Equity Division
Supreme Court
New South Wales

Case Name:	Application by Maggie Riman (Estate of Rita Riman)
Medium Neutral Citation:	[2022] NSWSC 872
Hearing Date(s):	23 June 2022
Date of Orders:	1 July 2022
Date of Decision:	1 July 2022
Jurisdiction:	Equity
Before:	Hallen J
Decision:	See Paragraph [100]
Catchwords:	SUCCESSION – Probate and administration – Online document, in the form of answers to questionnaire, whether purporting to state the testamentary intentions of the deceased - Typed out by the deceased and sent to an online will writing platform – Formal will not drafted using the document forwarded by the deceased – No signature on the document that was created – Email sent by the deceased to her solicitor referring to having "drawn up and completed a will" – Unsent text message to Plaintiff on deceased's mobile phone also referring to "will I had made this morning" - Dispensing with requirements for due execution of a will pursuant to s 8 of the *Succession Act 2006* (NSW) – No dispute that there was a document and that it purported to state the testamentary intentions of the deceased and that it had not been executed in accordance with Part 2.1 of the *Succession Act* – Question whether the deceased intended that the document form her will – Whether evidence sufficient to permit a finding that the deceased intended the document form her Will
Legislation Cited:	Evidence Act 1995 (NSW) s 140 Interpretation Act 1987 (NSW) s 21 Succession Act 2006 (NSW) Pt 2 Div 2, ss 3, 6, 8, 128 Supreme Court Rules 1970 (NSW) Pt 78, rr 14, 42

Cases Cited:

Ackerley v Felton [2012] NSWSC 1468
ANZ Executors & Trustee Co Ltd v McNab (1999) 3 VR 666
Application by SCS Super Pty Limited atf Australian Catholic Superannuation and Retirement Fund [2022] NSWSC 686
Banks v Goodfellow (1870) LR 5 QB 549
Belcastro v Belcastro [2004] WASC 111
Burrows v Burrows (1827) 1 Hagg Ecc 108; (1827) 162 ER 524
Collins v Marinovich [2021] QSC 141
Estate of Laura Angius; Angius v Angius [2013] NSWSC 1895
Fielder v Burgess [2014] SASC 98
Heffernan v Innes [2021] NSWSC 1033
In the Estate of Knibbs, deceased; Flay v Trueman [1962] 1 WLR 852
In the Estate of Margaret, deceased [2012] NSWSC 1490
In the Estate of Masters (Deceased); Hill v Plummer (1994) 33 NSWLR 446
In the Estate of Robin Michael (deceased) [2016] SASC 164
In the Estate of Stewart (Supreme Court (NSW), Cohen J, 12 April 1996, unrep)
Newman v Brinkgreve; The Estate of Floris Verzijden [2013] NSWSC 371
Public Trustee v Commins; The Estate of Gwendolyn Myrtle Wray (Supreme Court (NSW), Powell J, 19 June 1992, unrep)
Re Bubnich; Marian v Bubnich [1965] WAR 138
Re Estate of Brock; Chambers v Dowker (2007) 1 ASTLR 127; [2007] VSC 415
Re Hodges (1988) 14 NSWLR 698
Re Langley [2018] VSC 623
Re Nicholls [1996] 1 Qd R 179
Re Sanders [2016] VSC 694
Rodny v Weisbord (2020) 102 NSWLR 403; [2020] NSWCA 22
Ryan v Kazacos; Estate of Michael Harvey Kazacos (2001) 183 ALR 506; [2001] NSWSC 140
Snape v Gibson; Re Estate of Paul Francis Snape [2006] NSWSC 829
Stuart v Kirkland-Veenstra (2009) 237 CLR 215; [2009] HCA 15
Sutton v Sadler (1857) 3 CBNS 87; (1857) 140 ER 671
Symes v Green (1859) 1 Sw & Tr 401; (1859) 164 ER 785
The Estate of Bradley Scott Lyons [2021] NSWSC 197

	The Estate of Kevin John Hines v Hines [1999] WASC 111 The Estate of Walter Ostro [2021] NSWSC 495 Tobin v Ezekiel (2012) 83 NSWLR 757; [2012] NSWCA 285 Weisbord v Rodny; Rodney v Weisbord [2018] NSWSC 1866 Whyte v Pollok (1882) 7 App Cas 400 Yazbek v Yazbek [2012] NSWSC 594
Category:	Principal judgment
Parties:	Maggie Riman Attorney General of NSW (Amicus Curiae)
Representation:	Counsel: K Morrissey (Plaintiff) H P Bennett (Amicus Curiae) Solicitors: Keen Lawyers (Plaintiff) Crown Solicitors instructed by the NSW Attorney General (Amicus Curiae)
File Number(s):	2021/200347
Publication Restriction:	Nil

JUDGMENT

Introduction

1 These Probate proceedings follow the death, tragically, by her own hand, of Rita Riman (the deceased), who died in the late afternoon, or early evening, of 14 June 2021, leaving property in New South Wales.

2 The deceased did not leave a valid Will within the meaning of s 6 of the *Succession Act 2006* (NSW) (the Act).

3 On 12 August 2021, the Plaintiff, Margaret Riman, who is the sister of the deceased, filed a Summons in which she sought a declaration that a document, dated 14 June 2021, which has been described in the submissions, as “the online Will”, was a document that purported to state the testamentary intentions of the deceased, which had not been executed in

accordance with Pt 2 Div 2 of the Act, and which formed the deceased's Will. The Plaintiff also sought an order that Probate, in solemn form, of that document, be granted to her.

4 I shall also refer to the document as "the online Will" without pre-judgment.

5 Aside from the contents of the online Will, there is little evidence about the deceased's testamentary intentions. Indeed, there is no other direct evidence of the deceased having communicated her testamentary intentions to any other person. No prior Will of the deceased has been located.

6 It seems clear that if the relief sought by the Plaintiff is not granted, the deceased died intestate. Section 128 of the Act provides that if a deceased person leaves no spouse, and no issue, then her, or his, parents are entitled to the whole of the intestate's estate. If there is only one surviving parent, the entitlement vests in the parent, and, if both survive, it vests in equal shares. In this case, in that event, the deceased's parents would share the estate equally. The parents of the deceased support the application made by the Plaintiff.

