is not really giving you instructions. I think what is intended to be suggested is that the facts upon which the plaintiff's case is conducted are, to some extent at least, facts as provided by Mrs Mahlo.

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MS TRESTON: Yes, as one would expect, I would call the persons who can prove the facts upon which I propose to rely and that's what I do by calling Mrs Mahlo.

HIS HONOUR: Alright. So you continue Mr Nevison.

MR NEVISON: Thank you, your Honour. Mrs Mahlo, did Anna tell you that she had printed out the document off the computer?-- No. I mean - no, I can't remember.

1

Thank you. Did Jenny Ruhno tell you that she had printed out the document?-- I can't remember that, no.

You were present when the solicitors were instructed, were you not, when it was said that Anna printed the document? Do you recall-----?-- I can't recall that either.

10

You can't recall.

MS TRESTON: I object. No-one's given evidence that Anna told the solicitors the document was printed - that Anna had printed the document. No-one's given that evidence, so it's put to her on the fact that it's not proved.

HIS HONOUR: They haven't said that yet, have they?

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MR NEVISON: They haven't said it, no, but I may be in a position where I may have to put it ultimately. That's my difficulty.

HIS HONOUR: It's a matter for you, but I would have thought your position is you have a letter from Thynne & McCartney that says, "This is what happened with the printing the document off the computer," and here are the people or this was the person who did it and in somebody else's presence.

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MR NEVISON: Yes.

HIS HONOUR: Now, if evidence is then given by one or both of those persons, which is inconsistent with Thynne & McCartney's letter, then you can explore that by asking whether that's the first time they have said it et cetera, et cetera. Then ultimately you will ask me to infer that Thynne & McCartney would not - or I should not assume that they were mistaken about it. Rather I should infer that they had information which was inconsistent with the evidence which was given and I should infer that that therefore results in an inconsistency between the witness' version and an earlier version.

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MR NEVISON: Yes, very well. Accordingly I need not take it any further. I have no further questions.

HIS HONOUR: Before you re-examine I should asks Mr Sasonow and Miss Sasonow - I do hope I am not mispronouncing your surname.

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THIRD DEFENDANT: Sasonow.

HIS HONOUR: Sasonow. Do you have any questions, either of you?

SECOND DEFENDANT: No, your Honour.

RE-EXAMINATION:

MS TRESTON: Mrs Mahlo, you were asked about reasons why you would not go, as it was put, to your daughter's belated 50th birthday party?-- Yes.

Do you remember that?-- Yeah.

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What actual birthday was it for her?-- It was for her 50th birthday and she was 52 already.

She was in fact 52?-- Yep.

You explained to his Honour that you weren't feeling well. How old are you or how old were you then in 2007?-- Well, I have to work back.

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How old are you now?-- I was born in '33, so you can work it out.

1933. What year was your husband born?-- Thirty. I am 78 in October this year and he is 81 this year.

MS TRESTON: It was suggested to you by my learned friend that after the incident at the Buderim Hospital - where your daughter went to the Buderim hospital?-- Yeah.

30

You rarely had any contact with her from then until the time that she died. Do you remember that line of questioning?-- But I did.

That's what I want to ask you about. How would you describe the frequency of the contact with your daughter from that time until the time of her death?-- Oh, except just immediately after she was released from the Buderim Hospital, which, you know, there was a kerfuffle over the flowers and everything, I was annoyed with myself and as I said, with her and we didn't speak maybe for - I'm not sure now, for a while, and then she rang me and apologised and everything but after that things were back. You know, we rang each other weekly or if I was very worried about her, much more often than that. I mean, the time before after John went up I rang her practically every night or every second night. You know, Karen and I were good friends, let's face it. You know, she was my daughter. We were not - we were not at each other's throats. Ever.

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Thanks, Mrs Mahlo. You mentioned, in response to some questions by my learned friend, that Karen and her father spoke the same language?-- Oh, yes.

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You used that expression and you said something about she was interested in mechanics?-- Oh, yes.

Can you explain to me what her interest in mechanics was?-- Well, Karen was very scientific and she was interested in

electronics. I mean, she loved that house because it was electronically controlled and she would love to, you know - and she was interested in cars and she was interested in mechanical things all up. She was very much like him.

1

I see. Your husband told us this morning about an interest that he had in some particular submarines and hot air engines. Were they the sorts of things that she was interested in?-- Oh, yes, she was - she would - they would discuss all those kind of - you know, it wasn't my particular interest, but they were particularly interested in engineering and science. She was quite scientific in her own way.

10

You were asked some questions about this conversation with John Hehir on the telephone the day before the funeral?-- Oh, yes. Yep.

In particular, this conversation about the increase in the gift-----?-- Yeah, yeah

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-----to you and your husband. Doing the best you can, can you remember the conversation as it came from Mr Hehir in relation to that gift?-- Well, it was beforehand he was - he was speaking about Karen and I was - it was on my mind why, you know, she - at the time we thought it was suicidal and I was concerned about her involvement in these houses and the money and I thought that might have been part of it and we were discussing finances actually. You know, the financial arrangements and he said, "No, she wasn't worried about that," and I knew she was and that's how it came up I think, because we were talking about finances.

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What did he say to you in relation to - you said you started saying, "I'm 74. I will put it into an investment for the kids."?-- Yeah, I said I was going to - I forgot now. I said I was going to buy a house and when we passed on we would leave it to the kids, as an investment or something because I - you know, I wanted them to be secure, too.

Doing the best you can, what did he say to you in response to that?-- He just said something about, "Oh, I know that, you know, she increased it from that amount, 150,000 to 300,000."

