

THE HIGH COURT

2007 2007 P

IN THE MATTER OF CHARLES GORDON LAMBERT

BETWEEN/

MARK LAMBERT AND JUNE LAMBERT

PLAINTIFFS

AND

ANTHONY LYONS, OLIVE BEAUMONT AND CATHERINE MARSHALL

DEFENDANTS

JUDGMENT of Mr Justice Roderick Murphy delivered the 26th day of January, 2010.

1. Overview

The deceased, Charles Gordon Lambert (Mr. Lambert) was born on 9th April, 1918, qualified as a chartered accountant and had a distinguished career as managing director and chairman of W. & R. Jacob plc, a patron of the arts and a senator in Seanad Éireann.

He died on the 27th January, 2005 aged 86 years of age, single and without issue.

By his Will dated 21st August, 2003, and codicil made on 21st May, 2004, he appointed the defendants as his executors and trustees. He left certain pecuniary legacies to his nephews and to his brother and further legacies to his nephews including the first named plaintiff and nieces and goddaughter, the second named plaintiff. A pecuniary legacy was also left to both Olive Beaumont and Catherine Marshall, the second and third named defendants. A pecuniary legacy was left to the Gordon Lambert Charitable Trust at the Irish Museum of Modern Art of which Catherine Marshall was and remains as Curator.

One quarter of the residue was left to certain family members and a further quarter to other family members with a cap of €100,000 per beneficiary.

Three eighths was left to Mr. Anthony Lyons, the first named defendant (Mr. Lyons), and one eighth to Catherine Marshall, the third named defendant (Ms. Marshall).

The realisation of the assets, in particular, the value of Mr. Lambert's residence exceeded the sum of the schedule of assets prepared by him some time before making his last Will and testament.

The effect of the increased valuation was to benefit the residuary legatees whose legacy was not capped, that is to say, the first and third named defendants, Mr. Lyons and Ms. Marshall.

Mr. Lambert had been ill for some years with Parkinson's disease before he died. On 15th March, 2007, the Will was impounded on the application of the plaintiffs herein.

There is a provision in the Will disinheriting those who challenged the Will.

Mr. Lambert had executed an enduring power of attorney on 17th November, 1997, at a time he was diagnosed with Parkinson's disease which was some seven years before his death at age 86.

The enduring power of attorney was duly registered on 12th January, 2003, two years before he died. His attorney was Mr. Lyons.

The Last Will and Testament was preceded by 30 previous Wills and codicils, executed between 8th June, 1979 to 21st May, 2004 all of which were drawn up by and on the advice of the testator's solicitors McCann Fitzgerald. The successive drafts reflected, in part, changes in the Finance Acts and, in particular, in the thresholds for Capital Acquisition Tax.

Mr. Lyons was first included as a beneficiary under the sixth Will of 22nd October, 1985, in the sum of £1,000 which increased gradually to £5,000 in three successive Wills from 1993 to 1994. The sum increased from £12,000 to £25,000 between 1996 and 1997. In 1997, Mr. Lyons was also included as entitled to the income on £100,000 from the residue of the estate.

By the Will of 7th April, 1999, the pecuniary legacy had increased marginally to £26,000 and the sum of £100,000 from the residuary.

By the Will of 14th April, 2002, Mr. Lyons became entitled to a pecuniary legacy of €200,000 plus.

The residue in the Will of 21st August, 2003, with some changes to the membership of the class already referred to, benefited two residuary classes, capped at €100,000 for each member of that class. Three-eighths and one eighth of the

remainder of the residue benefited Mr. Lyons and Ms. Marshall respectively.

The balance of the residue in previous Wills from 2000 to 2002 had benefited a named class of residuary legatees.

In the third last Will of 9th August, 2001, 10% of the balance benefited the Parkinson's Association of Ireland, 5% benefited the Charles Gordon Lambert Trust and the remaining 85% benefited the named class of residuary legatees.

The Wills were drafted by Patricia Rickard-Clarke and after Ms. Rickard-Clarke became a Law Reform Commissioner by Susan O'Connell. Each was drawn up following detailed attendances on Mr. Lambert.

The latter attendances on Mr. Lambert by Patricia Richard-Clarke and Susan O'Connell and Cormac Brennan of McCann Fitzgerald adverted to concerns that the Will might be challenged.

A questionnaire drafted by Mr. Lambert on 2nd April, 2003 and addressed to his family, *inter alia*, asked whether Mr. Lambert was not allowed to decide his future.

Correspondence between Mr. Lambert and his brother, Hamilton Lambert, known to his family as Ham, and between Mr. Lambert and June Lambert, the second named plaintiff, from April, 2002, indicate concerns regarding Mr. Lambert's relationship with his family. Hamilton Lambert though older, died after Mr. Lambert and before these proceedings commenced.

A schedule of his assets on 1st August, 2003, included a valuation of his dwelling house in the sum of €680,000. His solicitor, Susan O'Connell, though not a valuer, believed it to be worth €1 million. After death two valuations for probate were obtained for €2 million and €2.75 million. The reserve for auction in April 2006 was €3 million. When it was sold in April 2006 it realised €4.5 million when it was purchased by a developer.

2. Pleadings

2.1 Plenary summons

By plenary summons dated 15th March 2007 the plaintiffs claimed an order striking down the Will of the deceased dated 21st August, 2003 in a codicil thereto dated 21st May, 2004 on the grounds that the same were extracted under duress and undue influence exerted by the first named defendant and admitting the Will of April 2002 to probate as the valid Last Will and Testament of the deceased.

The statement of claim served under cover of letter dated 29th May, 2007 stated that the deceased died a bachelor leaving no issue. The first named plaintiff is a nephew of the deceased and the second named plaintiff is a niece and godchild of the deceased.

The first second and third named defendants are executors under the deceased's purported Will of 21st August, 2003 and codicil dated 21st May, 2004. At all material times the executors had been responsible jointly and severally for the execution of the purported Will and codicil. The first named defendant was appointed as the attorney of the deceased by enduring power of attorney dated 17th November, 1997.

It is alleged in the statement of claim that the first named defendant had placed such pressure and influence on the deceased as to sap his free will and that the influence and pressure applied amounted to duress and undue influence such that the testator could not really dispose of his assets by way of testamentary disposition and the said purported Will was inconsistent with the deceased's previous conduct, and attitude towards his relatives.

Ten particulars of duress and undue influence were given as follows:

A. The deceased, who had been suffering from Parkinson's disease, was reliant on the first named defendant to organise all his daily affairs, including but not exclusively the arranging, procurement and payment of all household food and goods, outgoings, insurance, taxes, utilities, fuel and nursing and cleaning staff.

B. The first named defendant threatened the deceased that he would resign his power of attorney unless the deceased ceased communications with the Lambert family.

C. The plaintiffs and other members of the Lambert family were prevented from speaking to, calling into, or seeing the deceased since 2002, despite the deceased's having had up to that point a close and affectionate relationship with his relative.

D. The deceased had been informed by the first named defendant that his brother Ham Lambert, (the first named plaintiff's late father) had been hiding in the deceased's house.

E. The first named defendant alleged that the other members of the Lambert family had been unkind to him.

F. The first named defendant refused to allow further contact between the deceased and the new vicar of his parish.

G. The first named defendant so overbore the will of the testator that the testator was in fear of him.

H. The first named defendant, although appointed as attorney of the deceased, failed to act on the instructions of the deceased as to his testamentary intentions and purposes.

I. The first named defendant in breach of duty and fiduciary duty as attorney of the deceased abused his position and power so as to apply duress and undue influence to the deceased in the disposition of his Estate.

J. It was further stated as follows: "(t)he plaintiffs will rely on such further particulars as may be adduced in

evidence between now and the trial of the action including those which may be within the power of proof of the defendants and not the plaintiffs any which may be implied and could reasonably be inferred from any document provided."

The statement of claim further stated that the first named defendant had represented on several occasions to the second named plaintiff and others that the deceased, in the weeks and days just before his death, had indicated in clear terms that he wished to alter his Will, replacing the third named defendant with the second named plaintiff but due to the unavailability of a solicitor, the amendments were not and could not be made.

It was further stated that the first named defendant had continuously represented to the second named plaintiff that he was using his best endeavours to make the alterations to the deceased's Will as per his dying wishes and he reassured the second named plaintiff that he would not sign anything in relation to the Will until all the deceased's wishes were honoured and based on those representations and in reliance thereof the plaintiffs initially did not exercise their statutory rights to challenge the Will in early course.

The plaintiffs stated, as a part of a class of persons who would be likely to succeed on intestacy and or the next of kin, are concerned that their uncle's last Will and codicil and the circumstances should be investigated by the Court for the benefit of the estate and in the interest of public policy that the Will should be seen to have been made without direct, indirect, implied or inferred interference.

2.2 Particulars of Claim

By notice of particulars the second and third named defendants asked the plaintiffs to state why and the manner in which it was alleged that the executors had been "responsible" for the execution of "the purported Will" and codicil and in what manner such alleged responsibility was joint and several.

The plaintiffs replied that that was a logical inference and a matter of law as the second and third named defendants were joined as executors. The statement of claim pleaded wrongdoing on the part of the first named defendant.

The defendants asked the plaintiffs to say precisely how it was alleged that the "purported Will" was inconsistent with the deceased's previous conduct and attitude towards his relatives. The plaintiffs replied that that was a matter for evidence. The plaintiffs would say that the deceased had been on very good terms with them and with his other relatives and that they were prevented from communications with the deceased after a spell in hospital and it was believed that this was on the instructions of Mr. Lyons.

The next particular in relation to the alleged duress and undue influence asked what, when and to whom was it alleged that the first named defendant "threatened" the deceased, with which members of the Lambert family was it intended that the deceased would cease communications and what the plaintiff's means of knowledge was in relation to the manner.

Further particulars were raised in relation to each member of the Lambert family who was prevented from communications in the circumstances in relation thereto.

The plaintiffs replied that that was a matter for evidence but then instanced seven matters. Pauline Slater, the deceased's housekeeper, would give evidence as to Mr. Lyon's conduct in respect of this and other particulars; the deceased's brother Ham Lambert and the second named plaintiff who had been the deceased's goddaughter, confidante and trustee of the Lambert Trust, were those who it was alleged were prevented from speaking to, calling into or seeing the deceased since 2002.

The defendants asked the circumstances of Ham Lambert's hiding in the house and whether the plaintiffs were informed of this matter, and if so, by whom. The plaintiffs replied that "Ham Lambert was not in the house in respect of this incident. Ms. Slater, the housekeeper will give the evidence."

It was asked when it was alleged that the first named defendant refused to allow the "new vicar" to contact Mr. Lambert and how that was known by the plaintiffs. The plaintiff said that that was a matter for evidence and interrogatories.

The second and third named defendant asked what manner and in what circumstances was it alleged that the deceased was in fear of the first named defendant and when such alleged fear arose. It was replied that that was a matter for inference from other particulars raised together with the evidence supporting same.

The notice for particulars also asked what it was alleged were the testamentary instructions and purposes of the deceased, the nature of the plaintiff's awareness of the deceased's supposed testamentary instructions and purposes and how it was alleged that the first named defendant failed to act on the deceased's instructions. The reply was that the first named defendant had informed the plaintiffs that the deceased in his dying hours indicated that he wanted his Will changed and the position of his family members reinstated as per previous intentions, and that the solicitor responsible could not be contacted or did not respond, thus preventing the deceased's dying wishes being implemented.

In relation to that matter particulars were raised as to whom the first named defendant had made representations, what the deceased intended by wishing to alter his Will, replacing the third named defendant with the second named plaintiff, on what occasions did the first named defendant make such alleged representations and what amendments the deceased wished to make. The plaintiffs replied that that was a matter which should be raised with the first named defendant.

Finally, the second and third named defendant asked in relation to the alleged continuous representation and alleged reassurance of the first named defendant when and what was alleged to be the deceased's "dying wishes", how these were made known to the plaintiffs and what was conveyed by the alleged assurance that the first named defendant would not sign anything in relation to the Will until all of the deceased's wishes were honoured. The plaintiff's reply given was that these were matters which should be raised with the first named defendant.

2.3 Further and better particulars

By notice for further and better particulars dated 2nd October, 2007, the second and third named defendant said it was not acceptable to say in general terms that the particulars of duress and undue influence would be a matter for evidence. Reference was made to O. 19, r. 6 of the Rules of the Superior Courts, 1986, in relation to pleadings of undue influence which required particulars of the names of the persons against whom the charge of undue influence was preferred, the nature of the conduct alleged to constitute the undue influence and the dates upon which the acts alleged to constitute undue influence were exercised.

Those defendants further maintained that it was entirely illegitimate to refuse any information whatsoever on the basis of the reply that the second and third named defendant should make their own inquiries with the first named defendant.

It does not seem that there was a reply to these particulars.

The first named defendant also raised particulars in relation to similar matters on the 16th June, 2008. It would appear that there was no reply to these particulars.

2.4 Amended Defence and Counterclaim of the First Named Defendant

Mr. Lyons denied that he placed any pressure on the deceased in any respect or that he exerted any influence or that any alleged pressure or influence, which was denied, amounted to duress and undue influence on the deceased. The testator disposed of his assets in accordance with his own free will and any and all allegations to the contrary were denied and traversed *seriatim*.

Paragraph A of the particulars of duress and undue influence was a statement of fact and not a particular of the alleged duress and/undue influence. Such particulars were denied and the plaintiff was put on full proof.

Mr. Lyons denied that he represented on several occasions, or at all, to the second named plaintiff that the deceased, in the weeks or days just before his death, had indicated in clear terms that he wished to alter his Will as alleged, or at all. He denied that he continuously, or at all, represented to the second named plaintiff that he was using his best endeavours to make any alterations to the deceased's Will as per his dying wishes or otherwise. He denied that he had reassured the second named plaintiff that he would not sign anything in relation to the Will until the deceased's wishes (as alleged) which was denied, were honoured. He denied that the plaintiffs failed to expedite their statutory rights to challenge the deceased's Will in early course based on any representations made by him as alleged or at all.

Mr. Lyons said that the plaintiffs claim was spurious and opportunistic and an abuse of process. He categorically denied any allegation of duress and undue influence and any alleged interference with the testator's wishes. The Will and codicil was the last Will and testament of the deceased, made entirely of his own volition without any interference by Mr. Lyons and, accordingly the plaintiffs were not entitled to the reliefs claimed or any relief.

Mr. Lyons counterclaimed that the deceased made and executed the testamentary document on the 21st August, 2003, and the codicil on the 21st May, 2004, in accordance with the provisions of the Succession Act 1965, and that the said documents constituted the deceased last Will and testament. The deceased died on the 27th January, 2005, without having altered or revoked the said Will or the said codicil and a grant of probate was issued on the 7th March, 2007. This grant was recalled by order of the High Court made on the 15th March, 2007, following an application made by the plaintiffs and a citation issued.

Mr. Lyons counterclaimed that the Will and codicil were drafted by solicitors well known to the deceased who had acted on his behalf and who had been familiar with his affairs for over twenty years. The Will and codicil were respectively witnessed by two solicitors well known to the deceased. On the occasion of the execution of both the Will and of the codicil the deceased was medically examined, prior to execution, and found to have testamentary capacity. All present were satisfied on each occasion that the deceased was of sound mind, memory and understanding and was acting freely and voluntarily.

The plaintiffs had been furnished with extensive documentation including all previous Wills and codicils, full and complete attendances and affidavits, setting out the detailed circumstances in relation to the taking of instructions, drafting and execution of the Will and codicil. They had been furnished with medical reports confirming the deceased's testamentary capacity.

The first named defendant counterclaimed for an order establishing the Will and codicil and admitting same to proof in solemn form of law and, if necessary, an order setting aside the citation entered.

2.5 Defence of the Second and Third named Defendant

Olive Beaumont and Catherine Marshall denied that either, in their capacities as executors, or at all, they had been responsible (either jointly or severally) for the execution of the last Will and testament and codicil as alleged in the statement of claim. They admitted that the first named defendant had been appointed attorney of the deceased pursuant to an enduring power of attorney dated the 17th November, 1997.

They were strangers as to the allegation that the first named defendant placed any pressure or influence on the deceased. They were unaware of any evidence to support that suggestion and awaited proof of that allegation. They denied that, if proved, any such pressure and influence amounted to duress or undue influence such that the deceased could not freely dispose of his assets by way of testamentary disposition. The Will and codicil was not inconsistent with the deceased's previous conduct and attitude towards his relatives. Even if this were so, they denied that that constituted an act or conduct resulting from duress or undue influence or that it was inconsistent with the deceased's freedom of testamentary disposition.

The particulars of alleged duress and undue influence (including the particulars set forth at paras. A to J in the statement of claim) were denied.

The deceased at the time he executed the Will:

- (I) Was of sound disposing mind capable of forming the testamentary intentions embodied in the will,
- (II) Was of sound memory able to recall several persons who ought to have been considered as his possible beneficiaries,
- (III) Was of sound understanding comprehending the various ties of such persons with him by blood or friendship, and their claims on those or other grounds upon his testamentary bounty,
- (IV) Was capable of understanding the effects of the Will, and knew and appreciated the full nature of his estate,
- (V) Had the benefit of independent legal advice.

The second and third named defendants say that they were strangers to the matters pleaded in relation to the alleged representations made by the first named defendant to the second named plaintiff.

A counterclaim followed in relation to the establishment of the last Will and codicil and asked for an order establishing same to proof in solemn form of law.

2.6 Order of the Master

By order dated the 12th November, 2008, the Master of the High Court ordered that the action be set down for trial before a judge without a jury and that the issues to be tried were:

- (a) Whether the first named defendant, his servants or agents exercised duress or undue influence over Mr. Gordon Lambert deceased, ("the deceased") of such a character as to deprive him of his free will and in connection with the disposition of his Estate in respect of his Will dated the 21st August, 2003, and the codicil to that Will dated the 21st May, 2004.
- (b) Whether the testamentary document executed by the deceased on the 21st August, 2003, and the codicil to the Will executed by the deceased on the 21st May, 2004, should be admitted to probate if necessary in solemn form.
- (c) If the Will dated the 21st August, 2003, and the codicil to that Will dated the 21st May, 2004, struck down by the Court whether the Will of the 13th April, 2002, and the codicil to that Will dated the 18th May, 2002, should be admitted to probate and if necessary in solemn form.

2.7 Reply

The plaintiffs reply, also of the 12th November, 2008, denied the particulars in the defendants defences, denied that the deceased made his last Will and codicil freely and without influence being exerted upon him and, if, which was denied, the deceased made a full and free disposition of his assets or any part thereof by his last Will and the codicil thereto, the same could only be reasonably be said to have occurred to the extent that such disposition was for the benefit of persons other than the first named defendant.

The plaintiffs repeated their claim and further said that a previous Will, that of 2002, prior to the deceased's admission to hospital, or other previous testamentary dispositions of an earlier date than the said 2002 will, should be admitted, or in the alternative such alteration of any such document as would, in the opinion of the Court, give effect to the intentions of the deceased free from any duress or undue influence.

3. Legacy to Anthony Lyons

An overview of the 31 testamentary dispositions made by the deceased over 26 years from 8th June, 1979 to 21st May, 2005 has already been referred to. The detail of the benefit to Mr. Lyons in the Will of 21st August, 2003 and the codicil of 21st May, 2004 are contained in Clause 3(a) and (b) and in Clause 7(a) and (b) as follows. There is also a further clause regarding challenges to the provisions of the Will at Clause 8.

- (a) I give for his own use, absolutely, the sum of €250,000 (Euro 250,000) to Anthony Lyons, acquaintance of over thirty years, whose steadfast care and attention in my progressive illness has enabled me to live a life of mobility, good humour and close association with my trusted friends. In my direst need, he has never failed me.
- (b) For the avoidance of doubt, I confirm that the proceeds of investment account with Northern Rock, which is held in the joint names of myself and Anthony Lyons, is to pass, absolutely, to Anthony Lyons

Residue

I GIVE, DEVISE AND BEQUEATH ALL THAT the rest, residue and remainder of my estate as follows:

- (a) As a first charge on the residue, I GIVE the sum of €50,000 (EURO 50,000) to Tony Lyons and Catherine Marshall to be expended by them on the publication of biography to include the different aspects of my life - in Jacobs, in Seanad Éireann, as Senator of the Junior Chamber, International, as a member of the Arts Council of Northern Ireland, as an art collector, as a member of the Lambert and Mitchell families and the many associations, economic and cultural, included in my career profile and the

many awards received by me during my lifetime, including the first ever lifetime award given by the Business to the Arts.

(b) I GIVE the absolute residue of my estate to my Trustees upon trust either to retain or sell it on the following trusts:

- As to one-quarter share (up to a maximum value of €100,000) to be divided equally between my nephew, Bruce Lambert, my niece, Janette, my nephew, Mark, his wife Hedda and my brother Hamilton's, grandchildren, Ben, Jessica, Mayla, Molly, Daniel and Louis, for their own use absolutely;

(as substituted by the codicil of 21st May, 2004)

- As to one-quarter share (up to a maximum value of €100,000) to be divided equally between my nieces, Valerie Rohan, June Beverly Gordon Lambert, and the grandchildren of my late brother, Thomas, Catriona and David, or the survivors of them absolutely;

- As to three-eighths share to Anthony Lyons absolutely;

- As to one-eighth share to Catherine Marshall absolutely.

Subject to the foregoing, and if and so far as any of the shares are not wholly disposed of for any reason whatever, then any remainder shall pass to Anthony Lyons absolutely. In the event that Anthony Lyons shall predecease me or die before taking a vested interest under my Will, then the share which he otherwise will have taken shall be taken by the Modern Art Trustees as defined above.

The codicil of 21st May, 2004 had added a bequest as new Clause 5(e) of €15,000 as capital sum to

the trustees (the "Modern Art Trustees") of the Charles Gordon Lambert Charitable Trust (CHY 11567) (the "Charitable Trust") settled by me by Deed of Trust dated 30th January, 1992 (the "Deed of Trust"). ... for the purposes of issuing a catalogue maintaining, exhibiting or adding to the Art Collection as specified in Clause 6 (objects Clause) of the Deed of Trust.

Challenges to Will Provisions

I DIRECT that if any beneficiary of this, my Will, seeks to question, challenge, disagree with or take legal action of any kind whatsoever against my Estate in respect of my Will, that person shall be automatically disinherited and they shall receive no benefit from my Will, and the benefit which they would otherwise receive shall fall into the residue of my Estate.

This clause shall override everything previously stated in my Will.

4. Attendances and Instructions of the Deceased

By written Attendance dated 19th February, 2003, Cormac Brennan noted that he attended with Susan O'Connell (S.O'C.) at a meeting with Mr. Lambert (G.L.) at his home.

The attendance referred to G.L.'s concern as to what would happen to his property and affairs after he departed this life and said that he wanted to make a new Will. S.O'C. explained that under the Enduring Power of Attorney, which had been registered, Tony Lyons had authority to look after his property and affairs for the remainder of his life. After he passed away, his executors (the defendants herein) would look after his affairs in accordance with the terms of his Will.

G.L. is recorded as saying: "we should include the words 'my great friend and attorney' before Tony's name in paragraph (a) of the executor's clause in order to identify him".

In relation to Anthony Lyons (Tony), S.O'C. explained that the legacy which was left to him at present was €250,000, as G.L. had amended his Will by a codicil dated 8th May, 2002. G.L. said that he understood this and wished that this legacy should be put at the top of the list. He said that, even in his worse moments, Tony had always had the ability to make him laugh.

G.L. began to speak of the ongoing disagreements which he had with his brother, Hamilton (referred to as "Ham"). He said he had implied to S.O'C. that he hoped never to see Ham again, but now felt that bridges might be mended between himself and his brother if Ham would agree to apologise to Tony. S. O'C. said that she felt that this was a good idea. She said that she had explained to Ham that G.L. did not wish to speak to him for the time being because of the way that Ham had treated Tony, who had been such a good friend to G.L.

The attendance recorded S.O'C.'s concern that Ham and/or his family might object if G.L. amended his Will at this stage, given that an Enduring Power of Attorney had been registered. S.O'C. said that the changes which G.L. wished to make to his Will were small, but that a doctor had certified that G.L. was becoming mentally incapable in order to enable the enduring Power of Attorney to be registered. S.O'C. said that she was certain that G.L. was capable of dealing with his affairs and had the capacity to make a Will, but that if G.L. intended to change his Will, we must have a certificate from Dr. Gleeson to certify that G.L. had testamentary capacity. S.O'C. said that there was no difficulty here, but that she was concerned that if Ham and/or his family were unhappy with the changes that G.L. intended to make to his Will, they might challenge it on the grounds that G.L. lacked testamentary capacity. They might also allege that G.L. was under the influence of Tony, but S.O'C. said she was certain that this was not the case, as G.L. was a man of his own mind.

S.O'C. said that if G.L. felt that bridges could be mended between him and Ham, that she would speak to Ham about this. She added that G.L. should feel under no pressure from Ham.

S.O'C. said that the reason she was concerned about a possible challenge to the Will was that she would prefer that the assets of the Estate were not wasted in defending litigation in respect of G.L.'s capacity to make a new Will. G.L. said that he would speak to Ham about this, and explain that Ham's family would get nothing from the Will if the money in the Estate was dissipated in defending litigation.