7 No Defendant was named in the Summons. It was filed as an uncontested application for a grant of Probate.

The Proceedings

8 In support of the Summons, the Plaintiff filed an affidavit of executrix sworn on 9 August 2021, and an affidavit, sworn on 10 August 2021, made by her solicitor, Wayne Gregory Keen.

9 On 7 September 2021, the Senior Deputy Registrar in Probate issued requisitions that the matter would be listed, in Court, as a grant of Probate in solemn form was being sought.

10 The Plaintiff responded to the requisitions on 22 September 2021 by filing a number of additional affidavits.

11 On 23 September 2021, the Senior Deputy Registrar in Probate issued another requisition repeating the second requisition that had previously been made. This prompted the Plaintiff to file, on 28 October 2021, an affidavit of Ms R di Stefano, another solicitor at Mr Keen's firm, which affidavit responded to that requisition.

12 The matter was listed in the Succession List on 22 November 2021. On that date, Ms di Stefano, appeared for the Plaintiff. Having considered the documents in the Court file, and in light of the issues that appeared from the affidavits, I raised the question whether there should be a contradictor to the Plaintiff's claim. The possibility of the Attorney-General of New South Wales being approached was suggested. I adjourned the matter until 6 December 2021 to enable consideration to be given to that question.

13 On 6 December 2021, I noted that the Attorney General was giving consideration to whether the Crown would participate, as amicus curiae, in the proceedings. I adjourned the matter until 31 January 2022, in order to enable a response from the Attorney General to be obtained.

14 On 8 February 2022, the date to which the matter had been adjourned on 31 January 2022, Mr K Morrissey of counsel appeared for the Plaintiff and Ms L Lewis, solicitor, appeared for the Attorney General. Ms Lewis informed the Court that the Attorney General had agreed to appear as amicus curiae in these proceedings. Directions for the conduct of the proceedings were made, and the proceedings were stood over, for hearing, on 23 June 2022.

15 At the hearing, Mr K Morrissey of counsel appeared for the Plaintiff. Leave was granted to the Attorney General to appear as amicus curiae, and Dr H P Bennett, of counsel, appeared on his behalf. I shall refer to that order in the final orders.

16 The matter proceeded with the reading of the Summons and the affidavits. There was no cross-examination of any of the deponents and then counsel made oral submissions to supplement his, and her, written submissions.

17 The questions for determination, at the hearing, are whether the deceased died testate, or intestate, to whom administration of her estate should be granted, and consequently, how her property should be distributed.

Amicus Curiae

18 Before proceeding further, I should mention that I am most grateful to the Attorney General for agreeing to act as amicus curiae. I should also commend the legal representatives for the Attorney General, for the diligence, and effort, for the timely provision of the detailed written submissions, and also for the general way in which the case was presented at the hearing. The traditional role of the amicus curiae, to assist in an independent, detached, manner has been achieved. Also, that no costs and disbursements were sought out of the estate of the deceased should be appreciated by the Plaintiff.

19 Next, I should say something about the role of an amicus curiae. I dealt with the appointment of a person, or entity, as an amicus curiae, very recently in *Application by SCS Super Pty Limited atf Australian Catholic Superannuation and Retirement Fund* [2022] NSWSC 686 at [19]-[26] as follows:

> "An amicus curiae is not a party to the proceedings. By definition, it, he or she, is a stranger to the litigation and does not have any rights, or interests, affected by the litigation. (In this case, it was not submitted that APRA was entitled to appear, as of right, or by leave, as an intervener, in the proceedings.)
>
> The power of courts to permit amicus curiae appearances is well established throughout the common law world: *Breen v Williams* (1994) 35 NSWLR 522 at 533 (Kirby P). There is no prescription of the circumstances in which it may, or may not, be proper for a Court to hear an amicus. It is well-established that if it is in the interests of justice to do so, the Court may permit an amicus curiae to participate in the proceedings: *Kabushiki Kaisha Sony Computer Entertainment v Stevens* (2001) 116 FCR 490; [2001] FCA 1379 at [11] (Sackville J).
>
> Also, a further consideration is one of utility. The Court should be satisfied that it would be significantly assisted by the submissions of the amicus and that any costs to the parties, or any delay consequent upon agreeing to hear the amicus, is not likely to be disproportionate to the expected assistance: *Roadshow Films Pty Ltd v iiNet Limited* (2011) 248 CLR 37; [2011] HCA 54 at [4].

The principal role of an amicus curiae was explained by Brennan CJ in *Levy v The State of Victoria* (1997) 189 CLR 579 at 604-605; [1997] HCA 31. It is to provide assistance to the Court:

> "The hearing of an amicus curiae is entirely in the Court's discretion. That discretion is exercised on a different basis from that which governs the allowance of intervention. The footing on which an amicus curiae is heard is that that person is willing to offer the Court a submission on law or relevant fact which will assist the Court in a way in which the Court would not otherwise have been assisted. In *Kruger v The Commonwealth*, speaking for the Court, I said in refusing counsel's application to appear for a person as amicus curiae:
>
> > As to his application to be heard as amicus curiae, he fails to show that the parties whose cause he would support are unable or unwilling adequately to protect their own interests or to assist the Court in arriving at the correct determination of the case. The Court must be cautious in considering applications to be heard by persons who would be amicus curiae lest the efficient operation of the Court be prejudiced. Where the Court has parties before it who are willing and able to provide adequate assistance to the Court it is inappropriate to grant the application.
> >
> > It is not possible to identify in advance the situations in which the Court will be assisted by submissions that will not or may not be presented by one of the parties nor to identify the requisite capacities of an amicus who is willing to offer assistance. All that can be said is that an amicus will be heard when the Court is of the opinion that it will be significantly assisted thereby, provided that any cost to the parties or any delay consequent on agreeing to hear the amicus is not disproportionate to the assistance that is expected." (Omitting citations)

In *Bropho v Tickner* (1993) 40 FCR 165 at 172-173, Wilcox J observed, citing *Corporate Affairs Commission v Bradley* [1974] NSWLR 391 at 399, that an amicus curiae has no entitlement to lead evidence. His Honour added, with some reservation, that he did not dispute that "it may sometimes be appropriate to allow an amicus curiae to complete the evidentiary mosaic by tendering an item of non-controversial evidence".

