IN THE SUPREME COURT OF VICTORIA Not Restricted

AT MELBOURNE
COMMON LAW DIVISION

S CI 2013 4823

IN THE MATTER of an application pursuant to Pt IV of the *Administration and Probate Act 1958*

- and -

IN THE MATTER of the estate of GEOFFREY CAMPBELL BARROW, deceased

ROMA ARIADNE POOLE — Plaintiff

v

SAMANTHA BARROW (who is sued as one of the administrators of the estate of the abovenamed deceased) — Defendant

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JUDGE:	McMillan J
WHERE HELD:	Melbourne
DATE OF HEARING:	8–9 October 2014
DATE OF JUDGMENT:	24 November 2014
CASE MAY BE CITED AS:	Poole v Barrow
MEDIUM NEUTRAL CITATION:	[2014] VSC 576

Succession Law — Testator's family maintenance — Application under Pt IV of the *Administration and Probate Act 1958* — Application by de facto partner of the deceased — Where relationship admitted — Where responsibility to provide admitted — Where failure to adequately provide admitted — Whether life interest in home sufficient further provision

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APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Mrs S Marks QC with Mr B Mason	Hoban Legal
For the Defendant	Mr A Verspaandonk	Lyttletons Lawyers

HER HONOUR:

1. By originating motion filed 16 September 2013, Roma Ariadne Poole ('the plaintiff') seeks an order for further provision from the estate of Geoffrey Campbell Barrow ('the deceased') for her proper maintenance and support, pursuant to s 91 of the *Administration and Probate Act 1958* ('the Act').

2. The deceased died intestate on 14 September 2012. He is survived by his daughter, Samantha Barrow ('the defendant'), and the plaintiff, who was his domestic partner for 32 years.

3. On 13 February 2013, letters of administration of the deceased's estate were granted to the plaintiff and the defendant.

4. The inventory of assets of the deceased's estate filed in support of the application for a grant of letters of administration valued the estate at $1,806,722.83. That amount includes the amount of $800,000 as an estimate of the value of the estate's interest as residuary beneficiary in the estate of the deceased's mother. The other major asset of the deceased at the date of his death was his property at 38 Park Road, Middle Park ('the Park Road property'), owned by him as to 75 per cent and the plaintiff as to 25 per cent as tenants in common. The Park Road property was the home where the deceased lived with the plaintiff from 1985 until his death. The plaintiff continues to reside at the property and wants to live there for the rest of her life.

5. During the deceased's lifetime, the defendant borrowed two amounts for her business ventures. At some stage, the loans were secured by a registered mortgage over the whole of the Park Road property. At the date of death, these loans amounted to $218,505. At the date of trial, the total debt was $239,000. Although the loans were for

the plaintiff's business, ultimately, the fact that the loans are secured over the Park Road property is a matter that must be taken into account in any further provision for the plaintiff.

6. At trial, the parties agreed that the value of the estate was $1,520,000. Of that amount, it was agreed that the deceased's share of the Park Road property was $975,000, with the balance of the estate estimated at $792,157,[1] thereby making a total of $1,767,373. After allowances made for the plaintiff's costs estimated at $131,000 and the defendant's costs estimated at $95,000 plus estimated further fees for winding up the estate, this left a balance remaining of $1,520,000.

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[1] This amount includes 441 shares in CBA valued at $76.49 per share and not $55.28.

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7. As can be seen, the parties worked on the basis that the costs should be paid out of the estate. In principle, that should be the situation in the circumstances of this case but I have difficulty with the high quantum of those costs, particularly where much of the affidavit material was inadmissible. I have addressed the deficiencies in affidavit material filed in Pt IV proceedings previously, and need not repeat myself. Ultimately, the plaintiff gave evidence *viva voce* , and the defendant relied upon an affidavit sworn by her. Before I make final orders in the proceeding, I will hear the parties further on the quantum of the costs to be paid out of the estate. However, whether those costs are ultimately borne entirely or only partially by the estate, it is convenient for the purposes of this judgment to value the estate at the agreed balance of $1,520,000, as, given the size of the estate, any increase in that amount owing to any orders as to costs will not have any substantial bearing on the outcome.

8. Under the intestacy provisions of the Act and based on an estate valued at $1,520,000, the plaintiff is entitled to $573,000 and the defendant to $947,000. [2]

9. In addition to the estate assets, the deceased held just over $1,000,000 in the 'Slender Teal Staff Superannuation Fund ('the superannuation fund') which, pursuant to a non-binding death benefit nomination, was distributed 50 per cent each to the plaintiff and the defendant after his death.

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[2] By reason of the intestacy provisions contained in s 52 of the Act .

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10. As the plaintiff's application for further provision was filed out of time, she sought an extension of time, pursuant to s 99 of the Act , within which to bring her application. The defendant did not oppose that extension. The reasons for the plaintiff failing to make her application within six months of the grant of letters of administration were explained adequately, the delay was only slight, and she has good arguable grounds for seeking further provision. Accordingly, I granted the extension of time sought.

11. On the substantive claim for further provision, the defendant accepts that the deceased had a responsibility to provide for the plaintiff, and that the extent of her provision under the intestacy laws is not sufficient to satisfy that responsibility. At the trial, the only issue concerns the extent and the nature of further provision that should be ordered. [3]

12. At the first directions hearing, the plaintiff sought further provision of 75 per cent of the estate, which on an estate valued at $1,520,000 at trial would amount to $1,140,000. At trial, the plaintiff sought further provision of $1,322,000, which amounts to 87 per cent of the estate and leaves the defendant with the balance of $200,000.

> [3] Accepting of course that under s 91(3) the Court can only make orders if satisfied that the distribution of the deceased's estate under the intestacy provisions does not make adequate provision for the proper maintenance and support of the plaintiff, and the Court therefore cannot act as a 'rubber stamp' for the agreement of the parties.

13. The defendant resisted the plaintiff's claims for a lump sum payment and contended that the appropriate order would be for the plaintiff to have a life interest in the deceased's interest in the Park Road property, plus the sum of $200,000 to be used specifically for the repayment of most of the debt secured over the Park Road property.

14. Although both parties initially sought to rely on the many affidavits filed in the proceeding, much of the material deposed to was not relevant to the narrow range of issues in dispute and as stated the plaintiff gave *vive voce* evidence.

The applicable principles

15. The legal principles to be applied in claims under Pt IV of the Act are familiar, and do not need to be set out in any great detail. The first and second questions being conceded by the defendant, the only question remaining is what amount and what kind of provision should be made for the plaintiff's proper maintenance and support.

