Neutral citation number [2025] EWHC 1072 (Ch)

**IN THE HIGH COURT OF JUSTICE CLAIM NO. PT-2024-001055**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**PROPERTY TRUSTS AND PROBATE LIST**

**MASTER MARSH (sitting in retirement)**

Rolls Building

Fetter Lane

London EC4A 1NL

**BETWEEN:**

**SUSAN SULLIVAN**

 **Claimant**

**and**

1. **STEPHEN SULLIVAN**
2. **DAVID SULLIVAN**
3. **KERRIE BHATTA**
4. **HOLLY SULLIVAN**

**Defendants**

**WILLIAM EAST** instructed by Cripps LLP appeared for the Claimant

The Defendants did not appear and were not represented

**JUDGMENT**

Hearing 22 April 2025

This judgment will be handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be **10:00am on 9 May 2025**

1. On 22 April 2025 I made an order rescinding a Declaration of Trust dated 31 July 2009 (“the Trust”) on the grounds of mistake. This judgment provides my reasons for making that order.

**The Parties**

1. The parties to this claim are all members of the same family and for convenience I will refer to them using their given names.
2. The Trust was executed by Patrick Sullivan in relation to 24 Stanley Road, Bromley BR2 8JE. That property comprises a house, a maisonette and a yard and office and is held under title numbers SGL174242 and SGL 190754.
3. Patrick died on 1 June 2021 and the claimant (Susan) is his widow. She is the executrix of his estate under his last Will dated 4 October 2019. She also inherits his residuary estate under the will. Susan obtained a grant of probate on 1 August 2024 and she brings the claim in her capacity as executrix as well as in her personal capacity.
4. The First and Second Defendants (Stephen and David) are Patrick’s children by a previous marriage with Priscilla Sullivan (Priscilla).
5. The Third and Fourth Defendants (Kerrie and Holly) are Susan and Patrick’s children.
6. All the defendants have filed acknowledgments of service saying that they do not intend to defend this claim. The court has been provided with witness statements made by Susan, Kerrie and Holly. There are no factual issues in dispute.

**Background**

1. Patrick and Priscilla separated in the 1970’s. Patrick and Susan met in 1976 but Patrick remained married to Priscilla until her death in 2008. Kerrie was born on 25 April 1986 and Holly was born on 3 May 1989. Patrick and Susan were married on 10 August 2009.
2. Priscilla died intestate and Patrick and Stephen were appointed joint administrators of her estate. At the time of her death:

9.1 24 Stanley Road was held by Patrick and Priscilla as beneficial joint tenants. Priscilla occupied the house, the maisonette was rented out and Patrick ran his roofing business from the yard and the office.

9.2 Patrick and Priscilla also owned jointly another property at 25 Napier Road, Bromley BR2 9JA. This property was held as tenants in common.

 **The evidence**

1. The principal evidence is provided in Susan’s witness statement.
2. Following Priscilla’s death, a dispute arose between Patrick on one side and Stephen and David on the other. Patrick was unhappy that Priscilla’s share of 25 Napier Road formed part of her estate and Stephen and David were unhappy that Priscilla’s half share of 24 Stanley Road had passed to Patrick by survivorship. There is no first hand record of Patrick’s state of mind at the time but Susan’s witness statement summarises the conversations she had with him. Although Patrick was intending to make provision for Stephen and David on his death, it was not his plan that they would benefit from his estate during his lifetime. He was very upset that his sons had made a claim on him. He spoke to Susan about finding a way to placate them without giving property to them. He wanted to “get them off his back” by providing a non-binding assurance about his intentions when he died. It is in this context that the Trust came into being.
3. Susan was working as the Facilities Manager at Manches Solicitors (as it then was). She recalls speaking to a colleague, Oonagh Grant, a Legal Executive who worked in the firm’s property department. Their paths crossed at work and they had a connection because Ms Grant’s daughter went to the same school as Holly. Susan’s witness statement records:

*31. My clear recollection is that Patrick had made it clear that he wanted a non- binding document. Whilst I worked at Manches, I have no legal knowledge or experience. Whilst I cannot recall specific conversations, I am clear that I had multiple discussions with Patrick about this and I understood he wanted a document providing an indication of his intentions but not in a manner that would be binding. I am absolutely clear that Patrick did not want to make a binding commitment.*

*32. I discussed this with Oonagh and through this the idea of a Declaration of Intent (‘DOI’) was talked about. I recall the words “Declaration of Intent but I cannot recall who suggested this. I believe it was likely to have been Oonagh. I am clear however that I talked to her about having something non-binding.*