In *Re Medical Assessment Panel; ex parte Symons* [2003] WASC 154, E M Heenan J wrote at [18]:

> "…The role of the amicus, as his name suggests, is to assist the court by ensuring that the court is properly informed of matters which should be taken into account in reaching its decision and this may well be of assistance to the court where the litigation involves an important question of law affecting persons other than the parties, especially disadvantaged persons. It is often a convenient course to allow an address by an amicus curiae where one of the parties to the litigation or appeal is unable or unwilling to arrange for legal representation, or where they may be no contradictor to ensure that opposing arguments are brought to the attention of the court: *Dobree v Hoffman* (1996) 18

> WAR 36. However, an amicus curiae does not become a party to the proceedings and may not appeal: *Day v Day* [1957] P 202; *Corporate Affairs Commission v Bradley* [1974] 1 NSWLR 391 at 396 and 399. The latter decision was cited, with evident approval, by Dawson J in *Levy v The State of Victoria* (1997) 189 CLR 579 at 604 - 605. As there is no right of appearance it is entirely for the court to decide whether or not an amicus curiae should be heard and, if so, to what extent and on what aspects of the case: *Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245 at 258."

His Honour at [20], also observed that:

> "Without excluding the possibility that there may occasionally be a case which may justify the course, my reading of the authorities leads me to the conclusion that it will be a rare and exceptional case in which an amicus curiae is permitted to adduce evidence or raise a special defence. The disinclination of the court to allow such a role is consistent with the rule that, in litigation in which only the rights of the contesting parties are affected, the cause should be accepted and decided by the court on the issues and upon the evidence which the parties themselves present for decision."

In *Coulthard v State of South Australia (Adnyamathanha, Ngadjuri and Wilyakali Overlap Claim)* [2018] FCA 2094, White J, at [9], noted that "the position of an amicus is very different from that of an intervener in that, amongst other things, an amicus cannot file interlocutory process or commence an appeal or otherwise take exception to a ruling of the Court"."

Background Facts

20 Unsurprisingly, the Attorney General did not seek to lead any evidence in order to complete the evidentiary mosaic. What follows is taken from the uncontested evidence which the Plaintiff filed, and read, at the hearing.

21 The deceased was the oldest child of Ana Riman and Jason Riman. She was born in August 1978. She had two siblings, being the Plaintiff, who was born in February 1981, and Frederick, who was born in June 1987. He has played no part in the proceedings.

22 The Death Certificate, the original of which is in evidence, reveals that the deceased was never married. There are no children referred to therein. These matters are confirmed by the evidence of the Plaintiff and in the online Will.

23 At the age of 17 years, the deceased left school. At or about this time, she also left the family home, residing elsewhere for about 12 months. She then returned to the family home, where she remained until her mid-20s.

24 Between 2004 and 2015, the deceased worked in the Information Technology Department of IBM, dealing with cyber fraud. The Court can infer that she was computer literate, and that she had sufficient knowledge, and skill, to be able to use a computer.

25 The Plaintiff gave evidence that the deceased suffered a lot of stress during this period, and that, due to psychological trauma, she ceased employment at IBM in about April 2015. The nature of the trauma was not the subject of evidence.

26 Following her departure from IBM, the deceased was treated for that psychological trauma. In 2016, she attended a private psychiatric hospital, in Wollongong, where she remained for approximately ten weeks. She also attended a number of clinics where she received ongoing psychological treatment, coming under the care of a psychiatrist and psychologist.

27 In about March 2017, whilst residing in Melbourne, the deceased suffered a cardiac arrest. The Plaintiff went there to support her. She arranged for the deceased to return to Sydney where she lived with the Plaintiff and her family for nearly 12 months.

28 Once her condition became more stable, the deceased moved to a residence in North Parramatta, where she lived, with a friend, until her death in June 2021. However, she had a key to the Plaintiff's home, and she continued to visit fairly regularly, sometimes staying for as long as two weeks. She and the Plaintiff spoke, by telephone, "virtually every day". I am satisfied that the deceased was very close to the Plaintiff, her husband and their two children.

29 During the period 2018 to 2021, the deceased continued to suffer ongoing psychological trauma and significant anxiety. The Plaintiff gave evidence of

her concern for the deceased's general welfare and her psychological condition. There was never any discussion between them about a Will, or the deceased's intention to make a Will.

30 Each of the deceased's parents accepts that the deceased did not have very much contact with them or with her brother. This is not to say that the deceased did not love each of them, or that she did not understand how her suicide would affect her family and friends.

31 I have carefully read what is described as "Rita's Facebook post" made between 5:45 p.m. and 6:00 p.m. on 14 June 2021. It is a poignant document and reveals much about the deceased and how she felt at the time. I shall not set out the contents of that document, which comprises about 10 pages, but clearly in it, the deceased refers, with heartfelt expression, to some of the important people in her life, including her immediate family and some friends and reveals her feelings towards each of them. She apologises to her parents and brother, for what she is going to do. She says that they should "Be at ease knowing I'm at peace".

32 I am satisfied that a letter dated 7 September 2021, together with a Notice to Affected Persons was sent to the deceased's parents. Neither has filed an Appearance in the matter. Indeed, each has made an affidavit sworn, respectively, on 22 February 2022, which was read in the proceedings.

33 The deceased's mother, Ana, gives evidence that she has seen the "Safe Will" which the deceased prepared, noting that it leaves the bulk of the estate to the Plaintiff. She gave evidence that she could fully understand, and appreciate, why the deceased would want to leave her estate to the Plaintiff, as "Maggie was there for Rita providing love and support, especially during the last few years of Rita's life". She also wrote that she was aware of the intestacy laws, that she would be entitled to claim on the deceased's estate, but that she does not wish to, and, in fact, supports, the Plaintiff's application.

34 The deceased's father, Jason, gives evidence in similar terms to the evidence of his wife.

35 I am also satisfied that a letter dated 24 September 2021, with a Notice to Affected Persons and other documents was sent to Ms A J Buxton, Ms Rebecca Kirkby and to Ms Ebony Bass. Neither has filed an Appearance. Other evidence reveals that Ms Kirkby is a friend of the deceased; that Faith Lombardi and Olivia Lombardi, are the two children of the Plaintiff and her husband, Maurice; Ebony Bass, Yasmin (Bass) and Ciara (Bass), is each a cousin of the deceased and the Plaintiff and is a daughter of Paul Bass; and that Amanda (Dan) is a friend of the deceased.

The deceased's estate

36 In the affidavit of executrix, sworn by the Plaintiff on 9 August 2021, the Plaintiff estimated that the deceased's estate had an estimated gross value of $872,329 and an estimated net value of $869,812. The estate was said to consist of the proceeds of superannuation held with Australian Super ($859,991) a car ($9,000), and reimbursement of HCF premiums ($3,337). Liabilities, with an estimated value of $2,516 were identified. It is not a large estate.