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Did he use those figures when he spoke to you?-- Yes, he was - yes, he used those figures.

I don't have anything more for Mrs Mahlo.

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WITNESS EXCUSED

MS TRESTON: I beg your pardon, your Honour, I was saying whether Police Officer Allen should give her evidence now because I understand that she is only under subpoena for today. She wouldn't have been who I would have normally put

in next because I am just trying to juggle some witnesses.

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HIS HONOUR: I might just stand down for a couple of minutes.

THE COURT ADJOURNED AT 3.21 P.M.

THE COURT RESUMED AT 3.25 P.M.

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MS TRESTON: Your Honour, I call Jodie Nicole Allen.

JODIE NICOLE ALLEN, SWORN AND EXAMINED:

MS TRESTON: Miss Allen, could you please state your full name to the court?-- Yes, my full name is Jodie Nicole Allen.

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Are you a police officer by occupation?-- Yes.

What's your rank?-- My current rank is a Detective Senior Constable.

Where are you stationed at the moment?-- I am stationed at the Sunshine Coast Criminal Investigation Branch.

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Your Honour, could the witness see from the trial bundle - not your Honour's working copy, the other bundle that's been handed up - document 22 which are three statements she has given.

HIS HONOUR: Do I have two sets?

MR NEVISON: I don't think so.

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MS TRESTON: I beg your pardon, your Honour, I thought two sets had been handed up at the outset.

HIS HONOUR: I have one.

MS TRESTON: I will extract them from my solicitor's file.

HIS HONOUR: I might have lost a set but my associate loses nothing.

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MS TRESTON: Your Honour, I'd doubt that very much. Detective Constable, is that right?-- Senior Constable.

Senior Constable Allen, would you please look at those three witness statements, one dated the 20th of August 2008, the second one dated the 6th of January 2011 and the third one dated the 23rd of January 2011?-- Yes.

Are the contents of those three statements true and correct to the best of your knowledge?-- Correct.

I tender those three statements in a bundle, your Honour?

HIS HONOUR: They will be Exhibits 7, 8 and 9.

ADMITTED AND MARKED "EXHIBITS 7, 8 and 9"

MS TRESTON: Just a few questions in relation to those statements and if you need to refresh your memory by reference to them, please say so. The morning of the 28th of May 2008 when you attended upon Dr Karen Mahlo's house, your statement says that you attended there at about 5.50 a.m., you identified that there two suicide notes, as described in your statement, that were face down on the printer?-- That's correct.

Approximately what time was that?-- I would have like - by the time I have walked into the residence it was 10 to six. It would have taken me five minutes and I have located them.

You recently, in January of this year, executed a search warrant on the business Financial Advisers Australia?-- Yes.

Being a business that - who did you understand owned and operated that business?-- John Hehir.

Now, what were you looking for, in terms of executing the search warrant, when you went there, what sort of categories of documents?-- That document was authorised for me to look for any computers, any computer images, anything computerised, USB sticks, CD's, compact discs, anything at all, any documentation, physical documentation, any paperwork, anything at all relating to Karen Mahlo, anything.

Did you personally carry out that execution of that search warrant on that day?-- Yes, I did.

As a consequence, you say that you seized various items which are described in your statement of 23rd of January 2011; that's right?-- Yes, that's correct.

As recently as yesterday were you provided with a copy of a document which I will show you, being a file note for Karen Mahlo, apparently created by John Hehir, on the 7th of May 2008 at 16:13 hours?-- Yes, I was shown that document yesterday.

Did you recognise it from the search warrant that you had carried out?-- No.

As a consequence of getting that document, have you been through the material that you obtained pursuant to the search warrant?-- Yes, I have.

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Can you tell me whether you located that hard copy of that document?-- No, I did not.

What about the computer records, have you personally looked through the computer records to see if a copy of that exists on the records you seized?-- Yes, I have just sat with the computer analyst just now and he has done a search and this cannot be located.

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Were you present while that was carried out?-- Yes, I was.

In any of the documentation that you seized in January 2011, was that document there?-- No, it was not.

I have nothing further in relation to this witness, thank you, your Honour.

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CROSS-EXAMINATION:

MR NEVISON: Detective Senior Constable, would you just have a look at this document, please. It's from page 547 of the trial bundle. It is similar in format to the document that my learned friend just showed you, but do you recall ever seeing that document at all?-- No.

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No. What does that document purport to be?-- A file note for Karen Mahlo.

Does it bear a date?-- 23rd of May 2008.

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Yes. Thank you. So if I suggested to you that that's in fact another file note contained in the computer records of FAA, you say you've never - never seen that document in those records?-- The document that I was just previously asked about-----

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Yes?-- -----I was given the time in which to search. If you would like me to search my hard copy documents with regards to this one, I certainly can.

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Yes. You're able to do that while you're here?-- I'm able to do that.

Yes. The witness should properly do that, your Honour. It's a further file note that was in the disclosure.

HIS HONOUR: Yes.

MR NEVISON: Some moment is now being made.

20

HIS HONOUR: Are you able to do that now as you sit in the witness-box?-- Your Honour, the documentation is about that thick. So-----

That's what I thought?-- -----it may take me 15 minutes if that's okay, your Honour.

MR NEVISON: Well, are you looking only at hard copy documents?-- I will now have to - if you want me to do a computerised search, I'll have to walk back to Police Headquarters and speak to the computer analysis. If this was provided to me earlier, I could have done this earlier.

30

Thank you.

HIS HONOUR: Well, do you want Ms Allan to spend 15 minutes or so looking at the hard copies or-----

MR NEVISON: Well, it may assist, your Honour. Ms Allan is somewhat giving second-hand evidence on behalf of the computer analyst as well, because this involves a search of what's known as the FPSSQL server database which I may need now to call some evidence in response to as well. So I think, yes, given the issue has been made, I need her to have a look for the document.