16. The questions required to be answered in a claim under Pt IV of the Act require the Court to consider the concept of an applicant's moral claim. It is said that this:

> reflects a duty resting on a testator to make not merely adequate or sufficient financial provision for members of his or her family in the specified class but also the obligation to measure that adequacy or sufficiency by reference to what is right and proper according to accepted community standards. [4]

17. What is meant by 'community standards' or 'community values' was considered by White J in the New South Wales decision of *Slack v Rogan*: [5]

> I know of no way of determining what the community would expect, or what its standards are, or values would be. I do not know, but suspect, that the expectations of individual members of the community would vary widely. It may be that the Act itself, at least in so far as it goes beyond allowing provision to be made in favour of spouses and minor or disabled children, runs counter to community expectations about freedom of testamentary disposition. As Basten JA said in *Andrew v Andrew*, the only guiding light, consistent with the rule of law, for the identification of community standards are those reflected in current legislation. No legislation other than the *Succession Act* itself is relevant to the present case. Attempts to identify particular community standards, for example, that a testator need not make provision for an able bodied son, or that a widow's claim is paramount, have been rejected. To say that the court itself is the spokesman for the fair and reasonable man or woman in the community is to acknowledge that in truth there is no ascertainable external community standard to guide the decision.

> The question of whether the provision, if any, made for an eligible applicant is adequate for his or her proper maintenance, education or advancement in life is to be assessed having regard to the facts and circumstances of each individual case. The assessment involves a broad evaluative judgment which is not to be constrained by preconceptions and predispositions. This really means that there are no definite criteria for the exercise of the 'evaluative judgment'.[6]

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[4] *Collicoat v McMillan* [1999] 3 VR 803, 818 [43]. See also *Andrew v Andrew* (2012) 81 NSWLR 656.

[5] (2013) 85 NSWLR 253. The Court interpreted s 59 of the *Succession Act 2006* (NSW), which establishes a similar legislative regime in New South Wales.

[6] Ibid 284 [125]–[126] [Citations omitted].

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18. The onus lies with the plaintiff to demonstrate the extent, and that extent should be determined at the date of trial, taking into account the plaintiff's position at that time.

19. In this jurisdiction, claims are made frequently by second or subsequent wives, where the contest is between the deceased's family by their first wife and their family by their second. In this case, given the length of the relationship between the plaintiff and the deceased, it is less relevant that the plaintiff is a 'second wife', as it was not suggested by the defendant that the deceased accumulated significant assets prior to embarking on his relationship with the plaintiff. However, the contest between the deceased's obligations to his daughter and the plaintiff, is a familiar contest where the deceased, and the Court standing in his shoes and assessing what a wise a just testator would have provided, is forced to balance his obligations to his first and second families. In that way, it is distinct from a claim by a first and only spouse.

20. It is often said that the obligation of a deceased to his widow is, at the least, to ensure that she has a roof over her head. That roof has been provided by being awarded matrimonial homes absolutely, sufficient funds to purchase another suitable residence, a life interest in a property or even a mere right of occupancy. [7] The appropriateness of each of these solutions, and indeed whether there is in fact an obligation to provide a home for the plaintiff, depend on all the facts and circumstances of the case.

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[7] See *Montaque v Montaque* [2002] NSWSC 328 (22 April 2002) [62]–[65] (Austin J); *Smith v Barker* [2005] NSWSC 14 (2 February 2005) (McLaughlin M); *Moore v Moore* [2005] VSC 95 (8 April 2005) (Mandie J); *Abrego v Simpson* [2008] NSWSC 215 (13 March 2008) (Windeyer J).

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21. The defendant contends that the plaintiff has a very poor track record in handling her money. There are a number of testator's family maintenance cases in which courts have dealt with applicants who are spendthrifts, have a record of squandering money, are chronic problem gamblers, or are penurious owing to their own lifestyle choices. [8] Consistently, it has been held that those circumstances do not disqualify a person from applying for further provision. [9] However, they are relevant to the form of any order made, and very often limited interests, such as orders that money be held on trust or life interests, are ordered instead of orders for outright capital provision. Where an applicant has caused their own financial difficulties, it may reduce the moral obligation of the deceased to provide for those difficulties.

[8] See *Close v Close* [2001] NSWSC 668 (30 July 2001); *McLean v Public Trustee* [2001] NSWSC 970 (29 October 2001); *Carroll v Cowburn* [2003] NSWSC 248 (4 April 2003); *Hampson v Hampson* [2010] NSWCA 359 (17 December 2010); *McCann v Ward and Burgess* [2012] VSC 63 (1 March 2012); *Lowe v Lowe* [2014] NSWSC 371 (2 April 2014).

[9] *Mitrovic v Perpetual Trustee Co Ltd* [1999] NSWSC 900 (30 August 1999).

22. Finally, it is generally accepted, that for the purposes of a claim under Pt IV, where a deceased dies intestate he is taken to have made a will in accordance with the intestacy provisions. [10] As a result, the Court can only interfere with the deceased's 'dispositions' insofar as it is necessary to provide for the plaintiff's proper maintenance and support. [11]

[10] *Iwasivka v State Trustees Ltd* [2005] VSC 323 (18 August 2005) [5], referring to *Re Russell* [1970] QWN 22, 56 referred to in *Vigolo v Bostin* (2005) 213 ALR 692, 708 (Gummow and Hayne JJ). See also *Lee v Hearn* (2005) 11 VR 270, 272 [3] (Callaway JA).

[11] *Re Wren* [1970] VR 449, 451 (Smith J).

Consideration of the criteria under s 91 of the Act

23. Of the specific matters that I am required to consider under ss 91(4)(e)–(o) and (p) of the Act, many of the matters are generally agreed between the parties. The principal issues that are in contention are the financial needs of the plaintiff and the plaintiff's inability to manage her finances since the deceased's death which, in turn, affects the form of any order made for further provision for the plaintiff.

24. For convenience, I now set out the matters under the Act where there is substantial agreement between the parties.

> *(e) Any family or other relationship between the deceased person and the applicant, including the nature of the relationship and, where relevant, the length of the relationship.*

25. The plaintiff is the domestic partner of the deceased. She had a loving relationship with the deceased for the past 32 years. The defendant is the only child of the deceased. She also had a loving relationship with her father.