*33. Oonagh offered to do the work, which did not surprise me as I knew she worked in the property department, and I spoke to Patrick. He agreed and I spoke to Oonagh to accept her offer.*

*34. I am absolutely clear that I understand the DOI was intended to be a document that would provide reassurance to Stephen that he may receive some inheritance later, with a view to getting him to sign off on Priscilla’s probate. The plan was for Patrick to prepare his Will after the completion of Priscilla’s probate.*

*35. At that time, Patrick and I were planning to marry.*

*36. Whilst Oonagh assisted Patrick, I do not believe there was ever any formal client agreement and I do not recollect whether a charge was ever made for the work undertaken. I cannot see from the file a client agreement or any invoice and this supports my recollections.*

13. Manches’ file has a number of documents that assist with the background to the Trust. The file opens with an email from Susan to Ms Grant dated 17 July 2009 headed “Declaration of Intent”.

 *“If you have time please could you draw up a Declaration of Intent:*

*Patrick wishes:*

*25, Napier Road to go to me.*

*The yard/workshops/house/flat and offices at 24, Stanley Road to be split equally between Kerrie/Holly/Stephen and David.*

*Pat's Building Society accounts in his name to go to me*

*His Pension to go to me*

*All shares in his name to go to me*

*All Bank Accounts in the name of Sullivan's or Patrick Sullivan to go to me*

 *All shares in Priscilla Sullivan's name to go to Stephen and David Sullivan.*

*All Building Society Accounts and Bank Accounts etc at present still in Priscilla Sullivan's name (to be changed to Patrick Sullivan) to go to me.*

*The sum of £50,000 placed in Stephen Sullivan's bank account by Pat to caretake is to be split and decided at a later date.*

*Let me know what we need to do.*

*I really appreciate all your support and help.”*

1. Ms Grant replied almost immediately saying she would put something together over the weekend and asking for the post codes for the two properties. Then on 22 July 2009 Susan sent a further email, under the heading DOI:

*“Pat's solicitors are STILL sorting out some assets of Priss' as they were in her maiden name and have told Pat that all this should be sorted in the next month! I cannot for the life of me understand why they have taken so long, although I do appreciate that Pat hasn't really been chasing them.*

*Could you just draw up a draft DOI so that it is obvious exactly what he intends and then we will draw up a proper Will, as soon as we are married and Weller's have finished messing around.*

*Thanks everso much Oonagh”*

1. On 23 July 2009 Ms Grant sent the following message under the heading “docs”:

*“Hi Sue I have read through your e mail again and basically apart from the yard which is to be held in trust and then left to the four children and apart from Cilla's shares the rest is to go to you.*

*I have to say that whilst I have prepared a Declaration of Trust in respect of the yard in Stanley Road that a Declaration of Intent is meaningless, will not stand up in court and will probably do more harm than good.*

*Therefore I have prepared a Will for Pat for you to look through and then show to him*

*This is a will made in contemplation of your marriage as you will see from clause 2 so this will not be revoked when you both mary [sic]*

*In a nutshell the Will states*

*• The shares of Cilia to go to Stephen and Robert*

*• The yard to be divided equally between all four children*

*• The residue to go to you*

*• If you should die together or if you predecease Pat then the estate to be divided equally between the four children*

*I think that covers it all but let me know if you require further info - I am quite happy to pop up and see you both at the weekend if you need me to*

*Also Pat will need an alternate Executor should you both, for example, die in a plane crash - maybe his sister ? Let me know in due course”*

1. The email had a draft declaration of trust and a draft will attached. The Trust was signed by Patrick and dated 31 July 2009. His signature is said to have been witnessed by Ms Grant. However, Susan’s recollection is that Patrick signed the Trust at home (with the address being corrected in manuscript by her) and Ms Grant’s signature as witness added later. Susan does not recall any discussion with Patrick about Ms Grant’s email or the Trust. She says that neither she nor Patrick would have understood the significance of the document being a declaration of trust as opposed to a declaration of intent. She goes on to say:

*“44. At no stage was any advice provided by Oonagh (or anyone else at Manches) to either Patrick or me that the DOT would result in a binding trust of the Property, such that Patrick would no longer be the owner of it. I am clear in my recollection of this. Further, Oonagh did not explain that if the DOT was executed, then the part of the July Draft Will which dealt with the Property could not be effective. Patrick and I both believed that Patrick would remain the owner of the Property if he signed the DOT.”*

