

JERSEY / JUDGMENT

# Millard v Cox and Ors [2022]

## JRC 023 (27 January 2022)

[2022] JRC 023

---

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

---

### JUDGMENT

the master:

### Introduction

1. This judgment contains my reasons for refusing various applications for specific discovery made by the plaintiff and for ordering general discovery and making certain other directions.

### Background

2. The background to the present proceedings concerns the real and personal estates of Annie May Bosworth ("the deceased"). The proceedings primarily concern two Wills of personalty and realty made in 2017 by the deceased. 3. The plaintiff is the only child of the deceased and Philip Stanley Bosworth ("Mr Bosworth"). 4. The first defendant is the daughter of the deceased and Mr Frederick Cox. The plaintiff and the first defendant are therefore half-sisters. 5. The second defendant is the husband of the first defendant. The third defendant is one of the two sons of the first and second defendants and the fourth defendant acted as attorney of the third defendant in applying for a grant of probate in respect of the 2017 Will of personalty. 6. On 9 th April 2020 the 2017 Will of realty was registered before the Royal Court. 7. The order of justice seeks to set aside both Wills on the basis that they were procured through undue influence on the part of the first, second and/or third defendants and/or that the deceased lacked the capacity to make the Wills. 8. In relation to the 2017 Will of realty, it is also alleged that the provisions of this Will were in breach of an agreement between the deceased and the plaintiff that the deceased would provide for the plaintiff because the plaintiff agreed to renounce her entitlement to participate in Mr Bosworth's estate because otherwise there would be adverse tax implications for her. According to the plaintiff this agreement manifested itself in various Wills of realty of the deceased leaving the deceased's home in Jersey to the plaintiff. 9. The dispute also contains a challenge by the plaintiff to the sale of the property where the deceased was living from 1989 to 2019 called 3, Parcq du Rivage which was sold, and a property called Les Quatre Saisons purchased where the deceased and the first and second defendants all resided. It is the plaintiff's case that

these transactions were entered into on the basis of undue influence and were procured without the consent of the deceased. The relevant sale and purchase occurred on 20 th April 2018. 10. The order of justice also contains allegations about how the first and second defendants were caring for the deceased from 2019 onwards and that the plaintiff and her family were excluded in later years from any dealings with the deceased. However no relief is sought in respect of these allegations as is clear from the prayer to the order of justice which seeks the following orders : - "(a) set aside the 2017 Will of Realty and the 2017 Will of Personalty and the resulting Acts of the Royal Court;

- (b) declare that the 2007 Will of Realty and the 2007 Will of Personalty are effective in place of the 2017 Will of Realty and the 2017 Will of Personalty respectively;
- (c) order the First and/or the Second and/or the Third and/or the Fourth Defendants to provide a full and complete inventory of the avances which they have received from the Deceased during her lifetime;
- (d) set aside the Power of Attorney;
- (e) set aside such actions as the Court may deem fit, purportedly taken by the Deceased's Attorneys pursuant to the Power of Attorney (once the said actions have been identified);
- (f) set aside the sale of 3 Parcq du Rivage and / or the purchase of Les Quatre Saisons ;
- (g) part of the decision of the Court under paragraph (a) hereof, order the First Defendant to pay such sum as the Court shall deem fit by way of caution pursuant to Article 17 of the Loi (1851) sur les testaments d'immeubles ;
- (h) order the First and / or Second and / or Third Defendants to pay such sum as the Court shall deem fit by way of damages to the Plaintiff..." 11. Interests and costs are also sought.

## Procedural history

12. The first to third defendants have filed pleadings disputing the plaintiff's claims. It is not necessary generally to set out the details of the pleadings in response save that the third defendant pleaded that in 2015 the deceased executed a new Will of personalty . In terms of the material provisions of the 2015 Will of personalty , these were the same as the 2017 Will of personalty namely that the estate of the deceased was to be split equally between the plaintiff and the first defendant. This led the third defendant to contend that even if the 2017 Will of personalty was set aside the 2015 Will would take effect in its place. 13. The 2007 Will of realty left the deceased's realty to the plaintiff in contrast to the 2017 Will which left the deceased's realty to the first defendant. 14. Advocate Begg for the plaintiff in response to this pleading asserted that his client was not aware of the 2015 Will which is why it had not been referred to in the order of justice. As far as the plaintiff was aware the last Wills made by the deceased prior to 2017 had been in 2007 which divided the personal estate as  $\frac{2}{3}$  for the plaintiff and  $\frac{1}{3}$  for the first defendant and left the deceased's realty to the plaintiff. 15.