40

HIS HONOUR: Well, now, as I understand it, Ms Allan, you're being asked to go through the hard copies which you do have with you. I'll stand down while you do that. If you can - are you able to do it in the courtroom or would you prefer to do it outside?-- Wherever you'd like me to do it. I've brought the whole file. It's just sitting over there.

50

All right. Well, if you do it here and just let the bailiff know when you are ready and I will come back down.

THE COURT ADJOURNED AT 3.34 P.M.

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THE COURT RESUMED AT 3.53 P.M.

JODIE NICOLE ALLAN, CONTINUING:

10

CROSS-EXAMINATION:

MR NEVISON: Thank you, your Honour.

HIS HONOUR: Yes. Now, you have looked through the hard copies?-- Yes.

20

MR NEVISON: We understand that you have found a similar document, detective senior constable?-- Yes.

May I have a look at the two documents, please, the one I handed to you and the one that you found? Excuse me, your Honour. I can hand you back your version. Thank you.

MS TRESTON: Copy.

30

MR NEVISON: Copy, thank you. Now, the documents that you brought to Court then, the hard copy of those documents, detective senior constable, do they purport to be a complete copy of the image that was taken of the file server at FAA or just selected documents?-- No, no, no, they're all the hard files that I asked John Hehir to give me, anything relating to Karen Mahlo. He produced a folder-----

Yes?-- -----which I then took possession of that folder, and I have photocopied that entire folder.

40

Thank you?-- Relating to any computer stuff and any hard drives and any file servers, they were all downloaded by our computer analysis in my presence.

Yes. What was the name of the computer analysis person engaged by the Queensland Police Service to undertake that?-- On that day?

Yes?-- Was Brett Muir.

50

Yes. And was it Mr Muir who assisted you to search the records back at Police Headquarters today?-- I searched with Brett Muir and James Morris.

Yes. And you conducted a search for the 7 May 2008 file note?-- And anything that had any key words.

Yes. Yes. And you couldn't find any documents you say?--
No.

1

No. Very well. Are you able to search by date?-- Yes, we
can search by date.

Yes. And have you conducted a search by date?-- Brett
conducted a search by date and it's not there.

You didn't find the document?-- No, it's not there.

10

You unequivocally say it's not there, on your version?-- It's
not there. I cannot find it. I've had the experts helping
me. They don't know why I'm asking for it, and they can't
find it, so it can't be found.

So you can't offer any explanation as to why there might be a
copy on the server at FAA in Maroochydore today then?-- No, I
can't offer you any explanation for that.

20

No. Very well. Yes, I have nothing further, thank you, your
Honour.

MS TRESTON: I have no re-examination, your Honour.

HIS HONOUR: I take it Mr Sasonow and Ms Sasonow have no
questions.

SECOND DEFENDANT: We have no questions, your Honour.

30

HIS HONOUR: Thank you.

MS TRESTON: Sorry, your Honour, given that - for the record,
so that I don't need to tender the identical copy of the file
note of 23 May 2008, I assume my learned friend has no
objection to let the record show that the police file does
have on it a hard copy of the document which appears at page
547 of the trial bundle.

HIS HONOUR: Yes, well, Ms Allan said that, so-----

40

MR NEVISON: Yes.

MS TRESTON: Yes, I am just making sure, because it was put
her version, and I interpolated-----

HIS HONOUR: I see.

MS TRESTON: It said copy but I wanted it to be clear on the
record that it's-----

50

HIS HONOUR: And the other thing is - the other thing is it is
probably clear but I was thinking at the end of your
examination-in-chief whether one of us should have said
something to the effect that you were asking, Ms Treston,
about the document at 551 of the Court bundle, which
sufficiently identifies it if it is not clear already, when
you were asking Ms Allan whether that was amongst the

documents electronically retrieved by the police, and for which she looked as recently as today.

1

MS TRESTON: Whether the record adequately shows that it was the file note said to be created by John Hehir at 07 May 2008 16:13 hours in relation to Karen Mahlo which commences, "Karen has rung in and asked if I could work out for her what the kids' inheritance would be at age 25, 30 and 35."

HIS HONOUR: Yes. Thank you.

10

MS TRESTON: Thank you, your Honour.

HIS HONOUR: Thanks, Ms Allan. You are excused.

WITNESS EXCUSED

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MS TRESTON: Your Honour, I call Dr Jennifer Ruhno.

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JENNIFER CHRISTINE RUHNO, SWORN AND EXAMINED:

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MS TRESTON: Dr Ruhno, could you please state your full name for the Court?-- Jennifer Christine Ruhno.

And where do you live?-- I live at 11 Clinton Street in Orange.

10

And are you a medical practitioner by occupation?-- Yes.

All right. Now, Dr Ruhno, you have given an affidavit in these proceedings. Your Honour, might the witness see eCourt document number 18 in proceeding 7731 of '08? Do you recognise that as an affidavit that you gave in these proceedings?-- I do.

And it was given by you on the 24th of October 2008?-- That's right.

20

And the facts and matters that are contained in the affidavit are true and correct to the best of your knowledge?-- That's correct.

Your Honour, I tender the original of the affidavit.

HIS HONOUR: That will be Exhibit 10.

30

ADMITTED AND MARKED "EXHIBIT 10"

MS TRESTON: Can I just ask you a few questions about your affidavit? If it will help you, I can pass you up a-----

HIS HONOUR: Here is the original.