1. Susan does not know whether Patrick showed the Trust to Stephen but believes Patrick told him that he had prepared a declaration of his intent to benefit Stephen on Patrick’s death. Stephen did not withdraw his objection to Priscilla’s estate being administered. However, the Trust changed nothing ‘on the ground’ at 24 Stanley Road. Patrick continued to run his business from the property and receive rent for the annexe at number 24A from his brother. Stephen continued to park a truck in the yard, as before.
2. The draft will prepared by Ms Grant in July 2009 was not executed at the time. Its terms are important because they are inconsistent with the execution of the Trust. Clause 5 of the draft will gave 24 Stanley Road to the four children in equal shares which could not have taken effect because under the Trust Patrick had already declared that he held that property on trust for them.
3. In August 2009 Susan and Patrick were married nearly 33 years into their relationship and when their two daughters were in their early twenties.
4. On 20 November 2009 Susan sent a further email to Ms Grant:

*Sorry to be a pest Oonagh.*

*Please could Pat's Will be amended as follows:*

*• Firstly so his address reads 24, Stanley Road, Bromley, Kent, BR2 9JE*

*• Secondly, bearing in mind the inheritance tax issue, could everything be left to me as his wife.*

*• Executors, in the event of my death being Anne Hughes (Pat's sister) and Robert Hubbert (my brother)*

*Could a Letter of Wishes then state that Stephen and David Sullivan are each to receive 30% of the premises at Stanley Road and Kerrie Sullivan - Hubbert and Holly Sullivan to receive 20% each of the premises at Stanley Road, for me to arrange after Pat's death. Hopefully that should sort out the 7 year issue (if I live that long !!!!! )*

*Thank you so much for all your help.*

1. On 20 November 2009 Patrick executed a will that reflected these instructions. He left his entire estate to Susan with a gift over to all his children if he predeceased him. In addition, he signed a memorandum of wishes on the same date as his will requesting that 24 Stanley Road be divided as to 30% for each of Stephen and David and 20% for each of Kerrie and Holly.
2. No advice was given by Ms Grant (or anyone else at Manches) about the effect of the will and memorandum of wishes. Susan says that neither she nor Patrick understood that by the time the will and memorandum were executed the Trust had already amounted to a transfer of value for inheritance tax purposes and a disposal for capital gains tax purposes. This would give rise to significant tax charges, something of which they were unaware. The reference to inheritance tax in Susan’s email sent on 20 November 2009, the will and the memorandum were all based upon the premise that no transfer or disposal had taken place.
3. Stephen was not immediately appeased by the memorandum but in 2010 he agreed to complete the administration of Priscilla’s estate if he was assured that Kerrie and Holly were aware of the proposed 30:30:20:20 split. Susan says that Patrick showed Kerrie and Holly his 2009 will and the memorandum telling them that the uneven split was not binding. Stephen insisted on meeting Kerrie and Holly. That meeting took place as he had requested and they have both made full statements about it and their subsequent dealings with him and David. Priscilla’s estate was administered.
4. It is clear based upon the evidence that neither Patrick nor any member of his family appreciated the effect of the Trust. The discussions outlined above proceeded upon an entirely false premise. Furthermore, the previous status quo was preserved and Patrick treated 24 Stanley Road as his own and Susan says she is in no doubt he believed the entire property was his. Patrick’s relationship with Stephen by then had broken down and they had little contact although Stephen continued to park his truck in the yard as he had done previously.
5. In December 2010, 25 Napier Road was registered in Patrick’s sole name (he and Susan had moved there in late 2009). In 2011 Patrick applied for and was granted planning permission to convert the storage loft at 24 Stanley Road into flats 24b and 24c. The conversion work was carried out with financial help from Susan and the flats were let. The house at 24 Stanley Road was also let. Susan says that the income from the property was an essential part of their planning for her future and the income supported their lifestyle. Right up to his death in 2021, 24 Stanley Road was treated by Patrick as his property.
6. Patrick made a new will in 2018 and a new letter of wishes. These documents were executed without Cripps LLP who acted for him being made aware of the Trust. It was only after Patrick’s death when Stephen and David challenged Patrick’s will that Cripps obtained the Manches file and the existence of the Trust emerged.