Following the filing of pleadings, the matter came before me for directions on 25 th August 2021 where I made the following orders at paragraphs 1 to 7: - "1. the action shall be set down on the hearing list; 2. Pursuant to Royal Court Rule 6/15, the Plaintiff and the First Defendant within 14 days shall provide a supplementary pleading, to be provided to all parties and filed with the Court, setting out their full case as to whether they received any lifetime gifts as avances de succession from the Deceased, and if so what gifts 3. the Parties shall make discovery of the following categories of documents to each other by a List of Documents verified by affidavit by 5:00 p.m. Friday 17th September 2021: - a. any documents relevant to the Deceased's instructions and capacity to make Wills in February 2015 and July 2017; b. any documents relevant to the execution of the General Power of Attorney by the Deceased dated 23rd July 2017, including any documents relating to the Deceased's capacity to do so; c. any documents relating to the sale of 3, Parcq de Rivage and the purchase of Les Quatre Saisons dated 20th April 2018, including any documents recording or containing the Deceased's instructions or capacity in relation to these transactions. 4. the Third Defendant shall also provide discovery of: - a. any documents referred to in paragraph 4 including the sub-paragraphs of his answer; b. any documents relating to the Agreement as defined at paragraph 9 of the order of justice, and the allegation of a breach of the Agreement as pleaded at paragraph 33. 5. the Plaintiff shall also provide discovery of any telephone records upon which they wish to rely concerning their attempts to call the deceased from 2017 onwards; 6. in relation to the Third Defendant this order shall also operate as a subpoena requiring the Third Defendant in his capacity as a partner in Lexstone Lawyers and that firm to produce any documents in his or their possession, custody or power described in paragraphs 3 or 4 of this order held by Lexstone Lawyers, such documents also to be produced by 5:00 p.m. Friday 17th September 2021; 7. the Fourth Defendant shall further produce any medical records of the Deceased in his possession, custody or power insofar as not already disclosed to the Parties, also by 5:00 p.m. Friday 17th September 2021;..." 16. I then stayed the action until 29 th October 2021 for the purposes of mediation. The limited discovery was ordered because the parties wanted to mediate. 17. Following the expiry of the stay my secretary enquired whether the matter had settled or whether a further directions hearing was required. This led to complaints from Advocate Begg about alleged failures by the defendants to provide proper discovery in accordance with the orders made on 25 th August 2021. I indicated in response that if the complaint was that the plaintiff considered that the defendants were in breach of orders I had made previously, then a specific summons should be issued to that effect. In the alternative I suggest that if what was sought was specific discovery then again, an appropriate summons should be issued. 18. Advocate Sharp in response to Advocate Begg's exchanges with the court wrote on 5 th November 2021 an email to Advocate Begg which included the following: - "I refer to your exchanges with the Court below. As best I understand it, the mediation process was and remains confidential and is not to be referred to by one party "in the court proceedings. Please refrain from any further breaches of these principles. In so far as you determine to issue a Summons regarding the previous discovery order, then I wish to put you on notice that the Plaintiff is at serious risk on costs. The allegations are denied but at all events, there

is a notable absence of an open pre-application letter from you that articulates what the concerns/ issues are. As a matter of basic fairness, the other parties are entitled to know in open correspondence, that the Court can also see, what they are said to have done/not done before any application is made to the Court. What you are proposing is not cost effective. On 1st October 2021, and without waiving privilege, the Third Defendant notified me that he had inadvertently not disclosed the attached email exchanges in his affidavit of discovery. These were disclosed into the mediation process. These same documents are now openly disclosed into the court proceedings by this email. An updated affidavit/schedule will be produced. I mention these matters now so that you don't waste costs issuing a Summons in respect of the same. If there is some other discovery issue that you say the Third Defendant should address then, as I say, you are invited to articulate your concerns in open correspondence before any Summons is issued. I would suggest that the more sensible and cost efficient course would be for the Plaintiff to seek standard discovery orders at the directions hearing already envisaged by the Court. If you are still unhappy at the end of the full discovery process, then any outstanding issues about discovery (whenever arising) can all be addressed in one go so far as I am concerned." 19. Advocate Boothman wrote an email to like effect. 20. Advocate Begg then provided a summons and a date fix hearing took place. 21. In relation to this summons, Advocate Young on th November 2021 confirmed the following:- "1) We have written to Lloyds Bank and have this week received confirmation that they are gathering copies of the bank statements, once received we will send copies to the parties;

