

AUSTRALIA / JUDGMENT

Donatiello v Donatiello

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Supreme Court

New South Wales

Amendment notes

Medium Neutral Citation:

Donatiello v Donatiello [2026] NSWSC 1043

Hearing dates:

15-16 June 2026

Date of orders:

2 September 2026

Decision date:

02 September 2026

Jurisdiction:

Equity

Before:

Muston J

Decision:

- (1) The proceedings are dismissed.
- (2) The plaintiff is to pay the defendants' costs of the proceedings.
- (3) If any party contends for a different costs order to that which is provided for in Order 2, they should make an application to my Associate by 4pm 7 September 2026, whereupon I will vacate Order 2.
- (4) Should an application for a different costs order be made pursuant to Order 3:
 - (a) That application should include submissions of not more than 3 pages and any evidence;

- (b) Any other party may serve and provide to my Associate responsive submissions of not more than 3 pages and any evidence by 4pm 11 September 2026; and
- (c) I will, thereafter, determine the question of costs on the papers.

Catchwords:

LAND LAW — Conveyancing — transfer of title — where plaintiff transferred property to defendants having expressed an earlier intention that they inherit the property — whether the transfer was a gift or a sale

EQUITY — Unconscionable conduct — where plaintiff claims the transfer of property to the defendants was the result of unconscionable conduct on the part of the defendants — whether plaintiff had a special disability or disadvantage — whether defendants took unconscientious advantage

Legislation Cited:

Real Property Act 1900 (NSW) ss 74D, 74LA

Cases Cited:

Blomley v Ryan (1956) 99 CLR 362 at 405; [1956] HCA 81

Bridgewater v Leahy (1998) 194 CLR 457; [1998] HCA 66

Commercial Bank of Australia Ltd v Amadio (1983) 151 CLR 447 at 461; [1983] HCA 14

Fox v Percy (2003) 214 CLR 118; [2003] HCA 22

Kakavas v Crown Melbourne Ltd (2013) 250 CLR 392; [2013] HCA 25

Louth v Diprose (1992) 175 CLR 621

McLennan by his tutor Kennedy v McLennan [2026] NSWCA 102

Nitopi v Nitopi (2022) 109 NSWLR 390; [2022] NSWCA 162

Stubbings v Jams 2 Pty Ltd (2022) 276 CLR 1; [2022] HCA 6

Thorne v Kennedy (2017) 263 CLR 85; [2017] HCA 49

Watson v Foxman (1995) 49 NSWLR 315

Category:

Principal judgment

Parties:

Maria Donatiello (Plaintiff)

Paul Donatiello (First Defendant)

Catherine Donatiello (Second Defendant)

Representation:

Counsel:

M Evans (Plaintiff)

R Gall (Defendants)

Solicitors:

ELG Legal (Plaintiff)

Deutsch Miller (Defendants)

File Number(s):

2025/470186 / 2025/491005

Judgment

Introduction

In late 2020, Maria Donatiello transferred a property located in the Central Coast suburb of Long Jetty (Long Jetty property) to her youngest son, Paul Donatiello, and his wife, Catherine Donatiello. Maria now seeks to have that transfer set aside, alleging it was obtained by unconscientious dealing. For the reasons that follow, her claim has not been made out.

This dispute involves a number of members within the same family; with no disrespect to the parties or other relevant members of the Donatiello family, I will refer to each of them by their first names.

The parties provided a list of agreed issues to be determined in these proceedings. They were:

Was the transfer of the Long Jetty property from Maria to Paul and Catherine a sale or a gift?

Did Paul and Catherine procure the transfer of title to the Long Jetty property to them by Maria by unconscionable conduct?

Was the execution of the document entitled “Deed of Gift” dated 7 April 2024 by Maria procured by unconscionable conduct on the part of Paul and Catherine or either of them?

Does the document entitled “Deed of Gift” dated 7 April 2024 bar Maria’s claim to set aside the transfer of the Long Jetty property to Paul and Catherine?

Are Paul and Catherine entitled to restitution of the \$30,000 paid to Maria on 1 May 2024?

In the event that the Court finds that the transfer of title to the Long Jetty property to them by Maria was procured by unconscionable conduct:

Is the appropriate remedy the imposition of a constructive trust and transfer of title to the Long Jetty property to Maria, or is there some other appropriate remedy?

Are Paul and Catherine liable to account to Maria for rents received from Long Jetty property after October 2020?

Are Paul and Catherine entitled to set off or should there otherwise be a taking of account for the amounts they have spent in connection with the Long Jetty property?

For the reasons set out below, I have concluded that the transfer of the Long Jetty property from Maria to Paul and Catherine was a gift and was not procured by unconscionable dealing. In these circumstances, issues (3) to (6) do not arise.

Witnesses

At the outset, it is appropriate for me to make some brief observations about the six witnesses who gave evidence in these proceedings.

Three of those witnesses — Maria, Paul and Catherine — each swore affidavits and were cross-examined. Much of their evidence related to conversations that were said by them to have occurred years ago. As will be apparent from what follows, I have placed very little weight on the exact words that each has attributed to themselves and others in those conversations.

Evidence was also given by Maria's eldest son Salvatore (known as Sam), Tony Zaccaria, and Justine Akuhata. All three were called by Maria. Sam and Ms Akuhata appeared and were cross-examined in person. Mr Zaccaria gave his oral evidence via AVL from a hospital, at which he was receiving treatment for emphysema. The evidence given by these three witnesses had negligible bearing on the actual issues to be resolved in the proceedings. To the limited extent that their evidence was relevant, I have placed little weight on it.

I have little confidence in the reliability of the accounts provided by Mr Zaccaria and Ms Akuhata of conversations they claimed to have had with Maria and Catherine respectively. While I have no doubt each of them did their best to assist the Court, the conversations about which each gave evidence were brief, incidental, and occurred sometime before they came to prepare their respective affidavits. To the extent that either had any actual recollection of those conversations when they came to prepare their affidavits, I consider it likely to have been corrupted by the understanding each had developed of the dispute which had emerged within the Donatiello family and their sense of the relevance that the conversations about which they came to give evidence might have had in the context of that dispute.

I have no confidence in the reliability of any aspect of the evidence given by Sam which was not consistent with the available contemporary materials, objectively established facts or the apparent logic of events. For reasons I describe below, Sam has no direct knowledge of the relevant events immediately preceding the transfer of the Long Jetty property. However, he clearly feels acutely aggrieved by the fact that the transfer occurred. To the very limited extent that any aspect of his evidence about later events was relevant to the issues I am required to

determine, I formed the view that it had been distorted by his firm belief that Maria should never have transferred the Long Jetty property to Paul and Catherine.

Factual Background

Before dealing with the substantive issues, it is useful to set out the broad circumstances from which this dispute has emerged and address a number of factual disputes relating to those circumstances.

The Donatiello family

Maria was born in Italy in 1947. She immigrated to Australia in 1958. When she was around 14 years old, Maria commenced working in the women's fashion department at Mark Foy's. For several years in the 1980s she operated a retail fashion business in the suburb of Fairfield but was otherwise an employee in retail shops throughout her working life. She said that, from 2009 onward, she "only did casual work now and then for pocket money".