The Online Will

37 Before turning to the facts that have been established concerning the online Will, I set out the terms thereof. At the commencement of the hearing, a copy of the document so described was tendered, without objection, and was marked Ex. A.

38 First, I shall describe the form of the document, which as will be read, was described, in my view correctly, in an affidavit, as an "online will questionnaire". On the left-hand side are the seven fields, which required completion, namely, "Customer; Contact Details; Date of Birth; Address; Submission Details; 1. About Yourself; 2. Guardians; 3. Executors (with sub-field Primary Executor); 4. Estate (with sub-fields "Beneficiary #1 and

Beneficiary #2; 5. Gifts (with sub-fields Gift #1, Recipient #1, Gift #2, Recipient #2); 6. Assets & Liabilities (with sub-fields); 7. Funeral (with sub-fields).

39 The deceased completed each of the fields, and where necessary, the sub-fields. She stated her name, her address and that she had no partner and no children. She identified the Plaintiff as the "Primary Executor"; Rebecca Kirkby, as Beneficiary #1, and stated that she was to receive a distribution of 10%, with "Backup" as "their children". She identified the Plaintiff as Beneficiary #2 and stated that she was to receive a distribution of 90%, with "Backup" as "their children".

40 Near the field "Gifts", the deceased identified a 2009 Suzuki Swift (with registration number) which was "to go to Ebony Bass"; all furniture and furnishings owned at the property (which was her home) "to go to Dan (Previously known as Amanda) Joy Buxton, but anything that Mags and the girls want take priority". "Any clothes please give to Faith or Olivia, or Ebony, Yasmin and Ciara. She then completed the field "Assets & Liabilities", identifying superannuation with Australian Super, a life insurance policy, a bank account, other (legal interests), financial assets TPD claim - Australian Super. She also completed the field of liabilities. She also completed the field Funeral, stating "Cremation" and the type of service she required.

41 The date on which the deceased completed the document was 14 June 2021. In New South Wales, that day was the Queen's Birthday public holiday.

The circumstances surrounding the online Will

42 On 14 June 2022, the Plaintiff filed an affidavit, affirmed on 10 June 2022, of Adam Lubofsky, the Chief Executive Officer of Safe Will Pty Ltd ("Safewill").

43 He gave evidence that Safewill is an online will writing platform. To use the platform, a customer must create an account on the Safewill website. Once an account is created, the customer enters the next part of the website where she, or he, is asked various questions about how she, or he, wishes to leave her, or his, estate. The customer is asked for payment at which point the

customer responses to the questions are reviewed by Safewill. The software uses the customer's responses to those questions to generate a Will for the customer.

44 The review conducted is largely procedural and is conducted to ensure that the customer has used the Safewill platform correctly. If the customer has inserted incomplete information, or instructions that are unable to be achieved via the Safewill platform, the customer is notified and given the opportunity to edit the information or seek legal advice. Once the review occurs, the Will is released to the customer. When the Will is downloaded by the customer, it is accompanied by explanatory material, including information about how to execute a Will.

45 Mr Lubofsky also gave evidence about the deceased's involvement with Safewill. In summary, he stated:

(1) She opened an online account with Safewill on 2 June 2021, using a particular email address.

(2) At about 11:18 a.m. on 14 June 2021, the deceased completed the online will questionnaire on the Safewill will writing platform.

(3) From that questionnaire, the will writing platform generated an electronic document, which was headed "Customer FQYAF". That is "a direct export of all information entered by Ms Riman into the Safewill platform".

(4) The deceased would not have received a copy of this electronic document.

(5) Following completion of the online will questionnaire, the deceased paid for the Will. Once payment was received, she would have received a payment confirmation email (which is generated by an external payment processing platform).

(6) Then, the deceased would have seen “a completion screen”, which screen, it is evident, that the deceased did receive and see.

(7) Due to the day on which the questionnaire was completed being a public holiday, the document completed by the deceased was not able to be reviewed until at least the next business day.

(8) Prior to the review taking place, Safewill was notified of the deceased’s death. “For that reason, Safewill did not proceed to generate a Will for Ms Riman”.

(9) Once a customer establishes an account with Safewill and completes a questionnaire, it sends, from time to time, emails to that customer to, among other things, remind her or him, to complete the process of completing the will.

(10) The Safewill website allows a customer to communicate, through an online chat platform, through a “customer care consultant”. (He does not say that, in this case, the person was a legal practitioner.)

46 The evidence also reveals the following emails passing between the deceased and Safewill:

(1) On 2 June 2021, at 10:38 p.m., following the deceased having opened the online account, Safewill sent the following email to her:

> “Thanks for joining Safewill. Your Will is just around the corner. Hit the button below to verify your email address and finish setting up your account.
>
> **Verify my email**
>
> There are just three steps to your legally binding Will:
>
> 01. Prepare your Will
>
> Make your Will online using our simple setup guided app.
>
> 02. Submit for review

Submit your Will to our team of experts for review.

03. Sign your Will

Print your legally-binding Will, sign it and store it."

(2) On 2 June 2021, at 11:19 p.m., Safewill sent the following automated chat message to her:

> "I can see that you've completed your Will and it is now ready to submit."

(3) On 2 June 2021, at 11:49 p.m., the deceased sent an email to Safewill:

> "Hey there Adam, sorry to disturb you, just quickly, do you guys have disability support pensioner discounts at all?"

47 There were several "chats" between the deceased and a customer care consultant via the online chat platform (which was said to be the usual form of communication rather than by email):

(1) On 3 June 2021, at 10:04 a.m., Tess, sent a message to the deceased in response to her enquiry about whether the company provides a pensioner discount:

> "Tess from Safewill: Hi Rita, thanks for reaching out. Whilst we do not offer pensioner pricing, we would be happy to offer you a 20% discount, bringing the will down to $128. If this is something you'd be interested in, let us know and we'll happily provide you with a unique code 😊"

(2) There were subsequent chat messages between the deceased and another customer care consultant, Tali, between 11:03 a.m. and 11:28 a.m. on 14 June 2021:

> "Rita Riman: Hi guys, I got this message from Tess a week ago. I have just edited my will.
>
> Operator: You'll get replies here and in your email…
>
> Our usual reply time
>
> A few minutes

Rita Riman: Hi Rita, thanks for reaching out whilst we do not offer pensioner pricing, we would be happy to offer you a 20% discount, bringing the Will down to $128. If this is something you'd be interest in, let us know and we'll happily provide you with a unique code 😊

Tali from Safewill: Hi Rita

Rita Riman: Hi Tali

Tali from Safewill: You can apply the code … at the checkout

Rita Riman: Amazing thank you

Tali from Safewill: You're welcome Rita. If I can help with anything else, please let me know 😊

Rita Riman: Thanks Tali, much appreciated.

