

IN THE HIGH COURT OF JUSTICE
BRISTOL DISTRICT REGISTRY

CLAIM NO: PT-2023-BRS-000077

BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

BETWEEN

BERNADETTE ROGERS

Claimant

-and-

ANDREW WILLS

(as Executor of the Estate of Ursula Wills (Deceased))

Defendant

AMENDED PARTICULARS OF CLAIM

Amended Particulars of Claim by Order of District Judge Wales dated 2 May 2024

1. These Amended Particulars of Claim are filed and served on behalf of the Claimant pursuant to the Order of District Judge Wales dated 2 May 2024. They replace the Particulars of Claim dated 19 May 2023 in their entirety.
2. The Claimant and the Defendant are siblings and are two of the six children of the late Mrs. Ursula Wills (“the Deceased”). The remaining siblings are Richard Wills, Maryann Dickinson, Shaun Wills and Jane Hustler. The six siblings are herein collectively described as “the Siblings”.
3. The Deceased died on 19 April 2020, having been predeceased by her husband, the late Mr. John Wills, in 2012.
4. The Defendant is the sole Executor of the Estate of the Deceased by virtue of a will dated 4 December 2015. A grant of probate was issued on 24 June 2020.

5. The Deceased had since around 1977 lived in her matrimonial home at 40 Beechlands Park, Southrepps, Norwich, NR11 8NT (“Beechlands”). However due to concerns for her health in the latter part of 2017, it was agreed between the siblings, primarily by way of WhatsApp messages, that the Deceased would stay with the Claimant and her husband at their home, 20 Windsor Road, Bristol, BS6 5BP (“Windsor Road”), in order for her to be cared for by them.

6. The Deceased therefore moved to live with the Claimant at Windsor Road on or around 13 September 2017, remaining with the Claimant, who provided her with care throughout, until her death on 19 April 2020, being a total of 950 days, save that:
 - 6.1 during the said period the Deceased spent a total of 10 days in Rosewood Care Home for respite care;

 - 6.2 during the said period the Deceased spent a total of 10 days with Shaun Wills;

 - 6.3 during the said period the Deceased spent a total of 25 days exclusively with Maryann Dickinson, and a further 16 days in which the Claimant and Maryann Dickinson shared the care of the Deceased;

 - 6.4 during the said period the Deceased spent a total of 5 days with Jane Hustler; and

 - 6.5 from time to time the Deceased was admitted to hospital, though at such times the Claimant remained her primary carer.

7. From 13 September 2017 and save in respect of the periods set out hereinabove, the Claimant undertook the role of primary carer for the Deceased, with support from her husband, a retired GP. That care involved being present at the property at all times, assistance with the medication and consequences of the medical conditions of the Deceased, which included dementia, faecal incontinence, pain and distress from a rectal prolapse in July 2018, angina, cataracts, glaucoma, deafness and intermittent constipation.

8. On or around 9 May 2018 the Claimant and the Defendant were jointly appointed attorneys for the Deceased pursuant to Lasting Powers of Attorney both for Property and Financial Affairs and Health and Welfare.
9. In or around August 2018 the Deceased was diagnosed with vascular dementia, leading to a deterioration in her health and a consequential increase in the level of care and support that she required from the Claimant.
10. At all material times, the common understanding and agreement between the siblings, and between the Claimant and the Deceased, was that the Claimant would both be reimbursed in due course for the expenses incurred by her in caring for the Deceased, and would receive reasonable remuneration for the care that she and her husband were providing the Deceased:

PARTICULARS

- 10.1 in or around October 2017 the Deceased expressed to Dr. Rogers, the husband of the Claimant, during the course of a conversation in the living room of Windsor Road, that he must make sure that the Claimant was paid for looking after her;
- 10.2 On numerous other occasions on dates that are not able to be recalled the Deceased expressed the same desire to Dr. Rogers;
- 10.3 On 23 October 2017 the Deceased on a trip to Beechlands with the Claimant refused to return with the Claimant to Windsor Road unless the Claimant was paid property for her care, and that she wanted to “pay her way”. The Claimant agreed with the Deceased that she would be paid;
- 10.4 On numerous occasions including in February 2018 and again in October 2018 the Deceased expressed to the Claimant her desire that the Claimant be paid for providing her with care, to which the Claimant reassured the Deceased that she would be paid;

- 10.5 The Deceased expressed the same desire to two of the Claimant's daughters in or around early to mid-2018 and to one of the Claimant's daughters in December 2018;
- 10.6 On 28 October 2017 the Claimant had dinner with Shaun Wills, who made clear that he was concerned to ensure that the Claimant be entitled to be paid for the care of the Deceased, with which the Claimant concurred;
- 10.7 Shaun Wills by a WhatsApp message on 16 February 2018 to the Claimant timed at 21:48:26 stated "Make sure you are taking money for extra heating, food etc etc";
- 10.8 The Defendant by a WhatsApp message on 27 July 2019 timed at 14:06:40 expressed to the Claimant that she should get the Deceased to pay towards the care that the Claimant and her husband were providing. By a response on the same date timed at 14:17:48 the Claimant responded to the Defendant stating (insofar as is relevant) that "We will do Andy";
- 10.9 The Defendant by a WhatsApp message on 6 August 2019 timed at 9:17:57 stated to the Claimant (insofar as is relevant): "We (you and me) really need to sort out Mum's method of financing her care for the time she is with you. Do you want to give me a call when you have 30 mins to talk it over";
- 10.10 Maryanne Dickinson, by a WhatsApp message on 10 August 2019 timed at 16:44 stated to the Claimant that she had sent a message to the Defendant regarding a direct payment for the care provided, and that the Claimant needed paying. This message followed from a discussion earlier in 2019 between the siblings regarding the sale of Beechlands, with which the Deceased did not agree;
- 10.11 On the same date the Defendant by a WhatsApp message timed at 16:44 to the Claimant referred to the message from Maryanne Dickinson, and asked what need to be done regarding the bank accounts of the Deceased. The Claimant responded at 9:12:15 on 11 August 2019 stating that she was putting an invoice together for the Deceased; The Defendant responded on 11 August 2019 at 9:14:07 asking

whether the Claimant had access to the savings of the Deceased, as if not, it was necessary to make sure that the Claimant could “draw down” on the account;