In 1966, Maria married Paul Donatiello. To avoid confusion, I will refer to him as "Maria's husband". Maria's husband was also born in Italy. After immigrating to Australia, he worked as a pebblecreter. When an Achilles tendon injury prevented him from doing that work, he was employed by the NSW Department of Education as a General Assistant in a school.

Maria and her husband had two sons, Sam and Paul. Both are now married and have children of their own.

In 1986, Maria and her husband purchased a house in Smithfield (Smithfield property). It became their family home.

Acquisition and use of the Long Jetty property

Maria's husband had an attachment to the Long Jetty area and, during his life, expressed a desire to have a holiday house in that area when he retired. Sadly, in September 2001, he passed away at the age of 60, before he could fulfil this desire.

Upon the death of her husband, Maria received approximately \$250,000 from his superannuation. She used some or all of that money to purchase the Long Jetty property. It was Maria's intention that it be used by her, her two sons, and their respective families as a holiday house. She felt proud that her family owned a holiday house.

Between 2002 and 2010, the Long Jetty property was used by each of Maria, Paul, Catherine, Sam, his wife Diane, and their two children as a holiday house. It was a gathering place for family celebrations at Christmas and Easter. Each had keys to the property and were free to use it when they wished.

During this time, Paul and Catherine had no children. They visited the Long Jetty property more frequently than Maria or Sam and his family. Nevertheless, Paul and Sam each contributed 50% toward the cost of the outgoings for the Long Jetty property, including the council rates, electricity bills and insurance costs. Paul and Catherine mowed the lawns and otherwise performed — or organised and paid for — any physical maintenance work required. Maria made no financial contribution toward the outgoings or maintenance associated with the Long Jetty property.

Sam's estrangement from Maria, Paul and Catherine

In 2010, Maria and Sam had a significant falling out over the fact that Maria had become romantically attached to a man named Joe and was planning to sell the Smithfield property. Sam considered the Smithfield property to be his father's house and was unhappy that Maria had chosen to sell it. Despite regular cards and gifts sent to her grandchildren — and attempts by her to re-establish contact with Sam — Maria remained wholly estranged from Sam and his family until late 2022.

In 2010, Sam also fell out with Paul. There was some dispute about the circumstances in which they came to fall out. It is unnecessary to resolve that dispute. It was common ground that the brothers have had almost no contact with one another since that time.

Following his estrangement from his mother and brother, Sam ceased using the Long Jetty property. He made no further contributions toward the outgoings associated with that property. As a result, from 2010, all outgoings and maintenance associated with the Long Jetty property were paid for and attended to by Paul and Catherine.

In August 2010, Maria sold the Smithfield property for \$640,000 and, in early 2011, purchased a house in Abbotsbury (Abbotsbury property) for \$510,000.

Maria's 2012 Will and Statutory Declaration

In November 2012, Maria prepared a new Will. Through this Will, Maria indicated that Paul was to inherit the Long Jetty property, absolutely. Sam was to inherit the Abbotsbury property but on the condition that he pay Paul a sum equivalent to 23% of the value of that property; failing which they would inherit the property as tenants in common with their shares being 23% and 77% respectively.

At the time of signing her new Will in 2012, Maria also made a statutory declaration in which she explained her decision to leave the Long Jetty property to Paul in the following terms:

"1. I have provided different shares in my will in respect of my [Long Jetty property] for my children for the following reasons:

- a. Paul has shown continuing interest in the property and has consistently helped me by paying council and water rates over many years.

- b. Paul has contributed his time and effort in maintenance of the property. He has also contributed financially to upkeep and maintenance.
 - c. Salvatore has not contributed to rates and maintenance for the property since 2008.
 - d. Salvatore has not visited the property since 2008 and seems to have no interest in it.
 - e. I believe it is fair and just that Paul receive recognition of his assistance in this way.
2. I have been deeply disappointed and hurt by the behaviour of my son Salvatore Donatiello who has not spoken to me since about 2008. I provided considerable assistance to him when his children Marcus and Catia were young. I was at Salvatore's beck and call to provide minding the children, collecting them and delivering them to and from school and sporting activities. I often stayed overnight at their home allowing them to have a social life providing free child minding. My relationship with my grandchildren Marcus and Catia has now been closed off to me and I fear that he has poisoned their brains against me for reasons that I do not understand."

Maria said that she had no memory of having signed her 2012 Will or the accompanying statutory declaration but accepted that her signature appeared on both documents. I am satisfied that she did sign these documents in 2012, and that when she did so, she well understood their content and effect. I am also satisfied that, in 2012, she told Paul and Catherine of her intention to leave the Long Jetty property to Paul and showed them copies of her new Will and the accompanying statutory declaration.

2017 Statutory Declaration and further developments

On 4 April 2017, Maria made a further statutory declaration. The evidence does not reveal whether this was made in connection with a change to her Will. In that statutory declaration, Maria added to her reasons for leaving the Long Jetty property to Paul the fact that it would have a capital gains tax liability in due course, whereas her principal residence would not. In this statutory declaration, her relationship with Sam was described as follows:

"My relationship with my son Salvatore Donatiello has been one of estrangement for the past 8 years. I have tried to re-establish the relationship by direct contact on several occasions, the last of which was in 2016. On that occasion I went to my son's work shop but left after our discussion turned into an argument when Salvatore said to me "Why did you sell Dad's house? That was Dad's". Salvatore has said this to me on many occasions after I sold the matrimonial home following my husband's death. Salvatore has not accepted that I had any entitlement in the home or to deal with it in any way."

Several other significant events occurred in 2017. Maria completely retired from work and found herself with a significant credit card debt that was paid discretely by Catherine. Further, in June of that year, she attended hospital having suffered a panic attack and was treated for anxiety.

At around that time, Maria spent a period living in Paul and Catherine's home; the duration of that stay was disputed. Paul and Catherine gave evidence that Maria stayed with them for up to 3 months, during which she was largely cared for by Catherine. Maria said that she stayed for no more than two weeks before being asked to leave. It is unnecessary to resolve this dispute as, on either account, Maria's stay in Paul and Catherine's home was relatively short and she thereafter returned to live independently in the Abbotsbury property.

Discussions about the sale or rental of the Long Jetty property and Maria's desire to receive a full pension

A central feature of the evidence given by Maria, Paul, and Catherine was their respective (and often conflicting) accounts of discussions about the Long Jetty property and Maria's desire to receive a full pension.

In early 2019, Maria approached Paul and Catherine and told them that she needed more money for her living expenses. She said that, at that time, she raised with them the possibility that she would sell or rent out the Long Jetty property. She claimed to have been told by them that she should not sell the property and that income received through renting it out would prevent her from receiving the pension. Each of Maria, Paul and Catherine gave accounts of different conversations in which these general topics were discussed, the content and timing of which conflicted in certain respects.

The oft-quoted observations of McClelland CJ in *Eq in Watson v Foxman* (1995) 49 NSWLR 315 at 319 aptly capture the impression I formed of the affidavit and oral evidence Maria gave in relation to those conversations; in particular, his Honour's observation that:

"...human memory of what was said in a conversation is fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time, particularly where disputes or litigation intervene, and the processes of memory are overlaid, often subconsciously, by perceptions or self interest as well as conscious consideration of what should have been said or what could have been said. All too often what is actually remembered is little more than an impression from which plausible details are then, often subconsciously, constructed. All this is a matter of ordinary human experience."