> *(f) Any obligations or responsibilities of the deceased's person to the applicant, any other applicant and the beneficiaries of the estate.*

26. Apart from any obligations and responsibilities that arise as part of being a domestic partner and a parent, the deceased did not have any obligations and responsibilities to the plaintiff or the defendant.

> *(g) The size and nature of the estate of the deceased person and any charges and liabilities to which the estate is subject.*

27. The agreed asset value of the estate is $1,520,000 after deduction of the costs of the parties and further estimated costs of winding up the estate. The estate comprises the deceased's share in the Park Road property valued at $975,000 plus cash or shares

comprising $545,000. The Park Road property in encumbered as a result of the plaintiff's debts now amounting to $239,000.

(h) The financial resources (including earning capacity) and the financial needs of the applicant, of any other applicant and of any beneficiary of the estate at the time of the hearing and for the foreseeable future.

28. I will return to this issue.

(i) Any physical, mental or intellectual disability of any applicant or any beneficiary of the estate.

29. The plaintiff did not claim that she had any disabilities. She did say she had been attending a psychologist for her grief issues since the death of the deceased. The defendant has no disabilities.

(j) The age of the applicant.

30. The plaintiff is aged 68 years.

(k) Any contribution (not for adequate consideration) of the applicant to building up the estate or to the welfare of the deceased or the family of the deceased.

31. The evidence did not disclose any contributions by the plaintiff to the building up of the estate.

32. Both the plaintiff and the defendant contributed to the welfare and care of the deceased in the ordinary course of their close relationships with the deceased.

(l) Any benefits previously given by the deceased person to any applicant or to any beneficiary.

33. The deceased benefitted the plaintiff by allowing her to encumber his share of the Park Road property to secure her debts, now amounting to $239,000.

34. The plaintiff received over $500,000 from the deceased's superannuation fund as well as receiving her own entitlement to her superannuation of $90,000 and a legacy of $10,000 from the deceased's mother. She also received around $5,573 from the deceased's Bendigo Bank account.

35. The defendant has been paid approximately $528,000 from the deceased's superannuation fund being her entitlement.

(m) Whether the applicant was being maintained by the deceased person before that person's death, either wholly or partly, and, where the court considers it relevant, the extent to which and the basis upon which the deceased had assumed that responsibility.

36. The plaintiff and the deceased lived in the Park Road property together. They kept their finances separate and the plaintiff worked up until April 2011. The deceased did pay some of the plaintiff's monthly mortgage payments of approximately $1,700 towards the end of his life.

(n) The liability of any other person to maintain the applicant.

37. Not relevant.

(o) The character and conduct of the applicant or any other person.

38. The plaintiff's management of her finances is relevant and is dealt with below.

39. The next matter to considered under s 91(4) of the Act are the financial resources and needs of the plaintiff and the financial need of the defendant. [12]

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[12] Section 91(4)(h) of the Act .

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40. The defendant's financial resources were not in issue, nor did the defendant put forward any competing financial need.

41. The plaintiff's financial position and her management of her finances was the significant issue between the parties. The plaintiff failed to produce much of her financial information. This left the defendant with the task of understanding how the plaintiff has managed her finances since the death of the deceased, much of which was done by an analysis of the plaintiff's subpoenaed bank documents.

The plaintiff's financial needs and history of managing her money

42. The deceased separated from the defendant's mother in around 1976, and lived with the plaintiff from 1980 until his death. The plaintiff and the deceased did not bring to their relationship any assets of significance or relevance to this dispute. They purchased the Park Road property in 1985. During the deceased's lifetime, the plaintiff borrowed money. The first amount was of some $40,000, originally secured against the plaintiff's BHP shares and then, in early 1980s, secured against the Park Road property. The second amount was of some $185,000 borrowed to support her business interests in Canberra with her business partner, John Kerr. Both amounts are secured over the whole of the Park Road property. At the date of the deceased's death, the loans totalled $218,505. From the date of death to the date of trial, she made payments on the loans amounting to $13,529. As at August 2014, the total amount owing on those two debts is $239,000 as a result of the capitalisation of interest payments on the combined debt. Interest on the loan accrues at around 6 per cent or approximately $14,500 per annum.

43. The plaintiff worked full time until April 2011, earning an annual salary of $104,000 as a contractor, operating under the company name of RAP Activities Pty Ltd. After a re-structure at her work, she was made redundant. RAP Activities Pty Ltd went into liquidation in September 2011.

44. In the 2011–12 tax year, she was employed as a management consultant for two eight-week periods, first at the Department of Immigration and secondly at the Bureau of Meteorology. There was some discrepancy about the amount she earned for this work. Initially, she indicated that she earned, in total across the two jobs, between $130,000 and $140,000. Her tax return filed for that year showed an income of just over $17,000. When this was put to her in cross-examination, she reassessed her income for those two jobs as being $800–$1000 per day, and agreed that this would have put her income for that year at between $60,000 and $70,000.

45. The plaintiff was unable to explain the discrepancy between those three figures. She insisted that she had simply trusted her accountant, Mr Stewart Stockdale, of over 30 years who had completed the tax returns and she had signed off on the documents placed in front of her by him. The defendant requested that the plaintiff provide the documents in support of that tax return. Those were not provided by her and she did not call Mr Stockdale to give evidence on her behalf. She also said that all of the tax returns were completed shortly after the death of the deceased, and that this may have contributed to her lack of attention.

46. Although in earlier affidavit material filed in the proceeding but no longer relied upon at trial, the plaintiff had deposed that she had given up working in order to support the deceased whilst he was ill, she disclaimed that this was the case in cross-examination. Her redundancy occurred prior to his falling ill, and she was not working during the latter stages of his illness, but this was not in order to care for him, and the plaintiff did not maintain that it was so. Since his death, she has continued to look for employment as a management consultant and has been unsuccessful. She intends and expects to obtain full time work in the future, most likely she said in Newcastle or Darwin, when the economy recovers.

47. Upon the death of the deceased, the plaintiff was entitled to, and received, half of his superannuation funds, a sum of $500,000. Around the same time, she also withdrew her own superannuation of $90,000 and received a legacy of $10,000 from the estate of the deceased's mother. Although there was some minor disagreement, it was agreed that the deceased received a total capital amount of around $600,000. At issue between the parties was what had become of that money in the two years following its receipt by her.