40

MS TRESTON: Thank you. Thank you, your Honour. Now, could I ask you about the circumstances that occurred after Karen's death? Who were you contacted by to be informed of Karen's death?-- Anna rang me on the morning of Karen's death. I was at work. It was approximately 9 a.m. and she rang from the police station.

Okay. And when did you then travel to the Sunshine Coast, if you did?-- The following day.

50

Okay. So-----?-- The 29th of May.

29th of May. All right. Do you remember when you arrived on the Sunshine Coast?-- Yes, late afternoon.

And where did you fly to?-- Maroochydore Airport.

All right. Where did you go to from there?-- Anna and Ben

picked me up from the airport and took me back to Karen's house.

1

All right. On the next day, Friday, the 30th, in the morning, do you remember what events occurred on the morning of the 30th of May at Karen's house?-- Yes, I remember that it was the first time that I actually looked at the computer, at Karen's computer, and looked at documents on the computer and spoke with Anna about them.

10

All right. Why were you looking at things - sorry, I didn't mean to cut you off. Why were you looking at things on her computer?-- Because it was relevant and I had mentioned that there was a question about there being two wills, and that there was - that her mother had done a new Will and it was on the computer, and that's - and that's what I was looking at, that document.

Okay. And who had mentioned that to you?-- Anna.

20

Okay. So what did you observe when you looked on the computer on Friday, the 30th?-- There were - there was a Will in May that - that Karen had written that - leaving - do you want me to explain the contents of the Will or-----

What you remember of it?-- Yeah. Leaving her estate to Ben and Anna with money to her parents for a house and one of her brothers as the executor.

Okay. Right. Now, did you do anything after you had looked at that Will on the computer on the morning of Friday, the 30th?-- I - I remember asking Anna how you printed from the computer because I hadn't used that Microsoft Office program before, I didn't know how to print. So I remember that we printed a document.

30

Okay. Now, can you explain to me how that conversation between you and Anna occurred in relation to the printing, what you asked her and what she responded?-- Well, I had to ask her actually how you print, that I couldn't find the print icon on the program because I hadn't used Microsoft Office 2007 before, and she had to show me where the print icon was.

40

And where was the print icon?-- It's the top left-hand corner, if you push on the - that icon there, it opens up all of the other - like the printer icon from the - I'm not very - explaining that very well.

Okay. Can you describe to me what the icon - no, no, can you describe what the icon looks like, so-----?-- There's - just on the top left-hand corner there's a round, you know, disc, office program, you just - if you click on that, then it opens up - all of the other icons that are in the old 2003 were just automatically open on the tool bar.

50

Okay. And so who did that? Who opened up the icon to find where the print button was?-- Anna showed me how to, yeah. So-----

1

Okay. And then who actually then was responsible for - was the document then printed?-- Yes.

Okay. Who printed it?-- I printed it.

And so what did you do to do that?-- To click on the - where the print - actual print icon was from there.

And where was Anna while this was happening?-- With me there.

10

Right. Subsequently, did you go with Anna and Mrs Beverley Mahlo to see some solicitors in relation to this matter?-- Yes.

Okay. Can you tell me whether you had a - took a copy of that printed document with you?-- Yes, definitely.

Right. Do you know how many times you printed that document on the 30th of May or at all?-- No, I don't - I don't know. Most likely I printed it more than once, but I can't - I can't say that absolutely.

20

When was the first time that you were asked anything in relation to this issue about the printing of the document, that is the May 2008 document?-- Whether I printed it?

As to who printed it. When was the first time you were asked about it?-- You asked me about it.

30

And when was that?-- Last - on Friday.

Thank you. Thank you, your Honour, I don't have anything further for Ms Ruhno - Dr Ruhno.

HIS HONOUR: Yes, Mr Nevison.

CROSS-EXAMINATION:

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MR NEVISON: Dr Ruhno, on the morning of the 30th of May 2008 when you say this document was found, was an e-mail also sent to Mr Wade Mahlo in your presence?-- I sent an e-mail to Wade at some time but I don't know exactly when that was.

Attaching a copy of documents?-- Yes.

50

Yes?-- But I don't know exactly. I couldn't tell you exactly when I sent that.

That was from Karen's computer?-- Yes.

Yes. Saying - was it - was it addressed "Re Mum's stuff" and attaching the documents, do you recall?-- I don't - I don't.

No. Might come back there. Did Anna tell you when she'd found this document on the computer?-- No. Not - well, not specifically, no.

1

No?-- I know that she'd only been in - allowed back into the house the afternoon of the day before. So I presume in that time, but I don't know specifically.

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Of the 29th, yes?-- Mmm.

You were aware of another Will in existence?-- Yes.

And that Anna had rung to request that that be made available to her; were you aware of that?-- Yes. Yes.

All of this was fairly significant in terms of the control of Karen's estate, wasn't it?-- Yes.

10

Sufficient for you to communicate with people like Wade Mahlo about it?-- Yes.

And ultimately instructing solicitors?-- Yes.

And you joined with Mrs Mahlo Senior and Anna to go to the solicitors on the 3rd of June?-- That's correct.

And take that document. I am just curious because when you look at your affidavit it runs out at the 27th of May at paragraph 22 and there is no reference after that point about this revelation. Are you able to explain why that wasn't included in your affidavit?-- About printing the Will, sorry?

20

Yes. Well, about your involvement beyond that with this document?-- Well, I suppose with the printing of the Will, I just couldn't imagine why that would be relevant.

Just going back to a conversation you had with Karen in 2006, the first half of 2006, that's set out in paragraph six of your affidavit, do you have that there in front of you?-- Yes, I do, thank you.