- 2) We will write again to the Deceased's GP in France but given the silence thus far do not anticipate that they will respond;
- 3) If you provide to me a schedule of the redacted parts of the medical notes you require we will write to IMC. I am assuming that these redactions are relevant to the facts in issue in the pleaded cases of the parties. If not, we are not prepared to spend estate monies without further court order. Consequently, please briefly set out the reasons why the redactions identified in the schedule are necessary." 22. Having reviewed the summons, I also wrote to Advocate Begg copied to the other parties on 12 th November 2021, including the following observation: - "In relation to Advocate Begg's summons, as a general comment I ask Advocate Begg to set out what orders he considers I should make. It is not sufficient simply to require me to make such orders as I see fit without setting out what orders the plaintiff considers I should make. This is so that the parties affected know the case they have to meet. This arises from the overriding objective which places an obligation on parties to help further the overriding objective, namely, to deal with cases justly and at a proportionate cost." 23. A revised summons was produced which came before me for hearing on 5 th January 2022. Advocate Begg had filed an affidavit in support of his application sworn on 26 th November 2021. The first and second defendants provided affidavits in response. The affidavit from the first and second defendants was sworn by Mr Herold-Howes on 24 th December 2021. The third defendant provided his affidavit in response in approved form on 31 st December 2021 and a sworn version on 4 th January 2022. The summons 24. In relation to the Act of Court of 25 th August 2021 the plaintiff's summons in summary sought the

following. (i) requests were made in relation to the obligation in paragraph 3(a) to produce any documents relevant to the deceased's instructions and capacity to make Wills. This application was made against the third defendant. (ii) In relation to the obligation to produce any documents relevant to the execution of the general of power of attorney by the deceased on 23 rd July 2017, including any documents relating to the deceased's capacity to do so, the plaintiff sought the following: - "Why the Master should not make an Order requiring the Third Defendant to produce all and any correspondence and related documentation not already disclosed by which the Deceased gave instructions for the preparation of the General Power of Attorney in or around July 2017 including all and any correspondence between the Third Defendant / members of his firm (both internal and external) and the Deceased to include all file notes, telephone notes and emails, whether external and external." (iii) Five requests were made in relation to the obligation to disclose any documents relating to the sale of 3, Parcq du Rivage and the purchase of Les Quatre Saisons . Of these three requests were directed to the third defendant and two to the first and second defendants. (iv) In respect of paragraph 4 the plaintiff sought an order requiring the third defendant to produce copies of all documentation "recording all financial and administrative transactions and providing all accounting documentation relating to the company known as Qu Vib Limited and including all emails sent to or received by the deceased using a specified email address." (v) The application in respect of paragraph 7 which required the fourth defendant to produce any medical records sought the following: - "( i ) An Order requiring the Fourth Defendant to follow up his email to the Deceased's Doctor in France to request copies of medical records held by him in respect of the Deceased; (ii) An Order requiring the Fourth Defendant to write to Island Medical Centre requiring it to produce an unredacted copy of its medical records in respect of the Deceased." Decision - general principles 25. Before I set out the reasons for my decisions in respect of the specific applications made by the plaintiff, I firstly address the overall approach I took as a matter of principle to assessing the plaintiff's applications. 26. Advocate Begg contended that I did not need to follow the approach in *Hanby Associates Limited v Anor v Oliver*

[1990] JLR 337 . The central reasoning in *Hanby* is found at page 350 line 19 to 351 line 15 as follows: - "We have already expressed the view that the court ought to proceed on the basis that a list of documents which appears to have been prepared with the assistance of the party's advocate and which is verified by an affidavit in proper form ought to be regarded as conclusive save in exceptional circumstances. Those circumstances may include not only inherent evidence from the sources described in the passage which we have cited from the judgment of Brett, L. J. but also evidence which satisfies the test posed by Tomlin, J. in *Astra-National Prods.* (1), that is to say evidence sufficient to displace the oath of the party who has verified the list, by making a *prima facie* case that there are in that party's possession documents which are relevant to matters in issue in the action. In this connection we note the practice direction given by the Deputy Judicial Greffier in his judgment in *Jones v, Atkinson* (3) that- " ... every application for an order for specific