48. The plaintiff's *viva voce* evidence was difficult to follow. It was coloured by a vague, if not loose, approach to her spending. In a number of examples, the plaintiff swore to certain amounts of money as expenses and income that, under cross-examination, she blamed upon those preparing the documents. She asserted that significant amounts of money had been spent without producing any proper evidence to support those assertions. When confronted with expenses she could not explain, she answered questions by reference to how she believed she would have spent the money, or how she would probably have spent the money, rather than by stating what she actually did. Her evidence in relation to the spending of her money was not credible. She failed to provide any rational evidence as to her annual outgoings, leaving the defendant to estimate it based on her subpoenaed bank statements. As the onus is on the plaintiff to prove the extent of provision she should be provided, where there is no proper evidence, I conclude that she has not established financial need relevant to the extent of the provision she should be awarded.

49. The plaintiff described her lifestyle since the death of the deceased as 'normal, comfortable living', neither living excessively nor penny-pinching. She indicated that immediately following his death, she had been going out 'less often' and generally avoiding other people. She also said that, in the six months leading up to trial, she had begun to engage in a more regular amount of socialising, including going out to dinner and to the races, activities she enjoyed whilst the deceased was still alive. When pressed in cross-examination, she also said that she occasionally bet on the horses and played gaming machines. She said that the bets were small and that she had played the pokies only five or six times over the course of the last two years.

50. Apart from her very generalised evidence as to her living expenses, the plaintiff gave evidence of a number of significant expenses incurred after the death of the deceased. The primary expense identified in evidence-in-chief was that she had done a large amount of maintenance work on the Park Road property to enable her to continue to live in it. Her estimate of the expense of that work was $150,000–$200,000. No accounts, or any breakdown of that figure, was provided by her. Indeed, nothing like that figure was able to be identified with any precision. She estimated $5000 on painting the house, $3000 on repairing the roof for which she was reimbursed $1400 by her insurers, $1400 on repairing the hot water system and $300–$400 on plumbing, totalling just over $8000. Although she initially said that the cost of new curtains were paid after the deceased's death, in cross-examination, she said that the deceased had paid for those prior to his death.

51. She has continued to pay rates and charges over the property, as well as contents and house insurance, and said she paid interest instalments on the mortgages of $2000 per

month on three or four occasions, although her statements reveal she had spent $13,529 on mortgage payments. As put to her in cross-examination, the plaintiff agreed, or had no reason to disagree, that her utilities, expenses and similar outgoings, totalled as estimated by the defendant from her bank statements approximately $1400 a month or $35,000 over a two year period.

52. The plaintiff maintained she had a number of other large expenses after the deceased's death. She indicated she had a number of medical expenses, including physiotherapy, psychological treatment and dental work, but did not nominate any specific amount or produce documentary evidence of those expenses. She purchased a car, a Peugeot, for $39,625. She spent $15,000 restoring an old car of the deceased, a Studebaker, which she then sold for just under $10,000. She also paid her credit card debt of $10,000. She made six trips interstate of 4–6 days each, twice to Darwin and twice to Canberra to look for work, and to Brisbane for a friend's 90th birthday and Newcastle for a social event. At a rough guess, she estimated the total cost of these trips to be around $20,000. She could not recall whether she had been on a further trip in July 2014, only a few months before trial. She has also paid around $110,000–$120,000 for the legal costs of this proceeding, including trial fees.

53. Counsel for the defendant, in cross-examination, and allowing generous overestimates for figures where the plaintiff had been vague, estimated that, excluding ordinary living expenses, which the defendant agreed were not generous, the plaintiff had not explained how some $240,000 of the money she had already received from the deceased had been spent. The defendant accepted that figure and said she would not be surprised if that amount had been spent on living expenses. In closing, counsel for the defendant submitted that the unexplained sum was closer to $260,000, and prepared an estimate of the plaintiff's expenditure, which was not challenged by the plaintiff:

Amount received/available as at date of death		**$615,573**
Car purchase	$39,625	
Account of legal costs	$108,200	
Rates and outgoings taken from exhibit P2 (Westpac Statements) $14,403 over a 10 month period, extrapolated over 24 months	$35,000	
Mortgage instalments paid	$13,529	
Hot water $2000 Painting $5000 Plumbing $400 Roof $1600 (after receipt of insurance claim)	$9,000	
David Jones debt	$10,000	

Studebaker car ($15,000 less $10,000 received)	$5000	
Interstate trips (plaintiff's estimate)	$20,000	
Balance in account	$114,500	
Shortfall		**$260,719**

54. The only unidentified expenditure was the living expenses of the plaintiff after deducting outgoings, rates and accommodation. Such an amount as identified in the shortfall could not have been spent on the remaining items such as food and necessities incidental to a normal and comfortable standard of living.

55. Finally, counsel for the defendant took the plaintiff to her subpoenaed bank statements since the death of the deceased. In summary, and without referring to the detail, those accounts establish that on a regular basis, up to six or seven times a month, the plaintiff would withdraw up to $1000 cash, in $200 instalments, from ATMs located within a number of different pubs that have gaming machines. The plaintiff accepted that some, although not all, of that cash had been spent playing on gaming machines. As counsel for the defendant took the plaintiff through more instances, she became more defensive, denying that any of the money had been spent on gaming machines. She could not recall where else it may have been spent, other than to insist that at that time she did not know where she was or what she was doing. As I have noted, she frequently responded to cross-examination by insisting that she 'believed' the money would not have been spent on gambling machines, that she would 'probably not' have spent the money on gambling machines, that she 'doubted very much' that she had spent the money on gambling machines, that it was 'possible' she spent the money shopping, and that it 'would not' have been in her nature to spend the money on gambling machines. On many of the occasions in question, the bank statements revealed that she had previously used her EFTPOS card to pay for groceries and the like on the same or on subsequent days, making it unlikely that she had also spent the cash withdrawn from the ATMs on those expenses. She evaded counsel's questions as to why she had previously told the Court that she only used gaming machines five or six times in two years, when in fact it was at least that often each month.

56. Insofar as the plaintiff sought to deny that the cash withdrawals from those ATMs had not been spent substantially on gambling, I reject her evidence. It is contrary to the bank statements, and defied explanation. She could not explain credibly why such large sums of money had been withdrawn, in cash, at venues with gaming machines. Counsel for the defendant submitted that at best, she had not been frank with the Court. It is not necessary for me, for the purpose of this trial, to determine whether the plaintiff deliberately lied about those expenditures, or had deceived even herself. It is enough that I do not accept her evidence. Counsel for the defendant estimated that the total sum withdrawn on these occasions was over $115,000. Even if only half that sum was spent gambling, and the other half on clothing, shoes, bags and accessories, that is contrary to the plaintiff's evidence. Even if the whole of the sum was spent on food, wine, clothing, shoes, bags and accessories, as the plaintiff gave evidence that it had, that is an extraordinarily extravagant lifestyle.