Tali from Safewill: You're welcome.

Rita Riman: Question please? If I email you guys with a confirmation once it's paid for that I would like this to be legally binding. Would that be enough, or would I need to wait the 2 days to sign?

Tali from Safewill: The Will does require signing by yourself and two witnesses, as is required by Australian law

Tali from Safewill: If you need it completed earlier, I will try to expedite the review process for you

Rita Riman: Amazing. It's now paid for. Can it be expedited today by any chance?

Tali from Safewill: I will see if I can arrange that for you. As it is a public holiday here in sydney [sic], it's likely that the earliest it can be reviewed is tomorrow morning. Would this be too late?

Rita Riman: A little. I have sent the link to my lawyer though, so hopefully it is still legally binding."

Other evidence

48 Mr Keen had been acting for the deceased since February 2020 in relation to a possible compensation claim. On 14 June 2021, at 11:27 a.m., an email was received by Keen Lawyers, which stated:

"Hello Wayne,

Just letting you know I have drawn up and completed a will [link to Safewill website]

> Maggie Riman will be the contact for me and the TPD case in need.
>
> Maggie Riman - sister.
>
> 0467 xxx xxx
>
> Xx Satinash St Parklea
>
> Thanks Wayne."

49 On 14 June 2021, at 5:19 p.m., the deceased sent an email to her neighbour, which stated:

> "I need you to please do me a massive favour. In 1hrs time, can you please contact Parramatta Police station and get them to check out our garage for unit 5. It will be closed but not locked. It's the first garage on the rhs of the entry to the parking garage."

50 The Plaintiff found an unsent text message to her on the deceased's mobile telephone, which provided the deceased's email, username, and password, her Facebook email and password, her Qudos Bank application pin number and the verbal password on it. Then, it stated:

> "I have emailed my lawyer Wayne Keen with the link to my will I had made this morning. I didn't have time to wait for it to be signed, but I am hoping it will stick. Once approved I [sic] will be sent to my email address…it could be tomorrow it could be the next day. It's from Safewill.
>
> I also want a do not resuscitate to be noted if I end up in hospital due to the debrillator kicking in. I'm sorry I dissapointed [sic] you, I love you and the girls. Just remember that, and read my Facebook post. It says it all."

51 There is other correspondence that followed between Keen Lawyers and Safewill. It is not necessary to repeat it, other than to note that on 2 July 2021, Mr Keen informed Safewill that "we have now been instructed to manage the administration of Rita's Estate".

52 On 6 July 2021, a solicitor, on behalf of Safewill sent an email which included:

> "Please see **attached** customer information that was submitted by Rita Riman to Safewill. As discussed, I confirm that this document reflects Rita's initial information input. Given that the information was submitted on a public holiday, it was not yet reviewed by our team, or populated into a final draft will…".

53 The document referred to, was a copy of the online Will.

The Law

54 Section 8 of the Act relevantly provides:

> (1) This section applies to a document, or part of a document, that --
>
> > (a) purports to state the testamentary intentions of a deceased person, and
> >
> > (b) has not been executed in accordance with this Part.
>
> (2) The document, or part of the document, forms--
>
> > (a) the deceased person's will--if the Court is satisfied that the person intended it to form his or her will, or
> >
> > (b) …
> >
> > (c) …
>
> (3) In making a decision under subsection (2), the Court may, in addition to the document or part, have regard to--
>
> > (a) any evidence relating to the manner in which the document or part was executed, and
> >
> > (b) any evidence of the testamentary intentions of the deceased person, including evidence of statements made by the deceased person.
>
> (4) Subsection (3) does not limit the matters that the Court may have regard to in making a decision under subsection (2).
>
> (5) This section applies to a document whether it came into existence within or outside the State.

55 Section 8 contains a general dispensing power which allows the Court to admit a document to probate or administration notwithstanding that it has not been executed in accordance with the requirements of the Act: *Rodny v Weisbord* (2020) 102 NSWLR 403; [2020] NSWCA 22 at [15] (Meagher JA). The section is remedial in nature, meaning that it provides a means by which the Court can give effect to the will-maker's true testamentary intentions, even though the will has not been executed in accordance with the Act. However, the Court's discretion is limited to validating a document as a will only if it is invalid due to non-compliance with the relevant Part. If it is invalid for any

other reason, such as testamentary incapacity or a lack of knowledge and approval, the Court cannot exercise its discretion under s 8.

56 The clear intention of the section is to allow the Court to give effect to a will-maker's intention, despite the fact that a will has not been validly executed.

57 (Robb J, the trial Judge in *Weisbord v Rodny; Rodney v Weisbord* [2018] NSWSC 1866 at [388], had referred to s 8 as "remedial legislation intended to avoid the real testamentary intentions of deceased persons being thwarted by the application of formal rules concerning the validity of wills, which may have the effect of causing the courts to decline to grant probate of documents genuinely intended by the deceased to operate as the deceased's will".)

58 However, these general statements should not be taken to mean that the statutory formalities, enshrined in the Act, are to be unduly relegated in importance: *Belcastro v Belcastro* [2004] WASC 111 at [6] (Commissioner Odes QC); *Re Estate of Brock; Chambers v Dowker* (2007) 1 ASTLR 127; [2007] VSC 415 at [20] (Hollingworth J); *Re Sanders* [2016] VSC 694 at [14] (McMillan J); *Re Langley* [2018] VSC 623 at [18] (Moore J); *The Estate of Bradley Scott Lyons* [2021] NSWSC 197 at [43].

59 In *In the Estate of Masters (Deceased); Hill v Plummer* (1994) 33 NSWLR 446, Priestley JA, at 466, wrote that the particular questions for determination in a case such as this, are "essentially questions of fact". Each case must be decided on its own merits, taking into account all of the circumstances.