While I accept that, in 2019 and 2020, there are likely to have been multiple conversations between various combinations of Maria, Paul and Catherine in which these general topics were discussed, I have no confidence that the words Maria has attributed to herself, Paul or Catherine in these conversations were actually used and I do not accept that evidence.

I have also approached the evidence given by each of Paul and Catherine about specific conversations they claim to have had with Maria during this time with significant caution. I consider that aspect of their evidence more likely to represent an amalgam of different conversations they each had with Maria and one another at around that time. In that sense, it is more in the nature of a reconstruction. As such, I also consider this aspect of their evidence to be unreliable in so far as it was advanced as proof of the timing of, or the words used in, particular

conversations.

While I have approached the parties' affidavit evidence with considerable caution, I accept that the following details can be gleaned from the contemporaneous materials, objectively established facts and the apparent logic of events in the sense discussed in *Fox v Percy* (2003) 214 CLR 118; [2003] HCA 22 at [31].

By 2019, Maria was receiving a partial pension from Centrelink, which comprised weekly payments of between \$600 and \$700. Maria agreed that, upon retirement, she wanted to receive a pension. I am satisfied that she had a strong desire to receive a "full pension", if that could be achieved. She likely communicated this to Catherine and Paul at around this time; probably on more than one occasion.

Catherine said that Maria would often tell her about pension eligibility rules and relay to her advice she had received on this topic from her friends. I am satisfied that this did occur, and that Maria's understanding of those matters was largely informed by discussions had with those of her friends who were themselves receiving a pension of some description.

It was common ground between the parties that Maria's ownership of the Long Jetty property at that time rendered her ineligible to receive a full pension. I am satisfied that Maria understood this to be the case in 2019 and 2020, and also understood that:

If she rented out the Long Jetty property, her continuing ownership of that property and any rental payments that she received would need to be disclosed to Centrelink, and would likely further reduce any entitlement that she might otherwise have had to receive a pension.

If she sold the Long Jetty property — and thereby converted it into money — for so long as she held the sale proceeds in cash or other investments, she would likely remain ineligible to receive a full pension.

If she gave away the Long Jetty property, she would still not become eligible to receive a full pension for 5 years.

By late 2019, the partial pension Maria was receiving was her sole source of income. Any cash reserves she might have had after downsizing from the Smithfield property to the Abbotsbury property had, by that time, been largely exhausted.

I accept that by late 2019, Maria wanted to increase the amount of money she had available to meet her weekly living expenses, and that she is likely to have mentioned this to Paul and Catherine.

At some point before 2020, Maria had made her own enquiries about the possibility of taking out a "reverse mortgage" over the Abbotsbury property, with a view to using some of the equity she had in that property to fund her living expenses. She arranged to meet with a man to discuss this possibility, and Catherine attended that meeting with her.

Catherine said that she shared with Maria her view that the interest to be charged under the reverse mortgage was very high, but otherwise did not discuss with her the merits of the potential transaction. I think it is likely that Catherine did more than comment on the interest rate, and that she sought to discourage Maria from entering into such an arrangement. That said, I am also satisfied that the ultimate decision not to take out a reverse mortgage was one that Maria made independently.

Both Paul and Catherine agreed that, at around that time, the possibility of selling or renting out the Long Jetty property was raised in discussions that each had with Maria.

Catherine agreed that she suggested to Maria that she should not sell that property and should instead rent it out and use the rental income. I accept that Catherine is likely to have made this suggestion to Maria on one or more occasions in 2019 and 2020. I also accept Paul and Catherine's evidence that Maria responded to this suggestion by saying that she did not want to rent out the Long Jetty property.

I do not accept Maria's evidence that it was Catherine who told her that renting out the Long Jetty property would prevent her (Maria) from receiving a pension. While I am satisfied that Maria was aware that any rental payments received would have had an impact on her entitlement to receive a pension, I am not satisfied that either Paul or Catherine were the source of this information and consider it more likely that it came from a representative at Centrelink or through her friends.

The Long Jetty property is rented to relatives

In early 2020, Maria was contacted by Jake Ida; he was a relative of hers and Paul's godson. Mr Ida had recently been married. Maria agreed to rent the Long Jetty property to him and his wife, Rebecca, for \$300 per week. She told him to contact Paul and Catherine to make the necessary arrangements for this to occur.

Maria knew that the rent to be paid by Mr Ida and his wife was "a reduced rate" but was content to rent the property to them for that amount as she was "happy to help out family".

In early 2020, Mr and Mrs Ida moved into the Long Jetty property. For reasons which were not fully explored in the evidence, Paul and Catherine acted as landlords in this arrangement. The first rental payment of \$300 was passed on by Paul and Catherine to Maria. The balance of the rental received from Mr and Mrs Ida — during the period of roughly a year when they rented the property — was retained by Paul and Catherine.

Catherine said that Maria told her that she and Paul should keep the rent received from Mr and Mrs Ida to cover the outgoings that they were still paying in relation to the Long Jetty property. Maria disputed this. On her account, the rental payments were effectively commandeered by Paul and Catherine. She said that she did not question this arrangement for fear that doing so would lead Paul and Catherine to prevent her from seeing her grandchildren.

Maria knew that Mr and Mrs Ida were renting the Long Jetty property. She was aware that \$300 per week in rent was being paid to Paul and Catherine. She accepted that she did not suggest to either of them that they should be passing the rental payments on to her. I do not accept that, in early 2020, Maria believed that raising this issue with Paul or Catherine might lead to them preventing her from seeing her grandchildren. As I have already noted, I am also satisfied that Maria knew that any rental payments she received would need to be declared to Centrelink and that such payments might have had an impact on the part pension she was then receiving. In these circumstances, I am satisfied that Maria understood and was entirely comfortable with the arrangement whereby rent for the Long Jetty property was paid by Mr Ida to Paul and Catherine.

Maria downsizes from the Abbotsbury property

In early 2020, Maria decided to sell the Abbotsbury property and move into retirement accommodation, ultimately settling upon a retirement unit in Denham Court (Denham Court property).

It was common ground that Maria discussed with Paul and Catherine her decision to sell the Abbotsbury property and move into retirement accommodation. However, I am satisfied that she made the decision to do this independently and in order to free up further capital to fund her living expenses.

Maria made all relevant enquiries and arrangements for the sale of the Abbotsbury property and acquisition of a 99-year lease over the Denham Court property. She retained her own lawyers, Golottas Solicitors, to advise her in relation to those transactions.

The sale of the Abbotsbury property and lease of the Denham Court property completed on 1 June 2020. Once completed, these transactions left Maria with surplus sale proceeds exceeding \$300,000.

The transfer of the Long Jetty property to Paul and Catherine

At around the same time as Maria was making arrangements to sell the Abbotsbury property and move into the Denham Court property, she told Paul and Catherine that she also wanted to transfer the Long Jetty property to them. I consider the terms on which that transfer was to take place in greater detail below. For present purposes it is sufficient to note that I am satisfied that it was Maria who independently decided that this should occur; and that she then informed Paul and Catherine of that decision.