57. The final matter to be considered under the Act is 'any other matter the Court considers relevant'.[13] I consider it relevant that the plaintiff's expenditure, on any view, has been extraordinary and improvident. It is not explained by a comfortable standard of living. The defendant submitted, and I accept, that the plaintiff has spent large amounts of money on gambling. This has resulted in the plaintiff dissipating her

substantial financial 'nest egg' given to her after the death of the deceased. In my view, the plaintiff's management of her funds since the death of the deceased has been irresponsible and she has demonstrated that she is a poor manager of money and has excessive spending habits. In light of this conclusion, it would be imprudent to allow her to be in charge of any further provision.

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[13] Section 91(4)(p) of the Act .

The parties' submissions

The defendant's submissions

58. The defendant submitted that, rather than the law requiring that the widow, in effect, 'takes all', that a balancing act was required. The deceased owed obligations to both the plaintiff and the defendant and in a moderately large estate those obligations can both be satisfied. The deceased's obligations could be met, it was submitted, by providing her with a life interest in the estate's interest in the Park Road property, with conditions enabling the property to be sold and other accommodation purchased for the plaintiff to live in, if need be.

59. The major submission made against the plaintiff was that the plaintiff had put herself in the position she was in by her own actions. The amount of money that she had spent could not be explained by pointing to living expenses for a normal comfortable lifestyle. At best, some $240,000 was spent over two years that was not explained by the plaintiff. At worst, that money could be explained by gambling and other expenses that were well in excess of supporting an ordinary, comfortable lifestyle. In those circumstances, it was submitted, no further capital should be advanced to support her, although the debt owing on the Park Road property could be paid from the estate assets.

60. The defendant made two further narrow submissions: that a *Jones v Dunkel* [14] inference could be drawn against the plaintiff for her failure to call any evidence of her psychological treatment, such as her treating psychologist; and although the fact that she may be eligible for a pension could not deny the plaintiff further provision, it could be taken into account in making any further provision for her.

The plaintiff's submissions

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[14] (1959) 101 CLR 298 .

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61. Senior counsel for the plaintiff conceded in final submissions that in the two years since the death of the deceased, the plaintiff had not been a good manager of money. She also conceded that some of the money withdrawn at the gambling venues had been spent on gaming machines. By way of explanation, she submitted that her grief had caused much of her confusion and money problems. But the true submission of the plaintiff was that the plaintiff's management of money was irrelevant, it not being something that disqualifies her from receiving capital sums from a 'wise and just' testator.

62. The plaintiff submitted she should receive the fee simple title of the Park Road property, and after payment of the costs of the litigation from the estate, the defendant should receive a lump sum of $200,000 and the plaintiff should receive the residue of the estate. This provision amounts to the plaintiff receiving some 87 per cent of the estate. Senior counsel disclaimed any knowledge of the fact that, as is the usual practice in this jurisdiction, at the first directions hearing, the plaintiff nominated that she receive 75 per cent of the estate. Even so, no proper explanation was advanced as to why the amount was increased at trial.

63. The plaintiff submitted that a life interest in the property was not sufficient for her further provision. She contended that not only should she be entitled to the fee simple of the Park Road property, which would then enable her to manage her own financial affairs for the future, but she should also be entitled to a 'nest egg' for her future support her, given her age and lack of savings. The plaintiff also submitted that the authorities consistently support that a widow is entitled to the fee simple in the matrimonial home.

64. Although the plaintiff sought that any cash provision be provided directly to her, in the alternative, it was suggested that the money be held on trust by an independent trustee, such as her accountant, Mr Stockdale, to be managed in her interests, with both the income and capital available to the plaintiff but not to be frittered away.

65. In support of her submissions that a fee simple interest, rather than a life interest, should be provided, the plaintiff relied upon a number of decisions where the fee simple in the family home were provided to plaintiff widows:

(a) In *Hertzberg v Hertzberg*,[15] the deceased left an estate of more than $10 million. The plaintiff widow was left a right to reside in the principal residence but otherwise was left nothing in substance under the will. She had been provided with $1 million during the deceased's lifetime as a result of negotiations prior to his death. At trial, Acting Master Berecry 'recognised the community expectation that a testator should make provision for a widow to ensure that she can lead an independent and dignified life'.[16] On appeal,[17] McColl JA accepted that the prospect of meeting the community's expectation that a testator should make adequate provision for a widow:

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[15] [2002] NSWSC 1235 (23 December 2002).
[16] Ibid [23].
[17] [2003] NSWCA 311 (23 October 2003).

> is diminished when the widow does not have the benefit of the fee simple, but rather, a right of occupation of her home with a provision for expenses associated with that right being left in the hands of executors.[18]

(b) In *Ralphs v Shirt*,[19] the deceased left a house worth $490,000 to his mother and a legacy of $30,000 to his de facto spouse. The house was sold before the proceeding was heard. The plaintiff had gambled away half of a $30,000 legacy as a result of her depression. The court ordered that the plaintiff receive a legacy sufficient for her to acquire an appropriate

residence. Master McLaughlin indicated he would have had 'little hesitation' in ordering that the plaintiff receive absolute title to her home of almost 20 years had it not been sold. [20]

(c) In *King v White* ,[21] the deceased left a modest estate of the matrimonial home valued at $72,000 and a bank account of $39,000 and a motor vehicle worth $3,850. He gave the plaintiff wife the right to reside in the home until her death or until she no longer wished to reside there and thereafter it was devised to a distant and virtually unknown nephew with the residue of estate to pass to the Salvation Army. The motor vehicle was given to his niece. The nephew did not appear to dispute being deprived of his unexpected and unearned windfall. Justice Hedigan granted the plaintiff a fee simple interest in the matrimonial home to provide 'that degree of protection which will provide an adequate bulwark against inflation, future vicissitudes and uncertainties'.[22]

(d) In *Caldwell v Ang*,[23] the deceased left the plaintiff, his wife, a one half interest in a property (valued at $150,000) as well as a right to reside in the property and a life interest of the income in the residue of the estate. Justice Young ordered that the plaintiff be given the other half interest, a related property (valued at $180,000) and a further legacy of $26,000. In so ordering, Young J stated:

> with respect to a spouse in his or her 60s or 70s or later, a life estate is not likely to be adequate provision because of the changing circumstances of the spouse as old age advances. In addition to such problems, there are usually other unavoidable problems connected with who should bear expenses of a capital nature of the estate whilst the surviving spouse is enjoying the fruits.[24]

(e) In *Downing v Downing*,[25] the deceased sought to provide his wife with continuing accommodation in their matrimonial home or accommodation of an equivalent standard via a life interest in a subdivided property they had developed. Justice Osborn awarded her a capital interest as 'security against the potential vicissitudes of life' and to ensure that she could 'continue to live in a financially independent and autonomous manner'. [26] The plaintiff submitted that her situation was similar to that of the plaintiff in *Downing v Downing,* given the standard of living she has enjoyed with the deceased and the reduced amount of superannuation now available to her.