60 Section 8 of the Act is in two parts, one characterising the document and the other, the intentions of the deceased. It is necessary to establish each in order to cause the section itself to produce the result, relevantly, that the document forms the deceased person's will.

61 The gateway into s 8 is by means of "a document". There can be, and was, no dispute, in this case, that there is a document (being the online Will completed by the deceased). However, to exercise its jurisdiction, the Court

must be satisfied of this. The Act, in s 3, provides that the definition of "document" for s 8, has the same meaning that it is given by s 21 of the *Interpretation Act 1987 (NSW)*.

62 Section 21 of the *Interpretation Act* provides meanings of commonly used words and expressions in an instrument. The section includes:

> "document" means any record of information, and includes--
>
> (a) anything on which there is writing, or
>
> (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
>
> (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
>
> (d) a map, plan, drawing or photograph.

63 In *Yazbek v Yazbek* [2012] NSWSC 594, Slattery J admitted a Microsoft Word document on a computer as the last will of the deceased. His Honour found that both the document in the computer and a printout constituted a "document" for the purposes of s 8 of the Act. Slattery J wrote at [80]:

> The plaintiff relies on the meaning of "document" provided in *Interpretation Act*, s 21, "anything from which sounds, images or writings can be reproduced with or without the aid of anything else". An audio tape has been held to be a document within the meaning of *Interpretation Act*, s 21, being something from which sound could be reproduced with the aid of a cassette player: *Treacey & Ors v Edwards; Estate of Edwards* (2000) 49 NSWLR 739 at [27] per Austin J. I accept the plaintiff's argument that Will.doc is "something from which images or writings can be reproduced with or without the aid of anything else". Will.doc can be reproduced either with the use of Microsoft Word or by printing Will.doc using Microsoft Word's command and the operating system to print a copy of the electronic file. That Will.doc is a document for the purposes of *Succession Act*, s 8 is consistent with other States Supreme Courts decisions in relation to the equivalent legislation: cf *Re Trethewey* [2002] VSC 83, per Beach J, and *Mahlo v Hehir* [2011] QSC 243, per McMurdo J.

64 In *In the Estate of Robin Michael (deceased)* [2016] SASC 164 at [25], Stanley J, after referring to a number of authorities, including *Yazbek v Yazbek*, wrote at [25]:

> "These authorities exhibit a contemporary approach to recognition of electronic documents, such as the computer file in this case, constituting testamentary documents for the purposes of the Act, at least where evidence provides the necessary proof that the author of the electronic document is the testator and that the testator intended the document to be his will."

65 I am satisfied that the online questionnaire, completed by the deceased on 14 June 2021, is "something from which images or writings can be reproduced with or without the aid of anything else". It can be, and has been, reproduced by printing a copy of the electronic file.

66 There was no dispute about the law that applies in relation to s 8 of the Act. Counsel for the Attorney General quoted what I had written in *The Estate of Walter Ostro* [2021] NSWSC 495 (at [105]-[147]), and more recently summarised in *Heffernan v Innes* [2021] NSWSC 1033 (at [351]-[378]). For the benefit of the Plaintiff and others, I repeat what I have written in these cases.

67 If a document is intended to be a will, and it is executed in accordance with formal requirements prescribed by s 6 of the Act, the law gives effect to the document as a valid will.

68 The Act does not comprehensively define a will. Section 3(1) simply defines "Will" as including "a codicil and any other testamentary disposition". However, for a document to operate as a will, it must have been intended by the will-maker to be her, or his, will. As was written by Wolff CJ in *Re Bubnich; Marian v Bubnich* [1965] WAR 138 at 140 and quoted in *Collins v Marinovich* [2021] QSC 141 at [45]:

> "A will is the declaration in the prescribed manner of the intention of the person making it with regard to matters which he wishes to take effect upon or after his death … It is, therefore, a unilateral direction by a person to take effect upon or after that person's death. A will is also revocable by any one of the several methods prescribed by the Wills Act. Revocation of a will is also a unilateral action which cancels the dispositions of the will."

69 There was no dispute that the online Will was not executed in accordance with s 6 of the Act. The deceased did not sign the online Will and it was not signed by some other person in her presence and at her direction.

70 The burden of proof of all issues relating to s 8 is on the party seeking to rely upon the section and is to be satisfied on the balance of probabilities. In deciding whether it is so satisfied, without limiting the matters that may be taken into account, the Court is required to take into account that these are Probate proceedings (the nature of the action); the size of the estate (the nature of the subject matter of the proceeding); and the terms of the document sought to be propounded (the gravity of the matters alleged): s 140 *Evidence Act 1995* (NSW).

71 In this case, it was also not in dispute that the online Will purports to state the testamentary intentions of the deceased.

72 In *In the Estate of Knibbs, deceased; Flay v Trueman* [1962] 1 WLR 852, Wrangham J wrote at 855-856:

> "As Salter J said in Beech's case (*In the Estate of Beech, deceased* [1923] P 46 at 57):
>
> > 'I think that, in order to constitute a will, the words used by the testator must be intended by him, at or after the time when he uses them, to be preserved or remembered so as to form the guide to those who survive in carrying out his wishes.'
>
> In other words, in order to be a testamentary act, there must be a statement of the deceased's wishes for the disposition of his property after his death which is not merely imparted to his audience as a matter of information or interest but is intended by him to convey to that audience a request, explicit or implicit, to see that his wishes are acted on."

73 In *In the Estate of Masters (Deceased); Hill v Plummer*, Priestley JA pointed out, at 469, that:

> "A document in which a person says what that person intends shall be done with that person's property upon death seems to me to be a document which embodies the testamentary intentions of that person."

74 In *Estate of Laura Angius; Angius v Angius* [2013] NSWSC 1895, I wrote, at [281]-[282] and [284]:

> "The sole question for the Court is the status of the undated document — whether the Court is satisfied that the deceased intended the undated document to form her Will. It would not be sufficient if the Court came to the

> view that the deceased had intended the undated document to record only her instructions for a Will, or to be a draft Will made to assist in the preparation of a final Will by her then solicitors.
>
> Nor is it enough if the Court is only satisfied that the undated document contained the deceased's ideas about her testamentary intentions. The document must be intended to be the legally operative act which purports to dispose of the deceased's property upon her death and be intended by her to have present operation as her Will.
>
> …
>
> It is also clear that one must resolve the questions in dispute by looking at the probabilities on the totality of the evidence available to the Court, including, but not limited to, evidence relating to the manner in which the undated document was executed, if at all, and any evidence of the testamentary intentions of the deceased, including evidence of statements made by her. Thus, the Court determines, firstly, the objectively discerned nature of the content of the document, and then, subjectively, whether the specific deceased had the necessary intention."