**The law**

1. The law relating to equitable mistake was clarified by the Supreme Court in *Pitt v Holt* [2013] AC 108. Mr East relies upon the summary of the law provided by the Chancellor in *Kennedy v Kennedy* [2015] WTLR 837 at [36]:

*“(1) There must be a distinct mistake as distinguished from mere ignorance or inadvertence or what unjust enrichment scholars call a “misprediction” relating to some possible future event. On the other hand, forgetfulness, inadvertence or ignorance can lead to a false belief or assumption which the court will recognise as a legally relevant mistake. Accordingly, although mere ignorance, even if causative, is insufficient to found the cause of action, the court, in carrying out its task of finding the facts, should not shrink from drawing the inference of conscious belief or tacit assumption when there is evidence to support such an inference.*

*(2)  A mistake may still be a relevant mistake even if it was due to carelessness on the part of the person making the voluntary disposition, unless the circumstances are such as to show that he or she deliberately ran the risk, or must be taken to have run the risk, of being wrong.*

*(3)  The causative mistake must be sufficiently grave as to make it unconscionable on the part of the donee to retain the property. That test will normally be satisfied only when there is a mistake either as to the legal character or nature of a transaction or as to some matter of fact or law which is basic to the transaction. The gravity of the mistake must be assessed by a close examination of the facts, including the circumstances of the mistake and its consequences for the person who made the vitiated disposition.*

*(4) The injustice (or unfairness or unconscionableness) of leaving a mistaken disposition uncorrected must be evaluated objectively but with an intense focus on the facts of the particular case. The court must consider in the round the existence of a distinct mistake, its degree of centrality to the transaction in question and the seriousness of its consequences, and make an evaluative judgment whether it would be unconscionable, or unjust, to leave the mistake uncorrected.”*

1. There is a degree of overlap in these four criteria. Leaving aside the need for a close examination of or an intense focus on the facts, in the relatively straightforward circumstances of this case it suffices to highlight the need for (a) a distinct mistake, (b) one that is about the legal character or nature of the disposition, (c) a mistake that is central to the transaction and (d) an examination of the injustice (or unfairness or unconscionableness) and seriousness of the consequences of the disposition looked at objectively.
2. Mr East submits, and I accept, that there must in addition be an issue that is capable of being contested between the parties to the claim seeking recission of mistake despite that fact that they all consent: *Lewin on Trusts* (20th edition) at 5-075.

**Disposal**

1. The evidence about Patrick having made a relevant mistake is compelling. His mistake was about the legal character and nature of the document he signed. He thought he was signing an informal declaration of his wishes upon his death. In fact, he executed a trust with the legal and fiscal consequences the Trust brings with it. It was executed in the context of his request, through Susan, that his wishes were recorded in a form that he could show Stephen, not a request to dispose of his interest in the property. He received no advice about the nature of the Trust or its effects and neither he nor Susan had any legal training or experience. It is clear that he did not appreciate he was executing a document with unequivocal legal consequences. It also seems very unlikely that Ms Grant appreciated the effects of the Trust because her draft will, the 2009 will executed by Patrick and the memorandum are inconsistent with a trust having been declared. It need hardly be said that it is extremely poor practice to draft documents of this type (whether as a favour or for reward) without providing advice.
2. There are also compelling reasons for the court to conclude that that mistake was a serious one and it would be unjust for the Trust to be left in place. These include:

31.1 The Trust resulted in Patrick disposing of his asset of most significant value, worth around £1m at the time, when he had no intention to do so. This would have left Patrick and Susan in a very insecure financial position, given that 25 Napier Road had not been transferred into Patrick’s sole name and given that Patrick and Susan were renting a flat at the time, with no secure accommodation. Patrick would have been left with no rights to operate his business out of the Property and therefore no way of earning an income.

31.2 Patrick and Susan were reliant on income from the Property to fund their lifestyle up to Patrick’s death.

31.3 The Trust had significant consequences for Susan’s financial security after Patrick’s death, given the lack of other assets in Patrick’s estate apart from 25 Napier Road, where Susan lives. If the Trust were not set aside, Susan would be left without any provision out of Patrick’s estate for meeting her living costs (excluding accommodation). Susan is retired with no private pension and no assets other than Patrick’s estate, save for an interest in a property that is legally owned by her brother and from which she does not expect to benefit during her lifetime.

31.4 The Trust had significant tax consequences.

1. There was a dispute about Patrick’s will following his death. An agreement was reached at a mediation held on 13 May 2024. Stephen agreed to remove the caveat he had filed enabling a grant to be obtained under Patrick’s will. In addition, Stephen and David will receive £100,000 if, but only if, the Trust is rescinded. Thus, there remained an issue capable of being tried in the event that an order for rescission was not made.
2. Mr East has drawn my attention to the points made by Thompson Snell and Passmore acting on behalf of Stephen and David concerning the merits of the claim for recission. I do not need to say anything about them.
3. HMRC has been notified of this claim (twice) but has not responded.
4. In all the circumstances set out above, this is a clear case for the grant of an order rescinding the Trust on the grounds of mistake.