10.12 In the course of a telephone conversation between the Claimant and the Defendant on or around 3 January 2020, the Claimant informed the Defendant that there was a need for extra carers as the Claimant was “on [her] knees”. The Claimant expressed frustration that she could not access the bank accounts of the Deceased in order to be paid for the care she had provided and to bring on additional carers. The Defendant affirmed that the Claimant was to be paid for the care she had provided and was providing, and agreed to sign the relevant forms to close a building society account;

10.13 On 12 March 2020 the Defendant and his wife visited the Claimant at Windsor Road. In the course of a conversation regarding care for the Deceased during a holiday that the Claimant was due to take, and in particular a respite care home, the Deceased expressed words to the effect that if the Claimant did not get paid she would go into a home;

10.14 On or around 18 April 2020, the day before the death of the Deceased, the Claimant spoke to the Defendant regarding the deterioration in the health of the Deceased and raised the fact that she had not yet been remunerated for the care with which she had provided the Deceased nor been reimbursed her expenses. The response of the Defendant to this was to tell the Claimant to “just take it”;

10.15 By an email dated 1 June 2020 at 15:45 from the Defendant to the Claimant stated, insofar as is relevant: “You are due payment for Mum’s care and this has never been disputed. However, the costs for care have to be discussed and agreed once we see a complete breakdown of your estimate and costs incurred in delivering care and cannot just be plundered from her estate”.

11. In the circumstances the Claimant avers that her offer to provide care for the Deceased at her home and to be remunerated for it in a reasonable sum, expressed through her conduct in providing such care and the understanding and intention of the Siblings and

of the Deceased, was accepted by the Deceased coming to live with the Claimant and being cared for by her, such acceptance arising through conduct.

12. Further, by virtue of the matters set out in paragraph 10 hereinabove, upon which the Claimant relied in providing care for the Deceased and incurring expenses, the Defendant is estopped from denying the entitlement of the Claimant to reasonable remuneration and for reimbursement of expenses incurred by her on behalf of the Deceased, from the Estate.
13. Yet further and in the alternative, the Claimant is entitled to restitution for the care provided to the Deceased and the expenses incurred in so doing by way of a quantum meruit, it having been clearly understood and expected by the Siblings and by the Deceased that the Claimant would receive reasonable remuneration and reimbursement of expenses for the care that she provided.
14. By an email dated 2 June 2020 the Claimant provided to the Defendant an invoice in the sum of £135,000 as reasonable remuneration for the care provided by her to the Deceased. The said sum was calculated at a day rate of £150 across the 900 days of care provided by the Claimant to the Deceased on the basis that the Claimant and her husband had provided 24 hour, 7 day per week care, and included the expenses incurred.
15. In reliance upon the representation by the Defendant that the Claimant should “just take” the monies due to her, the Claimant transferred the sum of £100,000 from accounts held by the Deceased to herself. However this transaction was subsequently reversed and the Defendant reported the Claimant to the police. The Claimant was prosecuted but acquitted at trial. In the email of 2 June 2020 the Claimant had accounted for the payment of the sum of £100,000 towards her remuneration.
16. The Claimant has quantified her out of pocket expenses within the sum of £135,000 in the sum of £38,928.97. Annexed hereto marked “A” is a schedule setting out the breakdown of those expenses albeit it is noted that the expenses set out therein total £39,662.31.

17. The Claimant avers that an expense-inclusive day rate of £150 is reasonable and proportionate and that it was an implied term of the contractual agreement reached by conduct as set out above that her remuneration would be at a reasonable and proportionate rate. Annexed hereto marked "B" is a document prepared by the Claimant setting out comparative care costs. The Claimant notes that in January 2020 in a discussion with the Defendant the Defendant did not suggest that an additional carer cost for a carer for six hours per day from Home Instead of £150 per day was unreasonable or disproportionate.
18. The Defendant has not paid to the Claimant the sum of £135,000 or any sum, in respect of remuneration for the care provided to the Deceased or in respect of her expenses.
19. In the circumstances the Claimant Claims the sum of £135,000 from the Estate by way of debt alternatively damages and alternatively by restitution on the basis of a quantum meruit.
20. The Claimant is further entitled to claim and does claim interest on such sums as are found due to him pursuant to section 35A of the Senior Courts Act 1981 at the rate of 8% or at such other rate as the court in its discretion shall consider fit.

AND THE CLAIMANT CLAIMS:

- (1) The sum of £135,000 or such other sum as the court shall determine by way of debt alternatively damages;
- (2) Alternatively restitution by way of a quantum meruit in a sum to be determined;
- (3) Interest;
- (4) Further and other relief.

CHRIS BRYDEN

Statement of Truth

I believe that the facts stated in these Amended Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:  Position or office held: The Claimant

Dated: 5/29/2024