Correspondence sent to Maria by Golottas on 4 June 2020 reveals that Maria had discussed the transfer of the Long Jetty property with a solicitor from that firm prior to 1 June 2020, and that a portion of her surplus sale proceeds from the Abbotsbury property had been retained by that firm to cover — inter alia — “legal expenses relating to the work undertaken in respect to your ... transfer of [the Long Jetty property]”.

I am satisfied that, by mid-2020, Maria had been advised by Golottas that the transfer of the Long Jetty property to Paul and Catherine would likely trigger an obligation to pay a combined amount of approximately \$100,000 on account of stamp duty and capital gains tax. Golottas had by that time obtained a valuation of the Long Jetty property “for the purposes of stamp duty” from Meadow Real Estate Pty Ltd, which ascribed a value of \$700,000 to that property as at 19 June 2020.

Each of Maria, Paul, and Catherine gave conflicting evidence of conversations which were said to have taken place at around this time regarding the transfer of the Long Jetty property and payment of any costs associated with that transfer. In my view, the evidence given by each of them in relation to these conversations is more likely to reflect an unconscious reconstruction of events than an actual recollection of words used in any particular conversation. Once again, I consider it likely that there were multiple conversations at around this time in which the issue was discussed and that the evidence given by each of them is, at best, reflective of the general impression each had of those conversations.

While I am not able to make any finding about the words used in any particular conversation, I do accept the evidence given by Paul and Catherine to the effect that they initially resisted Maria’s suggestion that the Long Jetty property be transferred to them, and that their resistance stemmed from the fact that they were unsure that they could afford — and did not want to pay — the estimated \$100,000 in costs associated with that transaction.

Paul and Catherine’s attitude in relation to that matter is likely to have been informed by the fact that they were both well aware that:

Paul was to inherit the Long Jetty property when Maria died.

Negligible stamp duty would be payable if the Long Jetty property were to have passed to Paul in those circumstances.

Any capital gains tax liability would have been deferred until such time (if ever) as he chose to sell that property.

Although there remained a possibility that Maria would change her Will or choose to sell the Long Jetty property and use the sale proceeds to fund her living expenses, I do not accept that those possibilities motivated Paul and Catherine’s decision to accept the transfer of the Long Jetty property and contribute to the costs associated with that transfer.

It is apparent from the evidence that an understanding was ultimately reached between Maria, Paul, and Catherine to the effect that:

Maria would transfer the Long Jetty property to Paul and Catherine.

Maria would contribute \$30,000 toward the costs of the transfer, an amount that would likely be sufficient to cover the stamp duty payable.

Paul and Catherine would pay the balance, which principally involved payment of Maria's capital gains tax liabilities triggered by the transfer of the Long Jetty property, in relation to which Catherine subsequently assisted Maria to negotiate a payment plan with the ATO.

No other consideration would be paid by Paul and Catherine for the property. I discuss this final aspect of the understanding reached between them in slightly greater detail below when addressing Maria's principal contention that transfer of the Long Jetty property to Paul and Catherine represented a sale and not a gift.

Once that general understanding between Maria, Paul, and Catherine regarding the transfer of the Long Jetty property had been reached, Catherine engaged in her own correspondence with Golottas. She enquired whether it was possible to obtain an alternative valuation of the Long Jetty property; presumably in the hope that a lower estimate of its value would be proffered and, thereby, reduce the stamp duty and capital gains tax payable upon the transfer.

Catherine did obtain an alternative valuation of the Long Jetty property from Vanguard Valuations. In it, the author assessed the value of that property — once again “for stamp duty purposes” — to have been \$610,000 as at 3 August 2020.

On 2 September 2020, a transfer was lodged by Golottas, which effected the transfer of the Long Jetty property from Maria to Paul and Catherine.

Under the heading “Consideration”, the completed transfer recorded that “[t]he transferor acknowledges receipt of the consideration of \$610,000.00”. This figure was clearly drawn from the Vanguard Valuations' 3 August 2020 valuation, and was used to calculate the stamp duty and capital gains tax payable in connection with the transfer.

Maria receives advice from a financial planner

It was common ground that, shortly before the transfer of the Long Jetty property, Paul and Catherine insisted that Maria obtain advice from a financial planner in relation to the investment of the surplus funds that she had received following the sale of the Abbotsbury property.

It was suggested by Paul and Catherine that their willingness to receive the transfer of the Long Jetty property was made — and indeed, expressed to have been made — conditionally upon Maria receiving this advice. While I think this likely overstates the position, I do accept that Maria had little interest in receiving this advice and was ultimately persuaded to do so by Paul and Catherine; who each held a strong view that she should receive it.

On 29 June 2020, Maria met with Andrew Kostopoulos, a financial planner operating through Viridian Advisory Pty Ltd. Mr Kostopoulos had been recommended to Catherine by her own financial advisor. He was otherwise unknown to her.

The meeting was organised by Catherine and took place at Paul and Catherine's home. Maria, Paul and Catherine all attended the meeting; although I accept that Paul paid little attention to the discussions between Maria and Mr Kostopoulos.

On 26 August 2020, Viridian Advisory issued a statement of advice to Maria in relation to the investment of the surplus funds she had received following the sale of the Abbotsbury property. I discuss the content of this advice — and the instructions on which it was based — in further detail below. For immediate purposes it is sufficient to note that, in August 2020, Maria:

Invested \$100,000 in a lifetime annuity;

Invested \$100,000 in a diversified portfolio of managed funds; and

Retained approximately \$45,000 as accessible funds held in her bank account.

Events following the transfer of the Long Jetty property

In so far as the relationship and interactions between Maria, Paul and Catherine are concerned, little changed in the months following the transfer of the Long Jetty property. Things did change in 2022, when Sam reconnected with Maria after bumping into her at Club Marconi.

A significant body of evidence was adduced by the parties in relation to the events which followed Maria's reconciliation with Sam in late 2022. This evidence contained a wide range of factual allegations and other claims.

Some of those facts were contested. Others are incontrovertibly established by the objective evidence. Most have the capacity to damage reputations and further fracture relationships across three generations of the Donatiello family. Few (if any) have any material bearing on the issues which I am required to determine in this case.

I have given careful consideration to this evidence and how the various factual contests it has thrown up might be resolved. I have also given careful consideration to the extent (if any) to which this evidence — and the resolution of the various disputes it embodies — needs to be canvassed in these reasons. Ultimately, I have determined that it is neither necessary nor appropriate for me to address in these reasons the vast majority of the claims and assertions it contains; beyond noting the following conclusions which I have drawn from it that do bear on the issues that do need to be determined in this case.

Maria had ceased receiving a partial pension soon after she sold the Abbotsbury property; presumably because the surplus sale proceeds and the value of the Long Jetty property had combined to push her over a relevant asset threshold. While not receiving any form of pension, she did receive modest returns on the annuity she had placed through Viridian Advisory and had immediate access to that portion of the surplus sale proceeds which had been retained in her bank account. However, by late 2023, she had found herself in desperate need of further funds.