S.O'C. suggested that, as a first step, G.L. might think about contacting Ham and possibly setting up a meeting to speak with him. G.L. said he would first ask Tony whether he was willing to accept an apology if Ham was willing to apologise to him. S.O'C. said that this was a good idea and added that G.L. should not discuss with Ham the contents of his Will but could, if he decided, say that he would exclude Ham and his family from the Will if Ham did not apologise to Tony. S.O'C. said that should G.L. wish to meet Ham, the arrangements for the meeting should be on G.L.'s terms. G.L. said that his doctor had told him that he should have someone to accompany him when he meets Ham, and S.O'C. agreed that this was for the best, and suggested that possibly one of his carers might accompany him and make sure that Ham did not put him under any pressure.

S.O'C. said that the difficulty here was caused by Ham, as he had behaved badly, and had not tried to mend the bridges between himself and G.L. S.O'C. said that she felt that Ham wanted to have a relationship with G.L., but was having difficulty admitting that he was in the wrong. S.O'C. added that Ham had told her that he was very sad about the situation and found it difficult to accept that he would not speak to his brother again for the rest of his life. S.O'C. assured G.L. that he now had control over the relationship between himself and Ham, and that if he wished to speak to Ham, it should be on G.L.'s terms. S.O'C. reminded G.L. that Ham had no control over G.L.'s affairs, as the Enduring Power of Attorney had been registered . . .

S.O'C. suggested to G.L. that she would do nothing in relation to amending G.L.'s Will until G.L. spoke to Tony about Ham, and then, possibly, she or G.L. could speak to Ham to arrange a meeting between G.L. and Ham, if this was G.L.'s wish. S.O'C. said that if G.L. wanted to amend his Will, it was better to make all amendments at the same time, and that it was therefore best to wait until G.L. had decided what he wished to do with the residue of his estate. G.L. agreed, and said that he would be in contact with S.O'C. to let her know how the conversation with Tony had gone.

In a further written Attendance of 15th August, 2003, made within a week of the execution of his final Will, Cormac Brennan noted that he attended, with S.O'C. at Mr. Lambert's house. Mr. Lambert thanked him for sending out the redrafted Will so quickly and said he was broadly happy with the Will revisions, subject to a number of amendments. He said he wished the maximum amount of the share in Clause 7(b) to each of his nieces and nephews was to be €100,000. He said that he wished one and a half shares to be given to Mr. Lyons and therefore only one-half share to be given to Catherine Marshall. S.O'C. said that "we would redraft the residue clause to reflect his wishes".

S.O'C. asked why he had decided to limit the first two shares to a maximum value of €100,000 each. G.L. said that he did not wish that any of the beneficiaries of the first two shares would receive more from his residue than the share of the maximum amount of €100,000. G.L. said that he was concerned that he might have to dip in to his assets as time went by and there might not be enough funds to satisfy all bequests that he wished to make. S. O'C. explained how bequests would abate if there are insufficient funds to satisfy all of them, but G.L. said he wished to limit the size of the shares to go to his family in that way.

S.O'C. explained her concerns regarding the reduction in the legacies to Bruce, Janette, Mark, Valerie and June in comparison to what they would have received under the 2002 Will. S.O'C. said that it was possible that the family could challenge his new Will on the grounds that D.L. influenced him unduly and caused him to amend his Will in this manner. S.O'C. said that she knew this was not the case and that the family relationship had deteriorated since the Enduring Power of Attorney was registered, but added that the family might argue that T.L. had closeted G.L. away, and that the legacies to the family were reduced in a Will executed during this time. S.O'C. said that she knew that this accusation would be groundless, but it was possible that the family would pursue it. S.O'C. explained that, if the family managed to have the new Will overturned by the courts on the basis of undue influence, it would be disregarded and the terms of the 2002 Will would prevail. S.O'C. said that it was clear that T.L. did not influence him unduly, but he should consider his situation from an objective point of view, as he is quite dependent on T.L. in his day-to-day affairs.

The attendance notes that G.L. was adamant that he wished to amend his Will in the above manner. The attendance then referred to the availability of Dr. Gleeson and to a letter which G.L. had received from June Lambert. G.L. is recorded as saying that he was extremely angry with what she had written in that letter. S.O'C. suggested that, if G.L. wished to write to June, he should try to keep the letter short and that the main point should be that, as he said during their last meeting, unless the family apologised to T.L. and recognised the work he has done in support of G.L., then G.L. would not be willing to see them. S.O'C. suggested that this letter should not be typed on T.L.'s typewriter, as this could be misconstrued as to support the family's belief that T.L. is influencing him unduly. G.L. said that he would think about this and revert to his solicitors.

By manuscript spreadsheet of August 2003, Mr. Lambert had outlined what he termed the estimated implications for Capital Gains Tax of his testamentary dispositions. He listed pecuniary and specific legacies, charitable gifts in addition to trusts in the sum of €872,000 and a residue of €400,000 giving a total of €1.272 million.

In a row headed Anthony Lyons he listed a pecuniary legacy of €250,000; a specific legacy of €70,000 and a residue of €150,000 being a total of €470,000.

Among his assets he indicated a value of €600,000, in respect of his dwelling.

A further attendance note by Susan O'Connell on Mr. Lambert dated 18th August, 2003, stated that Mr. Lambert confirmed that he was very happy with the draft Will received that morning. He referred to some amendments regarding his membership of the Junior Chamber International and Arts Council of Northern Ireland. Reference was made to the letter to June Lambert and to Padraig Madigan, the solicitor who had written to McCann Fitzgerald on behalf of Mr. Lambert's family. He said it would be helpful if Susan O'Connell put a couple of points down to help him consider what comments he should make to June.

The following day the attendance noted that Mr. Lambert had asked Cormac Brennan to remove the reference to Sue Lambert in his Will at clause 7 (b) and substitute Jean Lambert.

On 21st August, 2003 Cormac Brennan attended a meeting with Susan O'Connell at the home of Mr. Lambert. Mr. Lambert read the draft Will and said he was happy with its provisions. Susan O'Connell suggested that he might either simply refer in his letter to June Lambert to the letter written to Pdraig Madigan. Ms. O'Connell prepared a list of bullet points which he might like to consider in response to June's letter.

The attendance noted that Dr. Gleeson arrived. Ms. O'Connell told him that Mr. Lambert wished to change the provisions of his Will but due to the fact that his enduring power of attorney had been registered, there was a presumption of testamentary incapacity. In order to prove that he had testamentary capacity she and Mr. Brennan were seeking reports from Dr. Gleeson and Dr. Bernard Walsh to certify that Mr. Lambert had such capacity.

Dr. Gleeson went through a "mini medical State examination" with Mr. Lambert. At the end of the test Dr. Gleeson said that Mr. Lambert had achieved a score of 100%. Dr. Gleeson asked Mr. Lambert whether he was under any pressure to amend his Will. Mr. Lambert confirmed that no-one was asking him to change his Will or to do anything against his Will. Dr. Gleeson said he was satisfied that Mr. Lambert was 100% mentally competent and asked Ms. O'Connell whether he should ask Mr. Lambert any further questions. Ms. O'Connell said that he should be satisfied that the three limbs of the test for testamentary capacity contained in her letter to him of 6th August, 2003 should be satisfied that:

"He should understand that nature of the act (making a new Will) and its effect;

He should understand the extent (not the value) of the property of which he was disposing;

He should be able to comprehend and appreciate the claims to which he ought to give effect."

Dr. Gleeson said he was satisfied that Mr. Lambert had testamentary capacity and that it was not possible to suggest that he was not capable of knowing his own mind in relation to his Will. Dr. Gleeson said he was satisfied that none of the drugs which Mr. Lambert took would alter his mind in a way that would detract from his testamentary capacity. Dr. Gleeson added that Mr. Lambert looked better now than he had the previous Christmas.

Ms. O'Connell asked Dr. Gleeson for a medical report and she said she would also seek one from Dr. Walsh. Dr. Gleeson said he would provide this in due course.

Dr. Gleeson left the room and Mr. Lambert signed his Will witnessed by Ms. O'Connell and Mr. Brennan.

Ms. O'Connell said that she would obtain a medical report from Dr. Gleeson and Dr. Walsh and would also draft an affidavit to confirm she was happy that Mr. Lambert had testamentary capacity. Copies of the Will and affidavit would be sent to Mr. Lambert for his records.

Regarding the proposed letter to June Lambert, Ms. O'Connell said she was happy to look at any letter which Mr. Lambert might draft if he wished her to cast an eye over it.

By letter of 11th May 2004 Ms. O'Connell replied to Mr. Lambert's letter of 19th April and enclosed a codicil amending his last Will for his review. The amendments were a reduction in the amount of the bequest to the Charles Gordon Lambert Charitable Trust and the substitution of Hedda for Jean in the residue clause. Ms. O'Connell said that it would be necessary to liaise with Dr. Gleeson in relation to the execution of a codicil in due course.

The draft codicil declared that clause 7 (b) of his Will should be deleted in its entirety and be replaced as is indicated above. (3. Legacy to Anthony Lyons).

By attendance dated 21st May, 2004 Cormac Brennan and Ms. O'Connell attended at Mr. Lambert's house for the purpose of executing that codicil. Mr. Lambert said he was happy with the provisions of the codicil which were talked through by Ms. O'Connell. He handed her a schedule of calculations detailing how his assets would be shared out and asked the solicitors to keep a copy for their file.

It was noted that, when Dr. Gleeson arrived, he remarked that Mr. Lambert was looking very well and healthier than he had been the last time they had met. Mr. Lambert explained to Dr. Gleeson that he wanted to change his Will due to the fact that the collection which he had given to IMMA was now valued at €3 million, an increase of €750,000 and he did not want to give any more to the Charitable Trust in his Will considering the value of the art which he had given during his lifetime. Ms. O'Connell confirmed that the main changes in Mr. Lambert's Will as a result of the codicil would be to reduce the legacy to the Gordon Lambert Charitable Trust.

Ms. O'Connell explained the effect of registration of the enduring power of attorney and the issue of Mr. Lambert's testamentary capacity. Dr. Gleeson said that as far as he was concerned there was no change in Mr. Lambert's mental capacity since the last time he had performed the test for mental capacity which Mr. Lambert had passed with flying colours. Dr. Gleeson did not feel it would be necessary to carry out that test again as Mr. Lambert was obviously physically better and was articulating his thoughts as well as ever. Dr. Gleeson said that Mr. Lambert suffered from no illness other than Parkinson's and there was no reason to carry out the test for testamentary capacity again as he could tell from simply speaking to Mr. Lambert that he had full mental capacity and understood the action that he was taking in amending his Will. He would nonetheless carry out the test if Ms. O'Connell felt it was necessary. Ms. O'Connell said she did not feel it would be necessary as long as Dr. Gleeson was happy with Mr. Lambert's capacity.

Dr. Gleeson asked Mr. Lambert whether he was changing his Will of his own free will, or whether anyone was pressuring him to make amendments. Mr. Lambert said the idea of changing his Will came solely from himself, and that he was not acting on anyone else's suggestion or coercion. Mr. Lambert reiterated that everything that happened was his decision. Dr. Gleeson said he did not feel it was necessary to carry out the test for mental capacity again as nothing had changed since the previous meeting other than Mr. Lambert was looking better and gaining weight. Mr. Lambert confirmed that he was feeling in great form.

Mr. Lambert signed the codicil. His signing was witnessed by Ms. O'Connell and Mr. Brennan.

Ms. O'Connell mentioned that the deposit interest rate was so low at the moment, Mr. Lambert might consider investing a small proportion of his liquid assets (say 20 to 30%) in shares, which might provide a better rate of return for his investment. Mr. Lambert said he would consider this but feared losing money, and there were numerous occasions in which people that he knew had invested in the stock market and lost money.

Ms. O'Connell had mentioned, before Dr. Gleeson arrived, that she had heard from Tony (Lyons) that there had been some interest in buying Mr. Lambert's house. Mr. Lambert confirmed that Gerald O'Toole of Ganly Walters had valued the property at approximately €1.5 million. Mr. Lambert said he agreed that he would not leave the house in which he had lived for such a long time and had not intention of doing so.

A second manuscript spreadsheet dated June 2004 written by Mr. Lambert and given to the solicitors entitled "Estimated Implications for CGT", while being broadly similar to the earlier spreadsheet of August 2003, indicated a net value for the house at €700,000.

In addition to the attendances Ms. O'Connell swore two affidavits on 17th October 2003 and 2nd June 2004 which summarised the circumstances and instructions given by Mr. Lambert.

These affidavits referred also to the enduring power of attorney.

5. Powers of attorney: enduring and general

Mr. Lambert executed the prescribed form of instrument creating an enduring power of attorney at Part B appointing Anthony Lyons to act as attorney for the purpose of Part II of the Powers of Attorney Act 1996, with general authority to act on his behalf and with authority to take on his behalf decisions on the following matters:-

"Where I should live;

With whom I should live;

Whom I should see and not see;

What training or rehabilitation I should get;

My diet and dress;

Inspect of my personal papers;

Housing, social services and other benefits for me.

1. Patricia Rickard-Clarke, Solicitor of McCann Fitzgerald Solicitors of 2 Harbour Master Place, Custom House Dock, Dublin 1 should be consulted for her views as to what would be in my best interest. I have also completed a letter indicating my general wishes.

2. I appoint Alvary Diane Tomlinson and Olive Beaumont to act as my attorneys if an attorney appointed by this instrument dies or is unable or declines to act or is disqualified from acting as attorney.

3. I am required to give notice of the execution of this power to at least two persons. I shall notify the following persons accordingly:

Jean Lambert (address)

Patricia Rickard-Clarke (address)

4. My attorney shall be reimbursed in respect of out of pocket expenses.

I intend this power to be effective during any subsequent mental incapacity of mind.

I have read or have had read to me the information in paragraphs 1 – 13 of Part A of this document.

Signed by me []

In the presence of

[Witness]"

Part C was signed by Mr. Lyons on 21st November, 1997 as follows:-

"I understand my duties and obligations as attorney, including my duties to apply to the High Court for the registration of this instrument under the Powers of Attorney Act 1996, when the donor is, or is becoming, mentally incapable, my limited power to use the donor's property to benefit persons other than the donor and my obligation to keep adequate accounts in relation to the management and disposal of the donor's property for production to the High Court if required.

I have read or have had read to me the information in paragraphs 1, 2 and 14 – 21 of Part A of this document.

I am not a minor or otherwise disqualified from acting as attorney.

Anthony Lyons in the presence of John Finge."

Part D, the statement by the solicitor, which was signed by Patricia Rickard-Clarke stated that, after interviewing the donor, she was satisfied that Charles Gordon Lambert, (the donor) understood the effect of creating enduring power of attorney and that she had no reason to believe that the document was being executed by the donor as a result of fraud or undue pressure. Part E, the statement by a registered medical practitioner, was signed by Dr. Conlon who stated that in his opinion at the time the document was executed by the donor, Charles Gordon Lambert, had the mental capacity, with the assistance of such explanations as may have been given to the donor, to understand the effect of creating the power.

A letter of wishes of 17th November, 1997 from Mr. Lambert stated as follows:-

"To my attorney

It is my wish that if I require nursing care because of my illness that such nursing care be administered in my home. It is not my wish, if I become incapacitated, to reside in a nursing home and it is only if medical treatment in a hospital is required that I should be moved from my home."

By certificate pursuant to s. 9 of the Powers of Attorney Act 1996, Dr. J. Bernard Walsh, Consultant Physician and registered medical practitioner certified and tested that on 10th October, 2002, St. James's Hospital, Ward Private 3, he examined Charles Gordon Lambert and in his professional opinion the patient was suffering from Parkinson's disease, heart failure and intermittent confusion and hallucinations. He said that the patient was becoming incapable by reason of a mental condition of managing and administering his own property and affairs. The certificate was issued on 23rd October, 2002 and signed by Dr. Walsh.

By certificate of registration of 15th January, 2003, the Registrar of Wards of Court certified that an application for the registration of an instrument creating the enduring power of attorney and appointing Anthony Lyons attorney and executed by Charles Gordon Lambert the donor on 17th November, 1997 was received from Anthony Lyons in the Office of Wards of Court on 31st December, 2002 and was registered on 15th January, 2003.

It was indicated that Patricia Rickard-Clarke, solicitor of McCann Fitzgerald solicitors, should be consulted for her views as to what would be in his best interests. Reference was made to a completed letter indicating Mr. Lambert's general wishes.

While he was in hospital, and before the registration of the enduring power of attorney, Mr. Lambert executed a general power of attorney in favour of Mr. Lyons.

6. Plaintiffs' evidence

6.1 Mark Lambert

Mark Lambert, the deceased's nephew is an actor, director and a son of Hamilton and Jean Lambert, the deceased's brother and sister-in-law.

He said that his relationship with Mr. Lambert ten years before his death was good. They spent time together at family lunches, particularly at Christmas. Mr. Lambert was extremely generous and fair to all of his family. There was a good relationship and no rows.

Mark Lambert was unsure when Mr. Lambert developed Parkinson's disease and when his speech became difficult.

He was aware from his late father who had been receiving phone calls in the middle of the night from the deceased that Mr. Lambert had had hallucinations. He was aware that his sister Janette and his father had brought Mr. Lambert to hospital after Mr. Lambert had fallen.

Mark Lambert said that he had received a long phone call from Mr. Lyons the following day. There was no indication of the purpose of Mr. Lyons's call. He knew that Mr. Lyons had been put in hospital. He could not recollect previous abusive remarks by Mr. Lyons against his father who had been referred to as a gentleman.

He said that Mr. Lyons in that phone call had complained of Hamilton Lambert taking things from Mr. Lambert's house, putting his hand over Mr. Lyons mouth and later hiding away as Mr. Lambert was taken to the ambulance on 26th September 2002. Mark Lambert said that Mr. Lyons rambled on in an hysterical way.

He described visiting Mr. Lambert once with his father in St. James's Hospital where they had a perfectly pleasant chat although Mr. Lambert was difficult to understand because of his speech. They had a discussion regarding pills as his father, Hamilton, was a vet. He said that Mr. Lambert had no views about being in hospital. Mr. Lambert treated them politely, no different than other visits.

On a previous visit, when he had gone to clear up the side passage of his uncle's house he found Mr. Lambert difficult to understand.

He did not see Mr. Lambert again after visiting him in hospital. He said he was prevented from seeing him. He requested Mr. Lyons to see his uncle as he was Mr. Lambert's favourite nephew. He said there were numerous phone calls but he could not remember how many.

He said he had phoned Mr. Lyons when Mr. Lambert was in hospital in September 2002. There was no mention of him not being able to see his uncle.

After Christmas day he said he went to London on 4th February, 2003 and received a call from a nurse asking him not to visit. He referred to a one and a half hour phone call from Mr. Lyons who said that Mr. Lambert was frightened of his family. He said that Mr. Lyons had slammed down the phone.

On 2nd February, 2003, he had a second phone call from Mr. Lyons which he described as being obsessive regarding the day of his uncle's hospitalisation. He said that Mr. Lyons was not hostile until he began arguing with him. Up to the time of hospitalisation the Lambert family had enjoyed Mr. Lyons's company when he drove his uncle to lunch with them. He said he kept in contact with his uncle in 2003 and 2004.

Mark Lambert could not understand the letter from his uncle with bullet points saying why his family could not see him. He replied in a long letter to his uncle on 29th December, 2003, from Stratford-upon-Avon. He was concerned that his letter might not have reached his uncle. The previous Christmas he had sent a card and a present to his uncle and a book token for Mr. Lyons. In a phone call subsequently with Mr. Lyons he said that he had apologised to his uncle for not inviting him for Christmas. He said that Mr. Lyons had replied that he did not know what Mark Lambert was talking about.

He said that Mr. Lyons had replied on 16th February, 2004 saying that his uncle was not in a writing mood; that his uncle thought a lot of him and had asked Mr. Lyons to write to him. For his own part, Mr. Lyons said he appreciated Mark Lambert's kind remarks and said that it had been a long lonely battle (for him).

The witness also referred to a letter from his uncle in his own handwriting thanking him for his letter and adding:

"I don't think you are fully aware of the facts ...".

Included in that letter from his uncle was the bullet-pointed letter which he presumed had come from McCann Fitzgerald.

He said he naively thought that he could persuade Mr. Lyons to allow him to see his uncle.

Mr. Lyons had told him that his uncle was terrified of his family because they wanted to put him into a mental institution or home. He described a small family funeral when his uncle died which he described as sad and rather pathetic as a tribute to his uncle. There was no memorial service.

He said that Mr. Lyons was totally in charge of everything to do with his uncle and had accused the family of interfering.

Mr. Mark Lambert said that, after his uncle's death, Mr. Lyons had said to him that there would be trouble when the Will was read. He said he did not know what Mr. Lyons meant. Mr. Lyons was very polite to them after his uncle died and he and his father went to the house and took a chair which his father had shown interest in. He said his father was also interested in a sepia photograph of his grandparent's wedding and said that that was one thing he would like. Mr. Lyons said it would be awkward as it was part of the estate but that he should come and discuss it. Mark Lambert did not know what happened to that photograph.

Mark Lambert said that he had an interest in a picture by Robert Ballagh in which he bid for the auction of his uncle's property but failed to secure it.

Mr. Mark Lambert said that as far as he was concerned, there was not any staff working with his uncle before he had gone into hospital in September of 2002 but thought that he had somebody coming into clean. He said he did not even know that for certain and had been concerned whether his uncle was in need of care before he had gone into hospital.

In cross-examination he said that, as his uncle could not see him or his father for two years, he felt he was in court for some redress in some form or fashion to honour his uncle and his father. He said he absolutely believed that his uncle was given misinformation which influenced him in relation to what actually happened on the day when he went into hospital and subsequently. He accepted that his uncle was upset about what the witness believed to be misinformation. He said that he believed that Mr. Lyons had manipulated his uncle into not seeing the rest of his family gradually over a period. He referred to the very long phone call and threat to sue his father which seemed to be out of character with their family or indeed, that their relationship with Mr. Lyons. He began to suspect that there must be some kind of motive behind Mr. Lyons's statement that Mr. Lambert never received presents or a card and subsequently stating then relaying that he had.

He said that the hospitalisation was due to concern and love for their uncle. He believed everyone would do the same thing under the circumstances.

He said that according to the information in the solicitor's letter it appeared that his uncle was very unhappy with the way he had been treated in being brought to hospital and the way his family had treated him when he was in hospital.

He agreed that he was moving to the position of saying that his uncle's concerns were so irrational that they could only have been fed by Mr. Lyons which would have been upsetting to his uncle.

He agreed that Mr. Lyons was free in his communications with his uncle and indeed, that he himself thought that Mr. Lyons could persuade his uncle to allow him to see him.

He agreed that he had no evidence that Mr. Lyons prevented him from seeing his uncle other than the realisation that his uncle, after a period of time, was angry and frightened, when nobody had actually tried to approach him. He said the evidence was based on suspicion. The only basis was his phone calls. He did not believe that these were his uncle's wishes to resolutely refuse to see his own family. He knew that a cousin had managed to see him and had pleasant conversations with him.

He agreed that his uncle's unhappiness was not merely about the circumstances in which he was brought to hospital but about the perceived neglect of his family. However he said that his uncle would have said something to them about it. It was inconceivable that one would not say so to the family.

He would not accept that his father was a dominant figure and had a good relationship with the deceased. His relationship was extremely good and fraternal and he would visit him on his own and as a family. He was not domineering despite his being ten years older than the deceased.

He was aware that two days before Mr. Lambert was hospitalised on 26th September, 2002, his father, in the presence of his mother, had seen Mr. Lambert's Will.

In cross-examination he was referred to the letter which Ms. O'Connell of McCann Fitzgerald wrote to Mark Lambert's father on 22nd January, 2003 after she had been contacted by Ham Lambert, his father. Mark Lambert assumed that his uncle had by then improved greatly though he had not seen him.

Reference was made to the attendance of Mr. Brennan at the meeting with his uncle on 19th March, 2003. Mr. Lambert said that while it was indicated that his uncle was making his own decisions and dealing with his own affairs that his belief was that there was conversation and discussion outside the actual signing of the papers. He agreed that he had no evidence of that. When asked whether it was a total surmise and conjecture on his part, he said it was a collection of a lot of things. He could not provide any evidence because he was not there. There was no documentary evidence on documents that Mr. Lyons wrote any of the documents. He said that, other than his own belief and suspicions, there was no evidence that Mr. Lambert was directed or controlled by Mr. Lyons.

The letter of Mr. Madigan dated 29th May, 2003, was put to Mr. Lambert and he was asked whether he was part of the family that Mr. Madigan represented. He said he did not know but that, when he later talked to his cousin, the matter had been blown out of proportion.

He said that his uncle believed what was told to him but agreed that Ms. O'Connell's instructions were from his uncle who was making the decision.

The attendance referred to his uncle wishing to amend his Will and giving detailed instructions. He said he would not dispute that he discussed the matter with Susan O'Connell and accepted that, from his uncle's perspective, the record seemed to suggest that his uncle had a concern about whether his assets were going to be sufficient to allow him to do all that he wanted to do.

He agreed that he was not alleging that his uncle had not got testamentary capacity. He was only alleging undue influence by Mr. Lyons. He agreed that there was no paper work as to that effect. But he was suggesting and had been doing so all along that misinformation and untruths would influence someone to change his Will. He agreed that if, he felt frightened of his family, he would probably do the same if he was told things that a family were out to get him in some way. He believed that the influence of Mr. Lyons on his uncle was why he continued to be fearful. He did not think anyone in the family was pressurising him. He said the only conversations that were happening were between him and Mr. Lyons and he certainly was not putting any pressure on his uncle and indeed his family were not.