75 In *Rodny v Wiesbord*, at [57], Meagher JA stated:

> "The position with respect to the possible application of s 8(2)(a) in such circumstances nevertheless remains as summarised by White J in *Bell v Crewes* in the following passages:
>
> > 'the provisions do not [provide] that a document is to be admitted to probate merely because it embodies the deceased's testamentary intention (at 43); The legislation expressly requires that the deceased intend that the document form or constitute the person's will'; 'A requirement that the deceased intend without more that the document constitute his or her will, or, that is to say, that the deceased intend the document have a present operation as his or her will, is not to put a gloss on the statute. Rather, it gives effect to the requirement that the deceased intend that the document form or constitute his or her will' (at [44]);
> >
> > 'If the deceased's intention is that the document will form his will only on the occurrence of a future event, and that event does not occur, then it cannot be said that he or she has the requisite intention' (at [45])."

76 Whilst, it is sometimes difficult to assess the intentions of a person who has left no specific directions, or indications, relating to an informal document, all that the Court can do, in those circumstances, is to look at such facts as are available, in order to determine what was more likely to have been intended by the deceased in respect of the document concerned: *In the Estate of Stewart* (Supreme Court (NSW), Cohen J, 12 April 1996, unrep).

77 As Fullagar J wrote in *ANZ Executors & Trustee Co Ltd v McNab* (1999) 3 VR 666, at 667 (albeit in a case involving the construction of a will):

> "The search for testamentary intention must be a search for intention disclosed by the words used, and in this search words must prima facie be given their ordinary meanings and, if the law has consistently given a particular meaning to some word or phrase, that is the meaning which the word or phrase must prima facie be given. Nevertheless, the intention is to be gathered from a study of the will as a whole, and in the light of any relevant and admissible evidence of surrounding circumstances."

78 The document, itself, should also be considered in context: *Public Trustee v Commins; The Estate of Gwendolyn Myrtle Wray* (Supreme Court (NSW), Powell J, 19 June 1992, unrep). The relevant intention may be inferred from the physical form of the document itself: *The Estate of Kevin John Hines v Hines* [1999] WASC 111; *In the Estate of Margaret, deceased* [2012] NSWSC 1490 at [31] (White J). The document must be read as a whole.

79 In determining whether the Court is satisfied that the deceased intended the document to form her, or his, will, the Court may, in addition to considering the form and content of the document or part of it, have regard to, amongst any other matter, (a) any evidence relating to the manner in which the document, or part of the document, was executed, and (b) any evidence of the testamentary intentions of the deceased, including evidence of statements made by the deceased.

80 Other relevant facts may be the degree of closeness in time of death to the preparation of the document; evidence of the deceased's state of mind leading up to the preparation of the document; the availability of persons to act as attesting witnesses (*Re Nicholls* [1996] 1 Qd R 179 at 181-182); and the relative publicity given to the document (*Snape v Gibson; Re Estate of Paul Francis Snape* [2006] NSWSC 829).

81 The Court resolves the questions in dispute by looking at the probabilities on the totality of the evidence available, including, but not limited to, evidence relating to the manner in which the document was executed, if at all, and any evidence of the testamentary intentions of the deceased, including evidence

of statements made by her or him. Thus, the Court determines, firstly, the objectively discerned nature of the content of the document, and then, subjectively, whether the specific deceased had the necessary intention.

Testamentary capacity

82 Neither the Plaintiff, nor the Attorney General, raised the question whether the deceased did not intend that the informal document operate as a will because she did not have the capacity to form any such intention.

83 The usual presumptions concerning testamentary capacity, referred to in such cases as *Burrows v Burrows* (1827) 1 Hagg Ecc 108; (1827) 162 ER 524; *Symes v Green* (1859) 1 Sw & Tr 401; (1859) 164 ER 785, and *Sutton v Sadler* (1857) 3 CBNS 87; (1857) 140 ER 671, do not apply in the context of an informal will: *Ackerley v Felton* [2012] NSWSC 1468 at [29]-[30] (Young AJ). As such, the Plaintiff, as the propounder of the informal document, must satisfy the Court that the deceased had the requisite testamentary capacity at the time of making the informal document.

84 In *Re Hodges* (1988) 14 NSWLR 698, Powell J, after reviewing the authorities, including some American authorities, held that the suicide of the will-maker following upon the execution of a will does not give rise to any presumption of testamentary incapacity. In that case the testator was in a state of severe depression and wrote and executed a will in the presence of two friends leaving his property to a de facto wife and within a short time thereafter shot himself. The document was upheld as a valid will.

85 The decision was cited, with approval, by Young J in *Ryan v Kazacos; Estate of Michael Harvey Kazacos* (2001) 183 ALR 506; [2001] NSWSC 140 at [50].

86 More recently, French CJ wrote in *Stuart v Kirkland-Veenstra* (2009) 237 CLR 215 at 236-237; [2009] HCA 15 at [45]-[46]:

> "…Suicide and attempted suicide are seen as reflective of psychological or psychiatric issues which may or may not involve 'mental illness' according to established diagnostic conventions. …

> The common law does not even support the general proposition that attempted suicide or suicide gives rise to a presumption of mental illness, at least not to the extent that would amount to testamentary incapacity. A testator's suicide, following shortly upon the making of a will, does not raise a presumption of testamentary incapacity."

87 French CJ later referred, in the same paragraph, to the "longstanding caution of the common law" about treating attempted suicide as necessarily reflecting mental illness, and referred, to "the complexity and variety of factors which may lead to suicidal behaviour".

88 In *Fielder v Burgess* [2014] SASC 98, Kourakis CJ at [29], after referring to *Stuart v Kirkland-Veenstra*, wrote:

> "There is no reason arising from the Court's knowledge of human affairs to infer, in the absence of other evidence on the issue, that the psychological distress which leads to suicide necessarily so compromises a person's reasoning capacity as to deny him or her the capacity to understand the nature and effect of his or her purported disposition of property and the way in which it resolves the competing moral and quasi-legal claims to that property."

89 The test for testamentary capacity was stated by Cockburn CJ in *Banks v Goodfellow* (1870) LR 5 QB 549 at 565:

> "It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties — that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."