In October 2023, Maria contacted Catherine and demanded reimbursement for a \$20,000 payment that she claimed to have made to Sam on Paul's behalf. The payment to Sam was said by Maria to have been made on account of the contribution he had made toward the outgoings on the Long Jetty property prior to 2010.

Sam accepted that he received either \$15,000 or \$20,000 from Maria at around this time but denied demanding that money from her on account of the contributions he had made toward the outgoings on the Long Jetty property; he instead suggested that the funds had been given to him by Maria to help him through certain financial difficulties he was experiencing in his business due to his suffering from a lingering illness he attributed to COVID-19.

In November 2023, Maria again asked Paul and Catherine to pay her \$20,000; again claiming that she had paid that amount to Sam on Paul's behalf, had no money left, and would lose her house.

Paul refused to pay \$20,000 to Maria as a lump sum but did offer to pay for her groceries and rent. Maria refused that offer; it was clear from her evidence that she considered it to have been insulting. Her relationship with Paul and Catherine broke down and she has had very little communication with them since that time.

In February 2024, Sam sent Paul a threatening message. He later attended Paul's workplace. A loud argument ensued and Sam made further significant threats to Paul.

On about 22 March 2024, Maria sent a letter to Paul. Her letter covered a wide range of topics and included a further request that Paul and Catherine pay her \$20,000.

Later that same day, Paul sent Maria a text message in which he said, inter alia:

"We will give you \$30,000 and only hope you don't put this in the machines. We offered to pay your rent and groceries so you would have a roof over your head and food on the table You forget all the good me and my wife has done for you in sickness and in health over the last 14 years. We would never stop you from seeing your grandchildren... We will draft a letter recording the transaction and will contact you when it is ready to be signed."

In April 2024, Catherine prepared a "deed of gift" using a template she had found on the internet. Under the deed of gift, Paul and Catherine were to transfer a sum of \$30,000 to Maria, and she would release them from all present and future claims; no particular claims were identified. A copy was sent to Maria and, at some later point in April 2024, she signed and returned that deed to Paul and Catherine's house.

On 1 May 2024, Catherine arranged for \$30,000 to be transferred to Maria.

In about June 2024, Paul and Catherine put the Long Jetty property up for sale.

On about 19 March 2025, a caveat over the Long Jetty property was lodged on behalf of Maria.

On 16 September 2025, Maria sent a further letter to Paul and Catherine's home. In it she requested that they give her a further \$30,000 to \$50,000 "to get [her] through the whole of next year". Neither Paul nor Catherine responded to this letter.

On about 19 November 2025, Paul and Catherine's then-solicitors served a lapsing notice in respect of the caveat. In December 2025, these proceedings were commenced by Maria. On 10 December 2025, Slattery J made an order pursuant to s 74D of the Real Property Act 1900 (NSW) extending the caveat over the Long Jetty property until further order.

Issue 1: Did Paul and Catherine agree to purchase the Long Jetty property from Maria or was it gifted to them?

Maria's principal contention was that Paul and Catherine had agreed to purchase the Long Jetty property from her.

I raised with Mr Evans (who appeared for Maria) what I perceived to be an inconsistency between this aspect of Maria's case and her ultimate claim that the transfer of the Long Jetty property to Paul and Catherine represented an unconscionable bargain.

When asked how it could have been unconscionable for Paul and Catherine to have agreed to purchase the Long Jetty property from Maria at a price determined by an independent valuer, Mr Evans suggested — in effect — that it was Paul and Catherine's failure to have paid the agreed price which made this arrangement unconscionable. I have some difficulty accepting this submission. Failure by Paul and Catherine to pay a sum that they had agreed to pay for the purchase the Long Jetty property would seem to give rise to an altogether different cause of action. However, this is ultimately not a matter I need to address as I am comfortably satisfied that Maria gifted the Long Jetty property to them.

The evidence Maria gave as to the purported purchase price was inconsistent; it wavered between \$610,000 and \$700,000. She steadfastly resisted all suggestions that she had gifted the property to Paul and Catherine.

Sam also sought to emphasise, through his oral evidence, that Maria had "sold" the Long Jetty property to Paul and Catherine. He too resisted any suggestion that the property had been gifted to them. I give no weight to this aspect of Sam's evidence. He was not actually a party to any of the relevant conversations between Maria, Paul, and Catherine. Given they all took place during the lengthy period that he was wholly estranged from Maria, Paul, and Catherine, he would not even have received a contemporaneous account of those conversations from any one or more of the people who were involved in them. To the limited extent that any evidence given by Sam was relevant to the issues I must determine, his steadfast refusal in these circumstances to accept even the possibility that Maria could have gifted the Long Jetty property to Paul and Catherine causes me to approach that evidence with significant caution.

Maria sought to further reinforce the claim that she had sold the Long Jetty property to Paul and Catherine through evidence given by Mr Zaccaria. Mr Zaccaria has long had a warm and friendly relationship with Sam, who helps him by cleaning his pool from time to time. Mr Zaccaria acknowledged that he had spoken to Sam about Maria's case and that this is what had led him to relay to Sam an account of what he considered to have been a relevant interaction that he claimed to have had with Maria. Mr Zaccaria prepared an affidavit and gave oral evidence in

which he described this interaction. That evidence has only marginal relevance to any real issue in the proceedings.

Mr Zaccaria claimed to have had a brief conversation with Maria in April or May 2020 after noticing a “For Sale” sign outside the Abbotsbury property, which was located next door to the then home of his “in-laws”. He further claimed that, during this conversation, Maria told him twice that she was “selling the holiday house to Paulie”. Like Maria and Sam, Mr Zaccaria firmly resisted any suggestion that she might have gifted the Long Jetty property to Paul and Catherine.

I have no confidence in the reliability of Mr Zaccaria’s evidence on this topic and place very little weight on it. It is most unlikely that Mr Zaccaria has a reliable memory of the precise words used by Maria during a largely incidental conversation which had taken place six years before he came to give his evidence. To the extent that he now has any recollection of that conversation, I consider it most likely that his memory of it has been unconsciously shaped or otherwise corrupted by discussions he has had with Sam about Maria’s case.

Finally, Maria relied on the form of transfer prepared by Golottas when the Long Jetty property was passed to Paul and Catherine; she submitted that the particular form used — and the language deployed in it to describe the consideration — was consistent with the property having been sold for \$610,000 rather than gifted to Paul and Catherine. To the extent that this is the case, I am not satisfied that it reflects anything more than an inadvertent use of the wrong form by the solicitor who prepared it on Maria’s behalf.

The contemporaneous documents make clear that Maria intended to gift the property to Paul and Catherine. That this was her intention is made plain in minutes of the 29 June 2020 meeting with Mr Kostopoulos and his subsequent statement of advice.

In the letter Maria sent to Paul on 22 March 2024 she makes clear that she had gifted the Long Jetty property to him. Four days earlier, she had completed an application for the aged pension in which — in answer to question 54 — she referred to the Long Jetty property as an asset that she “gave away or sold for less than its market value” and left blank the box which prompted her to indicate “what [she] got for it”.

Finally, it is difficult to reconcile the proposition that Paul and Catherine agreed to purchase the Long Jetty property from Maria with the objective fact that two separate valuations were obtained prior to the transfer, each of which expressly valued that property “for stamp duty purposes”.