30

It's page two, the last paragraph there, page six. There is discussion about investments and that. Do you see that there?-- Yes.

You say that that occurred just some time after Karen had moved to Maroochydore, to the best of your recollection, in the first half of 2006?-- To the best of my recollection.

40

You could be mistaken about that date?-- That it was the first half of 2006, to the best of my recollection I couldn't be specific about a date.

In fact it could be much later in terms of it being 2007 when the houses were invested in?-- As I said, it's my recollection about it.

50

Karen complained to you, didn't she, about the problems that she was confronting with her work?-- Yes.

In fact, she complained more about that than issues in her personal life to you, didn't she?-- I don't understand what you mean, sorry.

When she was talking to you about the issues that were causing her to stress, it was about work issues, wasn't it, not personal life issues?-- At what time?

1

Well, in paragraph nine you say, "It was a short time after my brother's death that Karen contacted me and told me about problems she was experiencing at work," do you see that there?-- Yes.

You recount the conversation that you had?-- Yes.

10

All I am suggesting to you is that she complained about work matters, not personal relationship matters?-- At that specific time, after my brother's death.

Yes?-- That is the beginning of 2007. That's what that conversation was specifically about.

Are you sure? You say in your affidavit that in or about June 2007, that Karen discussed with you the granting of a power of attorney in favour of John Hehir?-- Yes.

20

Are you sure about that date?-- To the best of my recollection. It's-----

You could be wrong?-- Of course. I know that - that she said that she granted the power of attorney. I couldn't guarantee the date.

In fact, if it occurred in February of 2008, that's a possibility?-- It's a possibility.

30

In paragraph 13 of your affidavit you refer to Mr Hehir being in constant contact with Karen when she was down at Orange with you?-- Yes.

I suggest to you that that was because he was concerned about her. That's what you were aware of at the time, that he was concerned for her?

40

MS TRESTON: I object. She can't possibly know what John Hehir's motives were for ringing constantly.

HIS HONOUR: That's right, isn't it?

MR NEVISON: Yes, it is, your Honour. Other than the fact that it may have been expressed to her by Karen that John was ringing because he was concerned.

MS TRESTON: It's still hearsay.

50

HIS HONOUR: Except that it may be relevant as original evidence. That is, that Dr Mahlo said that and it goes to her state of mind.

MR NEVISON: It's not earth shattering in the end and I will move on. Thank you. In relation, though, to John coming to Orange, I would suggest to you that in fact Karen had rung

John to ask him to come down on that occasion. Are you able to cavil with that or do you disagree?-- I can't answer that. I don't know whether she did or not.

1

According to your version of events then, at the end of April 2008 when in effect John Hehir had moved out of the property at Caloundra, out of Karen's house, Karen told you that even though her kids detested John, she still cared about him?-- At the conversation that you're referring to in April, she said that she did still care about him, yes.

10

Yes, Karen cared for John?-- That she cared about him.

Yes, at that time. She told you that specifically. Karen told you that?-- Yes.

I am just clarifying that point because in paragraph 20 of your affidavit you say, "It seemed to me that she still cared about John but had decided their relationship would not work." That's at the bottom of page seven, so I am just clarifying that she told you she cared for him?-- That was - paragraph 20 refers to following a May conversation, so that was a different-----

20

Right. You give an account of a conversation that occurred on the 3rd of May 2008. That's in paragraph 19?-- Yes.

That's when Karen and Anna came down to Orange for the weekend?-- Yes.

30

In terms of any discussion about estate matters, Karen hadn't put into effect anything that she was discussing with you at that time?-- I do not know whether she had or not. All she mentioned in conversation was the content, not whether there had been - whether there was a new Will or not. That was not a subject of conversation. She just mentioned the content of the - of her - of what she wanted in her Will. That was my understanding.

But your position was that you had actually done something at that stage and instructed a solicitor and done something, hadn't you, for your own affairs?-- Yes, that's correct.

40

That was discussed, was it?-- Yes.

According to your version?-- Yes.

But Karen didn't say that she had actually done anything, did she?-- It wasn't - the conversation wasn't about whether she had made a Will or not. It was just that as an aside to my family conversation, she mentioned the content of her Will, saying that she was leaving the estate to the - to the best of my recollection of her words, not exact words; words to the effect that she was leaving the estate for the children to manage themselves. That was the content. It wasn't anything about writing a Will, or a new Will, or changing a Will. It was more just saying that the children could manage the money themselves now, in her opinion.

50

That was on the 3rd of May?-- Yes.

You knew, didn't you, that just prior to that, a few weeks before, two to three weeks before, on or about 12 April to be precise, she had attempted suicide, very seriously attempted suicide. You knew that she was in a coma, didn't you?-- Karen told me about her - that, at that time, yes.

That was as a consequence of an overdose of drugs and alcohol?-- I understand it was - from what Karen said, it was an overdose of Paracetamol.

10

That occurred just a couple of weeks before her visiting you?-- I understand that's correct.

Just going back to something you said in your evidence-in-chief; that when you saw this document on the computer, this document that purports to be a Will that was found on the computer?-- Mmm.

20

You outlined to my learned friend in your evidence what you understood it to say?-- Yes.

Would you repeat what you understood it to say again?-- Yes, that to the best of my recollection it said that the estate was left to Ben and Anna, with one of Karen's brothers as the executor and a sum of money to her parents. That's the content.

30

You said for a house?-- Sorry for a - yeah, \$300,000.

For a house?-- Sorry?

You said in your evidence-in-chief for a house?-- For a house.

But that's something that somebody has told you subsequently, is it, or is that what you recall reading in the document?-- Karen said to me on that day that she was leaving her money to her parents so that they could, yeah, buy a house in Orange.