He was asked whether his suspicion was largely due to the fact that Mr. Lyons received increased benefits under the Will and that the family members received reduced benefits. He replied that it was a surmising of the facts that the Will was insofar as the addition of a cap on the residue and the addition of a clause that anyone who challenged the Will would be disinherited that he found extraordinary. The combination of the fact that his father made an innocent remark about the Will to his uncle and had arranged that Mr. Lambert be put into hospital had painted his family as being after his uncle's money. No attempt seemed to be able to persuade his uncle against that. The person who was closest to him had the power of attorney.

He agreed that he had no contact with his uncle at that stage.

It was put to him that his uncle was disappointed with the family's lack of interest in the art collection. He said he was interested and was proud of his uncle's art collection and was disappointed that his uncle was not aware of it.

Mr. Mark Lambert said he had only visited the deceased once in hospital when he came back from London. He saw relatively little of his own parents.

He said he became aware of his father seeing the deceased's Will two days before he was hospitalised on 26th September, 2002. He was told by Mr. Lyons who said that his father had ranted and raved having seen the Will. When he spoke to his own father he was told that his father had actually spoken quietly and wondered whether Jean, his wife, should be included in Mr. Lambert's Will.

It was put to him that Mr. Lyons did not have such a conversation with him as on that day he was in the hospital trying to find a bed for the deceased and that he did not know the provisions of the deceased's Will. Mr. Mark Lambert said that was why he was so surprised that he had said such a thing.

He was referred to a letter that he had written to the deceased expressing how good it was of the deceased to reply so soon. The letter continued:

"It is certainly true I did not know the facts in the correspondence you have sent makes awful and disappointing reading. I am very saddened by the overall impression that you feel under siege and even threatened... finally, I can also understand the trauma and hurt you went through in going to hospital and the isolation you suffered while you were there ...

... We are both concerned about you and we felt responsible for looking after you, that I can honestly vouch for. We also felt concern for Tony [Mr. Lyons] who I know and repeat myself that they constantly praise for his caring and loyalty to you. I say this in relation to the traumatic events of your admission to hospital. They also felt certain what was described to me of the event I am not sure what anyone would have done under the immediate circumstances. The result of their action of calling ambulances was clearly horrid and the fact that you were treated and left on a trolley ...Mum's behaviour was also out of character, as she was for at least a year cross and sometimes more cross with (other members of the family). I know she also said some terrible things to Tony and one phone call which may be hard to forgive. This seems to be the crux. Shakespeare in one of his tragedies had a character say that time is out of joint. Mum knew that she was dying.... This merely explains but doesn't condone her behaviour any more than Dad sometimes childish behaviour as he got increasingly frail and frustrated at his indisposition. All I can say is that I don't expect you to forgive Dad and Mum all of a sudden but I would beg you above all else to allow Dad to talk to you. I have seen how upset and confused he is by not being able to see you, and I would hope he would say sorry about some of the things you have said he has said and done....

I want for Tony's position to be appreciated and respected and whatever apologies be made and misunderstandings

to you and him. There must never again be any mention of Wills or inheritance but only love, respect and family pride."

Mr. Mark Lambert said that he wrote the letter absolutely believing that Mr. Lyons would read the letter which he wrote with full honesty and truth. He was aware that the only way he was ever going to see his uncle was by flattering and praising Mr. Lyons. His sole desire was reconciliation, that was the sole purpose of the letter.

He was asked whether there was a whisper of criticism of Mr. Lyons in the letter and replied referring to the letter from the solicitors which could only have been related by Mr. Lyons. He could not understand the content of that letter.

Mr. Mark Lambert agreed that (in his letter) he referred to himself feeling somewhat remorseful for not having seen more of his uncle in hospital. He said he was not aware of his unhappiness while he was in hospital. He said he apologised for not inviting his uncle for Christmas after he left hospital on 15th December, 2002.

He was asked whether he could see why the deceased might have been put out by the fact that having been instrumental in his being hospitalised, his father did not visit him for a period of four weeks. He said that as far as he knew phone calls had been made directly to the deceased by his father and that other contact was made on a fairly frequent basis to Mr. Lyons through his parents. He did bring his father in a wheelchair into hospital. He agreed that he did not return when he said he would come back to read to the deceased.

It was put to the witness that Mr. Lyons was a very loyal friend to his uncle and did far more for him in terms of the ordinary daily exigencies of his life than any member of his family. He agreed that after he was hospitalised that Mr. Lyons did more. He said he did not know whether Mr. Lyons had done more than any other members of the family before the deceased went into hospital in September, 2000. There was never a question of Mr. Lyons not actually being a friend or being good: he said that was never an issue. He was just saying that his understanding was that what happened after the hospitalisation was that everything turned upside down. He said he was sure that Mr. Lyons had called to see his uncle on a daily basis from the time of the execution of the power of attorney. He was sure that he had helped his uncle immensely.

He had absolutely no recall of an arrangement by Mr. Lyons that he should see his uncle at 2 o'clock and that he had turned up late and his uncle had changed his mind and did not want to see him and that he rang at 3.30 to be told by Mr. Lyons that his uncle had changed his mind and did not want to see him.

He agreed that he was not in communication with Mr. Lyons after the death of the deceased.

It was put to him that one of the features of the case was that there was absolutely no preliminary correspondence and he was asked why proceedings issued. He said that it was his desire for redress when he actually had a conversation with Pauline Slater, the deceased's housekeeper. If he had a conversation with her but could not give a date. He was asked why he had jumped to the conclusion that what Ms. Slater was telling him was true. He said it was because it was such a long list of suspicions and of abuse of other people that he had received. He was deeply upset that two men went to their death without having communicated with one another. He was led to believe that Mr. Lyons was responsible for preventing the deceased talking with his father.

He said he had no communication from June Lambert before he spoke to Ms. Slater.

In cross-examination by counsel for the second and third named defendants he accepted that the deceased had a strong, independent personality and also made up his own mind on issues.

He agreed that over the years while his physical health deteriorated his mind remained alert and active except at times when he was difficult to understand. He would not cast any aspersions on his uncle's ability to think and act.

He agreed that it was a concern that he be cared at home. That was a concern of his parents as well. He had never discussed with the deceased the question of nursing or home help. He accepted that his uncle was concerned that his own mother would not go into a nursing home when other members of the family wanted her to do so. He said he was not aware why the enduring power of attorney was executed in 1997 but understood that now. He had no reason to doubt the evidence of the deceased's solicitors that his uncle had given clear well thought out instructions in relation to each new Will and that the draft Wills were based on his instructions alone. He accepted that Ms. Rickard-Clarke was confident that all changes made to the deceased's Wills over the years were as a result of his own free will right up to the 2002 Will.

He disagreed that his uncle was a more dominant personality than Mr. Lyons as he found Mr. Lyons bossy but not unpleasant. He thought that Mr. Lyons had a strong influence over his uncle. It was hard to evaluate. He certainly would not say that his uncle dominated Mr. Lyons or that Mr. Lyons dominated his uncle. He thought that as his uncle became increasingly weak and vulnerable he was not necessarily dominant over Mr. Lyons.

He accepted that Ms. Rickard-Clarke had said that his uncle very much appreciated the care and attention provided by Mr. Lyons.

He was referred to the Will of 15th May, 2005 and to the reference to Mr. Lyons steadfast care and attention. He said that his uncle did not effuse him emotionally.

He agreed that he was making no claim in respect of his uncle's testamentary capacity.

He accepted the wishes of his uncle in relation to his instructions to his attorney but thought that his uncle would have wished that his family were around him and, indeed, some of his closer friends.

He accepted absolutely that Mr. Lyons was not present when either that Will or codicil were executed.

He said he agreed that his uncle was living alone and did not have any night carers and that his family were not in a position to take on that role. He said that was so and that was why they were urging nursing home – which is why, he

said, he knew that his mother and father were trying to urge him to take on home nursing. He agreed he had not visited his uncle in hospital for five or six weeks and accepted that he was upset and annoyed at the initial stages. He was not aware of the issue of the power of attorney. He agreed that if there had been mention of putting his uncle into St. John of God Hospital that he would be furious.

He said he was not there so he could not say whether his father had made contact with St. John of God Hospital but would be outraged if that were true. He agreed that the hospitalisation played a very big part in the deterioration of his uncle's relationship with his family. He said that that would be understandable if he thought he was being put into a hospital forcibly and try to be put into a mental institution. He referred to a phone call from Mr. Lyons threatening to sue the family for forcing his uncle into hospital. That was deeply hurtful because they did it out of an act of goodwill.

He accepted that his uncle found it very stressful when the prospect of the Will was raised with his family. He agreed that it was an unfortunate confluence of the hospitalisation and the issue of the Will.

6.2 Dr. Bruce Lambert

Bruce Lambert, Mark Lambert's brother, a medical doctor, also gave evidence. He had worked in Dublin hospitals before he left to work in England where he had remained since.

He too shared an interest with his uncle in his art and was hugely interested in his collection but when he moved to England he did not see much of his uncle. When he did come to Dublin he would try to visit his uncle with his father but his visits were very brief. He did go to the openings of his art collection and was proud of his uncle.

He was asked whether one of the factors that influenced his uncle and excluding his family after he became ill was that his uncle feared that he might come under pressure. He replied that he found that incomprehensible. He could not understand where it was coming from. It was certainly not coming from him. He had never spoken to anyone who said they had spoken to his uncle about his Will. He did say that his father had said to him that at the end of 2002 he was with the deceased and that he had been given a piece of paper which was the deceased's Will and started reading it and realised that it was his Will. According to his son, Mr. Hamilton Lambert, now deceased, had asked Mr. Lambert whether he was sure that he wanted him to see it. Mr. Lambert replied that he did not and Hamilton gave it back to him. There was no provision for Hamilton's wife, Jean, who had a good relationship with his uncle and he felt that his father was concerned that she had not been acknowledged. His father also told him that he had told Mr. Lyons that Jean was not in the Will but he did not say so to Mr. Lambert.

He was aware of the difficulties that his uncle had with Parkinson's which he was familiar with from his own practice.

He said he could not understand where the pressure was coming from or why the family were not allowed to visit him. When the letter came from Susan O'Connell, a letter had also come to his father from Tony Lyons which accused his father of all manner of things which he could not understand as his father was a gentleman of the old school. The witness was shocked by the solicitor's letter of 22nd March, 2003 and he wrote to Tony Lyons saying that he was very sad that this had been written. He was very disappointed with Mr. Lyons's letter which he thought was an outrageously savage letter.

Dr. Lambert said that he was saddened that his uncle did not wish to see any member of the Lambert family and, in particular, his own brother. He asked Mr. Lyons that if his uncle genuinely felt that his own brother would send him to hospital. He thought that Mr. Lyons would be able to explain to him that this was clearly not a possibility as Mr. Lyons had a power of attorney. There was full nursing care at home and no need to go back to hospital. He mentioned Mr. Lyons's tireless and unremitted devotion and attention to Mr. Lambert and the appreciation of this by all the family. Dr. Lambert said that that was how he felt at the time. He said he received no response to his letter.

Dr. Lambert said that having looked at the medical notes he realised that at the time that Mr. Lambert had been put into hospital against his will, that he needed acute medical care and that the action taken was entirely appropriate.

In cross-examination by Mr. Callanan, Dr. Lambert said that he should not have said that his uncle had no care but that he had insufficient care.

He was asked whether he supported the proceedings and he said he did once he had seen the statements from Pauline Slater (Mr. Lambert's housekeeper). He had not read the statement of Pauline Slater but had been told of it by his brother and his cousin (the first and second named plaintiffs). He agreed that his attitude seemed to have changed very dramatically from the time he wrote the letter of February 2003. He agreed that there was no suggestion in that letter that Mr. Lyons had in any way influenced or pressurised his uncle. There was no such suggestion at that time he said but he did not understand why his uncle did not want to see them.

He agreed that he had not responded to McCann Fitzgerald's letter but had written to Mr. Lyons directly.

He said he had not seen the letters from Ms. O'Connell to his uncle of 29th May, 2003.

He had said that the family were not allowed to visit their uncle any more and were banned from seeing him. That is what he understood from the letter of Susan O'Connell. However he could not say whether it reflected the wishes of his uncle.

In reference to Ms. Slater's statement, he said he could not find any other explanation as to why the family were not allowed to see their uncle.

He agreed that his uncle was a very talented and highly intelligent man and that the doctor had alluded to his clear mental capacity. That made him wonder more how, if his uncle had a clear mental capacity, he could have such thoughts in relation to his family.

It was put to him that that simply reflected his and his family's inability to accept the fact. He said he found it very difficult to accept but he had to accept that his uncle did not wish to see them because that was what everybody was telling them.

He agreed that it was within his rights for his uncle, having had a major disagreement with their father not to wish to see him or his brother Mark.

He could not comment on Mr. Lyons being told by Hamilton on 27th September, 2002 to urge the deceased to change his Will.

Dr. Lambert agreed that his uncle was clearly unhappy about going to hospital. He accepted that. He himself did not visit Mr. Lambert when he was in hospital.

He also accepted that his uncle was upset about the lack of family visits when he was in hospital.

He was referred to an attendance on Hamilton Lambert on 10th January, 2003 which included the following:

"Ham mentioned that he had words with Gordon in relation to the provisions of his Will. He said to me that Gordon's Will only made provision for Jean in the event that Ham pre-deceased Gordon. Ham said he knew that Jean would be very upset and he told Gordon this."

Dr. Bruce Lambert said that he was not aware, when he wrote the letter of February, 2003 to Mr. Lyons, that there had been words with his uncle about the Will.

It was put to him that the issue in the case was whether Mr. Lyons exerted undue influence over his uncle regarding the making of the Will in August 2003. He said that the feeling of the members of the family was that Mr. Lyons, instead of facilitating a good relationship between them and Mr. Lambert had actually done the opposite. He understood that undue influence could arise from a number of different sources and that, if his uncle was turned against the family, then naturally he would have a different view of them than he had for the preceding 90 years of his life. If the family were excluded from seeing him then that would make it very difficult for the family to reassure him on those matters.

He had a strong suspicion that Mr. Lyons exerted undue influence over his uncle who had, in his father's words, poisoned Mr. Lambert against his family. He agreed that he was not privy to the contents of the Will apart from the one point which his father had told him. He agreed that detailed instructions had been given by his uncle to his solicitor, Ms. O'Connell, and accepted that the solicitor produced a draft based on that and gave independent legal advice. However he had certain reservations about it. From his point of view where a patient was in the terminal stages of Parkinson's disease and was very unwell and vulnerable, they could rely very greatly on their immediate carer and that it was not very difficult for that carer to influence them. He had seen that happen on many occasions in his career as a doctor. It would not be beyond the bounds of possibility for that to have happened in this case.

He agreed that he had no solid evidence of any undue influence which supported his belief.

It was put to him that his belief was purely based on surmise and conjecture from the overall situation of Mr. Lyons being his attorney and his belief that Mr. Lyons was in some way responsible for the family not being able to visit his uncle. He agreed that that would be a fair summary.

6.3 Pauline Slater

Ms. Pauline Slater had started part time cleaning work with Mr. Lambert in 1996 initially doing a couple of hours a week. She said that Mr. Lambert started to get very confused in 2002. Mr. Lambert had given her a key. She had seen members of his family coming to the house as well as Ms. Catherine Marshall. She said there was a fairly constant flow of visitors.

As 2002 went on Mr. Lambert became less able to do things. She was told by Mr. Lyons that there had been terrible confusion over his being put into hospital.

She said that she visited Mr. Lambert in hospital quite a lot and would bring home some of his washing. She said this happened weekly or maybe twice a week sometimes.

She had never heard the deceased saying he did not want to see his family coming in.

When Mr. Lyons came home just before Christmas carers started coming in at night time in January.

She found both the deceased and his brother to be exceptional people, kind and gentle. She had never heard him say that he did not want to see his brother.

She said that she had received instructions from Mr. Lyons to tell members of his family not to contact the house. She said that other carers would have had the same message and that she heard Mr. Lyons say so many times to other carers.

She said she heard some exchanges between Mr. Lyons and Mr. Lambert though she would not have been actually in the room with them. Mr. Lyons just kept insisting that none of the Lambert family would be allowed to get in touch with him, she said. On a couple of occasions she did hear, they might be only snippets, she said, but she did hear Mr. Lyons saying he would walk away if the late Mr. Lambert tried to get in touch with his family because his family had been very rude to Mr. Lyons and he wanted an apology from them. She did not remember Mr. Lambert contacting anyone else. She had no idea about Ms. Beaumont and Mr. Lambert contacting one another. She never met her. She said that the only time she ever heard anything about Ms. Beaumont was when Mr. Lyons said that he had found out that the late Mr. Lambert had tried to ring Ms. Beaumont and that Mr. Lambert was absolutely furious, because he had forbidden Mr. Lyons to get in touch because Ms. Beaumont had let the side down by attending Jean Lambert's funeral. That was the only thing she had heard about Olive Beaumont. She then said "Sorry, I'm not quite sure about this one. I am getting a bit confused. I am sorry. Forgive me. When you say that he ever say (*sic*) anything else, I'm not quite sure?"

She said that the only thing really that she heard was that they were not allowed to get in touch with anyone and no-one was allowed to have contact, unless they got in touch with Mr. Lyons first. No-one was allowed in unless it was on

Mr. Lyon's approval.

She was asked whether the vicar had to check with Mr. Lyons if he wanted to go and see Mr. Lambert and she replied that everybody had to check before they could get in. There were no exceptions to that rule that she knew of.

She said that she felt that Mr. Lambert was a terribly lonely man in his way. When he came out of hospital, he asked whether Ham had called. She said that he believed that Ham had been unkind to him and that Ham was the one who had tried to get him into St. John of God Hospital. She said that Mr. Lyons had said that a row had started because Ham was annoyed that Mr. Lambert had not left enough money to Jean.

She said she heard Mr. Lyons say that if Mr. Lambert went against his wishes and got in contact with the family that he would walk away. She said Mr. Lambert was absolutely terrified about that. He had a real fear about that, that he would be left on his own. He had been a very self assured man before he went into hospital.

She was asked how many times did she hear Mr. Lyons making such threat. She replied that he talked about it every single day. Days never went by that he did not talk about being under terrible pressure.

She referred to the need for a ramp from the house to the garden and asked her partner, Bill Murphy, to price its construction.

6.4 Susan Taylor

Ms. Taylor was a carer with Mr. Lambert from early 2003 to early 2004 but was not sure of the dates. She worked from 8.00 pm to 8.00 pm the following evening. Ms. Slater came on Monday, Wednesday and Friday.

She said that her instructions from Mr. Lyons was to let him know if Mr. Lambert had any visitors and who phoned him. She would hand over her report book to the next carer. Towards the end there were two carers, herself and Anita Delaney.

Mr. Lyons instructed her not to let his family know in the event of his death. She was not allowed to let visitors in under any circumstances and especially the Lambert family. She was to say that Mr. Lambert was not in but would contact them. If anything happened during the day Mr. Lyons was to be informed.

Ms. Taylor said that Mr. Lyons helped Mr. Lambert with his correspondence but did not see Mr. Lyons typing. She did not know how correspondence was sent.

She left because of an incident of not responding to the carer's alarm in Mr. Lambert's room which she maintained was not functioning.

She did not contact any of the Lambert family as she was following orders.

6.5 Dr. Rachel Doyle

Dr. Doyle, a consultant with Loughlinstown (St. Colmcille's Hospital) and St. Vincent's Hospital reported on the facts detailed in the plaintiffs' solicitors instructions to her. There was no reference to the involvement of Mr. Lambert in the making of his last Will or in relation to the two defences of the defendants. She was not informed of matters in dispute. She was not told of the report of Dr. Gleeson and Dr. Walsh. She relied on the medical notes from September to December 2002.

The Court is of the view that her detailed and careful evidence is posited on the state of health of Mr. Lambert in 2002 and did not have the benefit of being aware of subsequent events of his recovery and engagement with his solicitors. She agreed that she did not have the advantage of examining Mr. Lambert.

6.6 Dr. Hugh O'Donnell

Dr. O'Donnell, an experienced general practitioner in Strokestown, had been given similar instructions. As with Dr. Doyle he did not have the benefit of the knowledge of pleadings of events of the circumstances of the instructions.

6.7 Mr. Bill Murphy

Mr. Bill Murphy had been asked by Ms. Slater to price a ramp to enable Mr. Lambert's wheelchair to gain easier access to the garden.

Mr. Lyons independently had ramps constructed.

6.8 Ms. Valerie Rowan

Valerie Rowan, the eldest grandchild of the Lambert family, is a sister of June Lambert and a cousin of Mark Lambert. She lived in Northern Ireland and, accordingly, did not see Mr. Lambert regularly. She saw him a couple of times after he went into hospital on 28th September, 2002.

She was a bit shocked to hear about the letter from Susan O'Connell in January, 2003. She said that as a result she was not prepared to present herself at the door and being refused entry to her grandmother's house. The other alternative was to phone Mr. Lyons. After the abuse which Mr. Lyons had given Bruce Lambert she certainly was not going to put herself up for that either. Through a friend, she was put in touch with Padraig Madigan, solicitor, who had a brief informal

chat with her. She had a few concerns and thought that that was the best way to proceed. The matter got blown out of proportion and, she said, a sledge hammer was used to break a nut. She thought it "spooked" Mr. Lyons and her uncle. Then June Lambert took over and chatted to Padraig Madigan. She thought that the letter that was sent by McCann Fitzgerald to Padraig Madigan was terribly formal referring to "our client" and "your client". She had come to realise that there were a lot of untruths (in that letter) and that a lot of damage had been done to a close family.

The last time she saw her uncle was in hospital when she brought him his Christmas present.

In cross-examination by Mr. Callanan she said that she was led to believe that her uncle had expressed his wishes through his solicitors on 22nd January, 2003 and that had not changed.

The family had met for Sunday lunch and discussed the situation and tried to see if there was any way they could establish how he was and try to resolve any ill-conceived differences. She did not think that her uncle Hamilton Lambert was there.

She disagreed that the reason that the allegations made in the letter of January 2003 were not rebutted was that they were substantially true. She said that Mr. Lyons had Mr. Lambert's ear all day every day.

6.9 June Lambert, second named plaintiff

June Lambert, the second named plaintiff, had been a district officer in the New South Wales government for nine years and was a Justice of the Peace and came back to Ireland in 1983 where she obtained a Masters Degree in systems development, a Masters Degree in Fine Arts and a Masters Degree in business studies.

She said she had a good and loving relationship with Mr. Lambert and saw him very frequently when she was in the country, where she would see him on average once a week. Her uncle trusted her and loved her enough to nominate her to replace him as director of Mitchells. He made her the founding trustee or joint trustee with him of the Gordon Lambert Trust which held his art collection. She had been executor of his Will for many years. She also attended many functions with him socially and co-hosted functions in his own house over the years.

Her uncle had very good friends, among whom was Mr. Lyons in more recent years. He was a good friend of Mr. Lambert. Mr. Lyons was friendly with the family and they were friendly with him. He was present at a large number of family events and occasions. She said she liked him and thought that he liked her. The family embraced Tony Lyons as "one of (their) own". There was never any issue with Tony Lyons up until recently.

She was not aware of the power of attorney but had no difficulty with it.

She said that Mr. Lambert's health had declined in 2002. She was not aware of his having hallucinations but had heard from Hamilton that he was hallucinating. She noticed that in Spring of 2002. It was a slow decline. Mr. Lambert was fiercely independent. He did not like lots of extra people around the house. The family were conscious that he wanted to remain in his own house right up until his death. That was a given, was never an issue for the family. She had subsequently contacted Mr. Lyons and mentioned the fact that Mr. Lambert and herself had discussed the possibility of somebody getting him up in the mornings and getting him breakfast. Mr. Lyons said that he wished that Mr. Lambert would tell him those things and that he would organise it.

In June 2002, Mr. Lambert had asked her to resign as trustee of the Gordon Lambert Trust. She had no specific reaction to that. She was happy to see the art collection go to the nation.

Later that day she rang her uncle and asked him if he was he sure that that was the right decision because it meant that the museum had total control of the art collection and that the Lamberts were out.

She referred to Patricia Rickard-Clarke writing to Mr. Lambert saying something to the effect of "please protect June on the Trust". She said that her uncle had never instituted the resignation. After her resignation she had seen him and he was fine. There was no deterioration in her relationship with him. There was absolutely no dispute.

She said that, on 28th September, 2002, when Mr. Lambert went into hospital she left a message on Mr. Lyons's phone offering support. The next evening she got the most abusive phone call she had ever received in her life from Mr. Lyons, who had since apologised twice for that phone call. Mr. Lyons had basically said "the house is off limits", that the locks had been changed and that she was not to organise the funeral and take the limelight, that he had the funeral and memorial in hand. She said that she was used to taking notes as a district officer and wrote that down at the time. She did not have the notes before her but thought that they were in the court. She said that really she did understand that it was a very stressful day and apologised with all her heart and soul to Mr. Lyons for the way he felt at that moment. The call lasted one hour. He had referred to "disgraceful Ham" for (a reference to Hamilton Lambert) for putting Mr. Lambert into hospital. She agreed that all the allegations then against Ham Lambert was really in relation to putting Mr. Lambert into hospital.