The suggestion that Paul and Catherine had agreed to purchase the Long Jetty property is also wholly at odds with the probabilities.

Both were aware that Paul was to inherit the property when Maria died. In those circumstances, the property would have been transferred to him for no consideration and the approximately \$100,000 transaction costs ultimately triggered by the transfer of that property to them during Maria’s lifetime would have been, in part, avoided and, in part, deferred. Both were aware of this fact. It was common ground that Paul and Catherine were at least unwilling — and possibly unable — to fund in full these transaction costs. It is inherently unlikely that, in those

circumstances, Paul and Catherine would have agreed to pay \$610,000 for the Long Jetty property, let alone the \$700,000 figure suggested by Maria in some aspects of her evidence.

As I have already noted, I do not consider this situation is likely to have been altered in any material way by what would then have been seen by Paul and Catherine as the slight chance that Maria's testamentary intentions might change, or that she might have sold the Long Jetty property to fund her lifestyle.

I am comfortably satisfied that Maria gifted the Long Jetty property to Paul and Catherine and that in doing so she believed that she was merely bringing forward her testamentary intentions so as to make herself eligible — five years after the transfer — to receive a full pension whilst, at the same time, keeping the Long Jetty property, that she remained proud of, in her family.

Issue 2: Was the transfer of the Long Jetty property obtained by unconscientious dealing?

The applicable principles

There was no dispute as to the circumstances in which equity will intervene to set aside a transaction because of unconscionable conduct.

As articulated in *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447 at 461; [1983] HCA 14, unconscionable conduct will be found to have affected a transaction where:

“a party makes unconscientious use of his superior position or bargaining power to the detriment of a party who suffers from some special disability or is placed in some special situation of disadvantage”.

In *McLennan* by his tutor *Kennedy v McLennan* [2026] NSWCA 102 at [54], Ball JA recently observed that:

“Unconscionability in this context involves (1) the existence of a special disability or disadvantage affecting the weaker party's ability to make a judgment as to their best interests, (2) knowledge of that disadvantage by the stronger party, and (3) the stronger party unconscientiously taking advantage of that disadvantage. Identification of these elements ought not occur separately or in a mechanical manner, but rather as part of ‘a precise examination of the particular facts’ and ‘a scrutiny of the exact relations established between the parties’”. (Citations omitted)

As to the first of these matters, in *Stubbings v Jams 2 Pty Ltd* (2022) 276 CLR 1; [2022] HCA 6 at [40] the High Court noted that:

*“In this field of discourse, “special disadvantage” means something that “seriously affects the ability of the innocent party to make a judgment as to his [or her] own best interests”. While the factors relevant to an assessment of special disadvantage have not been exhaustively listed, Fullagar J in *Blomley v Ryan* considered that special disadvantage may be inferred from “poverty or need of any kind, sickness, age, sex, infirmity of body or mind, drunkenness, illiteracy or lack of education, lack of assistance or explanation where assistance or explanation is necessary”. No particular factor is decisive, and it is usually a combination of circumstances that establishes an entitlement to equitable relief.” (Footnotes omitted)*

In so far as it is necessary to establish knowledge on the part of Paul and Catherine, that knowledge can be actual or constructive. It will be sufficient for them to have been aware of the possibility that the special disadvantage may exist, or of facts that would raise that possibility in the mind of any reasonable person: *Amadio* at 467. However, this is to be contrasted with constructive notice, in the sense of being on notice of facts that might lead on inquiry to discovery of the existence of a special disadvantage. The latter will not suffice: *Nitopi v Nitopi* (2022) 109 NSWLR 390; [2022] NSWCA 162 at [10] and [199].

Turning to the third matter identified by Ball JA in *McLennan*, it was not suggested that Paul and Catherine actively procured the transfer of the Long Jetty property. To the contrary, I am satisfied that it was Maria who was the principal driver of the transaction. However, this fact will not alone preclude a finding that Paul and Catherine unconscientiously took advantage of any special disadvantage that Maria might have been labouring under. It is now accepted that the passive acceptance of a benefit in unconscionable circumstances will suffice: see *McLennan* at [60]-[62] and the cases cited therein.

I recognise that the three matters identified by Ball JA in the above extract should not be approached as if they were discrete elements of a cause of action: *Stubbings v Jams 2 Pty Ltd* at [39]; *Nitopi v Nitopi* at [198]. Nevertheless, it is convenient to examine the particular facts of the present case by reference to each of those matters before returning to consider whether, drawing those facts together, I am satisfied that Paul and Catherine made unconscientious use of a superior position or bargaining power to the detriment of Maria in accepting and retaining the transfer of the Long Jetty property.

Was Maria burdened by a special disability or disadvantage?

Maria said that the special disadvantage that affected her at the time the Long Jetty property was transferred arose from a combination of:

Her age.

Her lack of sophistication in relation to financial matters.

Her financial need.

Her ill health.

Her emotional dependence on Paul and Catherine.

Age

Maria was 73 years old when she transferred the Long Jetty property to Paul and Catherine.

Age has been identified as a circumstance that can adversely affect a party and induce a court of equity to set aside a transaction: *Bridgewater v Leahy* (1998) 194 CLR 457; [1998] HCA 66 at [40]; *Blomley v Ryan* (1956) 99 CLR 362 at 405; [1956] HCA 81. However, I do not think the mere fact that Maria was 73 years old at the time of the relevant transaction materially compromised her ability to judge what was in her best interest or to act on that judgement. In saying this, I

acknowledge that there is at least a potential relationship between Maria's age and several of the other matters on which she relied in seeking to establish that she suffered from a special disadvantage or disability at the time of that transaction.

Financial Sophistication

I accept that Maria did lack some sophistication in relation to financial matters at the time of the relevant transaction. She had received very little in the way of formal education. Nevertheless, by the time she came to transfer the Long Jetty property, Maria had acquired, and demonstrated, a firm capacity to manage her own financial affairs.

Maria spent decades working in the retail sector and, for several years, operated her own retail business. She had always managed her own money and controlled her own bank accounts. She had managed the family's finances when Paul and Sam were children.

Maria's capacity to engage with her financial affairs is evidenced by her independent decision to downsize from the Smithfield property to the Abbotsbury property and her subsequent decision to sell that property and acquire an interest in the Denham Court property.

I am satisfied that her decision to embark upon each of these property transactions was made by Maria independently. In fact, it is to be recalled that Maria's decision to sell the Smithfield property was one of the catalysts for her lengthy period of estrangement from Sam. Against his opposition, she independently decided that that it was in her best interest to sell the Smithfield property and she did so. Nothing in the evidence points to her having been wrong in this assessment.

When embarking on each of these significant transactions, Maria recognised the need for, and was able to obtain, independent professional advice. I infer that she engaged real estate agents to act on her behalf. She understood that she needed to retain lawyers to provide advice and act on her behalf in connection with each of these important transactions, and she did so.