discovery must be supported by an affidavit stating that the deponent believes, with the grounds of his belief, that the other party has, or has had, in his possession, custody or power the document, or class of document, specified in the application and that it is relevant .... " A party seeking further discovery after an affidavit has been made following an order under r.6/16(1), must persuade the court that, despite the affidavit, his opponent has not complied with the order. It seems to us that it must be necessary, in these circumstances, for the party seeking further discovery to show, by evidence on oath, not only a prima facie case that his opponent has, or has had, documents which have not been disclosed, but also that those documents must be relevant to matters in issue in the action. The court must be satisfied that the documents will contain information which may enable the party applying for discovery to advance his case, damage that of his opponent, or lead to a train of enquiry which may have either of those consequences. It is not enough to show only that the documents may be relevant in the sense described. A court faced with evidence which establishes no more than that the documents may or may not be relevant would not be entitled to disregard the oath of the party who, having (ex hypothesi ) seen and examined the documents with the assistance of his advocate, has sworn, in effect, that they are not relevant. We should add that, even where a prima facie case of possession and relevance is made out, an order for specific discovery should not follow as a matter of course. The court will still need to ask itself the question whether an order for specific discovery is necessary for disposing fairly of the cause or matter. It must be kept in mind that O.24, r.7 of the English Rules of the Supreme Court is itself subject to r.8 of the same order, which makes this further requirement explicit." 27. Advocate Begg argued that because no order for general discovery had been made and because the defendants had failed to comply with the order for specific discovery, I had made, there was no need to show relevance because the specific categories where disclosure had already been ordered had already been determined to be relevant. 28. In my judgment there is a confusion with this approach. Firstly, the order made was to limit discovery i.e. to only order partial discovery as distinct from general discovery. The concept of limiting discovery which is permitted under Rule 6/17 of the Royal Court Rules 2004, as amended, is distinct from an application for specific discovery which follows on from a previous order for discovery already made whether general or limited. In my judgment there should not be any distinction between the test applicable following a discovery order, whether that order is general or limited, where it is said that the relevant discovery order has not been complied with. I consider that in either type of application case what an applicant has to show is the same namely: - (i) A prima facie case that the respondent to the application has or has had documents covered by the order that have not been disclosed; (ii) Those documents are relevant to matters in issue in the action; and (iii) Whether or not production of any relevant document is oppressive. 29. I therefore still have to be satisfied that the documents asked for will contain information which might enable the applicant to advance his case, of that of his opponent or lead to a train of enquiry with either of those consequences. It is accordingly still for the applicant to show that there are other documents that exist but have not been produced, which are relevant

to an issue in the action and which fall within the category of documents ordered to be produced. 30. Applying this approach, I now turn to set out my reasons in respect of each of the applications by reference to the paragraphs of the Act of Court of 25 th August 2021 where the plaintiffs sought further documents. Paragraph 3(a) 31. In relation to paragraph 3(a), this order was made because what was at the heart of the plaintiffs' claim was seeking to set aside the 2017 Wills on the basis of a lack of capacity and/or undue influence. This order was extended to the 2015 Will of personalty because if the 2017 Will of personalty was set aside then, as the third defendant had contended, the 2015 Will would revive unless itself invalid in some way. 32. It is also right to record in relation to the 2015 Will of personalty that at present the plaintiff's case is that the deceased only lacked capacity to make the 2017 Wills because she had suffered a stroke prior to those Wills being made. Neither the order of justice nor Advocate Begg's affidavit suggested there was any lack of capacity to make the 2015 Will. What was therefore sought were documents in relation to a possible case of undue influence. I proceeded on this basis so that any relevant material going to the heart of the dispute was produced. 33. The first category of document sought was any notes of a meeting between the deceased and the third defendant in relation to preparation of the 2015 Will. Some documents have been disclosed because the Will was ultimately witnessed before Advocate Crane where he gave advice to the deceased. Advocate Begg argued that a lawyer such as the third defendant should have kept file notes of his discussions with the deceased. The conclusion I reached was that this submission was not sufficient to overcome the third defendant's affidavit, subject to one point, because what Advocate Begg contended the third defendant should have done is not sufficient to discharge the prima facie burden that documents exist when faced with the affidavit of the third defendant. 34. The next part of Advocate Begg's submission focused on an email addressed to the third defendant dated 27 th January 2015 from the plaintiff. The third defendant deposed that he had not been able to locate any email although he believed it had been sent to him. Advocate Begg's position on behalf of the plaintiff was that no such email had in fact been sent. The plaintiff was therefore contending that the third defendant should produce a copy of an email which the plaintiff denied having sent. This submission did not meet the prima facie test that such a document existed. In the alternative even if it did exist the third defendant deposed that he could not locate it having searched all his email boxes. 35. While I accepted that Advocate Stone's affidavit was generally conclusive and no prima facie case had been made out to rebut the same, I did note that the affidavit stated that his current firm did not exist at the time the 2015 Will was executed. I therefore asked Advocate Sharp to review with the third defendant whether he would approach his former firm, Hatsones , to see whether they had any relevant documents covered by the Act of Court of 25 th August 2021 as it appeared that no such enquiries had been made. 36. The third request made by Advocate Begg was for any file notes, written instructions, letters or emails, or instructions from the deceased relevant to the instructions from the third defendant to Advocate Young to prepare the 2017 Wills. Again, the basis for this was that the third defendant as an advocate should have recorded file note of all conversations. However, what the third defendant should