(f) In *Lord v Lord*,[27] the plaintiff was a third wife of the deceased and they had not had a warm relationship. The estate comprised a weatherboard house valued at $148,000 and a small amount of personal property. The plaintiff was given a right to reside in the house while she remained unmarried, subject to keeping it in good repair and insured in the name of the trustee, with the plaintiff paying the rates and taxes levied on the house and thereafter the estate was left to the two adult children of the deceased. It was held that a life interest was inadequate for the plaintiff and she was granted the fee simple in the property together with its domestic contents. [28]

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[18] Ibid [35] .
[19] [2002] NSWSC 626 (12 July 2002).
[20] Ibid [61] .
[21] [1992] 2 VR 417 .

[22] Ibid 427.
[23] Unreported, Supreme Court of New South Wales, Young J, 11 April 1991.
[24] Ibid 10.
[25] [2003] VSC 28 (24 February 2003).
[26] Ibid [54].
[27] [2003] TASSC 99 (8 October 2003).
[28] Ibid [12].

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66. I have some real difficulties with the manner in which these cases were used, a point to which I shall return. It is a dangerous exercise, in Part IV cases, for counsel to draw out quotes and specific facts from previous trial and even appellate decisions and apply them to the facts at hand. Cases in this jurisdiction inevitably rely upon complex matrices of relationships and responsibilities, which cannot easily be reduced to a few short sentences. [29] In each of the cases relied upon by the plaintiff above, save for *Ralph v Shirt*, the applicants had been granted a life interest under the will and very little else. The question for the Court was whether a life interest was sufficient. In this case, the plaintiff was not granted a life interest, but rather two substantial lump sum payments, one in the form of the superannuation payment and the other by reasons of the intestacy entitlement. The question for the Court here is quite different, assessing what further provision, including by way of a life interest, should be provided.

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[29] An observation I have made before: *Feehan v Toomey* [2014] VSC 488 (3 October 2014) [26], citing *Bouttell v Rapisarda* [2014] NSWSC 1192 (27 August 2014) [66]; *Teubner v Humble* (1963) 108 CLR 491, 503.

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67. The plaintiff then submitted that a testator's responsibility to make provision for a person is not abrogated by the failure of that person's business ventures or their other failures to generate income. The plaintiff referred to the decision of the Full Court of the Supreme Court of Queensland in *Re Hatte*,[30] where Philp J (dissenting) rejected the contention that the applicant adult son was undeserving because his business failed due to his inefficient nature. [31] The plaintiff pointed to the decision of *Hughes v National Trustees, Executors & Agency Co of Australasia Ltd*,[32] where a majority of the High Court (Gibbs CJ, with whom Mason and Aickin JJ agreed) adopted the sentiments of Philps J.[33] The plaintiff submitted that the plaintiff's business debts should not be held against her in the assessment of her need from the estate as well as the fact that there was no suggestion that these debts were incurred as a result of the plaintiff's financial mismanagement.

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[30] [1943] St R Qd 1.
[31] [1943] St R Qd 1.
[32] (1979) 143 CLR 134
[33] Ibid 148.

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68. The next submission by the plaintiff was that her gambling activities after the deceased's death should not result in a reduction of the amount of the plaintiff's provision but should instead go only to the manner in which it is provided. It was

submitted that the plaintiff's gambling was an outlet for her grief as a result of the death of the deceased. The plaintiff again relied upon and distinguished a number of cases where conduct after the deceased's death was in issue:

(a) in *Hampson v Hampson*, the Court of Appeal considered 'a wise and just parent would be likely to take' the plaintiff's marijuana use 'into account in deciding the adequacy of provision for a child or in fixing on the type and amount of provision to make for a child'. [34] The plaintiff submitted that her ailment should not attract the same degree of opprobrium given its connection with her grief after the deceased's death.

(b) In *Ralphs v Shirt*, the plaintiff's depression after her partner's death fuelled gambling bouts in which she lost about half of the legacy she received from her partner's estate. Master McLaughlin did not regard these activities as

> having any bearing upon the outcome of this case, except to the extent that in consequence of these activities, the plaintiff had nothing to show for about half the legacy of $30,000 which she received.

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[34] [2010] NSWCA 359 (17 December 2010) [96].

Master McLaughlin also noted that the Court must exercise its discretion having regard to the circumstances of the present time. [35]

(c) In *Pizzino v Pizzino*,[36] Mullins J considered the applicant's genuine attempts to address his gambling and substance abuse problems meant that he did not need to be treated as a person unable to manage his finances or affairs. [37]

(d) In *Grey v Harrison*,[38] the Victorian Court of Appeal allowed a recovered alcoholic whose career had been ruined by alcoholism a substantial award of capital from his father's estate without attaching any conditions. [39]

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[35] [2002] NSWSC 626 (12 July 2002) [54].
[36] [2010] QSC 35 (15 February 2010).
[37] Ibid [68].
[38] [1997] 2 VR 359
[39] [1997] 2 VR 359.

(e) In *Marshall v Public Trustee*,[40] the plaintiff had been dependent on drugs for a large part of his life and Macready AsJ considered it appropriate that his share of the estate be managed for him in a protective trust. [41]

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[40] [2006] NSWSC 402 (18 May 2006).
[41] Ibid [57].

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69. The final submission dealt with the issue of whether the plaintiff, by reason of her age, might be entitled to receive the pension. The plaintiff submitted the courts have recognised the strong public policy reasons against permitting testators who have an ability and obligation to make proper provision for their dependants to escape that obligation because their dependants receive a pension. In the plaintiff's case, given the size of the estate and the defendant's financial circumstances, those policy grounds point against provision for the plaintiff being 'deflected by resort to the expectation of the continued payment from the public purse'. [42] In any event, it was submitted that welfare payments could not be construed as proper maintenance and support, relying on *King v White* ,[43] where Hedigan J said:

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[42] *King v White* [1992] 2 VR 417, 424 .
[43] [1992] 2 VR 417 .