40

So that's where your recollection comes from?-- Yes.

HIS HONOUR: About the house?

MR NEVISON: About the house, yes. Thank you, your Honour. Just one thing to clarify perhaps in finality, Dr Ruhno. On your evidence, what was done first, the e-mail to Wade or you printing the document off? Do you recall or you don't recall?-- I don't recall.

50

But you were definitely responsible, at or around that time, for sending an e-mail to Wade Barlow with this Will document attached?-- That's my recollection, yes.

Would Anna have assisted you in that process?-- She may have because we were both there at the same time.

1

Is it possible that you were looking for documents because there had been contact with Wade and Anna and you constructed the e-mail because they had been found and I am talking about the Will, what's known as the inheritance document; do you recall?-- Mmm.

And there were the suicide notes?-- Right.

Do you remember all of those documents?-- Yes.

10

Can you remember finding them on the 30th of May?-- I remember Anna showing me, yes.

Anna showed you?-- Yes.

You remember sending an e-mail to Wade Mahlo?-- Mmm.

You remember attaching each of those documents to that e-mail?-- I remember an e-mail being sent to Wade with the documents, yes.

20

Is it possible that all of those documents were printed after the e-mail was sent to Wade?-- I have no recollection what occurred first.

You don't recall the order in which it occurred?-- I have no recollection of the order.

But you accept that the documents were sent to Wade in an e-mail?-- Yes.

30

Thank you. Yes, I have no further questions. Thank you, your Honour.

HIS HONOUR: Mr Sasonow, Miss Sasonow, do you have any questions?

SECOND DEFENDANT: No, your Honour, we don't.

40

MS TRESTON: I don't have any re-examination.

WITNESS EXCUSED

MS TRESTON: Will your Honour take the evidence of Ceinwen Mahlo?

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HIS HONOUR: Yes. How long will her evidence be?

MR NEVISON: 15 to 20 minutes maximum I would hope, your Honour. I have nine questions presently.

HIS HONOUR: She has come from Orange?

MR NEVISON: Yes.

1

CEINWEN BARBARA MILFORD MAHLO, SWORN AND EXAMINED:

MS TRESTON: Mrs Mahlo, could you please state your full name to the court?-- Ceinwen Barbara Milford Mahlo.

10

Is "Ceinwen" C-E-I-N-W-E-N?-- Yes, it is.

Where do you live?-- 1236 Pinnacle Road, Orange.

You're the wife of Brett Mahlo, who is the plaintiff in these proceedings?-- That's right, yes.

You have given an affidavit in these proceedings.
Your Honour, might Mrs Mahlo see e-court document number 20 in proceeding 773148? Do you see that affidavit that's before you, Mrs Mahlo?-- Yes, I do.

20

Do you remember giving that affidavit?-- Yes, I do.

Are the contents of the affidavit true and correct to the best of your knowledge?-- Yes, they are.

I tender the affidavit of Mrs Mahlo.

30

ADMITTED AND MARKED "EXHIBIT 11"

MS TRESTON: Mrs Mahlo, you remember that on the evening of Karen's death on the 28th of May 2008, you had a conversation with the first defendant, John Hehir?-- That's right, yes.

40

I will just tell you at the outset, so that you know, we have to just get all your answers orally, we can't record a nodding of the head?-- Okay.

Just so that you understand that?-- Sure.

How long did that conversation with Mr Hehir last?-- Approximately 15 minutes.

Did you know John Hehir before that time?-- No, I didn't.

50

Had you met him?-- No, I hadn't.

Can you ever recall having spoken to him?-- No.

How would you describe his emotional state the night that he spoke to you?-- He was emotional, he was crying. He was also speaking in a whisper and going back to a sort of a normal

speaking voice and then into a whisper again and it was quite a bizarre conversation.

1

How would you describe your emotional state when you were speaking to him?-- Oh, I was emotional. I was crying at times and I was emotional.

Not having met or spoken to Mr Hehir, did you have any preconceived views about him?-- None whatsoever.

10

You say that you were both crying and sobbing and - sorry, might the witness be handed back her affidavit, Madam Bailiff? You set out in your affidavit some of the things that you recollect from that conversation. Do you remember what one of the first things was that Mr Hehir said to you in that conversation?-- Yes, I do. The first thing he said to me was he apologised that we were going through this again after I lost my brother 10 months prior in a motorcycle accident. That was the first thing he said.

20

Right. Sorry?-- And he-----

Sorry?-- Sorry, he said to me, "Eddie did not mean to die but Karen did," which I thought was a very strange thing to say.

How is your recollection of the conversation that you had with him that night?-- Very clear.

Very clear. As a consequence of the conversation, did you subsequently do something some hours afterwards in relation to that conversation?-- Well, I got off the phone and I - it was just a very strange phone call and my sister and husband were there at the time and I relayed the conversation to them and my sister actually said to me, "You should write this conversation down," which I did, while it was still clear in my mind.

30

Can I ask you to look at these original notes. Are they your notes, Mrs Mahlo?-- Yes, they are.

40

Is that your writing?-- Yes, it is.

Can you tell his Honour approximately what time it was that you wrote those notes?-- Approximately 5 p.m.

What time was your conversation with Mr Hehir?-- Oh, I am sorry. No, that was - the time of my conversation was approximately 5.

I beg your pardon?-- I would say it was about 7, 7 p.m. that I wrote the notes.

50

So your sister suggested that you do this. Was there some reason why she suggested that to you?-- I was just quite disturbed at the phone call, just the things that he said, the third thing that was raised in the phone call was the Will, which was quite off-putting. You know, it was - we had just received some terrible news and he was wanting to discuss

Wills, and the tone of his voice and there was quite a few strange things in it that just didn't seem to be quite normal I think.