The same can be said of her decision to transfer the Long Jetty property to Paul and Catherine. Like her earlier property transactions, I am satisfied that Maria independently arrived at the decision to gift the Long Jetty property to Paul and Catherine. Before she had even discussed this decision with them, she obtained advice from Golottas and had an understanding of the likely transaction costs. She also had a clear understanding of the impact that gifting the property would have on her entitlement to receive a pension. In fact, Maria had a reasonably well-developed understanding of her entitlement to receive a pension, and how the transfer of the Long Jetty property might have impacted upon that entitlement; this was informed by information she had obtained from Centrelink and through her discussions with friends.

Overall, I am satisfied that Maria had an ample appreciation of her own financial affairs at the time she transferred the Long Jetty property to Paul and Catherine and well understood the financial implications of that transaction. Any lack of sophistication in her understanding of her finances was not sufficient to have prevented her from making an informed and independent decision about whether it was in her interests to do so.

I am not satisfied that Maria's lack of financial sophistication rose to a level where it can be characterised as a special disability or disadvantage in the relevant sense.

Financial Need

To the extent that Maria placed reliance on her financial need, that need must be assessed by reference to her financial circumstances at the time she transferred the Long Jetty property to Paul and Catherine.

At that time, Maria held a 99-year lease over the Denham Court property. She was required to make a monthly contribution to the operators of the Denham Court facility. Maria described this as rent, although it may have been a maintenance levy or some other form of contribution towards outgoings. The strict characterisation of this payment does not really matter as — irrespective of what it was — Maria needed to pay it each month. To this recurring payment was to be added such other monthly expenses as Maria might have incurred in connection with her lifestyle.

At that time, Maria had access to the surplus sale proceeds received following the sale of the Abbotsbury property. However, the fact that she had received those surplus sale proceeds meant that she was no longer eligible to receive the part pension she had previously been receiving. Her entitlement to receive any sort of pension was — to her knowledge — going to be restricted for a period of five years after she transferred the Long Jetty property to Paul and Catherine.

The notes of Maria's first meeting with Mr Kostopoulos record that she believed that her annual expenses totalled approximately \$20,000. Mr Kostopoulos indicated that the returns on her funds would be insufficient to fund these expenses. As a result, her expenses would inevitably erode the capital she had to invest.

Much was made by Maria of the fact that these surplus sale proceeds — and any earnings thereon — were never going to be sufficient to cover her living expenses for the remainder of her life. However, the adequacy of the surplus sale proceeds to meet Maria's living expenses must be assessed in the broader context of her clearly stated objective.

Maria was eager to receive a full pension. I am satisfied that she was also quite content to live on that pension once it became available; that is, five years after gifting the Long Jetty property to Paul and Catherine.

As the notes of Maria's first meeting with Mr Kostopoulos and his subsequent statement of advice make clear, Maria had decided to gift the Long Jetty property to Paul and Catherine. I have found that she proposed to do this so as to become eligible to receive a full pension. She knew that she

would be unlikely to receive any sort of pension for five years after the transfer and, in those circumstances, was aware that she would need to be a “self-funded retiree” throughout the five-year period. Mr Kostopoulos had made clear to her that the earnings on her surplus sale proceeds would be insufficient to meet her annual living expenses, but she chose to gift the property to Paul and Catherine anyway.

In these circumstances, it is not to the point that Maria’s cash reserves may not have been sufficient to sustain her for the remainder of her life. Those reserves only needed to sustain her for the five-year window that she was to be ineligible for a pension. Based on the estimate of her living expenses provided to Mr Kostopolous, Maria had more than sufficient funds available for that purpose. Thereafter, her financial reserves would merely supplement her pension, to the extent that they had not been exhausted.

As Mr Kostopoulos made clear, after five years Maria would become entitled to receive a pension and, from that point onward, would receive an income which actually exceeded her stated requirements.

In these circumstances, I do not think Maria was — or, more importantly, believed herself to be — in financial need at the time she transferred the Long Jetty property to Paul and Catherine. Nor do I accept that Maria’s financial needs relative to what she anticipated would be her costs of living (or her perception of this) placed her in a position of special disability or disadvantage.

In light of this conclusion, a question arises as to how Maria’s surplus funds nevertheless came to be exhausted in the three years that followed her sale of the Abbotsbury property.

As I have already noted, \$30,000 of the surplus funds was contributed by Maria to the costs associated with the transfer of the Long Jetty property. A further \$20,000 was paid to Sam in circumstances I have touched on above. The balance was spent by Maria.

The modest returns on Maria’s annuity and a portion of her capital was always going to be required to fund her annual living expenses. However, those living expenses were not, alone, responsible for the rapid exhaustion of the funds Maria had retained following the sale of the Abbotsbury property.

Those of Maria’s bank statements that were in evidence reveal that, throughout this period, she made a substantial number of cash withdrawals through ATMs located in Club Marconi and various other registered clubs in Sydney’s south-west. Multiple large withdrawals were often made on the same day from ATMs at one — and sometimes more than one — of these clubs. Not infrequently, these withdrawals added up to hundreds of — and occasionally more than a thousand — dollars in a single day.

The evidence does not reveal what Maria did with the cash she withdrew from the ATMs on these occasions. Maria agreed that she likes to have a “little flutter” on the poker machines, but both she and Sam expressly denied that she has ever had a gambling problem. Ultimately, it is difficult to resist the inference that a significant portion of the money withdrawn by Maria from ATMs located at various registered clubs during the 3 years following the sale of the Abbotsbury property was gambled away though poker machines.

Maria did not point to a gambling addiction as a special disability or disadvantage. Whatever contribution problematic gambling may have made to the financial troubles subsequently faced by Maria, I am not satisfied that, at the time the Long Jetty property was transferred, she, Paul, or Catherine had sufficient awareness of the potential impact of that gambling for it to have constituted or contributed to any special disability or disadvantage in Maria.

Ill health

Maria’s reliance on her ill-health can be dealt with quickly. The evidence makes clear that in 2017 Maria suffered from panic attacks and anxiety.

Whatever health issues Maria may have had in 2017, there is no suggestion that those issues prevented her from making an independent and informed judgement of what was in her best interest as at mid to late 2020.

Emotional Dependence on Paul and Catherine

The position is more complex in relation to Maria’s emotional dependence on Paul and Catherine. Maria was clearly very close to Paul, Catherine, and their children.

If Maria did have “a strong emotional dependence [on] or attachment [to]” Paul and Catherine when she transferred the Long Jetty property to them, that would — at least theoretically — be capable of amounting to a special disadvantage: *Thorne v Kennedy* (2017) 263 CLR 85; [2017] HCA 49 at [113]; *Bridgewater v Leahy* at [115]; *Louth v Diprose* (1992) 175 CLR 621 at 626; [1992] HCA 61. However, such a relationship will not necessarily give rise to a special disability or disadvantage; it will always depend on the circumstances of the case.

At the time she transferred the Long Jetty property to Paul and Catherine, Maria was estranged from Sam and his family. She no doubt thought of Paul, Catherine, and their children as her immediate family. She enjoyed spending a lot of time with them and was actively involved in their lives.

However, Maria also had a wider friendship group. She remained close to her sister. She would regularly socialise with her friends. It is clear from the evidence that Paul and Catherine were not Maria’s only source of emotional support. In fact, I am not satisfied that they were even her primary source of emotional support at that time; nor am I satisfied that her dependence on them rose to the level of a special disadvantage.