> there can be no legitimate expectation that the payment of social service or old age entitlements would continue at any particular level on the same conditions, or be appropriately linked to rising costs. Further, the provision of such benefits are subject to political vagaries.[44]

Conclusions

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[44] Ibid 424.

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70. In my view, the resolution of this case is relatively straightforward. The parties agreed, and I accept, that the deceased in failing to provide secure accommodation for the plaintiff did not make adequate and proper provision for her. The defendant also agreed, and I again accept, that the estate should provide the plaintiff with secure accommodation.

71. Although those positions were agreed, I do not accept them in an unqualified fashion. Plaintiffs who are entitled to accommodation cannot always assume that they will be entitled to the accommodation that they had previously lived in. Nevertheless, the parties in this case seemed to accept that the Park Road property should be the vehicle for the plaintiff's accommodation and only disputed how that should be provided. The contest in this case is relatively confined, between the fee simple in the Park Road property and a life interest in that property as well as payment of the debt secured by the Park Road property. Although the plaintiff expressed a strong wish that she live at the Park Road property, the reality is that as she ages that may no longer be possible. This means that any further provision must be capable of conversion to a money sum in order to secure her accommodation in the long term.

72. Senior counsel for the plaintiff urged the Court to consider the many cases referred to in her written submissions said by her to support the plaintiff's position regarding the grant to her of a fee simple interest in the Park Road property and the effect of her gambling activities on any further provision, but in reality these cases are but examples of how the courts have dealt with the issue of further provision in Pt IV claims in the context of the well-known principles applicable in this jurisdiction having regard to the facts and circumstances of each individual case. None of the cases referred to by the plaintiff can be said to be similar to the facts in this proceeding. In *Hertzberg v*

Hertzberg, the estate was vast (some $10 million) and the plaintiff widow did not have a gambling problem. In *Ralphs v Shirt*, the plaintiff had no independent assets and did not receive any substantial provision outside of the life interest, unlike the superannuation payment received by the present plaintiff. In *King v White* there were no competing moral claims to the estate, the major beneficiary being a distant and virtually unknown nephew.

73. The plaintiff submitted the plaintiff's circumstances in *Downing v Downing* were similar to her position, In my view, that is inaccurate. In that case, an issue was that the provision for the widow was inadequate because it did not ensure the continuation of her present situation or provide her with such financial independence and autonomy as was proper in the circumstances. His Honour's decision was influenced by the standard of living the plaintiff had previously enjoyed and the uncertainties regarding her continuing income from a family trust and the extent of the nest egg left for her. In this case, the deceased did provide the plaintiff with a substantial nest egg in the form of $500,000 from his superannuation, and at least another $573,000 by way of the intestacy provisions of the Act . Combined with the plaintiff's own superannuation of $90,000; the legacy from the deceased's mother and some other funds; and her 25 per cent interest in the Park Road property valued at $325,000 (less the debt of $200,000), the plaintiff had over $1,200,000 at her disposal at the date of the deceased's death to purchase, if need be, accommodation and still have a significant sum to protect her against the vicissitudes of life.

74. The plaintiff's financial position is not strong, but nor is she impecunious. She is confident that she will be able to find work. If she is not able to, she will have to make significant changes to her lifestyle. Her current spending habits are not sustainable. She has a 25 per cent interest in the Park Road property and over $100,000 remaining from the deceased's and her own superannuation. She was not candid in her evidence, and while I could not possibly conclude that she failed to disclose any significant assets, her failure to lead evidence on her financial need cannot be in her favour. I accept, although I would place little weight on it, that she would likely be entitled to a pension, which may give her further minimal financial support in the future. In addition, it must be remembered that the Park Road property is encumbered by the plaintiff's loan now totalling $239,000.

75. Having accepted that the plaintiff's financial position was largely the result of her extravagant spending habits since the death of the deceased, the plaintiff sought to argue that it was not relevant to the question of provision how she became impecunious, but merely that she was. That cannot be correct. The deceased made substantial provision for the plaintiff of over $1,000,000 across his estate and superannuation, totalling at least a third of his estate. She has already received a half of that. The fact that she has then squandered the majority of that half prior to trial is relevant to the question of what a wise and just testator is morally obliged to provide to her. If it were not, there would be little or no incentive for prospective Part IV plaintiffs not to spend lavishly in the time between the deceased's death and the trial, knowing that every dollar spent is another dollar gained in the claim. The authorities are clear that it is at the date of trial that the plaintiff's need must be assessed, not at the date of death, but that does not mean that their conduct in the intervening period should be ignored.

76. On the issue of gambling or other addiction problems, in the cases of *Pizzino v Pizzino* and *Grey v Harrison*, both plaintiffs had taken measures to address or overcome their problems. Here, the plaintiff seems unaware or, perhaps, in denial of her gambling problem. In *Ralphs v Shirt,* whilst it was found the plaintiff gambled half of a $30,000 legacy as a result of her depression, this was the only benefit given to that plaintiff in an estate that primarily comprised a house and some money in the bank. In the context of the size of the estate, this was only a small amount. Here, the deceased provided the plaintiff with $500,000 in addition to her share of the estate now worth $573,000. She has gambled or spent much of the superannuation in two years to her own financial

detriment yet expects at least that amount be made good by the defendant foregoing most of her entitlement from the estate.

77. If one starts from the position advanced by the plaintiff, that of the fee simple interest in the Park Road property plus the balance of the estate less $200,000 to the defendant, it can be easily demonstrated that there are many good reasons why that should not be granted. The estate's interest in the Park Road property is valued at $975,000. If granted outright to the plaintiff, that would involve an enormous increase in the current provision to the plaintiff. The plaintiff has not in the past handled large capital receipts prudently. The evidence at trial gives no comfort that she would do so in the future. Any further provision for her proper provision must be provided in such a way as to protect her future financial wellbeing as well as protecting her from her own financial mismanagement.

78. Although she claims that her intention would be to live in the Park Road property for the rest of her life, if her current spending habits were to continue, she would run out of available funds in a very short period of time, necessitating the sale of the property. That, in turn, would put another large capital sum in her hands that would be at risk of being frittered away. In short, if the deceased's moral obligation is to provide the plaintiff with secure accommodation, granting her a capital interest is in fact more likely to put her accommodation at risk in the long term.