In that conversation she had asked Mr. Lyons if she could she support him and he said "you are the last person I want around me". He also said "you are not to go into the hospital. You are not to visit Gordon. Gordon does not want to see you." It was just her. She said that she went into casualty the morning after the phone call from Mr. Lyons and Mr. Lambert was on a bed in a cubicle and she said he was "very, very frightened, out of the world, not with it". That was a 10 o'clock on 29th September. He was not able to communicate with her and did not react.

She said the following day she went in and gave details to the hospital as to the next of kin whom she said was Ham Lambert. She identified herself as a niece. She gave the hospital Ham's name and number, but did not think that she gave Mr. Lyons number. She agreed that the telephone number and the name Tony on the hospital notes referred to Mr. Lyons. She said she visited her uncle on a number of occasions and, while he was in hospital, on days that she did not visit him, phoned the nurse's station and asked them to pass on her good wishes to him. On the second day she visited he was "completely out of it" as he had been medicated. On the third day he was in a wheelchair and he was not speaking but seemed friendly enough, a bit distant, a bit spaced out. Subsequently she asked one of the nurses to ask him if he would like to see her and she heard him saying "would you tell her to come back tomorrow". She did but he was missing, she

could not remember, if she had conversations with him. He never expressed any views to her about his hospitalisation. She said the only way he could have been outraged about it was "if he were told things". She was very conscious of the fact that Mr. Lyons had instructed her not to go in.

(The Court notes the pleadings in relation to the issue at para. 8 (C):

The plaintiffs and other members of the Lambert family were prevented from speaking to, calling into, or seeing the deceased in 2002.)

The evidence of June Lambert referred to visiting her uncle in St. James's Hospital from September onwards and that she said that she was conscious of the fact that Mr. Lyons had instructed her not to go in.

June Lambert referred to a visit to the outpatients ward with her nephew, David Rowan, where Mr. Lambert was happy to see them and was saying "look, I can speak better". This was in December, 2002. Ms. Lambert said that Mr. Lambert rang her when she was with her relatives, the Mitchells, in Australia, on 26th December and after that she did not detect any hint of anything untoward in his calls and messages but thought that he was very unwell.

She was asked when was the first time that she learned that she was supposed not to call into Mr. Lambert to see him or to contact him. She said it was when she was in Australia when her sister phoned her in the first week in January, 2003. She was very shocked.

She referred to the letter of 22nd January, 2003, which she said effectively banned the family from seeing Mr. Lambert. She came back from Australia at the end of January and had Sunday lunch at Janette's house where Valerie was present but Ham was not present and they agreed that Valerie would get in touch, through a solicitor friend with a solicitor, Mr. Pdraig Madigan. There was no meeting with Mr. Madigan. It was a phone call where Valerie was on the phone and she was on the other phone.

They did not expect Mr. Madigan to write a letter. They thought he would make a brief and formal phone call to Susan O'Connell. The letter from Mr. Madigan was in April 2003.

At that time she had no communication with Mr. Lyons.

Ms. June Lambert recalled the reference, in Susan O'Connell's attendance, that his doctors advised that he should not meet people on his own. She said that a lot of Susan O'Connell's attendance notes, and her letter back to Pdraig Madigan, were extremely inaccurate. She said that she was not in touch with Dr. Gleeson but was in touch with the medical admitting staff. The particular attendance note dated 28th March, 2003 and the letter written by Ms. O'Connell to Mr. Madigan, were full of inaccuracies and fictions.

She said that her uncle knew that she was going to Australia and said that it was not true that he only found that out when she sent him a card from there.

She would question why his doctors advised him not to meet people on his own. She was aware that he did in fact meet other people during that period.

She said it was inaccurate to say that the family had given out about Mr. Lyons as they had never spoken badly of him.

He had not complained to any member of the family that he was annoyed with them in the way that they had treated him or that they had not respected his wishes.

She disagreed with the attendance notes referring to her telling Mr. Madigan that she met with Mr. Lambert on his own and always met him on his own for the purpose of taking instructions from him. Ms. Lambert said that it was very clear that Ms. O'Connell also got information from other sources.

Ms. O'Connell had noted that she said to Mr. Madigan that she thought that generally Mr. Lambert was quite good but that he tired easily. Ms. Lambert said that the family did not get that information and referred to the family being banned from asking about him from his carers.

Ms. O'Connell had referred to Mr. Lambert inadvertently showing his Will to his brother Hamilton and that his brother had made a chance remark to Mr. Lyons on the way out. Ms. Lambert said that this did not happen.

The reference in the next paragraph of the letter was to his brother contacting St. John of God Hospital with a view to having Mr. Lambert admitted there. June Lambert queried who made Mr. Lambert aware of that. She said that she had not made any remarks about St. John of God Hospital.

June Lambert said that that was a very important letter. It was so distressing to the family and was so utterly wrong and agreed that the family did not reply to it because they were distressed by it.

In reference to Mr. Lambert advising his solicitor that he found the pressure being exerted upon him by his family being very stressful, Ms. Lambert said that no one exerted any pressure whatsoever on him at the time and that Hamilton had made four phone calls to the Lambert house asking to see his brother.

In relation to Ms. O'Connell's letter that he himself had made all decisions as to whom he saw and did not see, she said that her uncle had reduced capacity and was relying on what he was being told.

With reference to Mr. Lambert feeling that his family had shown little empathy with him and his medical condition, Ms. June Lambert said that the family had been forbidden from the date of that letter of 22nd January, 2003, to contact his carers or his doctors.

Ms. Lambert said that they were not informed by Mr. Lyons as to Mr. Lambert's health. She said she left a number of

messages on the phone and none of the calls were returned. She said that she received no indication of any change in Mr. Lambert's health either from Susan O'Connell or Tony Lyons. Ms. Lambert referred to her letter to her uncle, Gordon, dated June, 2003 which ended "Let us not judge or blame each other but instead try to understand each other. With my love, June" followed by a post script saying "No need to reply".

She said she had not seen the list of questions that Mr. Lambert wanted to put to his family.

She was referred to a letter from Mr. Lambert to her of 4th September, 2003, which was typed. She was deeply upset and hurt by it. She said that Mr. Lyons had done a lot of Mr. Lambert's typing. She said she was particularly hurt by the words:

"I have no wish to engage in ongoing correspondence."

She said this was not her uncle. She did not know what her uncle meant by the reference to the lack of understanding of the role of power of attorney. She asked why her uncle was saying that her letter showed no remorse whatsoever and that it disappointed him gravely that her loyalty to him had been perverted to such an extent. She said her loyalty was never perverted.

She said that the reference to there being no excuse for what was done to him in the context of being hospitalised in an emergency and his comment that she seemed to approve of the attempt to commit him never happened and was false and that Mr. Lambert never used questions in his letters which was the style of Mr. Lyons letters.

Ms. Lambert said she had no problem with the next paragraph of her uncle's letter which said that he was extremely angry and upset about the way the family had acted towards Mr. Lyons but stated that the family had not acted in any adverse way towards Mr. Lambert. She said that she had not made any accusations against Mr. Lyons at that stage and, as far as she knew, no one in her family had ever spoken badly about Mr. Lyons. She said that it was not true that Mr. Lyons had always been available should they have wished to enquire.

She was asked to comment on the following passages:

"So far I have refrained from charging you for the legal expenses you have cost me.

And any further attempts to upset me or interfere in any way with the arrangements I have put in place ..."

She said that her uncle was a very, very ill man and was not capable of putting arrangements in place. Mr. Lyons put arrangements in place. No one had tried to interfere or upset him.

There was a further letter from Mr. Lambert in January, 2004, acknowledging her Christmas card and present but bitterly regretting that she still showed no remorse over the circumstances of his hospitalisation and the subsequent relentless pressure on himself and his power of attorney.

She said that she was not in touch with Mr. Lyons or with her uncle since his last letter in September.

Mr. Lambert had said:

"This time last year Ham went behind my back to negotiate with my solicitor a change in my Will."

The witness said that she was not aware of any such approach but was aware that Ham had made one phone call to Susan O'Connell on the 10th January, 2003, before the banning letter.

She completely refuted that statement but then said that obviously she could not refute it. However, she considered it to be a crazy statement. She agreed that it was in her uncle's handwriting but said that he had obviously been told that that had happened.

In this letter Mr. Lambert referred to her hostile action in contacting a solicitor and involving more expense through his solicitor's reply. Consequently he had lost all trust, which in turn upset his health by delaying the progress he had since made. Mr. Lambert said that she had forwarded the banning letter and "a nasty letter from Tony to Ham" to Mr. Madigan.

Mr. Lambert then said that all of those unnecessary and unpleasant (matters), including the duties of the power of attorney "have been diminishing your own inheritance out of assets of my estate".

Ms. Lambert said that the family members were not remotely interested in their inheritance. She said that that was not her uncle who was writing on 10th January, 2004. She said that the four phone calls from Ham to Mr. Lambert in January, 2003 were not relentless pressure. She said that Lambert was poisoned against his family and there was no doubt whatsoever about that.

Reference was made to her letter of October 2004 to Mr. Lambert on 15th October, 2004. She said that on 12th December, 2004, she got a letter from Mr. Lyons.

She said she met Mr. Lyons on 10th January, 2005, for a six hour meeting. Mr. Lyons, she said, had wanted to see her to explain everything that had gone on over the previous two years. She said she thought that her uncle wanted him to meet her. It was a friendly meeting. He had told her that Mr. Lambert's health was fine and that the doctor had said he could live another five years. She said that at Christmas that she had dropped a Christmas hamper on his doorstep. But she was not aware that he had gone into hospital in January, 2005 – she did not have any details of his health.

After that meeting of 10th January, Mr. Lyons would phone her and she would phone him. Mr. Lyons made her aware of

the seriousness of what was going on. She knew that her uncle was in hospital at that time. Mr. Lyons rang her on 27th January, 2005, to say that Mr. Lambert had died that day. She came down from Omagh where she had been with her sister and the next day sat with Mr. Lyons as he was drafting the funeral notice. She made a few comments. There was to have been a celebration of Mr. Lambert's life but that did not occur.

She said that Mr. Lyons had said to her on 29th September, that she was not to organise his funeral and not to take the limelight. After his death, Mr. Lyons advised her that there were written instructions that the deceased wished to have a small private funeral, and that he wished to have a memorial to take place in the museum. She said that Mr. Lyons had said a few things to her about Mr. Lambert's wishes to change his Will in the last weeks before he died. She had met with Mr. Lyons on a number of occasions following the death of her uncle. Mr. Lyons was extremely friendly with her. Mr. Lyons was happy for her to write as he was talking. She asked him a lot of questions and he answered them to the best of his ability. She said she still had those notes.

An evidential problem arose in relation to whether these were included in the affidavit of voluntary discovery of June Lambert and the matter proceeded on the basis of what Ms. Lambert could recall.

At that stage Mr. Gilhooly for the plaintiffs said that she was saying, he thought, that Mr. Lyons told her that others had operated to deprive her of her inheritance and she said that he identified them. She said she did not want to harm other people or organisations in her answer. She believed him.

She said she had no idea what was in the Will. She did not see the Will for sixteen months after Mr. Lambert died and said the family members were prevented from seeing the Will.

She said that Mr. Lyons had written to her solicitors to explain what had happened with Mr. Lambert's last wishes from 3rd January to his death on 27th January, 2005, where/when Mr. Lambert had repeatedly asked Mr. Lyons to change his Will at a time when he was ill.

Subsequently that letter from Mr. Lyons to Ms. O'Connell dated 19th May, 2005, referred to Mr. Lambert spelling out on the alphabet board:

"They are all using me, I must change the Will."

Susan O'Connell replied on 1st June, 2005, *inter alia*, in relation to this matter as follows:

"I note from your letter that Gordon indicated to you shortly before his death that he wished to change his Will. As you know, given that the enduring power of attorney was registered, it was necessary to Gordon to undergo a medical examination to ensure that he had the requisite testamentary capacity on each occasion when he wished to execute a codicil to his Will. I note from the records of your conversation with Cormac during the weeks leading to Gordon's death that he was generally unable to speak and drifted in and out of consciousness. On that basis, and given the severity of Gordon's condition during this period, it would not have been possible for Gordon to have satisfied the test for testamentary capacity and instruct us in relation to any amendment to his Will."

Mr. Lyons referred, in that letter to the difficulty he had in getting a response from her office. She said that Mr. Lyons kept saying to her that he would not go ahead and probate the Will until all of Mr. Lambert's last wishes were honoured and that that did happen.

In cross-examination by Mr. Callanan Ms. Lambert was asked about the six hour meeting on 10th January, 2005, with Mr. Lyons. She said it was a mystery that Mr. Lyons made contact with her on 12th December, 2004 having been so cruel to her for the previous two years in banning the family from seeing her uncle. She believed that Mr. Lyons had instructed the solicitors to do so. She said that Mr. Lyons did provide her with a considerable amount of information about what had happened in the intervening years. She accepted that he had no role in the Trust.

Ms. Lambert said that though she had submitted her resignation to the Trust, that she was never removed from the Trust. She was still a legal founding trustee of the Gordon Lambert Trust. She never expressed her concerns of not being a trustee to Mr. Lyons prior to the death of her uncle.

It was put to her that Mr. Lyons' communicating with her was completely inconsistent with the idea of Mr. Lyons' engaging in a covert campaign of undue influence. She found that a very strange statement. Mr. Lyons suddenly became her best friend when he knew that Mr. Lambert was just about to die. She said she had no idea why Mr. Lyons did that. She did not accept that it was she who principally drove the proceedings. She referred to a number of untruths in the letters that, for example, Padraig Madigan wrote, which could not possibly have come from her uncle. She said that Mr. Lambert did not lie, the Lamberts did not lie.

It was put to her that it was plain that there was a "falling out" between Mr. Lambert and Ham Lambert. She asked if counsel was suggesting that Tony Lyons had nothing to do with it. She did not reply when the question was put again. She said she had no idea what happened between Gordon Lambert and Ham Lambert as she was not there. She said that the family were caused untold distress by the decision of Mr. Lyons to contact Susan O'Connell to say that they were under pressure from the family. There was no pressure from the family to see Mr. Lambert at that stage and she believed it was a disgraceful allegation to make.

Ms. Lambert agreed that she had received valuable shares in Mitchells, the wine merchants, from her uncle during his life time. It was put to her that her uncle Hamilton had contacted Mr. Lyons to say that those shares should have gone to Mark Lambert. She said she did not know what Ham had said to Mr. Lyons but that Mark had got some shares.

It was put to her that Mr. Lyons wanted to have the deed of the Gordon Lambert Trust and get it from her. She said that it was not true that he had not asked for the trust deed until at least a year later as far as she could remember.

When she was told that Mr. Lyons would give evidence that there was no abusive call from him to June Lambert or that he got her message asking was there anything she could do and that he replied to that telling her to "come off it", that

she had been rowing with Mr. Lambert for some time past, Ms. Lambert said that Mr. Lyon's version of that conversation "was crazy".

It was suggested to her that she had told the hospital she was the next of kin and that they were to report to her in relation to anything affecting Mr. Lambert's welfare. She said she had not but had referred to Ham Lambert as Gordon's next of kin and to herself as a niece.

It was put to her that her evidence that she was told not to go into hospital to visit Mr. Lambert because he did not want to see her was incorrect. She replied that she could not pin down what Mr. Lyons said at the time. She said the second point was that they were not to bother to go in because Mr. Lambert would be out soon.

Mr. Callanan put it to her that there was no plea suggesting that Mr. Lyons sought to impede hospital visits by the family and that she had said that it was correct to say that there was no impediment on her family visiting Mr. Lambert in the hospital. She repeated that Mr. Lyons said that Mr. Lambert did not want to see her. He was being kept isolated from the family.

It was put to her that Mr. Madigan did not convey a concern that Mr. Lyons was somehow isolating Mr. Lambert. She referred to "the banning letter" from Susan O'Connell dated 22nd January, 2003 and to the cruelty which emerged from the statements of Pauline Slater and the nurse (Ms. Taylor).

She was asked to identify a card to Mr. Lyons which stated:

"Thank you, Tony, for the care and friendship you gave you, Gordon ... in recent years. This comes with a heavy heart."

She agreed that there was no complaint, allegations or suggestion against Mr. Lyons in that card which was after her uncle's death and before the proceedings commenced.

She was asked to refer back to the two letters from Mr. Lambert to her of 4th September, 2003 and 10th June, 2004, which she said "were not Gordon". She agreed that she suggested that Mr. Lyons was behind those letters. She said that the nurse, whom she identified as Susan Taylor, advised that they saw Tony Lyons dictating to Mr. Lambert and dealing with nasty correspondence to her. She said she had found that out subsequent to Mr. Lambert's death.

It was put to her that she had suggested that Mr. Lyons wrote Mr. Lambert's correspondence. She said the nurses, whom she later identified as Ms. Taylor, one of Mr. Lambert's carers had advised her that "they saw Tony [Lyons] dictating to Gordon [Lambert]. They saw Tony dealing with nasty correspondence to me".

She said that there was no basis for any nasty letters from her uncle to her. They had Tony Lyon's stamp all over them. Her uncle never used complex sentences or sentences with question marks at the end nor would he have referred to "personal matters of mine".

Ms. Lambert was referred to a letter of 9th August, 2002, from Mr. Lambert to her. She said that she was willing to accept any accusations made by him against her. The letter followed from her resignation letter from the Trust. She said it was not unreasonable to be hurt because she was so instrumental in bringing the collection to the nation. It was the first time that her uncle, who was not a well man at this point of time had said, if she did not resign immediately, he would "get nasty". He uncle's letter continued to state that:

"... you have given a life time of support innocently and lovingly given is a bit far fetched"

She said that Mr. Lyons had a hand in that response. She agreed that Mr. Lyons did not know anything about nor had any role in the Trust. She was not saying that the entire letter was made up by Mr. Lyons. She thought it was a very sad letter, that it was written at a time when her uncle was very unwell in August, 2002. She said that he had "a retinue of people coming in" but at night time he did not have anyone.

Her uncle, in that letter, had said that, with regard to her statement that she had taken care of his welfare, that her caring had consisted of an occasional phone call or a post card, a catalogue or two, brief visits from time to time, long terms of being unable to contact her and a lot of personal abuse over the phone. She said that that was a Tony Lyon's phrase when she described the work she had done with regard to her uncle's collection and her international career. For twenty years she was at her uncle's beck and call and hosted receptions with him.

She was asked whether there was absolutely no expression or opinion on the part of her uncle that she was prepared to take at face value. She replied that she never had abusive telephone calls with her uncle in her life.

While she had said that she had submitted her resignation to the trust she said she was never removed from the trust and was still the legal founding trustee of the Gordon Lambert Trust. She said she never expressed her concerns to Mr. Lyons of not being a trustee prior to the death of Mr. Lambert. She did not have the deed of trust. She had not information as to what had happened or what had influenced her uncle.

Mr. Callanan referred to the last paragraph of Mr. Lambert's letter to her saying that to abuse an old person was an abomination and that the abuse that she had launched on him recently, in his advanced state of Parkinson's disease when he was so weak, fragile, fearsome, was so cruel. She said that was definitely Tony Lyon's words as she adored her uncle.

She said that she may have referred to the paintings of her uncle which he left to the trust as her inheritance as for many, many years Mr. Lambert had discussed leaving the collection to the family. She could not remember it. She said that her uncle built up his collection over a life time and many times, with David Hendrix, he discussed leaving the collection to the family and perhaps the family lending it to the nation.

She was asked why she thought that Mr. Lambert had appointed Mr. Lyons as his attorney in 1997 over members of his

family and she said that that was because Mr. Lyons was his friend and it was her uncle's choice.

It was put to her that Mr. Lyons would say in relation to his letter of 22nd January, 2003, which was of the same date as the McCann Fitzgerald letter that he was being repeatedly telephoned by Ham Lambert in relation to the Will and was extremely angry about it. She replied that Ham could not care less about the Will. She agreed that he had made four phone calls according to his diaries and would see and phone his brother every week.

Mr. Callanan had referred to the attendance of 22nd March, 2003 and to the questionnaire document sent by Mr. Lambert which referred to her calling in at the beginning of his hospitalisation and stating to the nursing staff that she was next of kin and that she had cared for him for the previous five years. She replied that it was not Mr. Lambert's questionnaire but Tony Lyons's questionnaire of April 2003 and that it was utter lies to say that she had said that she had cared for her uncle for the previous five years. She said she did not. She could not. She was not a carer. She was a career person. She worked abroad. She rejected the inference that she was taking over the role of Mr. Lyons.

Ms. Lambert referred to Mr. Lyons meeting her solicitor, Mr. Liddy. She said that Mr. Lyons had given her to believe that he was coming to see her solicitor in an effort to carry out the last dying wishes of Mr. Lambert. She said that Mr. Lyons had no intention of doing that. She said that she had later raised an objection that there was a conflict of interest in Mr. Liddy acting for her in the matter of the trust and for Mr. Lyons in this action.

Mr. Callanan referred to the affidavits impugning the Will on the basis of undue influence of Mr. Lyons and another person. She replied that a lot of allegations had been made against that other person but were dropped. She was "going on hearsay". She said that it was in order to give Mr. Lyons an opportunity to administer the Will as per the wishes of her uncle that the institution of proceedings had been delayed. She said that her solicitors wanted to challenge from the outset but she did not want to challenge either Mr. Lyons or the other person. It was false to say that it was only when she spoke to Ms. Slater and Ms. Taylor that she was able to persuade her solicitors to proceed with the institution of proceedings. When she was asked to say why the evidence of Ham Lambert had not been taken on commission, she said that it was a difficult situation and that the family did not know what was going on. The more she spoke to Mr. Lyons the more she realised that he kept saying to her that her uncle wanted to put Mr. Lambert into a psychiatric home and take all his estate and all his art collection. She believed that was a terrible allegation. She agreed that the first letter she had ever received from her uncle on 9th August, 2002 had Mr. Lyons's hand all over it. She suggested that Mr. Lyons had abused and maligned individual members of the Lambert family (in order) to remove them from her uncle.

Ms. Lambert said that, had Mr. Lyons told her on 10th January, 2005, that her family or Ham Lambert had tried to put Mr. Lambert into a psychiatric home, she would have dealt with the matter. She said he did not tell her until after Mr. Lambert had died.

Mr. Woulfe on behalf of the second and third named defendants said that it was clear and accepted that there was absolutely no allegation of impropriety made against Ms. Marshall. That was confirmed by counsel for the plaintiffs.

June Lambert agreed with him that her uncle had had a strong independent personality who always made up his own mind about issues. She had said he was fiercely independent. She said that in late 2002 onwards he was ill and vulnerable and that the doctors would tell how his mind was. She was not there nor present for those two years. She agreed that one of the biggest issues Mr. Lambert had was that he did not want to be put into a home and was constantly reassured that that would not happen. Mr. Lambert had referred to his mother being looked after by him throughout ten years of disabled old age, including three months of painful death at home. She agreed that that represented his wish and that it was terrible that he died alone away from home. She agreed that her uncle was very diligent about updating his Will on a regular basis. She said he had told her that she was a main beneficiary of his Will since 1992 and that she was a residuary beneficiary with Mr. Lyons for some Wills.

It was put to her that her uncle's solicitor would say that she did not think that Mr. Lyons would have directed her uncle in any way up to the end of 2002. She said that the dynamics had changed completely once Mr. got ill and vulnerable from April 2002 onwards. She said that her uncle was not in possession of the full facts and was removed from his family. She was not disputing the care and attention that Mr. Lyons gave Gordon. He was his friend. It was just the last two years of his life that was the problem.

Mr. Woulfe referred to the attendance with Ham Lambert who had admitted to Ms. O'Connell that he had words with Mr. Lambert, not with Mr. Lyons. Ham Lambert had said that he knew Jean would be very upset and he had told Mr. Lambert this. Ms. Lambert agreed that Ms. O'Connell had reported that. She questioned what pressure was being put on Mr. Lambert which led him to consult with Dr. Tim Gleeson in January, 2003. Ms. Lambert said Mr. Lyons was creating a situation where so much pressure was being put on a very ill man.

She said that her uncle had discussed his Wills with her and with his brother. Ms. Lambert said that Susan O'Connell had asked Ham Lambert not to contact her and that was one of the reasons that the family asked for an intermediary, Padraig Madigan, to see if he could find out how Mr. Lambert was. Mr. Woulfe said that there was no trace of that in any of the detailed attendances of Ms. O'Connell.

She agreed that her uncle was very upset about the family involving a solicitor in the matter. She said she did not regret it but regretted the approach that was taken by the solicitors.

She was referred to the draft of reply to Mr. Madigan's letter by Susan O'Connell and to the corrections and amendments made by her uncle including the note that he felt that some of his family had shown little empathy with him and his medical condition. She agreed that he did write that.

She was referred to the draft Wills sent by Ms. O'Connell to Mr. Lambert on 6th August, 2003, with instructions to place a cap of €100,000 on the first two shares of the residue. She said she had no idea whether her uncle gave such instructions as he was gravely ill and at the time he had no understanding of the value of his estate or anything else.

She said that Susan O'Connell's attendances were absolutely amazing because one would think that her uncle was both well and able to talk. When he spoke to her at Christmas, he could only grunt. His staff would say that it was difficult to communicate with him. She said that Susan O'Connell's notes had done nothing to reassure her.