I accept that Maria likely placed weight on anything Catherine said to her in relation to financial matters. Maria knew that Catherine worked in the wider finance industry and is likely to have considered her to have been knowledgeable in relation to such issues. I have already referred to the fact that Maria discussed with Catherine her plan to take out a reverse mortgage.

Nonetheless, Catherine was also not Maria's only source of advice and information on matters financial. She placed weight on advice provided to her by people within her wider friendship group, particularly about the pension.

More importantly, Maria also obtained professional advice from Mr Kostopoulos. She described what she said was the limited nature of the advice he provided; pointing out that he was asked to assume that the Long Jetty property would be gifted to Paul and Catherine and, therefore, confined his advice to the surplus sale proceeds Maria had received. While it is true that Mr Kostopoulos does not appear to have been asked to advise on what Maria should do with the Long Jetty property, I am nevertheless satisfied that the advice he was asked to provide assisted her in making this decision. It gave her a clear understanding of the position she would likely be in if she proceeded with the intended transaction.

I am otherwise not satisfied that Paul or Catherine had significant influence over Maria in so far as her financial decision-making was concerned. Maria independently decided to sell the Abbotsbury property and purchase her interest in the Denham Court property. She independently decided to gift the Long Jetty property to Paul and Catherine so as to secure an entitlement to a full pension. Paul and Catherine were able to exercise influence over Maria when they insisted that she obtain advice from a financial planner. Even then, she ultimately chose to depart from the advice provided by Mr Kostopoulos without first discussing this decision with Paul or Catherine.

Conclusion

Ultimately, I am not satisfied that any of the matters relied upon by Maria — either individually or collectively — placed her in a position of special disability or disadvantage at the time she transferred the Long Jetty property to Paul and Catherine.

Did Paul and Catherine have knowledge of any special disadvantage and, if so, did they unconscientiously take advantage of it?

For the reasons I have given above, I am not satisfied that Maria was labouring under any special disability or disadvantage when she transferred the Long Jetty property to Paul and Catherine. Nor am I satisfied that either Paul or Catherine unconscientiously took advantage of Maria.

Paul and Catherine hosted Maria's 70th birthday celebrations less than three years before the Long Jetty property was transferred to them. It is clear that each was aware of her age. They must also have been aware of the fact that she had enjoyed little formal education. However, both knew of Maria's employment history and of the fact that she had managed her own and her family's finances with confidence and independence for many years.

While Paul collected Maria from hospital on at least one occasion in 2017 and Catherine took her to several appointments with medical practitioners — and attended at least one of her appointments with a psychiatrist — I am not satisfied that either had a detailed knowledge of Maria's health issues at that time and neither was aware of any health problems that she may have had by the time she came to transfer the Long Jetty property to them in late 2020.

Having attended Maria's meeting with Mr Kostopoulos, Paul and Catherine knew how much money Maria had available in mid-to-late 2020 and were aware of what she estimated to be her annual living costs. They would also have been aware of the funds Maria had to meet those costs going forward and of the wider content of Mr Kostopoulos' advice to Maria.

While Paul was aware that Maria enjoyed gambling, neither he nor Catherine could have predicted that Maria would withdraw as much money as she evidently did from ATMs at registered clubs in the years immediately following the transfer of the Long Jetty property. She did not reveal to them (or Mr Kostopoulos) the extent of her spending in this area, nor did she give them any reason to suspect that the scale of these withdrawals would escalate in the way that it did.

If Maria's gambling in mid-to-late 2020 was sufficient — alone or in combination with other matters — to have amounted to a special disability, neither Paul nor Catherine were aware of this. During these proceedings, Maria expressly denied that she has a gambling problem. Sam, with whom she is once again close, similarly denied that Maris has a gambling problem. Whatever might be inferred from her bank statements in this regard, there is no suggestion that Paul or Catherine ever had access to those bank statements or were otherwise aware of the amount of money she was — or was likely to — waste on gambling when they accepted the transfer of the Long Jetty property.

In fact, neither Paul nor Catherine were aware of any fact that might have indicated to them that Maria would be incapable of managing her money during the five-year period that she was required to self-fund her retirement. To the contrary, the arrangements put in place following the advice provided by Mr Kostopoulos could only have given Paul and Catherine comfort that Maria's surplus sale proceeds would be managed prudently during this period.

The fact that Paul and Catherine knew Maria had obtained independent advice from both Mr Kostopoulos and Golottas in relation to the transfer of the Long Jetty property and her wider financial circumstances is itself important, and weighs heavily against a conclusion that they took unconscientious advantage of her by receiving and retaining that property. Not only were Paul and Catherine aware that Maria had sought and obtained independent advice; they had urged her to do so. Neither Paul nor Catherine had any reason to think that such advice as was provided to Maria in relation to these matters was incorrect or was being disregarded by Maria.

Views may differ about the financial prudence of Maria's decision to gift the Long Jetty property to Paul and Catherine so as to qualify for a full pension in the future and, at the same time, keep that property in her family. Some may think she would have been better off financially had she retained the Long Jetty property and used it — instead of the pension — to fund her retirement.

Ultimately, it is not necessary reach a concluded view on whether gifting the Long Jetty property to Paul and Catherine was the best decision for Maria to have made or whether it was in her “best interests”.

Assuming that Maria was content to live the life that a full pension would provide for her — as I have found she was — there is nothing objectively uncommercial about her decision to gift the property to Paul and Catherine. Even if there was, as the High Court said in *Kakavas v Crown Melbourne Ltd* (2013) 250 CLR 392; [2013] HCA 25 at [20]:

"equitable intervention does not relieve a plaintiff from the consequences of improvident transactions conducted in the ordinary and undistinguished course of a lawful business”.

For the above reasons, I am not satisfied that Paul or Catherine were aware that Maria was suffering from any special disability or disadvantage. Nor am I satisfied that — by accepting the transfer of the Long Jetty property — either of them took unconscionable advantage of her.

Conclusion and Orders

It follows that proceedings should be dismissed.

A question arises as to whether any order should be made in relation to the caveat over the Long Jetty property, Slattery J having extended it “until further order”. While I will hear the parties on that issue, s 74LA of the Real Property Act would appear to make a further order unnecessary.

As to costs, Paul and Catherine have been wholly successful in their defence of the claim made by Maria. As such, it would ordinarily follow that they should recover their costs of the proceedings. I propose to make an order to that effect but reserve to the parties the right to apply for some other costs order if so advised.

Accordingly, I make the following orders:

The proceedings are dismissed.

The plaintiff is to pay the defendants’ costs of the proceedings.

If any party contends for a different costs order to that which is provided for in Order 2, they should make an application to my Associate by 4pm 7 September 2026, whereupon I will vacate Order 2.

Should an application for a different costs order be made pursuant to Order 3:

That application should include submissions of not more than 3 pages and any evidence;

Any other party may serve and provide to my Associate responsive submissions of not more than 3 pages and any evidence by 4pm 11 September 2026; and

I will, thereafter, determine the question of costs on the papers.

Amendments

02 September 2026

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2 Sep 2026: Jurisdiction changed to Equity on coversheet.

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Decision last updated:

02 September 2026

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