1

What did he say to you in relation to Karen's Will?-- He said that there was a second Will which Brett, Karen's brother, was the executor of. He said he had never seen that Will but Karen had discussed it with him.

Did he say anything else about any other Wills?-- That he was the executor of another Will. Of - I think he said the first Will.

10

Now, when you made those notes, was any part of the conversation more important to you than any other part of it? Were you trying to record a particular thing?-- I was just trying - I just wrote down everything he said to me. So there wasn't any particular - I just wrote it while it was fresh in my mind. I wrote down everything that I could remember in sequence of the conversation.

20

When you made this affidavit in November 2008, there is no mention of your notes, your handwritten notes. Can you explain to me why that is?-- I believe I had them with me in the folder on my lap but I didn't refer to them. I didn't need to refer to them. It was clear in my mind what I was saying.

After you had written the notes, what did you do with them?-- Just put them in a file in the kitchen.

30

When did you first remember the notes, if I can - perhaps I should ask you this: what made you suddenly produce the notes?-- Would have been when I had to go to make the affidavit I suppose. I'm not really quite sure.

But you didn't use the notes you have just said to make the affidavit?-- No, I don't think I did. I am pretty sure I took them with me and I had them on my lap in case I needed them and to the best of my memory I didn't need to refer to them.

40

So what did you do with them then?-- Just took them home.

At the time that you spoke to Mr Hehir on that night of that late afternoon, about 5 p.m., on the 28th of May, had you spoken to other members of the family about Karen's death?-- Only my husband, my sister and-----

I should say the Mahlo family?-- No. No.

50

What about Anna and Ben?-- No, I hadn't spoken to them at that stage.

What about Beverley and John Mahlo?-- No, I hadn't spoken to them at that stage either.

What about Wade Mahlo?-- No.

I tender the notes, the handwritten notes that have the date Wednesday, the 28th at the top?-- That's right.

MR NEVISON: If I could just see them, your Honour. Thank you, your Honour.

ADMITTED AND MARKED "EXHIBIT 12"

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MS TRESTON: That is the evidence-in-chief of Mrs Mahlo, your Honour.

CROSS-EXAMINATION:

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MR NEVISON: You still have your affidavit in front of you Mrs Mahlo. Could we go straight to page two, paragraph nine, please, which is the last paragraph. You will see there that that's the paragraph that deals with the conversation you had with my client, Mr Hehir?-- Yes.

Do you see that? Just so that we are accurate, which is important, may I take it that where you have said, quoting what Mr Hehir said to you - where it says, "John," and it says, "I am sorry you have to go through this again after losing Eddie not long ago. Eddie was not meant to die but Karen was." Do you see that there?-- Yes, I do.

30

That's not an accurate statement of what Mr Hehir said to you at that point, is it, based on your evidence?-- Yes, it is accurate.

Well, I am sorry, I thought I heard you to say in your evidence-in-chief, when you were answering questions from my learned friend, that that last sentence which reads, "Eddie was not meant to die but Karen was," I thought you said in fact what he said was, "Eddie did not mean to die but Karen did."? Yes, I did say that.

40

Thank you. Is that version that I have just outlined, "Eddie did not mean to die but Karen did," the correct version?-- Look, I'm not too sure, I am sorry.

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Yes, thank you. That would make more sense in the context of what happened, wouldn't it, that Eddie did not mean to die, your brother was killed in an unfortunate road incident, but Karen did, which is a shocking thing to say but nonetheless it would appear that suicide was involved and that's what was meant by that statement, wasn't it?-- Yes.

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So may we now accept that the words in your affidavit are incorrect as typed there and that what was said was, "Eddie did not mean to die but Karen did"?-- Yes.

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Just going back a little bit in your affidavit, and I won't take you specifically to the paragraph unless we need to go there, but is it fair to say that there was a communication breakdown, in fact a complete communication breakdown, between your husband, Brett Mahlo, and his sister, Karen, between in or about January 2005 when she went up from Orange to the Sunshine Coast through until August 2011?-- Yes, that's right.

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They didn't talk?-- No, not that I'm aware of.

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Until just after the death of your brother?-- Yes.

Yes. So for a period of some two and a half years, there was no communication between them?-- I think that's right, yes.

Yes. Are you able to tell the Court what caused that communication breakdown?-- Well, to the best of my knowledge, I think it was just a difficulty of Karen's parents living with her at the time.

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Yes?-- And as - to the best of my knowledge, I think Brett just happened to say to his mother that maybe it would be a good idea if she and his dad moved out to let Karen try to maybe get on with her life, and I think Karen took that as an interference, and I think that's where it stemmed from.

Yes.

MS TRESTON: Just for the record, I should record an objection to that to the extent that it's relevant or helpful. It does seem to be prefaced on something - an assumption that's been made by this witness based on things she might have been told by somebody else. I'm not sure that she can really - that she really has offered us admissible evidence as to what led to the breakdown of the relationship between her husband and the deceased.

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HIS HONOUR: Well, if Mrs Mahlo was giving an account of what her sister-in-law said to her or in her presence, it would be admissible.

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MS TRESTON: I accept that.

HIS HONOUR: Yes. Are you able to clarify that, Mr Nevison?

MR NEVISON: I need not take the issue any further, in fact, your Honour. Yes.

HIS HONOUR: Well, otherwise it goes in only as evidence of the witness' understanding-----

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MR NEVISON: Yes.

HIS HONOUR: -----of the reason for the tension-----

MR NEVISON: I will clarify the issue.