She agreed that there was no trace of any involvement by Mr. Lyons but said that was the point that Susan O'Connell had "huge amounts of consultations" with Mr. Lyons. She queried who translated for Mr. Lambert and who was present with Mr. Lyons and Susan O'Connell.

She agreed that she was not there at the time. She had previously seen her uncle in December, 2002. She said that Mr. Lyons was motivated by power, control and money. She said that the nature of the relationship changed when someone became ill and vulnerable.

7. Defendants' evidence

Reference was made to the defence and to the particulars of duress and undue influence by Mr. Callanan in the opening of the defence case for the first named defendant.

Mr. Woulfe, on behalf of the second and third named defendants, referred to their defence and admissions and counter claim in relation to the Will of 21st August, 2003 and the codicil of 21st May, 2004, which was similar to the counter claim and relief sought by the first named defendant.

7.1 Anthony Lyons

Mr. Anthony Lyons, was born on 12th April, 1934 and was, accordingly, 75 years of age at the date of the hearing. He left school in 1952 and worked for seven years with Roscommon County Council in the accounts department of the health section and before progressing to being county cashier.

As his parents were getting old he looked after them, having resigned his job and came to Dublin to do a degree in English, Irish, and Economics while he worked as a freelance journalist with a column in the Irish Press and later as an announcer with Radio Éireann. He graduated in 1962 and had his first announcing duty on his 28th birthday on 12th April, 1962.

In 1965 he became press relations and information executive with Teilifís Éireann. He first met Mr. Lambert in 1965 when he was managing director of Jacobs. Mr. Lyons was involved in the Television Awards sponsored by Jacobs. Mr. Lambert's Public Relations Officer (P.R.O.), Frankie Byrne, asked Mr. Lyons to help her with the script for the Jacobs' Awards that Autumn. His first cousin was Mr. Lambert's personal assistant at that time.

It transpired that he was living just a road apart from Mr. Lambert in Churchtown. He was invited to Mr. Lambert's house from time to time where Mr. Lambert entertained a great deal. He said that Mr. Lambert was a P.R. creation. With Frankie Byrne he had created an image of himself as a patron of the arts as well as a businessman. Mr. Lambert, according to Mr. Lyons, was fascinated with Mr. Lyons theories of public relations. He became a brand for Jacobs and was the only businessman to have a personal P.R.O.

He knew Hamilton Lambert who was his vet and his wife Jane, possibly before he knew Mr. Lambert. Mr. Lyons said that he had nothing to do with the Charles Gordon Lambert Charitable Trust which was established in 1992.

He said he did not see Mr. Lambert a lot during that time. He was not in his inner circle. Mr. Lambert phoned him one day and asked him if he would like to be his attorney under the new regulation governing enduring powers of attorney. Mr. Lyons said that his family should do that. Mr. Lambert replied that he could not because his family would put him into a home and he did not want to go into a home. He said that his brother, Ham, had told him that. Mr. Lambert told him that there would be two substitutes, Ms. Beaumont and a Ms. Tomlinson. Mr. Lyons told the Court: "I realised he was distancing himself from his family. I got the feeling that he was quite afraid. I would have said it to take the power of attorney which he now regretted."

Mr. Lambert wrote him a letter through his solicitors which said that as his Parkinson's progressed he did not want to be removed from his home and that he was charging him as his attorney to recruit staff and to take care of him in his home. That was very important to him. He liked having visitors and showing them his paintings and his garden.

He said that Mr. Lambert involved him in his business totally, briefed him and asked to be at his house when his solicitors came so that he could let them in. When Mr. Lambert met with Patricia Rickard-Clarke, who was the partner in McCann Fitzgerald involved in his affairs, Mr. Lyons would stay with her husband in the garden.

Around 2002 Mr. Lyons described Mr. Lambert's health as "fairly O.K.". He told him that:

"Nobody understands this awful thing called Parkinson's – waves go through – and the family don't understand this. Nobody understands. They never make allowance. Waves go through you when you are losing control of your faculties and that is a frightening thing."

He said he did not have a day to day role until about 2000 when Mr. Lambert had to stop driving his car. Mr. Lyons had taken early retirement in 1986 at age 52 when he had acquired pension rights. His last role in RTE was as editor of Access. He said there was no training for an enduring power of attorney any more than there was for looking after somebody with Parkinson's. He did whatever he could to help him.

After the power of attorney had been executed in 1997, Mr. Lyons he had a call from Ham Lambert asking him not to pay too much attention to Mr. Lambert. On another occasion Ham Lambert had telephoned him and said that he should have stopped June getting Gordon Lambert's shares in Mitchell's and said that his son Mark, the first named plaintiff, should have got them. On another occasion he telephoned him and said "you shouldn't have got power of attorney at all. Bruce should have got it". He said that he made it his business to get on with Hamilton Lambert and was very friendly with the latter's daughter, Janette, who took both Ham and his wife, Jean out to lunch a few times and gave them presents at Christmas. He said that he was very friendly with Mark.

He did not know anything about the Will of 13th April, 2002 or the codicil of 18th May, 2002. He had no role at all in the sequence of Wills. He could not give much detail because he was not involved. He made a point of not being involved because of his local authority training where he had to deal with Wills of patients and the involvement of nurses and doctors in their affairs.

Around 2002, when Mr. Lambert could walk, he would often telephone Mr. Lyons and ask him where he was going that day. Sometimes Mr. Lambert would accompany him to a garden centre and have lunch. He was interested in gardening; had a treadmill and in keep fit. He was determined to conquer his problems with mobility and to fight Parkinson's as much as he could.

He said that he did not have any involvement with the Lambert Trust. That was deliberate. He did not want to get involved with the art people. He did not like some of the people who administered the arts.

He was not aware that June Lambert was resigning from the Trust but was aware that there were rows going on.

Mr. Lyons said that the letter of Mr. Lambert to June Lambert of 9th August, 2002, had been handwritten by him and he was asked to copy type it for Mr. Lambert which he did. He was not responsible for any of the sentiments expressed in it. He just copied it.

By late September, 2002 he said that Mr. Lambert had been hallucinating a bit and started saying funny things. He would ring Mr. Lyons on occasions late at night saying that there were people outside climbing the walls or there was a white van outside to take him away or that June was trying to get into the garage or sitting outside watching him. He was quite strong, fairly mobile but calling him a lot. Mr. Lyons explained: "He was used to having people work for him all his life and he expected me to do things."

At this stage there were two part time carers who would come in during the day and prepare his meals for him. Mr. Lambert did not want carers in the house. He was a man who hated change.

At that stage various people called. Catherine Marshall, Brenda Moore McCann, visitors from the art community and neighbours would come. The next-door neighbour, Mr. Barnes visited. His brother, Hamilton called in about once every three weeks, he thought. He did not think that he saw June Lambert at that stage. He described there seeming to be a cold war between Mr. Lambert and Ms. Lambert.

One Saturday night Mr. Lambert handed Mr. Lyons the phone. June was "shouting abuse" at him. Mr. Lyons handed the phone back. He did not know of any other members of the family calling.

He said he had to pay carers who came in at the end of their shifts. Mr. Lambert would phone him and ask him to come over if he had post to be attended to and other errands and payments to be made. He accepted invitations on his behalf by typing them formally. He was also aware of Mr. Lambert using a business called "Hard Copy" which did typing and photocopying. Mr. Lambert did not have much difficulty writing at that stage. It depended on his mood.

Mr. Lyons referred to Wednesday, 25th September, 2002 at 7.00 a.m. when he was going to get newspapers and went by Mr. Lambert's house and saw the front door open but with the chain on from the inside. When there was no response, he burst the chain and found Mr. Lambert lying on the floor outside the bathroom having been there all night. He got him into bed and rang Hamilton and Jean to tell them.

He talked to him that afternoon and asked him where the keys were but he did not know. As his power of attorney, he knew that he was responsible so he suggested that the locks be changed. When he came back with the locksmith, Hamilton and Jean were there in the study with Mr. Lambert. He had the locks changed and gave one to Hamilton and kept the other one himself. Mr. Lyons said that Mr. Lambert had seen his G.P. the previous day and was to see a specialist four days later on the following Monday.

Mr. Lyons said that a short time later Ham Lambert spoke to him and asked him if he could change the Will that Mr. Lambert would have to change it as he was not leaving enough to Jean. He said that Jean would not even go to his funeral as she would be so annoyed. Mr. Lyons said that the Will was between him and his solicitor and no one else. He had no say in it at all. After that Mr. Lyons paid the locksmith and left.

He felt that the tone of what was said by Mr. Lambert was domineering, ordering him.

Two days later on the Friday, Mr. Lambert had been very restless and telephoned Mr. Lyons. Mr. Lyons had to go down four times and ask him to go to bed. He looked pretty awful. He said he went to bed about midnight.

Earlier that Friday evening Ham Lambert had telephoned him and asked him was he sure he could not change the Will. He replied that it was a matter for Mr. Lambert and his solicitor. Hamilton Lambert said that he had phoned Mr. Lambert's solicitor, who had not returned his call and "obviously didn't want to speak to me." Mr. Lyons did not know what was the then current Will or its provisions.

He said that Mr. Lambert's local G.P., Dr. Conlon, lived just across the road and that he attended a specialist in St. Vincent's Hospital, every couple of weeks. Mr. Lyons accompanied him.

The specialist would recommend certain medication which Mr. Lyons would collect from the pharmacy and leave it into Mr. Lambert's house.

On Saturday, 28th September, 2002, he went for his newspapers, passed the house and had a feeling everything was not in order. He went in and found Mr. Lambert on the floor as on Wednesday, 25th. Mr. Lambert told him that he was there all night and that he could not reach his phone to ring Mr. Lyons and ask him to come to pick him up. Mr. Lyons said he put Mr. Lambert in bed with difficulty because he had not much strength in his legs at that time. He had to pull him down the hall. He found it difficult to lift him. He put him under the electric blanket and turned on the heating in the bedroom and said that he would be back in about two hours.

When he came back, Ham Lambert was there and said that Mr. Lambert would have to be "put away" and that he was

"mad". Mr. Lyons told Hamilton that Mr. Lambert had written to him and said that he was not to be removed from his house. He said he would get people to care for him in his home. Mr. Lyons said that he was totally disregarded. Hamilton went then, phoned and spoke, presumably, to his wife.

Janette Lambert, Mr. Lambert's daughter, then arrived.

Mr. Lyons said that while Janette and Hamilton were whispering together the land line rang and a woman's voice said:

"This is John of God here. We can't take that man in unless two doctors certify he is insane."

He said he thanked her and put the phone down. He became terribly alarmed and realised that his role as power of attorney was being completely ignored.

The doorbell rang and two men in uniform asked whether there an accident there. Mr. Lyons said there was no accident. Janette Lambert put her hand on my mouth and said "no you don't live here, you don't know what's happened. He had a very bad fall. He will have to go to hospital."

Mr. Lyons said he realised he was powerless as the two men went to the bedroom. He went into the living room and, while he was there, he saw Hamilton crouching behind the settee. He heard Mr. Lambert being taken out and heard him asking where Tony (Mr. Lyons) was.

Mr. Lambert had asked him that if anything happened there was a bank box under his chair in the study which he was to take possession of. While Mr. Lyons put the contents into his brief case, he said that Hamilton Lambert took some leatherette boxes containing gold cuff links and tie pins and also a little camera and put them in his pocket. Mr. Lyons told Hamilton Lambert that they were Gordon Lambert's, that no one should touch him, and that he was responsible for everything in the house.

He said that he rang Ms. Beaumont, who was recuperating after an operation, and told her.

That afternoon Jean Lambert rang Mr. Lyons and said Mr. Lambert was in St. James's Hospital. She said she could not look after him as she was going on a holiday with her daughter.

He then contacted Ms. Beaumont and asked her to come with him to St. James's Hospital. Mr. Lambert was lying on a trolley and Ms. Beaumont calmed him completely.

He said that Mr. Lambert was not examined by a doctor until 10.00 pm. By that time he had rallied a little.

Mr. Lyons got home about midnight. There was a message on her answering machine from June Lambert. He rang her and she screamed down the phone. He recalled hearing the conversation when she was abusing her uncle and he told her that she had been fighting with him for ages and that she should stop the hypocrisy and the crying. They did have "a battle", he admitted.

The following morning when he visited St. James's Mr. Lambert was still on a trolley in a little bay and was hallucinating that he had been kidnapped by the I.R.A. Mr. Lyons said he stayed with him and tried to calm him down. At about 3.00 pm he was given a bed in a private ward.

When Mr. Lyons returned on the Monday and asked the nursing station, he was told that they could not deal with him as his niece, June Lambert, was in and said she was the next of kin and that the nurses were only to deal with her. He phoned Patricia Rickard-Clarke in McCann Fitzgerald and told her what had happened. She came to the hospital and handed him a sheet of paper which was the enduring power of attorney and told him that he was responsible for everything now and to keep receipts. At that stage he knew nothing about the role of attorney.

He said he did not encounter June Lambert when he was seeing her uncle in hospital. He went in practically every day with his post and asked for his instructions. He kept the house heated and kept the cleaning staff coming in for a while, paid the gardeners and changed the locks again as soon as the power of attorney came checking the interests of security of the house.

On 15th December, 2002, Mr. Lambert was discharged and, Mr. Lyons felt, was becoming institutionalised. He said he did not feel like coming home on 8th and it was agreed he would come home on 15th. He wanted clothes and was beginning to live again and trying to look as best as he could.

He got an alarm and installed it, connecting Mr. Lambert's room to the carer's room. A carer was waiting when they returned to his house.

He arranged for a public health nurse to come, got a special bed for Mr. Lambert and a wheelchair. He said that Mr. Lambert never walked again and was effectively wheelchair bound.

A few days later Hamilton Lambert rang after his wife had gone on holidays and asked how Mr. Lambert was and asked whether there was a bug in the hospital. Mr. Lyons said that he had been in every day and Catherine Marshall had been in most days but neither caught any bug.

He said that he did not know anything about Ham Lambert calling to see Mr. Lambert on 17th December when Catherine Marshall was with him, until after their visit.

On 19th Ham Lambert and his wife Jean came with a Christmas present of home made soup and a cyclamen plant. He said the family did not return until after Christmas. He had received no enquiries about Mr. Lambert's health or welfare from other members of the family over that period. Mr. Lambert spent Christmas with Mr. Lyons in Mr. Lyon's house.

On 27th December Ham Lambert rang requesting a meeting with Mr. Lambert alone. Mr. Lyons asked Mr. Lambert who replied: "No".

On 30th December, Hamilton rang Mr. Lambert directly.

Hamilton Lambert's diary recorded that he had made further calls to Mr. Lambert: two calls on 1st January, two calls on 3rd January, a call on 4th January and two calls on 5th January seeking a private meeting. He thought that that was when Mr. Lambert began to ask the carers to answer the phone for him and the carers would say to call back later.

He said that Mr. Lambert at this time did not say anything to him about his attitude to meeting Ham Lambert alone nor was there any written communication from Ham Lambert. On 8th January Mr. Lyons said that he received a call from Ham Lambert accusing him of stopping him seeing Mr. Lambert. That was the first time he was so accused. Mr. Lyons said he told Hamilton that it was Mr. Lambert's home and it was up to him to decide who came and went.

He said that Ham Lambert continued to phone him and was so aggressive and so hostile that he had ceased to take the calls and let them go to the answering machine.

He said he rang Susan O'Connell who had then taken over from Patricia Rickard-Clarke in McCann Fitzgerald and told her he was being harassed by Ham Lambert. Ms. O'Connell told Mr. Lyons that Hamilton Lambert had phoned her to ask her to let him see Mr. Lambert.

Mr. Lyons decided that he would write Hamilton Lambert a letter in his capacity as power of attorney and explain the reality of the situation asking him to stop pressuring Mr. Lambert who needed rest and recuperation. This was the letter that he understood was shown to June Lambert and passed on to Pdraig Madigan for his advice.

The solicitor's attendance of 2nd January, 2003, recorded Mr. Lyons phoning McCann Fitzgerald saying that Mr. Lambert wanted to see a solicitor. Mr. Lyons message said "I think he wants to change his Will. His speech isn't very good. He thinks he wants to change his Will".

He said that Mr. Lambert had never discussed changing his Will with him. Mr. Lyons believed that the letter he wrote to Hamilton Lambert was a mature letter and a responsible letter from the power of attorney. He was satisfied that he had acted with complete propriety and dealt honestly and fairly with Hamilton Lambert.

In his letter he referred to Ham Lambert as being devious and arrogant, unable or unwilling to accept the reality of Gordon's illness, that Mr. Lambert never asked his family to care for or look after him and that Mr. Lambert needed rest and recuperation.

He had copied that letter to McCann Fitzgerald.

Ham Lambert did not respond to that letter. However, Mr. Lyons he received a letter from Bruce Lambert on 6th February, 2003.

He was asked about Pauline Slater, who cleaned the house when Mr. Lambert was hospitalised. Mr. Lambert said that there was no need to have a cleaner while he was in hospital and he could not justify paying someone for no work. He had changed the locks and kept the key himself and no one else had a key.

He was asked to comment on Jean Lambert's evidence that he had told her that she was not to organise the funeral. He denied making any such comment. He did not think Mr. Lambert was dying. He had been examined by a doctor and was very "chipper" at that stage.

He said that it was untrue to say that she was not to go to hospital or to visit Mr. Lambert or that Mr. Lambert did not want to see her. It was a public hospital and he was in a public ward.

Mr. Lyons said that on 4th January, 2003, Mr. Hamilton Lambert had brought a letter to Mr. Lambert who said he did not want to see Ham Lambert. In that letter Hamilton Lambert expressed sorrow about not having visited him more often and referred to Mr. Lambert saying that he would have died if he had not come into hospital. The letter referred to the reasons for the hospitalisation and how Hamilton felt personally about their relationship over the years.

Mr. Lyons was asked whether the family were prevented from speaking to or calling into or seeing Mr. Lambert. Mr. Lyons said he did not prevent them at all but he did advise them about the distance to Mr. Lambert's ward when he was in St. James's.

He was referred to Bruce Lambert's letter which Mr. Lyons said was rehashing Ham's arguments and indicating that the wards were closed. He said that the wards were never closed.

Mr. Lyons said that he never made any demand of Ham Lambert to procure an apology. He said that Mr. Mr. Lambert's personal notes to Ham and to June were all ignored. They just kept on pressing to see him. He said he was very annoyed with Bruce's letter. Mr. Lyons repeated that he had no involvement in Mr. Lambert's request that an apology should be made. Mr. Lyons was not seeking an apology.

He was conscious of the suggestion being made that the family perceived that he was locking Mr. Lambert away from his family. He said that was ridiculous as he lived in his own home. He did not live in Mr. Lambert's house. He had his own business to attend to. He was on call the whole time to the carers who could ring him anytime they wanted something.

He said he did not mind at all if a meeting were arranged between Mr. Lambert and his family.

Mr. Lyons said that Mr. Lambert had been unhappy that he had not expressed his outrage to Susan O'Connell about the letters from his family and wanted to make more points and send them to her in relation to a reply to Pdraig Madigan. He was asked whether that was not Mr. Lambert's style as maintained by June Lambert in her evidence. He replied that he was a trained journalist. He took the notes and he typed them up. He had no involvement in writing the notes nor did he suggest its contents to Mr. Lambert. He did not know the basis for the bullet points in the reply to Mr. Madigan.

Ms. June Lambert's letter stated that, after a week or so, the hospital saw her as having the primary role of organising Mr. Lambert's care at home to which she unreservedly agreed.

Mr. Lyons said that it had been established that he was the attorney by then. Ms. Lambert did not in fact assume a primary role or any role in organising her uncle's care at home.

That letter had been delivered by Jonathan Mitchell who wanted to see Mr. Lambert. Mr. Lyons asked Mr. Lambert who agreed and Jonathan Mitchell went in. Mr. Lyons left. He did not control access to Mr. Lambert. If someone wanted to make contact with Mr. Lambert they would phone or they would call. Mr. Lambert would say whether he was not feeling very well or he was tired or that he would see them and they were let in.

He said it was totally incorrect for Ms. Susan Taylor to say that she got instructions from him that he was to be told if Mr. Lambert had any visitors who phoned him and had to report to Mr. Lyons.

Ms. Taylor had said that Mr. Lyons had told her that his family were not to be informed when he died. Mr. Lyons said that neither he nor Mr. Lambert himself ever contemplated his death.

Mr. Lyons said that Ms. Taylor had never contacted him and it was completely untrue of her to say that Mr. Lambert could not receive visitors. He said that the carers were never told that they were not to let the family in.

Mr. Lyons said that he called down most afternoons when he had read Mr. Lambert's post and Mr. Lambert would have instructions to give. He would go to the carers and ask whether Mr. Lambert was getting his medicines and how he was the previous night. The carers had to be paid in cash. He was on call 24/7 and had to go down several nights to stop nose bleeds, and so forth.

He said that Mr. Lambert was very ill at ease with Ms. Taylor. He told them that Mr. Lambert liked to be called Mr. Lambert. He was not aware of her coming to work for Mr. Lambert as they came through the agency and explained how important it was that Mr. Lambert got his four-hourly medication. On one morning he was told by Mr. Lambert that he was in trouble that night and called Ms. Taylor but she never came down.

Mr. Lyons said he rarely saw Pauline Slater except to pay her on a Friday. He thought he got on very well with Ms. Slater but did not see a great deal of her as she came in three mornings a week for two hours at about 11 o'clock and was let in by another carer who was living there. He attended in the afternoons.

There had been difficulty with alarms and locking the house. He used to lock it because of trouble with the gardaí over Mr. Lambert setting off his alarm.

He denied that he had insisted that none of the Lambert family should be allowed to get in touch with him. Ms. Slater said she heard Mr. Lyons saying he would walk away if Mr. Lambert tried to get in touch with his family because they had been rude to him. Mr. Lyons asked why would he say that as Mr. Lambert already knew the situation.

He said he knew nothing about Jean Lambert's funeral. He did not express any view on Mr. Lambert having tried to ring Olive Beaumont as he had three mobile phones and one land line. There was no monitoring or checking or interfering with Mr. Lambert's access to communications of any kind. Mr. Lyons said Mr. Lambert used the phone the whole time.

Mr. Lyons said the vicar did not have to check if he wanted to go to see Mr. Lambert. He said that he was sure that the vicar would not allow that to happen anyway. He said that the vicar would just arrive at the house which he gathered was on Sundays around noon.

7.2 Dr. Tim Gleeson

Mr. Gleeson with thirty years in practice, a clinical tutor in U.C.D. and in addition to his medical qualifications had a diploma in forensic medicine. His thesis was on the mental capacity of the elderly which he completed subsequent to the examination of Mr. Lambert.

Mr. Lambert was a patient of his from December 2002 onwards. He described his symptoms as Parkinson's disease, aspiration difficulties, disabled in mobility but reasonably articulate, learned, bright with a pleasant existence for the one and a half years after his hospitalisation.

He had common interests with him in terms of arts, books and the fact that Dr. Gleeson had worked in Africa. He had been in hospital because of a urinary tract infection and dehydration. He did not want peg feed then.

There was no psychiatric element in his disease. He said that, had he been sent to St. John of God's, they would have "shipped him to St. James's. He referred to Dr. Walsh, consultant in St. James's, whose opinion was that the medication he was on could have caused occasional hallucinatory effects. He did not see him in St. James's.

Dr. Gleeson said that he hated hospital and asked him to solemnly promise that he would not hospitalise him against his will.

He said his family had been unhappy with their inheritance. He felt under pressure and did not want "this conversation".

He and Dr. Walsh said he had the right to restrict visitors. Both agreed he was *compos mentis*. The variation in his mental ability was *ectogenic*, that is drug-induced.

In February, 2003 to August 2003, when he made his Will, he had seen him every two months which he described as a social act.

He said that Mr. Lyons would convey messages and get prescriptions.

Mr. Lambert was as well as could be.

He said that in August, 2003 he had written to Ms. O'Connell regarding the mini-mental state examination in which Mr. Lambert was 100% in alertness and orientation. He was under no pressure from anyone to alter his Will. He had full control

of his faculties and was fully *compos mentis*.

In May 2004, on the occasion of the execution of his codicil, he saw him and was of the view that he did not need any repeat of the mini mental state examination.

His report referred to the process of Parkinson's disease being under good control and that there was no inter current illnesses that might alter his ability to think and make decisions. He felt it necessary to state the reasons why he was changing his Will although Dr. Gleeson had not asked him to do that. He informed Dr. Gleeson that the art collection which he had given to the Trust had increased in value significantly and he was now altering (the provisions in relation thereto).

Dr. Gleeson continued as follows:

"I asked him had this change in his Will been requested by anyone and he answered no. I asked him did this disadvantage any of his relatives and he answered no, in fact he answered that this would be to their benefit."

He continued:

"As a medical witness to the change of his Will, I found no difficulty in recommending that he was in a full and normal mental health to do so and was not provoked to making this change and took all factors into consideration ..."

Dr. Gleeson said that he knew none of the details of his Will before his death.

In cross-examination by Mr. Gilhooly he agreed that it was the most advanced case of Parkinson's in his practice. He would not expect improvement. His writing was good. Cognitive impairment would not necessarily affect testamentary capacity.

He said that the medical notes in St. James's in 2002 indicated that he had scored 25 out of 30 which he regarded as pretty good. There was no difficulty with his testamentary capacity.

In relation to the issue of the ramp he said this was not a matter for his G.P.