79. If, in the alternative, one starts from the position advanced by the defendant that the plaintiff should receive a life interest in the Park Road property, I can see no good reason why that is insufficient. It provides the defendant with rent-free accommodation for the rest of her life in the very property in which she wishes to continue living. With suitable conditions providing for the repayment of the loan of $239,000 currently secured over the whole of the property as well as resolving the dictates of the *Settled Land Act 1958* , the property could be sold if it became too large or otherwise inappropriate for the plaintiff as she ages. The net proceeds of any sale could be used for purchasing a new home or go towards a place in a retirement home with the remaining capital after the purchase of a replacement home being invested for her benefit as the holder of a life interest.

80. An order for a life interest would also protect the defendant's entitlements to the deceased's estate. It must be remembered in applications such as this claim that, although the defendant advanced no competing need, it is not for defendant beneficiaries to establish a moral obligation on the part of the deceased for their provision. The defendant received provision and has no case to establish. In this case, it is for the plaintiff to establish the deceased's moral obligations to her and the need for further provision.

81. The plaintiff, in closing submissions, sought to take the defendant's position further, submitting that her financial position disclosed that she was, in effect, so wealthy that it should count against her in the balancing act of moral obligations. Senior counsel submitted that, if the 'boot had been on the other foot', the defendant would not have been able to make a successful claim. That is not to the point. The defendant does not seek to make a claim against the estate. I consider the defendant's comfortable financial position is not relevant in the circumstances. To attack the defendant's position by contending that, if she had a claim again the estate, it would fail because she has no financial need, misconceives the principles to be applied in this jurisdiction, a limited jurisdiction directed to correcting abuses of testamentary freedom and not to the rewriting of the will as a whole.

82. As the plaintiff will be provided with further provision from the estate by way of a life interest in the Park Road property, she is taken to have an interest in the property for the next 21.14 years.[45] This means that the defendant's entitlement to possession of a remainder interest in the Park Road property will potentially be deferred for that period of time. That factor is also required to be taken into account in the amount of

any further provision made for the plaintiff, as the defendant's immediate entitlement to her inheritance is now deferred for a period of years.

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[45] Applying the 2014 Life Expectancy Tables produced by Cumpston Sarjeant Pty Ltd, Consulting Actuaries, published by the Law Institute 2014 Diary at 433–44.

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83. I turn now to the plaintiff's loan now in the amount of $239,000. Although the plaintiff submitted, first, that the plaintiff's business debts should not be held against her in the assessment of her need from the estate and, secondly, that there was no suggestion that the debts were incurred as a result of the plaintiff's financial mismanagement, the loan must nevertheless be taken into account in the assessment of any further provision for the plaintiff. The plaintiff made no submissions as to the repayment of the debt. Although the plaintiff had sufficient funds to repay the debt after the death of the deceased, her disastrous spending since then means that she is no longer able to do so and have a fund for her future financial needs.

84. If the interest on the loan is not paid, the debt to the bank will increase and it will increase quickly. At present the interest payments are around $14,500 per annum. As the loan is now secured over the whole of the Park Road property, this places the defendant's interest in the property at risk for the future. It is in the interests of both the plaintiff and the defendant that the debt to the bank be repaid in full. It is in the plaintiff's interest to stop the interest accumulating and the amount of the loan increasing. Accumulating interest over a twenty year period would be at least $290,000 on current interest rates. It is in the defendant's interest to prevent the loan being called up and being repaid from the estate's share of the property.

85. With further provision to the plaintiff being given by way of a life interest in the Park Road property, that life interest and the defendant's remainder interest in the property need protection. This can be achieved by the repayment of the debt (probably now around $245,000) from the cash funds in the estate. Based on the figures agreed at trial, the cash amount is $545,000. After payment of the debt, this would leave cash reserves in the estate of $300,000.

86. The repayment of the loan should be secured by a registered mortgage between the plaintiff as borrower and the defendant as the lender with the interest rate being nil. This is because the plaintiff's financial circumstances are not sufficient for her to pay any interest. The security for the loan is to be the plaintiff's 25 per cent interest in the Park Road property.

87. Upon the sale of the Park Road property, the loan to the defendant is to be repaid. The repayment is to occur on the sale, irrespective of whether the life tenancy in the estate property ends because it is secured by the plaintiff's 25 per cent interest in the property. If the property is sold because it becomes no longer suitable for the plaintiff, then the capital sum realised on the sale of the estate's 75 per cent interest in the property is the fund to be applied for the purchase of alternative accommodation for the plaintiff's life interest.

88. The effect of these conditions is that the plaintiff receives the benefit of the capping the amount of the loan and it will no longer incur interest. The effect on the defendant is that her receipt of an entitlement to a capital sum from the estate is delayed for a substantial number of years, the capital sum of the loan does not increase and she receives no interest on the loan. The advantage to her is that the loan is secured against the plaintiff's interest in the Park Road property, the loan will be repaid at some stage in the future and her remainder interest in the property is unencumbered.

89. Turning now to the amount of funds that the plaintiff now has, on the basis of her own interest in the Park Road property, she will have an equity of $85,000 remaining after it is encumbered with a mortgage of $245,000. That equity is to be taken into account as an asset available to her. A pragmatic approach to her current financial circumstances suggests that she ought to realise that equity. In reality, the defendant is the only person who would be interested in it. It may be that the parties could come to an agreement on this issue whereby the effect would be for the plaintiff to be paid $85,000 now in return for transferring her 25 per cent interest in the Park Road property to the defendant. Although the Court cannot order this, it makes practical sense because her life interest in the property will provide her with secure accommodation for her life.

90. At present, the plaintiff also has funds of $114,000 in the bank. If her costs of $108,000 that she has already paid are then paid from the estate, that amount would be returned to her, making around $220,000 available to her. In all, this means that the plaintiff has a nest egg for her future expenses of just over $300,000. Of the cash reserves in the estate, after payment of the plaintiff's loan, this leaves the sum of $300,000. That sum should be paid to the defendant as part of her share of the estate.

Orders

91. I shall hear the parties on the appropriate form of orders to be made after consideration of these reasons for judgment, including submissions on the matters relating to the payment of outgoings, both capital and income, in respect of the life tenancy for the plaintiff.

92. I shall also hear the parties on the payment of the costs out of the estate, particularly in light of the quantum of the estimates of the costs.