HIS HONOUR: -----which is irrelevant.

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MR NEVISON: Yes. Were you present at any communications between Brett and Karen about the subject matter of their disagreement?-- No.

No. Okay. Very well. Now, were you aware of a proposal by Mr Wade Mahlo for each of the children of John and Bev, that is Brett, Wade and Karen, to chip in and buy a house for-----?-- Yes, I was aware of that.

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Yes. And is it fair to say that both Brett and Karen were opposed to that?-- Yes, they were.

Yes. And you're aware that Brett was opposed and Karen was opposed?-- Yes.

Yes. Thank you. So your husband certainly didn't speak with Karen, his sister, every two to three months from when she moved to the Sunshine Coast?-- I don't think so, no.

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No. And, as I understand your evidence, and what you've put in your affidavit, when you received the call from John Hehir at about 5 o'clock on the 28th of May, everybody was extremely emotional; in terms of everybody, I mean yourself and Mr Hehir were both emotional?-- Yes, that's right.

You had already heard that Karen had passed away. You'd heard that from your husband-----?-- Yes.

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-----an hour before. But there was somebody else I think with you when all of this happened?-- My sister.

Right. And her name is?-- Nadine Morgan.

Right. But you didn't refer to her in your statement or in your affidavit. Just an oversight, is it?-- I didn't believe there was a need to.

See, I suggest to you that in fact initially there was an exchange in the telephone conversation on the 28th of May about your loss of your brother, Eddie; do you agree with that?-- Yes.

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Yes. And then there was an exchange of concern between you and John Hehir whether you were okay?-- Yes.

And somebody was there to look after John-----?-- Yes.

-----in particular, and John expressed concern to you about Ben and Anna shunning him?-- Yes.

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Do you recall that? And he didn't really want to talk about what had transpired earlier in the morning of that day-----?-- That's right.

-----with you, but he mentioned Jenny Ruhno ringing at the police station?-- That's right.

Yes. And he told you that Anna had rung his office to get the Will of 2008 - the February 2008 Will, Karen's Will, didn't he?-- He didn't mention a date.

No?-- He-----

He just told you that Anna had been ringing the office to get details of Karen's Will?-- That's right.

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Yes. See, I suggest to you that in fact he never then discussed with you any other second Will document at all?-- He said that there was a second Will which Brett was the executor of.

Yes. I understand that's your version. I'm just suggesting to you that in fact he never said that to you at all?-- Yes, he did say that to me.

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Could you have said that to him perhaps? No. Okay.

HIS HONOUR: I think the - well, your answer is no. You have shaken your head.

MR NEVISON: No. Yes.

HIS HONOUR: It just has to be recorded?-- I'm sorry, yes.

MR NEVISON: I'm sorry, your Honour, I didn't see that there wasn't a positive no.

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HIS HONOUR: What's a positive no?

MR NEVISON: A definite no, when no means no.

Did you go to the funeral?-- Yes, I did.

Did you stay at the house?-- No, I didn't.

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No. You and Brett stayed elsewhere, did you?-- Yes.

Did you go around to the house?-- Yes, we did.

Yes. On more than one occasion?-- Yes.

Did you use the computer at any time?-- No, I didn't.

Were you present when anyone used the computer, printed any documents from the printer?-- No, I wasn't.

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No. Thank you. I have no further questions, thank you, your Honour.

HIS HONOUR: Mr Sasonow, Ms Sasonow, do you have any questions?

SECOND DEFENDANT: No, your Honour, we don't.

HIS HONOUR: Thank you.

RE-EXAMINATION:

MS TRESTON: Might the witness be shown the handwritten notes or are they still in front of you, Mrs Mahlo?-- No, they're not.

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Just one issue. You were asked by my learned friend about this - the distinction between "Eddie did not mean to die but Karen did" versus what's contained in the affidavit "Eddie was not meant to die but Karen was"; do you remember those - those questions?-- Yes.

So far as your recollection today is concerned - I know you've told his Honour that you've got a very good recollection - does looking at the notes of your conversation taken shortly after you had had a discussion with Mr Hehir in relation to this issue help your memory in relation to that conversation?-- Yes, it does.

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Okay. And in what way?-- Just now - he - I just remember that he said that Eddie - said that he had not meant to die, but Karen did.

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Okay. And is that the best - your best recollection of that conversation-----?-- It is.

-----now?-- Yes.

I don't have anything more for Mrs Mahlo, your Honour. Might she be excused?

HIS HONOUR: Yes, you are excused, thanks, Mrs Mahlo?-- Thank you.

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WITNESS EXCUSED

HIS HONOUR: And I won't be able to resume till 10.15 tomorrow because of a swearing in ceremony.

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MS TRESTON: Your Honour, might I mention one matter to you about Dr Phillips? His availability is extremely tight tomorrow, I am informed. He can make himself available between 1 and 1.15. Given that we are starting 15 minutes late, would your Honour mind sitting that 15 minutes into lunch?

HIS HONOUR: Well, it just means he is seeing patients all

morning, does it?

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MS TRESTON: I think he is performing a procedure.

HIS HONOUR: Is he?

MS TRESTON: He is performing a procedure, I'm sorry, your Honour.

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HIS HONOUR: All right.

MS TRESTON: That's all I know.

HIS HONOUR: All right. Well, I will take his evidence at 1 p.m. then.

MS TRESTON: Thank you, your Honour. I'm grateful.

HIS HONOUR: This case will be adjourned until 10.15 tomorrow.

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THE COURT ADJOURNED AT 4.44 P.M. TILL 10.15 A.M. THE FOLLOWING DAY

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