Mr. Callanan asked Dr. Gleeson why he confirmed that he was not under pressure by anyone to make any alteration in his Will. Dr. Gleeson said he had no reason to doubt it.

When he had seen Mr. Lambert he would usually be with someone else as he had carers. He never asked for a complete private audience with him. He certainly met Mr. Lyons there on a number of occasions.

He said that Mr. Lambert had very specific views of what he had done and what he had not done but was not irrational. Had he or Dr. Walsh said to him that he needed to go to hospital he would probably have accepted it, but they would have had some difficulty in convincing him that he needed to be in hospital because of his already declared dislike of hospitals, which he hated.

Dr. Gleeson said he had no dealings with Hamilton Lambert or his family. He was aware that Mr. Lyons friend and Dr. Gleeson's colleague, Dr. Brenda Moore McCann knew him and he would ask how she was. He said that his level of engagement with the outside world was limited.

He said he regarded Mr. Lyons as Mr. Lambert's adviser, carer and accordingly anything to do with his attendance at the house would have been mediated through Mr. Lyons because of Mr. Lambert's inability to speak properly.

He confirmed in re-examination that he had used the phrase "the pressure issue" in relation to the problems with relatives possibly discussing the Will with him. He had used the word "pressure" rather than "fear".

7.3 Edward Woods

The evidence of Mr. Edward Woods, the Vicar of Rathfarnham since 1993, was that he called perhaps once a month or six weeks to bring Mr. Lambert the Eucharist. He was always in very good form, although physically he was not the best at times. Mentally he was very alert and very talkative and chatty and in good form. He did not know Mr. Lyons well during the latter part of Mr. Lambert's life. He only met him once or twice in the house. It was usually Anita who was his carer who let him in. She was attentive to his needs. He agreed that she was devoted to Mr. Lambert.

He said that Mr. Lambert seemed very much in control of his own life and what he wanted apart from his physical disability. He said that, on only one occasion did Mr. Lambert mention his Will. That was in the context of, he thought, Ham's wife being quite annoyed with Mr. Lambert not having included her in his Will.

He was referred to the pleadings which stated that Mr. Lyons had refused to allow Mr. Lambert further contact with the new vicar of the parish. Mr. Woods said he was not the new vicar as he had been there since 1993 and that Mr. Lyons had never interfered with his access to Mr. Lambert. He was never refused entry. He would ring Mr. Lambert up a day or two in advance and arrange a time that suited both of them and was let in by the carer. He said he did not have to go through Mr. Lyons.

He said he saw no evidence of Mr. Lambert having been neglected or that his care was inadequate or stinted during the latter part of his life.

He said he had visited Mr. Lambert on perhaps a weekly basis when he was in St. James's. Mr. Lambert was anxious to get home. That was his main aim. He was fully in control of his faculties most of the time. In cross-examination Mr. Woods said that he had asked Mr. Lambert whether, as he became more incapacitated, if he wished to be included on the regular monthly rota for communion and he said he would. That was five or six years before he died. He had become slightly more disabled in the latter years but on the whole his condition would have been fairly static. His speech was also a bit slurred

because of his Parkinson's.

He was asked whether Mr. Lambert talked to him about his family and he said not a lot, that they did not talk about family matters at all, apart from the one reference that came out of the blue which was already referred to. It was not a matter which he would necessarily expect him to mention. He did not pry into any of Mr. Lambert's personal relationships.

He said that Mr. Lambert never struck him as being paranoid. He never saw any hallucinations.

He said he gave a homily at Mr. Lambert's funeral. It was put to him that he spoke quite pointedly of the thoughtlessness of others. He said he could not recall what he said as he had done so many funerals. He did not recall saying anything about thoughtlessness. He said no one ever approached him about a memorial service.

There was nothing unusual. The funeral took place two days after he died which was standard. Mr. Woods was not asked to act as a mediator to resolve difficulties.

In re-examination Mr. Woods said that Mr. Lyons and Anita Delaney seemed to take great care of Mr. Lambert.

In cross-examination Mr. Gilhooly put it to Mr. Lyons that Ms. Slater had made a general suggestion that Mr. Lambert had been left in a very unsatisfactory condition or had been neglected towards the end of his life. Mr. Lyons said that he was very well looked after. He said that Ms. Slater objected to the carers being there. Mr. Lambert had called him one day and said that the women were screaming at each other. So a new carer came. She had been a legal secretary who was starting to do caring work and she was challenged by Ms. Slater as to what she was doing there.

He denied that he had vetoed the ramp proposed by Mr. Bill Murphy, Ms. Slater's partner. He said he produced the receipt for a ramp which was there from the time Mr. Lambert came out of hospital and was wheelchair bound. There were three ramps. Ms. Slater never came to him about a ramp at all.

He was asked who would visit Mr. Lambert during the period 2003 – 2005. He said the people he was aware of were Anne Madden and Louis le Brocqy, Dr. Moore McCann, Catherine Marshall, some banking friends and Ms. Rita Childers. There was also the director of Adams Auctioneers, Mr. Coyle, Robert and Mrs. Ballagh, and Michael Ashe. They just rang Mr. Lambert himself and said they would like to come to see him.

Mr. Lyons said he never saw Mr. Lambert's Will. He knew the solicitors were coming but he had nothing to do with the Will. The carer let them in.

He said that he had not exercised any influence over Mr. Lambert in relation to the Will. Mr. Lambert had negotiated the Will with Susan O'Connell and he was in touch with her the whole time. He just rang her and said if she would come on such and such a date. He did not know of the provisions of the Will. There were no discussions between him and Mr. Lambert in relation to his proposed testamentary dispositions. He was aware that Dr. Gleeson examined Mr. Lambert on 21st August, 2003.

Mr. Lyons said that he thought Mr. Lambert was perfectly normal, weak but perfectly clear in what he wanted to do. His brain did not go at all.

He was asked about the letter Mr. Lambert wrote to June Lambert on 4th September, 2003, in reply to her letter. He said he was not responsible for the content of that letter. He had nothing to do with it at all. He did not discuss the content of that letter with Mr. Lambert. He could not remember the attendance where he said that Mr. Lambert had drafted the letter and gave it to him.

He was asked about the evidence of Ms. Lambert saying that she had been advised that the carers saw him dictating to Mr. Lambert. He said that that was not correct – it was totally incorrect.

He said that Mr. Lambert opened all his own post and that he rarely typed a letter for him in reply other than the invitations which were formally replied to. It is not clear from the evidence whether this was before the time that Mr. Lyons opened the post.

Mr. Lyons was asked what the general condition of Mr. Lambert was on 13th October, 2004. He said that the carer had called him saying that Mr. Lambert was not well and asking Mr. Lyons to come over at night. When he arrived he called the doctor who diagnosed pneumonia and said he would have to go to hospital straight away.

Mr. Lyons said that he had objected to Mr. Lambert telling anyone about what was in his Will which was a matter for his solicitor.

He said that when he was in hospital Anita Delaney stayed with him and slept in a chair beside his bed. Mr. Lyons would go into visit him most afternoons. He did not encounter anyone else but thought the vicar may have dropped in.

(In January, 2005) Mr. Lyons had told June Lambert that Mr. Lambert had indicated a wish to change his Will, though he could hardly speak. He told Mr. Lambert to wait until he went home and was better. He said he left it like that.

Mr. Lyons said that he was with Mr. Lambert earlier in the morning of 27th January, 2005, and he knew that he had not long to live. Anita Delaney was with him the whole time. Anita Delaney called him that evening when he was at a meeting with Eoin McGonigal, the chairman of the Museum and told him that Mr. Lambert had died.

Mr. Lambert did not want any announcement of his death until after he was buried but word had got out. He was contacted from the Museum the following morning sympathising with him. He realised that it was necessary to move quickly so that Mr. Lambert's wishes would be honoured. He arranged the funeral for Saturday, the following day.

He was asked whether he engaged, or was capable of engaging, in some form of psychological cruelty towards Mr. Lambert. He objected to that totally and said that he was not that kind of person, that Mr. Lambert had been a friend that he had known for 30 years and he was obliged to look after him under the terms of the enduring power of attorney. He said it was a pretty grim (task) and that his health had been damaged. His hearing was affected by stress. His garden

had gone to seed. He was not able to show his dogs or to fulfil judging appointments in England.

He said that the family had known him for years and they knew what he was like. He was always on good terms with them. They knew this was not true and had refused to recognise the fact that they damaged Mr. Lambert's health a lot and did not apologise.

Mr. Lyons said that he did not realise that he was included in Mr. Lambert's Wills. He did not have an interest in other people's money. He always earned his own. He did not know about the increase in legacies.

He was not initially aware that he was suffering from Parkinson's disease but once, when driving by the park noticed he was walking lob-sided. He exercised the whole time to keep his illness at bay. While he did not understand Parkinson's he noticed slowness in his speech but did not notice slurring. He was aware that he was salivating a bit but he did not query it really because he appeared to be in good form.

When he signed the power of attorney it was explained to him but that was all he knew about it. He was willing to try it because Mr. Lambert needed help. He agreed that he had read the document in its entirety before he signed it. He was aware that it had no force until it was registered. He said he did not exercise the power of attorney as he did not have a power complex. He did not see any need for it. Mr. Lambert's doctors would decide what training or rehabilitation he should get.

He said he had spoken to Dr. Tim Gleeson who had replaced Mr. Lambert's previous G.P. when he came home from hospital in December 2002. His previous G.P. had said he did not want to treat him unless he got help at home. He had not suggested the change in G.P. He said he consulted with Dr. Brenda Moore McCann and with Catherine Marshall. The former recommended Dr. Gleeson.

He said that he was aware that Mr. Lambert had mentioned to Jean that he was not leaving her anything in his Will but was leaving it to their children to minimise (inheritance) tax.

In reference to the enduring power of attorney and the right to inspect Mr. Lambert's personal papers, Mr. Lyons said that he did not exercise that right as there was no reason to do it.

He said that Ham Lambert must not have read the whole Will as Jean Lambert was to get Ham's portion if he pre-deceased her.

He first had difficulties with the family the day they removed Mr. Lambert from his house and sent him to hospital in September, 2002. He agreed that there was no reason to complain before that.

He had contacted McCann Fitzgerald on 3rd January, 2003, which was twelve days before the registration of the power of attorney. It was put to him that he had no entitlement to make any decision at that time. He said that the solicitors had not told him that. He said he did not know that it had not been registered at the time. He believed it was the same power of attorney but was not familiar with the technicalities of registration. There was a lot of pressure at the time coming from the family to see him. He had never asked it to be registered at all.

Mr. Lyons was asked if it were a fabrication that Ham Lambert or the family had been in contact with St. John of God. He said he did not fabricate it. He took the call. The attendance the following day of 29th September by Patricia Rickard-Clarke referred to it.

His evidence was that he had given it, that Mr. Ham Lambert had said "He's gone mad, he will have to go to hospital and that's it". Then he picked up the phone which (answered) said it was St. John of God as he had indicated. He said it was completely true. He was there.

Mr. Lyons agreed that it was true that (as it was not registered) he had no power of attorney on 29th September and agreed that Mr. Lambert's next-of-kin at that stage was Ham Lambert.

He was referred to a general power of attorney dated 1st October, which was signed C.G. Lambert. Mr. Lyons said he did not know if Mr. Lambert had signed it but that it was Mr. Lambert's handwriting. He did not know whether there was any attendance in relation to that power of attorney which was signed by him and witnessed by Patricia Rickard-Clarke.

An objection was made that the validity regarding the general power of attorney was not pleaded. It appears also that it was not included in the discovery documents. It was claimed it was a way of circumventing the enduring power of attorney. Counsel for the plaintiff agreed that it had not been raised as an issue in the pleadings.

The court ruled that leave to mend the particulars regarding the enduring power of attorney and general power of attorney would be refused.

The nursing assessment form dated 28th September, 2002, gave the next of kin as Hamilton Lambert and agreed that his telephone number was included in the form.

The nursing assessment form also contained the words "relationship, Anthony Lambert, son". Mr. Lyons did not know who Anthony Lambert was but agreed that his phone number was underneath. He said that he had no hand, act or part in that form. The person who accompanied Mr. Lambert by ambulance was Janette Lambert. He did not get to the hospital until about 10 o'clock that night. He said that, when he got the power of attorney, he went and presented it to the hospital and said that they should deal with him now. He gave the power of attorney to the hospital the following Monday, 1st October.

The bottom of the nursing assessment form says "solicitor, Anthony Lyons". He had no explanation as to how they thought he was a solicitor. He had not done so. He assumed that, when the hospital knew he had a power of attorney, they thought he was a lawyer.

The hospital notes had queried whether Mr. Lambert had dementia. On 3rd October, there was an entry "need to speak with next of kin". He said nobody spoke to him at that time about that and that it did not follow that he was not regarded

as his next of kin.

He agreed that he had no communication with McCann Fitzgerald until the end of December, 2002, at a time when he had a general power of attorney. He believed the suggestion regarding the registration of the enduring power of attorney came from McCann Fitzgerald.

Mr. Lyons said he was not disappointed in the attitude of the family ignoring Mr. Lambert over Christmas. It was Mr. Lambert who was disappointed and made that known to his solicitors. It was put to Mr. Lyons that Hamilton had recorded that he had phoned to visit Mr. Lambert on Christmas Day. The note said "cancelled – he is going to Tony for the day".

Mr. Lyons said that he took him for the day because the carer wanted to be with her own family and they went to Mr. Lyon's house.

On 27th December, 2002, Mr. Lyons said, "Hamilton Lambert began ringing again looking for Gordon alone". The carer would have taken the call. He said that he did not instruct the then staff not to let the family in. It was put to him that he instructed Susan Taylor not to let the family in. He said that Ms. Taylor had not come for several years later. He had never said that there was anything improper in Hamilton wanting to see him alone.

Mr. Lyons said that he had no problem with Mr. Lambert taking the attitude of not wanting to see Hamilton specifically. Mr. Lambert was very angry with the Lamberts. When Hamilton Lambert had arrived on 17th December Mr. Lambert had two other visitors and did not want to see Hamilton alone. That was not Mr. Lyons doing. He said he knew nothing about it until afterwards.

He believed that an apology to Mr. Lambert would have helped. Mr. Lyons did not want an apology. He accepted from the papers now available to him, that the family felt that it was he who wanted the apology.

The questionnaire was not entirely his idea and he reiterated his comment that he had not said enough to Susan O'Connell. He noted what Mr. Lambert had said and typed it. It was not for him to dictate what Mr. Lambert should or should not do.

Mr. Lambert also objected to Ham approaching his solicitor and wrote to Ham to that effect, that he had lost all trust in him. Mr. Lyons said he did not discuss that with Mr. Lambert.

He said that Mr. Lambert had been very embarrassed that he had bestowed the power of attorney on him and that it had landed him in all that trouble. He had said several times "sorry, I got you into this awful mess". So he thought maybe an apology would be acceptable. Mr. Lyons said he did not want one and had never asked for one but agreed that Ms. O'Connell seemed to be under the impression that he did.

He agreed that Ms. O'Connell had suggested a meeting between Ham and Gordon and Gordon was quite open about it.

The matter of the call from St. John of God psychiatric hospital, mentioned in the second half of page 2 of the questionnaire, was put to Mr. Lyons on the basis that Mr. Lambert could not have known that except from him. He agreed.

Mr. Lambert had asked him some time before telling him of any decision he was making. Mr. Lambert wanted to hear everything that was going on and Mr. Lyons said that he told him everything. He thought he said that Mr. Lambert would never get over the trauma of being dragged from his own home and put into a hospital. He thought that what happened was that Ham Lambert had phoned St. John of God and said he had a patient he wanted to take in and thought there would be no difficulty.

Susan O'Connell had said that Mr. Lyons needed to be careful and that Mr. Lambert would be looking to him for advice and that he needed to stand back from it and ensure that he did not influence Mr. Lambert with his own views in relation to family members. She said that Mr. Lyons had agreed with this. Mr. Lyons said that would be her job to advise. He had suggested that maybe Pdraig Madigan would come and visit Mr. Lambert himself. Susan O'Connell said that might be a good suggestion. Mr. Lyons said that was not putting Mr. Lambert under undue influence. He had said that he should come to talk to him. He was referred to the attendance of 13th May, 2003, which was a long conversation that Mr. Lyons had with Susan O'Connell. Mr. Lyons said that that note from Susan O'Connell had also said as follows:

"I explained to Tony that I was happy to put it on the basis that Ham himself had mentioned to me about St. John of Gods."

(Ms. O'Connell's recollection was that Mr. Lyons was the person who told her that Ham had contacted St. John of God Hospital. She thought that they knew that because a telephone call came through to the house, but she was never clear as to whether Mr. Lambert knew this himself directly or whether he knew it because Mr. Lyons had told him.) (See Book 12, pp. 49 and 50).

The Court is satisfied that Ham had not mentioned it to Susan O'Connell.

Indeed Mr. Lyons agreed that the question of St. John of God could only be referable back to him and that Mr. Lambert's awareness could only have come from him. Mr. Lyons said that whether it came from him or not, Mr. Lambert wanted it included in the letter. It had been a very frightening morning for him.

The reason that Mr. Lyons did not come out to identify himself when Mr. Lambert was being brought to the ambulance was that he did not want him to think he was part of what he regarded as an outrageous deed.

In cross-examination by Mr. Gilhooly, Mr. Lyons said that Mr. Lambert was protesting when he was being removed to hospital. He said he heard shuffling and Mr. Lambert calling his name but he did not see him going out of the house.

The attendance of Susan O'Connell was that Hamilton Lambert had made the decision without reference to Mr. Lambert or to his doctors.

Mr. Lyons agreed that he was an executor in every Will since 1996 and was so informed by Mr. Lambert. However he was not informed of the content of the Wills.

He said he had not row with Hamilton Lambert. There were exchanges, he was annoyed, so he stopped communicating with him. He did not want an apology. He said that on 23rd May, 2003, there was a telephone attendance re amendment to Mr. Lambert's letter to Susan O'Connell. He said he had no part in Mr. Lambert's letter to Susan O'Connell. He agreed that Mr. Lambert was isolated from his family as he did not want to see them. He said he could contact them when he did want to see them. He was very angry about the way the family had treated him (Mr. Lyons). He said that Hamilton Lambert had been abusive, shouting at him and was very demanding. He knew that there would be trouble with the Will when Mr. Lambert died but did not know the content of the Will.

Mr. Lyons agreed that Mr. Lambert had expressed a wish that the family should see the Will so that they would all know everything had been divided fairly. Mr. Lyons had objected to anyone seeing the Will.

He did not know he was a beneficiary in ever increasing sums. He knew that the house had been sold for €4.5 million. He did not think that it was his business to know the value of assets as that was a matter for the solicitors to get a valuation. He said he had no interest in others wealth. He agreed that Gerard O'Toole of Nissan had called on Mr. Lambert who got an auctioneer who valued the house at €1.5 million. Drucker Fanning had telephoned him with the value of €1.5 million. He said he consulted Mr. Lambert regarding this possibly in 2004.

Mr. Lyons said that he had never seen the spreadsheet which had indicated a valuation by Mr. Lambert of €600,000 and €700,000.

He said during Mr. Lambert's last hospitalisation he did not give him instructions but he did say "I want to change the Will" and he replied that he should wait until he got home.

The Court notes that there is no claim in relation to the failure of Mr. Lambert to arrange for a new Will.

He said that Mr. Lambert had spelt out on an alphabet board: "They are all using me. I must change the Will".

He said he told Cormack Brennan that Mr. Lambert did not have long to live and left a message with Nora Lillis of McCann Fitzgerald after Mr. Lambert had died. He said that Mr. Lambert was in no position to change his Will at that stage.

In cross-examination by Mr. Woulfe regarding the proposed new Will he said that Mr. Lambert had never specified when or where or anything. He did not think he could have given instructions.

He accepted that in 1997 Patricia Rickard-Clarke had explained the enduring power of attorney to him but he did not think she did so in 2002 when it was registered.

7.4 Anita Delaney

The evidence of Anita Delaney was that she had acted as a full-time carer with Mr. Lambert from 29th June, 2003 until March, 2005, sometime after Mr. Lambert had died. She had been an operations manager in South Africa beforehand. She had previously worked for the Irish Wheelchair Association. She was a carer on shift initially. Then Mr. Lambert asked her to become full time. She said she virtually lived in and did so towards the end.

She said Mr. Lambert had quite a few visitors and phone calls to his mobile and landline. She stayed with Mr. Lambert in hospital from 31st October, 2004 to 14th January, 2005 and when he came home.

She said that Mr. Lambert was very weak. He still had a sound mind. He had been in isolation from MRSA in hospital as was his wish as he did not want to be embarrassed with the oxygen mask.

She said that Pauline Slater had telephoned to see Mr. Lambert. Ms. Delaney said that he was in isolation and could have no visitors. She insisted and "I put the phone to his ear for 5 seconds".

Four days later Ms. Slater came to Mr. Lambert's room. Ms. Delaney said that as she could not see him but, nonetheless she came in. Mr. Lambert had a mask on at the time.

She said that Tony Lyons and Mr. Lambert were very good friends. Mr. Lambert was demanding, perfectionist, and demanding both of Mr. Lyons and on her time. Mr. Lambert looked forward to Mr. Lyons company. He called him nearly every night. Mr. Lyons would collect Mr. Lambert from day hospital to which Mr. Lambert did not want to go. Mr. Lambert did not discuss his family with her. On occasions he would say that if they rang not to put them through. She only met the family at the funeral where there was no interaction as she did not know them.

She never saw Mr. Lambert, with whom she was then with for 24 hours, being neglected or treated cruelly. He had every possible care.

It was put to her that Ms. Slater had said that Mr. Lyons had refused to speak to Mr. Lambert for two weeks and he had ignored him in the last while of his life and that Anita Delaney had said that something had to be done "because it was cruel what was happening to that man".

Anita Delaney said that there was no occasion when Mr. Lyons was refusing to speak to Mr. Lambert and she did not have such a conversation with Ms. Slater.

She said she never heard any suggestion that Ms. Slater had overheard Mr. Lyons saying to Mr. Lambert that he was not to contact his family. She could not comment on whether Mrs. Slater overheard anything.

The rector did not have to check with Mr. Lyons if he wanted to see Mr. Lambert – he would pop around without any appointment and chat with Mr. Lambert.

She did not hear Mr. Lyons saying he would walk away if Mr. Lambert defied his wishes.

It was put to her that Mrs. Taylor had said that if Mr. Lambert had visitors that the carers had to report to Mr. Lyons. She said that no such regime was in place as far as she was concerned. She was not told that the family were not to be informed of his death or that his family were not to be allowed into the house.

She said that Mr. Lambert and Mr. Lyons got on very well. They just "bounced off each other and had so much in common". She referred to their interest in gardening, dogs, television". She said there was a very good rapport between them.

In cross-examination by Mr. Smith for the plaintiffs she agreed that Mr. Lyons was in charge of orientation of the carers. She confirmed that she did not hear the alleged exchanges between Mr. Lyons and Mr. Lambert or that Mr. Lyons would walk away.

She said that Mr. Lyons was in isolation in a private room when he had contracted MRSA in hospital.

7.5 Patricia Rickard-Clarke

Ms. Rickard-Clarke, a Law Reform Commissioner from 2001 having been part time Commissioner from 1997 to 2001 had previously been a solicitor with McCann Fitzgerald from 1980, and a partner from 1985. She was involved in trust, State, State planning, tax and succession. She had a particular interest in the capacity of older people and contributed to the Law Reform Commission and to the draft Mental Capacity Bill of 2008.

She said that Mr. Lambert was a client of McCann Fitzgerald for over 20 years. She had a good relationship with him from 1983.

She said he was independent and efficient but could be picky. He was up to date in his affairs and very well informed on law and taxation. She was one of the first to be told of his Parkinson's disease. She had no difficulty in understanding and was used to dealing with Mr. Lambert.

He was interested in his family but did not want them involved in his affairs. He had close friends with whom he confided.

In 1996/1997 there was new legislation governing enduring powers of attorney.

She explained that taxation and investment changes, the rise and fall of the value of his estate and, indeed, the birth of a grand-niece and death of a sibling were examples of occasion to change his Will. She never had any doubt about his testamentary capacity.

Before February, 1997, an ordinary power of attorney would lapse if persons lacked capacity. Mr. Lambert was under the impression that then the next of kin could decide. She informed him that there was no such situation in Ireland unless the next of kin were appointed as a ward or under the Enduring Power of Attorney Act.

Mr. Lambert did not want his family involved and was concerned that they might wish him to be hospitalised or put into a nursing home.

She was not really aware of his friendship with Mr. Lyons before 1997 other than him being a beneficiary under Mr. Lambert's Will since 1985. He had been an executor of the Will since 22nd January, 1996. He considered his friends, Ms. Beaumont and Ms. Tomlinson and herself and eventually he wished to appoint Mr. Lyons. The enduring power of attorney was executed on 17th November, 1997 but had no effect without registration when the donor was or was becoming mentally incapable. She explained that to Mr. Lyons on the execution.

There was an increased provision for Mr. Lyons when Mr. Lambert was getting more dependent on him.

She had no impression whatsoever of undue influence. She had experience of and was very alert to undue influence in vulnerable people and aware of Parkinson's and how it affects people.

She referred to the Will of 15th May, 2000, which referred to Tony Lyons in the following terms:

"...whose steadfast care and attention in my progressive illness has enabled me to live a life of mobility, good humour and close association with my family and trusted friends. In my direst need he has never failed me."