90 Establishing testamentary capacity also requires proof that the will-maker knew and approved the contents of the will at the time it was executed so that it can be said that he, or she, comprehended the nature and effect of what he, or she, was doing: *Tobin v Ezekiel* (2012) 83 NSWLR 757; [2012] NSWCA 285 at [44] (Meagher JA).

91 In this case, the specific date, and time, when testamentary capacity is to be assessed can be determined with precision as the date and time the online

Will was sent to Safewill. Bearing in mind what I have written about the events, I am satisfied that the deceased had testamentary capacity.

Determination – the informal document

92 In *Whyte v Pollok* (1882) 7 App Cas 400 at 405, Lord Selborne, L.C., wrote:

> "nothing can receive probate which was not intended to be a testamentary act by the testator."

93 It is clear that the deceased knew that to ensure its validity, a will needed to be executed in a formal way and, in particular, that it needed to be signed and the signature needed to be witnessed by two witnesses. A person contemplating suicide might not bring to mind the requirements for execution of a valid will. In this case, the deceased did so, saying that she did not have time to sign the document but she hoped that it would stand.

94 I accept that there is a distinction between a document which merely sets out what a person wishes, or intends, as to the way his, or her, property shall pass on her death and a document which, setting out those things, is intended to cause that to come about, that is, to operate as her Will.

95 Having established that there is a document, I am comfortably satisfied that the online Will was intended by the deceased as her testamentary act in the law, that was to have present operation as a will. The following facts and circumstances justify this conclusion:

(1) The deceased initiated the creation of the online Will by completing the online Will questionnaire, which she sent to Safewill.

(2) The online Will was complete in its terms. It is worded in intelligible English, and the dispositions appear to make grammatical, and legal, sense.

(3) The dispositive terms of the online Will appear rational, and are consistent with her parents, and the Plaintiff's, understanding of the deceased's testamentary priorities.

(4) The online Will dealt with all of the deceased's property.

(5) The deceased paid for the online Will, indicating that she considered she had finalised it, and also that it was a completed document. Payment, in the circumstances of this case, does not suggest that she thought it was preliminary, tentative, or an incomplete expression of testamentary intention, or that it was prepared for further consideration and possible revision.

(6) The relevant intention was formed very close (in all probability within hours) of the deceased committing suicide, supporting a finding this was a complete document with finality, and was not a test-run or a draft waiting for amendment: *Newman v Brinkgreve; The Estate of Floris Verzijden* [2013] NSWSC 371 at [108]. The inference to be drawn is that it was a completed document.

(7) There were practical difficulties, which the deceased realised, in not complying with will-making formalities of which she was aware. There was no one readily available to act as an attesting witness; the form of making a will was using an online will platform, which is novel, with no ability for her to sign, and send, it on to Safewill; in this sense, the absence of the signatures was the only real departure from compliance with the requirements of the Act (see *Heffernan* at [375].

(8) Even if the deceased appreciated that signing by herself and two witnesses was a formal requirement, no matter what, given she was considering taking her own life, in all probability she may not have wished to arrange proper execution.

(9) The deceased did not immediately respond to the 11.22 a.m. question from Safewill. Rather, she turned her attention to her lawyer Mr Keen, and sent him an email at 11.27 a.m. stating, "*Just letting you know I have drawn up and completed a will*", included what she believed to be a link to the online Will, as well as the name and contact details of her nominated executrix. It was at this point that she clearly formed the relevant intention for that particular document, being the online Will, to operate as her will.

(10) Following the email, at 11.28 a.m., the deceased replied to Safewill and stated, "A little [ie, yes, the expedition offered would be a little too late]. I have sent the link to my lawyer though, so hopefully it is still legally binding". She proceeded with the alternative strategy of leaving the link to the online Will with her own lawyer, in the hope that doing so would make the online Will legally binding and thus able to operate as her will.

(11) She confirmed her intention drafting a text to the Plaintiff, which remained unsent. In part the text stated, "I have emailed my lawyer Wayne Keen with the link to my will I made this morning. I didn't have time to wait for it to be signed, but I am hoping it will stick" (my emphasis).

(12) The making of the online Will was a part of a sequence of events, including contact with Safewill, with her lawyer, Mr Keen, and the neighbour (to call the police in an hour) and the making of the Facebook post, finalising her affairs before her suicide.

96 Precisely what the deceased was thinking, or feeling, at the time she completed the online questionnaire cannot be known. However, her testamentary intentions appear from the form and wording of the online Will itself and by comparing it with the other documents that were found, which are not dispositive, but emotional, in tone and content. In none of these documents is there a reference to what was to be done with her property after

her death. The contents of the online Will focus, predominantly, upon the distribution of the deceased's property.

97 The online Will contains words capable of being construed as indicating it was to take effect on the deceased's death. It specifically referred to cremation. I am satisfied that the provision made required the death of the deceased for its consummation.

98 Having regard to the evidence relating to the manner in which it was executed, and the evidence of the testamentary intentions of the deceased, including evidence of the written statements made by the deceased, I am satisfied that the online Will purports to state the testamentary intentions of the deceased and that it has not been executed in accordance with s 6 of the Act. I am also satisfied that the deceased intended the online Will to form her will.

99 I should mention, whilst acknowledging that digital communication has become an essential part of the social and economic fabric of society, that this application has been determined on its own facts. But for the statements, in writing, made by the deceased, about the online Will, the Plaintiff's claim may not have succeeded.

100 The Court:

(1) Grants leave to the Attorney-General of New South Wales to appear as amicus curiae.

(2) Declares pursuant to s 8 of the *Succession Act 2006* (NSW) that the Court is satisfied that the document being Ex. A in these proceedings, purports to state the testamentary intentions of Rita Riman (the deceased), and that it has not been executed in accordance with Part 2.1 of the *Succession Act*.

(3) Declares pursuant to s 8 of the *Succession Act* that the deceased intended the document to form her Will dated 14 June 2021.

(4) Orders that probate in solemn form of the Will dated 14 June 2021 be granted to the Plaintiff, the executor named in the document.

(5) Orders that the matter be remitted to the Senior Deputy Registrar in Probate to complete the grant.

(6) Orders that the Plaintiff's costs of the proceedings, calculated on the indemnity basis, be paid, or retained, as the case may be, out of the estate of the deceased.

(7) Makes no order as to the costs of the Attorney General, as amicus curiae.

****

Associate to Hallen J