She said that Mr. Lambert had drafted that himself.

It was typical of the way he dealt with his Wills that he would give instructions and then make amendments and, indeed further amendments on the draft prepared for him.

She recalled the execution of the Will of 13th April, 2002. Her husband, David Clarke, also a solicitor was with her and was called in after she had spoken to Mr. Lambert, in order to witness the execution of the Will. Mr. Lambert was able to communicate properly with her. He was fine. She had no concerns whatsoever about his testamentary capacity. She noted the increased provision for Mr. Lyons which Mr. Lambert had discussed with her. Mr. Lambert was relying on Mr. Lyons who facilitated him to be at home. She was satisfied that he knew the contents of the Will.

She recalled the codicil of 18th May, 2002. Mr. Lambert did not take any part in any discussions but went into the garden with her husband. She was not concerned about his capacity in May – he was able to communicate properly with her and she read over the codicil and was satisfied that he knew the contents thereof which were attested by her and her husband.

She had no concerns at the time about the possibility of undue influence by Mr. Lyons nor got the impression that he might be asserting any pressure on Mr. Lambert. She would have regarded Mr. Lambert as the stronger, more dominant

personality and never got the impression that he would be influenced or unduly influenced.

Susan O'Connell worked with her for seven to eight years and knew the up to date position of the matters coming to a head after the first hospitalisation of Mr. Lambert in September to December, 2002. She had received voice messages from Tony Lyons and from Hamilton Lambert.

She phoned Hamilton Lambert who was under the impression that, as next of kin, he could make decisions with regard to the hospitalisation and care of his brother, Mr. Lambert. She pointed out that he did not have such legal entitlement. Nobody had the right to make a decision on Mr. Lambert's behalf. The issue of registering the enduring power of attorney which the family knew of in 1997 would arise if Mr. Lambert had not the capacity. She recognised the practical difficulty.

She did not recall any mention of St. John of Gods Hospital in conversation with Hamilton Lambert but Mr. Lyons had mentioned to her and had mentioned his concern about Mr. Lambert's wishes. He had referred to Hamilton Lambert having seen a copy of Mr. Lambert's Will and was concerned about the items in the house and regretted that Hamilton had been given a key by him.

She was conscious of the need to ask a doctor to certify Mr. Lambert as capable and talked to him about it.

Meanwhile a (general) power of attorney was executed on 1st October, 2002 in favour of Mr. Lyons. She said she saw Mr. Lambert on Sunday, 30th September, 2002. Mr. Lyons was concerned that he had let Mr. Lambert down. Mr. Lambert was comfortable and annoyed that he had been moved to hospital. He was lucid, had clear capacity but had physically deteriorated. It was clear that he would need carers. She decided to draft a general power of attorney, took instructions on the Monday and Mr. Lambert executed the power on the Tuesday following.

As he had capacity, the enduring power of attorney could not be registered. Under the general power of attorney, Mr. Lambert could direct Mr. Lyons to make the decisions that Mr. Lambert wished.

She ceased to work in McCann's in October, 2002.

She said there was no obligation on the donee of the enduring power of attorney to get valuations nor, indeed, on the solicitors unless they were on notice that the testator was completely devaluing his assets.

In cross-examination Mr. Gilhooly referred to the hospital notes for the 3rd October, 2002 which described Mr. Lambert as "demented" and asked whether this affected his capacity to make a general power of attorney. She replied that dementia did not mean lack of capacity. Hallucinations would be time specific. The international best practice was to allow a person to be involved in decision-making.

The test for making a person a ward of court was based on old legislation regarding unsound mind and inability to manage affairs. The Law Reform Commission was very critical of the current system. She said that she never spoke to Mr. Lyons except when Mr. Lambert asked her. Mr. Lambert drafted a letter of wishes that nursing care, if required, should be administered in his house and that it was not his wish if he became incapacitated to reside in a nursing home. Only where medical treatment was required in a hospital should he be removed from his house. Hamilton Lambert accepted that she told him regarding him being cared for at home and that he did not need to be hospitalised.

She was very aware of the Northern Rock investment which was to pass directly to Mr. Lyons. She had generally informed Mr. Lyons of his authority to act under the enduring power of attorney. She agreed that undue influence was much wider than physical coercion or emotional suffering. She never got the impression that Mr. Lyons was in any way unduly influencing Mr. Lambert.

When asked about the reference to Mr. Lyons in Mr. Lambert's Will she said that she was following the instructions given to her by Mr. Lambert. In relation to the valuation of the house, sold for €4.5 million, she said the house had been sold to a developer. She had been working on the valuation that Mr. Lambert had given her.

7.6 Susan O'Connell

Susan O'Connell worked with McCann Fitzgerald from 1993, was a solicitor in the private client group from 1996 onwards.

Her main area of practice was Wills, trusts, State planning, probate, powers of attorney and charities. She was a member of the Institute of Taxation, a member and past chairperson of the Society of Trust in Estate Practitioners and lectured in that area.

She first met Mr. Lambert in 1997 when she was a witness to his Will.

She worked closely with Ms. Rickard-Clarke and broadly understood the affairs of Mr. Lambert. She said that when she first met him he was able to speak without difficulty. In Autumn 2002 he found it difficult to talk. He made a recovery after hospitalisation. He was extremely pleasant and interesting with strong and well formed views and a sense of humour. Only fear was the effect of the Iraq War on the value of his estate and his concern that he would be cared for at home at all times during his illness.

Ms. O'Connell said that she spoke to Mr. Lyons about what happened over the weekend of 7th August, 2002. Mr. Lyons had said that Mr. Lambert told him that he had mentioned to Jean Lambert that he was not leaving her anything in his Will but was rather leaving it to her children for thanks purposes. Mr. Lambert had told him that Jean was very upset.

Ms. O'Connell referred to a discussion she had with Mr. Lambert in hospital in September, 2002, regarding the enduring power of attorney and the (general) power of attorney. Mr. Lambert was anxious about the power of attorney. Her firm contacted Dr. Brendan Walsh of St. James's who certified on 23rd October, 2002, that Mr. Lambert was becoming incapable by reason of heart failure, Parkinson's, hallucinations and was becoming incapable by reason of a mental condition. Mr. Lambert was notified on 16th November of the process of registering the enduring power of attorney. He understood and was delighted. Both Jean Lambert and Patricia Rickard-Clarke, as notice parties, were notified by registered post of the registration. The application was filed in the wards of court office before Christmas.

Mr. Lambert was very frail the only time she visited him in hospital. While his speech was difficult to understand he was perfectly lucid and in good form but not in good health.

She agreed with the attendance on Mr. Lyons on 31st December, 2002, regarding the trouble with Hamilton Lambert which was making Mr. Lambert furious. A further attendance on 2nd January, 2003, noted that Mr. Lambert wished to change his Will (as he had done regularly because of tax changes, for example).

In fact, while Dr. Walsh had certified that Mr. Lambert was losing mental capacity, she said that he never became mentally incapable and always retained capacity. In reality the enduring power of attorney never needed to be operated. Mr. Lambert made all the decisions and knew what was going on.

Dr. Gleeson wrote to Susan O'Connell on 12th January, 2003, regarding his long discussion with Mr. Lambert and said that he alone must make decisions. Dr. Gleeson noted that Mr. Lambert had made references to pressures from his family.

She said that Mr. Lambert improved but was still very frail. His speech was difficult to follow but she could tune in to what he was saying. He was adamant that he wanted to rest at home and was under pressure to receive visits from his family but did not want to receive them. She thought this was for two reasons: frailty and a feeling that his family had not visited him often in hospital, were not respecting his own rights to make decisions, were not listening to messages that Mr. Lyons and the carers were delivering to them and were showing a lack of respect for Mr. Lyons. He was also upset about inadvertently showing the Will to his brother Hamilton Lambert.

Ms. O'Connell said that the attendance of 19th February, 2003, regarding a new Will showed his concern that there would not be sufficient assets to meet all of the legacies included in his then Will.

She said that she had no sense that Mr. Lyons was influencing him or putting him under pressure. Mr. Lambert had great respect for Mr. Lyons.

She could understand how people could get the wrong impression.

She had no personal knowledge regarding the hospitalisation but knew that Mr. Lambert was upset that he had not received many visits from his family and that Hamilton Lambert was not accepting his wishes regarding visits.

She was referred to the attendance of 21st February, 2003, regarding the amendment of his Will. She said that she had said to Mr. Lyons that it was important from Mr. Lambert's point of view that he not change provisions in respect of Hamilton Lambert and his family because it could end up in litigation and his estate would be dissipated through litigation which neither she, Mr. Lyons or anyone else wanted to see happen. If it were the clear wish of Mr. Lambert she would be happy to make a Will accordingly.

She said that while she did not have any sense that Mr. Lyons was behind any of the proposed changes she was, in a way, trying to issue a warning to him to let him know that she was highly alert as they were dealing with a very elderly person who was dependent on Mr. Lyons and that any changes be thought through carefully.

She had, two days earlier, raised the issue of the possibility of the family alleging that Mr. Lambert was under the influence of Mr. Lyons.

She was 100% satisfied that Mr. Lambert was making the decision not to see his family members. In February he was considering seeing Hamilton Lambert again but the letter from Pdraig Madigan, solicitor for some members of the family, further aggravated the situation and deepened the wound that the family were not accepting that he had chosen Mr. Lyons as his attorney.

She said the only time she had a meeting with Mr. Lambert and Tony Lyons together took place with her and Cormac Brennan on 3rd April, 2003. Ms. O'Connell had said that it would be beneficial for Mr. Lambert to meet with the family to refute their claim that Mr. Lyons had been hiding Mr. Lambert away and preventing Mr. Lambert from seeing his family.

At that meeting there was a reference to a possible questionnaire which Mr. Lambert had dictated and Mr. Lyons had typed up and Mr. Lambert had amended.

At that meeting Mr. Lambert had said that he was very grateful to Mr. Lyons and appreciated what he had done over a number of years. They shared a sense of humour and genuine respect and showed affection for one another.

The letter of Susan O'Connell of 29th May, 2003, to Mr. Madigan summarised Mr. Lambert's feeling confirming what he had written to the family on 22nd January, 2003. He was disappointed with his family not respecting his wishes and consulting a solicitor. Mr. Lambert instructed Susan O'Connell to clarify a number of bullet points regarding the incidents surrounding his hospitalisation.

Ms. O'Connell said that at that time Mr. Lambert's health was excellent and he had got sharper since he came out of hospital. Mentally he was perfectly alert. She had no concern about him giving instructions regarding the amendment of his Will and reducing the legacies. She asked why he had done so and he said he was concerned as there might not be enough assets.

Ms. O'Connell asked if he could provide an estimate of his assets and Mr. Lambert produced a schedule of assets as of 30th May, 2001.

On 6th August, 2003, he was sent a draft of an amended Will and told of the necessity of having Dr. Gleeson present.

Ms. O'Connell had assumed a value of €600,000 for the house which would give a residue of approximately €500,000.

Ms. O'Connell did not have any conversation with Mr. Lyons. There was no evidence of him being involved in any way. She had no concerns regarding undue influence or contact with Mr. Lyons. She had no contact with Mr. Lyons. Mr. Lambert did not mention him. She said that she was very much alive to undue influence.

On 15th August, 2003, Mr. Lambert wished Bruce Lambert's wife, Sue, to be included and the share to be divided between Bruce, Mark and Ham's grandchildren and a second share to be divided between Valerie, June and the grandchildren of his later brother Tom, with a maximum in each case of €100,000.

He said he wished a one and a half share to be given to Mr. Lyons and a half share to Catherine Marshall.

Ms. O'Connell referred to the possibility of the family challenging his new Will as two of the beneficiaries had already consulted Padraig Madigan, solicitor. She said that Mr. Lambert was adamant despite her concern.

Ms. O'Connell agreed with Mr. Woulfe, S.C., that she had prepared a schedule for the meeting of 21st August, 2003, to advise Mr. Lambert of the effect of the changes to the draft Will which would reduce the legacies to his family. She explained that Mark Lambert, (the first named plaintiff) would receive a potential €41,000 under the draft as against a potential €96,000 under the 2002 will. Mr. Lyons, on the other hand, would receive a potential €375,000 as against €306,000. This was in the context of an estimate of a residue of some €500,000.

At that meeting Mr. Lambert produced a schedule of his assets as of 30th May, 2001, which had estimated the value of his house at €600,000. The residue for clause 7A and clause 7B was estimated to be €50,000 and €523,000 respectively. (A revised schedule of his assets before the execution of his codicil estimated a value of €780,000.)

On 21st August, 2003, Dr. Tim Gleeson examined Mr. Lambert using a mini-medical state examination and made a report of that day, saying that he was satisfied that Mr. Lambert was mentally alert and had testamentary capacity and confirmed that he was under no pressure from anyone to make any alteration in his Wills.

Mr. Lambert approved the contents of the Will. The attestation was by Susan O'Connell and Cormac Brennan. She was satisfied that the Will was executed in accordance with the Succession Act.

A subsequent report of Dr. Walsh of 6th January, 2004, dealt with his health at August, 2003. Dr. Walsh said that Mr. Lambert was perfectly competent to take full ownership of all his legal affairs and his testamentary capacity was fully intact.

Ms. O'Connell confirmed attending at Mr. Lambert's home on 21st May, 2004 to execute a codicil with Cormac Brennan and Dr. Tim Gleeson. Ms. O'Connell said that Mr. Lambert was probably in the best health she had ever seen. She confirmed talking Mr. Lambert through the provisions of the codicil and was satisfied that he was capable of knowing and that he did know and approve the contents thereof. His signature was attested by her and Cormac Brennan.

At that meeting Mr. Lambert had prepared a revised schedule of assets with the house now valued at €780,000 or €700,000.

Dr. Gleeson's report referred to having seen him every two months and that he had excellent health since his last letter. He said it was not appropriate to repeat the mini medical state examination as his Parkinson's disease was under control. He said:

"He is in full mental health and is in full control of faculties."

Ms. O'Connell said that there was no issue of any question of undue influence by Tony Lyons nor, as far as she was aware, of any involvement with the codicil.

In relation to the house she said she had spoken to Laurence McCabe of Ganly Walters. Mr. Lambert, on the recommendation of his friend, Gerard O'Toole, had contacted Ganly Walters as he was concerned that the annual upkeep and maintenance and care was amounting to some €160,000 per annum. He did not want to leave the house.

Mr. Drucker of Drucker Fanning also contacted Mr. Lambert.

After he died in January, 2005, Ms. O'Connell contacted two auctioneers for valuation. Sherry Fitzgerald valued the house at €2 million and Lisney's at €2.75 million. It was a huge surprise when the house was sold for €4.5 million in May, 2006, when the reserve was €3 million.

Mr. Gilhooly in cross-examination suggested that the factors which would predispose someone to susceptibility of undue influence were cognitive impairment, dependence, living alone, no independent adviser, middle or upper income, medication, frailty, change of doctor and solicitor and isolation from family. Susan O'Connell agreed that Mr. Lambert was very dependent on Mr. Lyons when he came home from hospital. She agreed he himself accepted ultimately that he needed hospitalisation in September, 2002 and came out a much healthier person. He was very angry with the manner of his hospitalisation. Ms. O'Connell said that she was not there on 28th September, 2002, when he was hospitalised. She had no knowledge of that period.

Mr. Lambert had told her that Hamilton Lambert wanted to see him alone.

It was put to her that Mr. Lyons had a very active role in dealing with Mr. Lambert's solicitors.

Ms. O'Connell said that Mr. Lyons role was dealing with the issue of seeing his family as opposed to anything to do with the Will. The only contact was on 5th August, 2003 when Mr. Lambert told her that Mr. Lyons would contact Dr. Gleeson.

Mr. Lyons had left a message for her that Mr. Lambert wished to change his Will. Susan O'Connell said that she brought a copy of the Will to him on 18th January, but he indicated he did not wish to change it.

Ms. O'Connell did not know if Mr. Lyons was discussing (the Will) with members of the family on Mr. Lambert's instructions or not. She was not aware of other attendances which referred to Mr. Lyons having an involvement in the making of the Will.

Mr. Lambert could not speak very well so he would frequently ask Mr. Lyons to make calls on his behalf for the purpose of

setting up meetings.

It was put to Ms. O'Connell that the attendance of 20th January, 2003 referred to her speaking with Mr. Lyons. She said she had seen Mr. Lambert on 18th and that possibly Mr. Lyons phoned on Mr. Lambert's instructions regarding meetings with Hamilton Lambert.

Ms. O'Connell said that Mr. Lambert was annoyed with Hamilton Lambert telephoning him and telephoning Mr. Lyons and, without him being aware of it, phoning Ms. O'Connell. Mr. Lambert felt that Hamilton Lambert was not respecting his wishes. Ms. O'Connell had no impression that Hamilton Lambert had anything other than good intentions to see his brother. He had written a letter saying that he might not see Mr. Lambert again in his lifetime.

Ms. O'Connell was concerned that Mr. Lambert would look at things objectively. She agreed she could have no control over whether there was undue influence. She could only assess the matter on the basis of the various meetings she had with Mr. Lambert. She only knew what Mr. Lambert's beliefs were not whether they were correct or not.

She said she did not know anything about the background to the letter that Mr. Lambert sent to June Lambert in September, 2003, other than he sent Ms. O'Connell a copy of that letter in November, 2003. The only person Mr. Lambert expressed in mending bridges with was Hamilton Lambert.

All her attendances on Mr. Lyons were by phone other than the attendance on 5th April, 2003.

Ms. O'Connell spoke about Mr. Lambert being quite open about having a meeting with Hamilton and expressed a wish that Mr. Lyons would be in agreement. She said that Mr. Lambert asked her to speak to Mr. Lyons. The meeting with Mr. Lambert and Tony Lyons dealt with Mr. Lambert wanting the family to answer questions which Mr. Lyons had typed up according to his instructions. She agreed that Mr. Lyons was suggesting asking a number of questions. She thought that Mr. Lambert would want the questionnaire to be sent to Mr. Madigan. Ms. O'Connell favoured a letter, the questionnaire was never sent.

She could not recall Mr. Lyons saying that Hamilton Lambert had been unpleasant to him.

The attendance referred to Mr. Lyons advising Mr. Lambert against showing his Will to his family. Mr. Lambert had wanted to do so in order that they would see that everything had been divided fairly. Ms. O'Connell said that she generally advised clients not to show the Will to the family so that they were free to change the Will. She did not think that necessarily meant that Mr. Lyons had seen the Will.

She was not sure whether it was Mr. Lambert or Mr. Lyons need for apology that was keeping the brothers apart. She had offered to convey that to Padraig Madigan but she thought that Mr. Lambert decided that he would express it in a letter to June. She said that Mr. Lyons "never really rode in behind it", he did not feel an apology would make a difference though Mr. Lambert felt that it would.

Ms. O'Connell said that Mr. Lambert wanted the residue for Mr. Lyons to be dealt with in a separate clause. He decided to put a cap of €100,000 on the legatees.

She was not an expert in valuation of the house which Mr. Lambert had at that stage valued at €600,000 net or €680,000 gross but she thought that the property would be worth no more than €1 million at that stage. She believed that it was probably worth double that on the following year. It needed a lot of work. Mr. Lambert was concerned that his cash was about €800,000. She agreed that the site had potential.

Mr. Gilhooly referred to the existing power of attorney being like Schroedinger's cat-in-the-box which was both alive and dead and that was in abeyance until it was activated where the need arose. Ms. O'Connell agreed that but said that Mr. Lambert had the right to have the enduring power of attorney revoked so long as he was not mentally incapable.

She said it was Dr. Walsh who suggested it would look bad if both he and Dr. Gleeson examined Mr. Lambert on the same day.

Mr. Fox asked if Susan O'Connell knew that Mr. Lambert had an accountant. She said she knew but did not know how often she had contacted him. She never had any sense that Mr. Lyons was around, involved, or discussed matters in relation to the Will and she certainly did not see any evidence of any undue influence.

7.7 Evidence of Catherine Marshall

Catherine Marshall, the third named defendant, was the executrix of the August 2003 Will. She was an art historian, the head of the Irish Museum of Modern Art (I.M.M.A.) (the museum) and senior curator there. She was previously on secondment to the Arts Council and currently on secondment to the Royal Irish Academy. She lectured at Trinity College, Dublin and the National College of Art and Design.

She met Mr. Lambert in June, 1995 when Mr. Lambert was on the museum board. A close friendship developed. Mr. Lambert was very supportive to the staff of museum. He was then suffering from Parkinson's disease but fully participated in the board to the end of 1997. She had contact with him. The museum was like a family to him. She said she visited him on Wednesday evenings and Saturday mornings. She was his companion when he was given a special achievements award by President McAleese.

He was a lovely, kind, fair-minded, generous person and fountain of information about art and advertising in Ireland for 40 to 50 years.

She said she had little contact with his family. She met them when he was given an honorary fellowship in Trinity College, Dublin. It was a regret that he was not close to his family. He did not discuss at all the contents of his Will.

Around 2002 Mr. Lyons appeared at the openings of the museum with Mr. Lambert and was also present in Áras an Uachtaráin when he drove Mr. Lambert and attended those events. She gradually realised that there was a strong

friendship between them. She got to know Mr. Lyons after Mr. Lambert's first illness in 2002. Mr. Lyons was involved in Mr. Lambert's care. When she had returned from the country at the end of September, 2002, she had a very agitated message from Mr. Lyons on her phone to the effect that they (the family) were taking Mr. Lambert to hospital and he had also mentioned in that message the someone had tried to put him into St. John of God's Hospital. She described the message as almost incoherent.

She said she went to his house on the following day, Monday 30th September and virtually every day or twice a day during the entire period he was in hospital. The hospital was five minutes away from the museum. She had a relative with Parkinson's disease so she knew that he needed liquids. He picked up rapidly but had a bout of hallucinations. She knew Dr. Brendan Walsh who was his consultant.

She had no difficulty visiting him – twice a week. Mr. Lambert would often ask her to come when he had visitors at his home. She mentioned four close friends and his brother, Hamilton and Hamilton's wife Jean at Christmas 2002 and January 2003.

2003 was the best year she had known him. He was well care for. The home was bright and warm and he was at ease in his own home. He had regular care which was good for him. He had twelve visits from Dr. Vera Ryan, a writer who interviewed him and included him in a book on movers and shakers in Ireland. She had been with him from October, 2003 to October 2004.

8. Submissions on behalf of the plaintiffs

Counsel referred to the fiduciary position of Mr. Lyons as a relationship where a person undertakes to act on behalf of or for the benefit of another, often as an intermediary with a discretion or power which affects the interests of the other who depends on the fiduciary for information and advice.

There was, it was submitted, a presumption of undue influence by fiduciaries. Reference was made to Keating on *Probate*, 3rd Ed., 11-20 to 11-24, distinguishing between undue influence in equity as distinct from undue influence in probate matters.

The plaintiffs submit that once the presumption of undue influence is raised, the onus is on the defendant to establish that the gift was the free exercise of the will of the donor.

Counsel relied on *Carroll v. Carroll* [1991] 4 I.R. 241 regarding the presumption of undue influence.

Carroll concerned a transaction *inter vivos* and would seem to have no application to the onus of proof in the present case.

9. Legal submissions on behalf of the first named defendant

Counsel, referring to Keating on *Probate* at 11-21 submitted that the onus of proof rested on the party alleging undue influence. Counsel referred to Williams on *Wills* and to the case law cited therein. He referred to *Craig v. Lamourex* [1920] A.C. 349 where the Privy Council held:

"When once it is proved that a Will has been executed with due solemnities by a person of competent understanding, and apparently a free agent, the burden of proving that it was executed under undue influence rests on the person who so alleges. That burden is not discharged by showing merely that the beneficiary had the power unduly to overbear the will of the testator; it must be shown that in the particular case the power has been exercised, and that execution of the Will was obtained thereby." (Viscount Haldane at 349.)

Reference was made also to Millers Irish Probate Practice (1900) at 132-133 where it was stated that a defendant was not entitled to an issue of undue influence left to the jury unless reasonable evidence was given that:

- 1). The person charged had influence over the testator.
- 2). That he exercised such influence over the testator to the extent of coercion.
- 3). That the execution of the impaired impeached papers by the exercise of such coercion.

Counsel also refer to Tristram and Coote: *Probate Practice*, 13th Ed. at 34.38.

Counsel submitted that there was no presumption of undue influence.

Counsel referred to Patrick Kavanagh: *Healy v. MacGillicuddy & Lyons* [1978] I.L.R.M. 175 where Costello J. stated the established principles at 178 as follows:

"(1) (a) In equity, persons standing in certain relations to one another are subject to certain presumptions in respect of *inter vivos* transactions. No presumption of undue influence, however, arises in the case of Wills and the burden of proving undue influence in relation to Wills always rests on the person alleging it...

(3) The court may infer undue influence, it cannot however act on mere surmise or suspicion. If the evidence leaves no other rational hypothesis on which the conduct of the testator can be accounted for then it may be that undue influence was exercised."

10. Submissions on behalf of the second and third named defendants.

It was submitted that the burden of proof of the claim of duress and undue influence rested upon the plaintiffs. Order 19, rule 6 (1) and (3) of the Rules of the Superior Courts provided that:

"In probate actions it shall be stated with regard to every claim or defence which is pleaded, what is the substance of the case in which it is intended to rely; and further:

(1) Where undue influence is pleaded, the party making such plea shall, before the case is set down for trial, give particulars of the names of the persons against whom the charge of undue influence is perfected, the nature of the conduct alleged to constitute the undue influence and the dates upon which the acts alleged to constitute undue influence were exercised and

(3) Except by leave of the court, no evidence shall be given of any other instance of undue influence ... at the trial."

These defendants also referred to *Re Kavanagh, Wintle v. Nye* [1959] 1 W.L.R. 284 at 291; *Hall v. Hall*, cited by Costello J. in *Re Kavanagh and Elliott v. Stamp*.

In relation to the standard of proof, counsel referred to *Potter v. Potter* [2003] N.I. (Unreported, High Court, Gillen J., 5th February, 2003).

It was submitted that no presumption of duress and undue influence arises; that the deceased was a free agent when he executed his Will and codicil, that he was medically examined and found to have testamentary capacity and there was evidence that he was acting freely and voluntarily.

In surveying the evidence it was submitted that Mark Lambert, under cross-examination confirmed that he was not privy to what happened at the time in relation to the making of the Will (day 2, pp. 131 and 132). He confirmed that he had no evidence to support his claims other than his own belief and suspicions (day 2, pp. 133 & 134).

In his evidence Dr. Bruce Lambert, under cross-examination referred to his strong suspicion regarding the first named defendants allegedly exerting undue influence on the deceased (day 3, p. 116). He acknowledged that there was no solid evidence for this and he accepted that his suspicions were based on surmise and conjecture (day 3, p. 119).

In her evidence June Lambert under cross-examination confirmed that she last saw the deceased in December, 2002 (transcript day 3, p. 119) which was eight months prior to the execution by the deceased of the Will, and seventeen months prior to execution by the deceased of the codicil.

It was submitted that June Lambert was unable to adduce any evidence of undue influence allegedly exerted by Mr. Lyons over the deceased in relation to the making of the Will or codicil.

It was submitted that the plaintiff's had tendered no evidence that Mr. Lyons had a power unduly to overbear the will of the deceased nor was there cogent evidence that that power had been exercised in fact and that it was by means of it that the Will and the codicil was obtained.

11. Decision of the Court

11.1 Issue

The plaintiffs plead that Mr. Lyons unduly influenced Mr. Lambert by "sapping his free will by pressure and influence amounting to duress and undue influence" such that Mr. Lambert could not freely dispose of his assets. They plead that the Will was inconsistent with Mr. Lambert's previous conduct and attitude.

The particulars are based on an allegation that Mr. Lyons told Mr. Lambert certain matters in relation to his brother, Hamilton; that Mr. Lyons prevented the family seeing Mr. Lambert; that the family were unkind to him; that they had refused to allow contact with the vicar and so overbore the Will of Mr. Lambert that he was in fear of Mr. Lyons.

It was submitted on the plaintiffs' behalf that, given the fiduciary relationship which existed between Mr. Lyons and Mr. Lambert's attorney and Mr. Lambert that the burden passes to the defendants, once the presumption is raised, to prove that there was no undue influence.

The Court will first of all consider whether the plaintiffs have established that there was evidence of undue influence.

If there is no such proof the Court will then consider whether the onus shifts to the defendants.

The Court has carefully considered the evidence adduced by and on behalf of the plaintiffs in relation to duress and undue influence on the part of Mr. Lyons in relation to Mr. Lambert's last will and testament.

The first named plaintiff, Mark Lambert confirmed in cross-examination that he was not privy to what happened at the time in relation to the making of the Will and, indeed, admitted that he had no evidence to support his claims other than his own belief and suspicions. Indeed, the pleadings in relation to particulars refer to the evidence of Pauline Slater, amongst others, in relation to the belief and suspicions. The Court is not satisfied that Mark Lambert's evidence substantiates any of the allegations particularised. Belief and suspicion do not prove allegations.

Dr. Bruce Lambert under cross-examination referred to his strong suspicion regarding Mr. Lyons exerting undue influence on the deceased. He agreed that there was no solid evidence for this and accepted that his suspicions were based on surmise and conjecture from the overall situation of Mr. Lyons being Mr. Lambert's attorney. He believed that Mr. Lyons

was in some way responsible for his family not being able to visit Mr. Lambert. Such belief, surmise and/or conjecture do not establish the particulars of the plaintiffs' claim

In her evidence June Lambert under cross-examination confirmed that she last saw the deceased in December 2002 which was eight months prior to the execution by the deceased of the Will and seventeen months prior to execution by the deceased of the codicil. The Court has had regard to the relationship which existed between her and Mr. Lambert from the time when she was appointed a founding trustee of the Gordon Lambert Trust to her resignation. The Court has regard to the letters between Mr. Lambert and June Lambert. The Court has also considered the communications between her and Mr. Lyons including those after the death of Mr. Lambert.

The Court is satisfied that June Lambert did not adduce any evidence of undue influence allegedly exercised by Mr. Lyons in relation to the Will or codicil.

The issue of Mr. Lambert indicating to Mr. Lyons, shortly before Mr. Lambert died, of changing his Will is, in the view of the Court, not relevant to the issue of undue influence in relation to his last Will and codicil.

Valerie Rowan lived in Northern Ireland and was shocked when she read about the letter from Susan O'Connell in January, 2003. She contacted Padraig Madigan, solicitor. She believed that it was unfortunate that the matter had got blown out of proportion. She had not seen her uncle since she brought him his Christmas present in hospital in 2002. She gave no evidence in relation of her belief or suspicion in relation to undue influence.

It would appear from the pleadings that the evidence relied on by the plaintiffs was that of Pauline Slater, who had been a part time cleaner from 1996 onwards in Mr. Lambert's house and Susan Taylor who was a carer for a year.

The evidence of Ms. Slater regarding exchanges between Mr. Lyons and Mr. Lambert "might be only snippets", she said, and she had not been in the room with him. She said she heard Mr. Lyons saying he would walk away if Mr. Lambert tried to get in touch with his family. Mr. Lyons denied this. There were some contacts with the family. She was not quite sure about Ms. Beaumont's visiting and about Mr. Lambert being furious with her. She admitted she got a bit confused in relation to that matter.

Her evidence in relation to Mr. Lyons requesting that everybody had to check with him before they could get into the house was not borne out by the evidence of the vicar, Mr. Edward Woods and the evidence of Catherine Marshall and Anita Delaney and was denied by Mr. Lyons.

Ms. Taylor was a carer with Mr. Lambert from early 2003 to early 2004, though she was not sure of the dates. She left the employment because an alarm or a monitor connecting Mr. Lambert with the carers was not functioning.

She said she had instructions from Mr. Lyons to let him know what visitors Mr. Lambert had and who phoned him. She said that Mr. Lyons instructed her not to let the family know in the event of his death. She was not allowed to let visitors in under any circumstances and especially the Lambert family.

This was denied by Mr. Lyons and seems inconsistent with the evidence of Anita Delaney.

Ms. Taylor had said that Mr. Lyons had helped Mr. Lambert with his correspondence but did not see him typing.

June Lambert had said that nurses (*sic*), which she identified as Ms. Taylor had advised her that they saw Mr. Lyons dictating to Mr. Lambert and saw Mr. Lyons dealing with "nasty correspondence" to her.

Ms. Taylor did not give such evidence.

Neither Ms. Slater nor Ms. Taylor told any member of the Lambert family of any concern when Mr. Lambert was alive or at or about the time of his death. It would appear that the first contact was immediately prior to the initiation of these proceedings.

Anita Delaney was a part time carer from 29th June, 2003 until Ms. Taylor left in early 2004 when Ms. Delaney became a full time carer with Mr. Lambert until Mr. Lambert's death in January, 2006. Her evidence was of Mr. Lambert having quite a few visitors and phone calls to his mobile and landline phone. She said she stayed with Mr. Lambert in his second hospitalisation from 31st October, 2004 to 14th January, 2005 when he came home. She was with him until his death on 27th January, 2005.

She said that Mr. Lyons and Mr. Lambert were very good friends and that Mr. Lambert looked forward to Mr. Lyons company when he called nearly every night. Ms. Delaney said there was no occasion when Mr. Lyons refused to speak to Mr. Lambert and she did not have a conversation with Ms. Slater to that effect.

She said she had never heard any suggestion that Ms. Slater had overheard Mr. Lyons saying to Mr. Lambert that he was not to contact his family.

She said the rector did not have to check with Mr. Lyons if he wanted to see Mr. Lambert. She did not hear Mr. Lyons saying that he would walk away if Mr. Lambert defied his wishes.

She said that no regime was in place whereby the carers had to report the visits to Mr. Lyons. She said that she was not told that the family was not to be informed of his death or that his family were not to be allowed into the house.

The Court prefers her evidence as Ms. Delaney would appear to the Court to be in a better position as carer about the time that Mr. Lambert instructed Ms. O'Connell in relation to the drafting and execution of his Will of 21st August, 2003 and as a full time carer when he was involved in the instructions and drafting and executing the codicil of 21st May 2004.

She said that both Mr. Lambert and Mr. Lyons "bounced off each other and had so much in common". She referred to their common interest in gardening, dogs and televisions.

The Court is satisfied from her evidence as a full time carer that she was in a better position to assess the relationship

between Mr. Lambert and Mr. Lyons.

Moreover, her evidence does not bear out, and appears to be at odds with that of Ms. Slater and Ms. Taylor.

The Court considered the evidence of Dr. Rachel Doyle and Dr. Hugh O'Donnell. The Court accepts that their evidence, based on hospital records of late 2002, was necessarily limited to that year, and was based on instructions they were given. Neither had examined Mr. Lambert nor had sight of Dr. Gleeson's or Dr. Walshe's report. Those instructions did not relate to the subsequent interaction between Mr. Lambert and his solicitors in relation to the drafting of the Will of 21st August, 2003 and the codicil of 21st May, 2004.

The evidence of both medical doctors, of Susan O'Connell and Catherine Marshall pointed to a recovery in Mr. Lambert's physical health, a soundness of mind, an active involvement in his testamentary affairs and an assurance by him that he acted freely and without influence.

The Court is not satisfied that the matters pleaded in relation to duress and undue influence have been proved by the plaintiffs.

The Court now considers whether there are circumstances whereby the onus shifts to the defendants to prove that there has been no duress or undue influence.

In their written submissions, the plaintiffs submit that "having regard to Mr. Lyon's fiduciary position as the donee of a registered EPA (enduring power of attorney), he is put upon explanation of this result and must satisfy the Court that it did not come about as the result of undue influence on his part". They continue:

"having regard to this presumption of undue influence arising out of his fiduciary position, it is submitted that once the fiduciary position has been established, the burden of proving that the gifts in question were not the result of undue influence falls upon the first-named defendant."

In the written submission of both the first defendant and the second and third defendants, it is argued that the burden of proof in respect of the alleged undue influence rests upon the plaintiffs and that no presumption of undue influence arises so as to shift that burden to the defendants.

Thus, the parties disagree as to the legal principles applicable to the proof of undue influence in the instant case.

There are three elements of this dispute. First, it is necessary to consider whether the doctrine of undue influence in the context of wills is the same as that doctrine as it applies in the context of transactions *inter vivos*. Secondly, if the doctrine is the same in both contexts, it is necessary to consider whether the relationship between the deceased and the first named defendant is such as to give rise to a presumption of undue influence. Thirdly, if such a presumption arises, it is necessary to consider whether that presumption has been rebutted on the basis of the evidence in the case.

11.2 Undue influence in the context of Wills and in the context of transactions *inter vivos*

In their legal submissions, counsel for the plaintiffs refer to a distinction drawn by *Keating on Probate* (3rd., Thomson Round Hall, 2007) between undue influence in the context of gifts and other transactions *inter vivos* and undue influence in the context of wills. At para. 11-22 (p. 172), Keating states that "in probate law, unlike in contract law, or indeed, in equity, the nature of the relationship that existed between the testator and the person exerting the pressure will not give rise to a presumption of undue influence". Keating goes on to comment that "nevertheless, the circumstances of a case may arouse the suspicion of the court, especially where a fiduciary relationship exists between the testator and the person alleged to have exerted pressure ...". With respect to the proof of such a claim, Keating states (at para. 11-23, p. 173) that "the party who alleges undue influence must prove it and the evidence adduced at the trial must be material to the issues alleged", citing *inter alia* *Boyse v. Russborough* 6 H.L.C. 2.

The plaintiffs also refer to the case of *In bonis Kavanagh: Healy v. Lyons* [1978] WJ-HC 2724, in which Costello J., citing *Boyse*, took the view that "no presumption of undue influence ...arises in the case of wills and the burden of proving undue influence in relation to wills always rests on the person alleging it". Nevertheless, the plaintiffs contend that it is difficult to see why the law would or could reasonably distinguish from an evidential point of view between the recipient of a gift *inter vivos* who by reason of a fiduciary relationship is presumed unduly influential and the recipient of a gift in a will whose relationship with the testator at the time of making it was precisely the same.

On this basis, they submit that Irish law makes no such distinction. In support of this proposition, they cite a Canadian academic authority, Shepherd on the *Law of Fiduciaries* (Toronto, 1981) where the author criticizes this distinction and submits that "the fact that the presumption of undue influence does not apply in the case of gifts by will is an anomaly, and wrong". Shepherd, while criticizing the law, is affirming the distinction.

The case of *Allcard v. Skinner* from which the distinction between "actual" and "presumed" undue influence flows was concerned with a situation where a will had been made by the plaintiff on entering the sisterhood and a number of transactions *inter vivos* had taken place during her time in the sisterhood and prior to her leaving that community.

The plaintiffs' legal submissions do not reflect the law as it currently stands in this jurisdiction. The judgment of Costello J. in *In bonis Kavanagh* is authority in Irish law for this longstanding distinction between wills and transactions *inter vivos*. It is also reflected in the leading academic commentaries in this area: see, in addition to Keating, Brady, *Succession Law in Ireland* (2nd ed., Butterworths, 1995) citing in turn Keane, *Equity and the Law of Trust in the Republic of Ireland* (at pp. 338 et seq).

There are a number of reasons for this distinction. In *Boyse*, the court referred to "the natural influence of the parent or guardian over the child ... or the attorney over the client [which] may be lawfully exerted to obtain a will or legacy so long as the testator thoroughly understands what he is doing and is a free agent". Quite distinct considerations will often apply, in the context of testamentary gifts, to parties in the special relationships of the type which trigger the presumption of undue influence in the context of transactions *inter vivos*.

The editors of *Theobald on Wills* (16th ed., Sweet & Maxwell, 2001) state, at p. 41, para. 3-27-29, that "the legal burden of proof of undue influence or fraud always lies on the person alleging it" and that "no presumption of undue influence arises from the existence of a confidential relationship between a donee and the testator". A footnote in *Williams on Wills*, (8th ed., Butterworths, 2002, p. 57ff.) states that while certain relationships may raise a presumption of undue influence in the case of contracts, "in the case of wills, these relationships (or most of them) are naturally the source and reason of the testator's bounty and no such presumption is made". The editors cite *Parfitt v. Lawless* (1872) LR 2 P & D 462. They continue by saying: "Nor does the doctrine of fiduciary relationship, gifts to executors and trustees as such, excite any suspicion".

The difficulties in respect of the remedies potentially available in the case of undue influence in respect of a will and in respect of a transaction *inter vivos* may provide another justification for this distinction: see, for example, the reference to remedies in the legal submissions of the plaintiff. The plaintiffs ask the Court, in the event of a finding of undue influence, to set aside "any undue gift and to allow the same to fall into the residuary estate". The plaintiffs seek an order striking down the Will of 21st August, 2003 and the codicil of 21st May, 2004.

Irish law, accordingly, recognises a distinction between the proof of undue influence in the context of wills and in the context of transactions *inter vivos*. In the case of undue influence in the context of wills, the burden of proof is on the plaintiffs and there is no presumption of undue influence arising from special relationships.

Undue influence in the context of probate – because it does not have the special probative rules which apply in other contexts – is more closely aligned to common law duress (where the burden of proof rests squarely on the plaintiff at all times).

Nevertheless, if this conclusion is wrong and there is no distinction between undue influence in the context of wills and transactions *inter vivos*, does the relationship between the deceased and the first defendant give rise to a presumption of undue influence? If so, it falls to the defendant to rebut that presumption.

11.3 The relationship between the deceased and the first named defendant

The types of relationship triggering the presumption of undue influence in the case of transactions *inter vivos* include: that between solicitor and client, trustee and *cestui que* trust, doctor and patient, religious adviser and pupil, parent and child, guardian and ward (see Delany, *Equity and the Law of Trusts*, Ch. 16). The list is not exhaustive. Similarly, the types of relationship properly described as fiduciary cannot be exhaustively enumerated (see Delany, Ch. 8).

The relationship arising from the registration of a power of attorney derives from an instrument voluntarily executed by the donor in accordance with statute (Powers of Attorney Act 1996). Costello ("*The Enduring Problem of Powers of Attorney*" (1998) 3(2) CPLJ 35) states as follows:

"At common law an attorney is in a fiduciary position. He must, thus, not allow himself to do anything in which he has a personal interest which may possibly conflict with the interests of the donor; and from this general rule, certain specific applications follow (for example, that the attorney keep the donors money separate from his own: *Henry v. Hammond* ([1913] 2 K.B. 515). In principle therefore the attorney could never act so as to benefit himself, but a rigorous application of such a principle could cause obvious hardship particularly where a donor and an attorney are related ..."

In principle, therefore, the relationship between the deceased and the first named defendant would appear to constitute a relationship which is fiduciary in nature and of the kind which gives rise to a presumption of undue influence. Assuming that such a presumption of undue influence applied in the instant case, it falls to be considered whether that presumption has been rebutted on the facts of the case.

11.4 Rebuttal of the presumption of undue influence

As the Supreme Court in decision in *Carroll v. Carroll* [2000] 1 I.L.R.M. 210 (which was concerned with a transaction *inter vivos*) makes clear, the most significant factor in rebutting the presumption of undue influence is, first, whether the donor had independent legal advice. Secondly, the court must consider whether the transfer was an independent act taken in the exercise of the transferor's free will. As the judgment of Denham J. makes clear, this is a matter of evidence which must be considered on the facts of the particular case.

The Court is satisfied from the evidence of Susan O'Connell that the testator knew and approved of the contents of his Will. He initiated the request to change the Will and gave instructions to Susan O'Connell in relation thereto. He had explained his instructions to cap certain legacies and to limit the legacy to the Irish Museum of Modern Art.

Some of the issues, e.g., the valuation of the house, often arise in the context of actions for undue influence in respect of transactions *inter vivos* in which additional reliefs – such as declarations that the transaction was improvident and unconscionable – are sought. While always an important factor in the broad context of undue influence, in case of such reliefs, issues such as alleged undervalue may play a greater role than in the context of undue influence. See, e.g. *Grealish v. Murphy* [1946] I.R. 35; *Keating v. Keating* [2009] I.E.H.C. 405.

The increase of valuation of the late Mr. Lamberts home (which had been his parent's family home) after his death is, no doubt, a *post facto* event. In this case insofar as it exceeded Mr. Lambert's valuation in his detailed schedule of assets of 2003, it accordingly, enhanced the residuary estate. It has, accordingly, no relevance to the claim of duress or undue influence either in relation to the Will or the codicil though may have been a factor in the commencement of these proceedings.

The legal situation arising on such relationships being established is described in Delaney on *Equity and the Law of Trusts in Ireland* at 482 as follows:

"Once a relationship giving rise to a presumption of undue influence is established, and it is shown that 'a substantial benefit' has been obtained, the onus lies on the donee to establish that the gift or transaction resulting from the 'free exercise of the donor's will'. As Dixon J. put it in *Johnson v. Butress*, the evidence must establish that the gift was 'the independent and well understood act of a man in a position to exercise a free judgment based on information as full as that of the donee. The manner in which this presumption may be rebutted relates to two main issues; first, the question of whether independent legal advice has been received and secondly, whether it can be shown that the decision to make the gift or transfer was 'a spontaneous and independent act' or that the donor 'acted of his own free will'."

Denham J. in *Carroll v. Carroll* at 254 adopted this analysis of the law and applied it.

Prior to the first and second question arising there must be evidence of an independent and well understood act to exercise a free judgment based on full information.

The evidence in this case, particularly that of Susan O'Connell, is that Mr. Lambert was intimately involved in the instructions given to his solicitors in relation to the several changes of his Will and, in particular in relation to the drafting of the Will executed on 21st August, 2003 and the codicil of 21st May, 2004. His professional background as a chartered accountant, the concern for the legatees and beneficiaries of his successive Wills, the manuscript schedule of his assets in 2001 and 2003 and the calculation of his residuary estate on the assumption of certain valuations for his house in 2001 and 2003 would appear to point to full information and a well understood act.

The Court, while primarily concerned with the Last Will and Testament of Mr. Lambert, is conscious of the consistency and development of each of the 31 Wills and codicils made by Mr. Lambert.

The plaintiffs' claim that his Will was inconsistent with his previous conduct and attitude is not proven.

He had included nieces and nephews once they were born; was conscious of tax efficiency in relation to inheritance tax, and included Dr. Bruce Lambert's wife in his last Will. Mr. Lambert appointed Mr. Lyons as executor of 13 Wills from 22nd January 1996 onwards. He expressed his indebtedness to Mr. Lyons in his Will of 21st August, 2003.

Mr. Lambert's central concern, in his last Will and codicil, was the adequacy of his assets to meet all the legacies. He mentioned to Dr. Gleeson before he made his last Will, that the value of his art collection given to the museum had increased in value and that, accordingly, he had reduced the legacy to it.

Ms. O'Connell agreed that she had prepared a schedule of changes to be discussed at a meeting of August, 2003 prior to the execution of his Will on 21st August. She advised Mr. Lambert as to the effect of the changes in the Will which would reduce the benefit to his family. Ms. O'Connell told him that she was concerned that this might lead to litigation as Mr. Madigan, solicitor, had already written in respect of two of the beneficiaries.

Ms. O'Connell pointed out that Mark Lambert would get a potential €41,000 in the proposed Will as distinct from a potential €96,000 in the 2002 Will. Mr. Lyons would get €375,000 as distinct from €360,000 in the previous Will. All of this was in the context of an estimate of the residuary estate of about €500,000.

In the schedule produced by Mr. Lambert of his assets as to the 30th May, 2001, on the assumption of a valuation of his house at €600,000, the residue for clause 7A and clause 7B was €50,000 and €523,000.

Mr. Lambert had told Susan O'Connell that he estimated the cost of care and of running his house to have amounted to €160,000 per year.

The Court is satisfied that these considerations, referred to above, which were communicated to his solicitor at the time of his last dispositions are the independent and well understood act of a person with full information.

The Court is also satisfied that it is an exercise of free judgment given the clear evidence of Ms. O'Connell at the time of the execution of the Will. The evidence of Dr. Gleeson in this regard is also significant.

Dr. Gleeson asked Mr. Lambert if the change to his Will would disadvantage any of his relations. Dr. Gleeson's evidence was that Mr. Lambert had answered that it would not, that it would **not** be to their benefit. It is clear that given the unexpected increase in value of the house and the cap of €100,000 on the legacies to members of the family that the changes did not, in fact, benefit the family as much as the residuary legatees. This is, of course, *ex post facto*. It does not, in the opinion of the Court, advance the plaintiff's case.

The Court, having heard the evidence of Patricia Rickard-Clarke and Susan O'Connell in relation to the legal advice given is satisfied that that advice was independent. Mr. Lyons was not involved in the drafting of the Will, was not present at its execution and was not aware of the contents thereof.

Accordingly, even if there were a presumption, the Court is satisfied that that presumption of undue influence has been rebutted.

The Court is conscious of the freedom of testamentary disposition which encompasses freedom from duress and undue influence as much as freedom of a testator to benefit whosoever a testator chooses.

The Court has also been concerned to see that solicitors prepare a draft Will according to the instructions of the testator and is satisfied that Mr. Lambert's solicitors were assiduous in complying with his instructions. They explained the effects of the proposed changes in a detailed schedule and asked and were given explanations for the changes.

The Court in the present case is satisfied as to the "righteousness" of the transaction". (See *Hegarty v. King* 5 L.R. Ir. 249). That it established, not only by showing that the testator knew of and approved this will but also by the thoroughness of his instructions recorded in his solicitor's attendances and the explanations and reasons given to his solicitors in respect of the changes made from his previous Will.

The solicitors were conscious of the possibility of duress and undue influence as, indeed, was Dr. Gleeson, and were satisfied with the answers of Mr. Lambert that he acted freely and according to his own will and not subject to the manipulations of another. Mr. Lyons as the donee of the power of attorney was not involved nor privy to the changes made in Mr. Lambert's testamentary disposition.

11.5 Order of the Court

Accordingly, the Court determines the issues ordered by the Master on 12th November, 2008 to be answered as follows:

(A) The first named defendant, his servants or agents did not exercise duress or undue influence over Mr. Gordon Lambert, deceased, ("the deceased") of such a character as to deprive him of his free will in connection with the disposition of his estate in respect of his Will dated 21st August, 2003, and the codicil of that Will dated 21st May, 2004.

(B) The testamentary document executed by the deceased on 21st August, 2003, and the codicil to the Will executed by the deceased on 21st May, 2004, should be admitted to probate if necessary in solemn form.

(C) Does not arise.

(D) The Court will set aside the citation entered herein on 15th March, 2007.

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