have done as a matter of best practice is not sufficient to displace the third defendant's affidavit where he has deposed that no such documents existed beyond those already disclosed. It should also not be forgotten that in this case the deceased was the grandmother of the third defendant. According to his affidavit and answer they were close. It is not surprising that informal queries from a relative are not dealt with or recorded in the same way as instructions from a client where there is an arm's length relationship. 37. The fourth request sought production of copies of the Wills drafted by the third defendant referred to in his email of 4 th July 2017 to Advocate Young. During the hearing Advocate Sharp confirmed that these had been provided on 20 th September 2021 to Advocate Begg . Advocate Begg already therefore had a copy of the Wills. I was accordingly satisfied there was no need to make any order requiring production of copies of the drafts when they already had been provided. 38. The next request sought a copy of the written undertaking also referred to in the third defendant's email of 4 th July 2017 to Advocate Young. The third defendant in his affidavit deposed that when he swore his affidavit of discovery, he did not have a copy of the same but that he had subsequently tracked down a copy of the undertaking from Advocate Bridgeford one of his colleagues at Lexstone which draft had therefore now been provided. 39. It is also right to observe in relation to this undertaking which concerned the first and second defendants agreeing to look after the deceased for the rest of her life in return for the deceased leaving her Jersey real estate to the first defendant, that no copy of this undertaking or the original has been produced by the first and second defendants in their discovery. Advocate Herold-Howes in his affidavit at paragraph 12 suggested that this undertaking did not fall within the category set out in paragraph 3(a) of the Act of Court dated 25 th August 2021. Advocate Boothman however accepted that if his clients had the original undertaking or a copy of the same then it did fall within paragraph 3(a) because it was a document relevant to the instructions given by the deceased in relation to the 2017 Wills. He accordingly agreed to review with his clients whether they had the undertaking or a copy of the same and to produce copies. 40. The sixth request in respect of paragraph 3(a) sought further and better particulars of an assertion in the third defendant's email of 4 th July 2017 to Advocate Hanson that there had been substantial gifts to most members of the family including the third defendant from the deceased. This request was refused as firstly it was not a request for specific discovery. Secondly, it was not relevant to paragraph 3(a) of the Act of Court which related to the deceased's ability to give instructions and/or her capacity. 41. I took the same approach in relation to the seventh request which sought information in respect of all advice given by the third defendant to the deceased about the management of her affairs and full details of all steps taken by the third defendant in managing the deceased's legal affairs. This request was clearly outside the scope of paragraph 3(a) as it had nothing to do with the deceased's ability to make wills in 2015 and 2017. While I understand that the plaintiff might want to see this information, this only has to be produced if relevant to the plaintiff's pleaded case. That case is primarily about a challenge to the 2017 Wills and possibly the 2015 Will. 42. I also took the same approach in relation to requests 8 and 9. These were requests for information about details of loans made to a third party and their repayment. They had

nothing to do with the deceased's ability to make Wills in February 2015 and 2017 and accordingly were refused. 43. Request 10 sought copies of all file notes maintained by the third defendant in relation to the deceased's approval of the draft Will prepared by the third defendant. This request was refused for the same reason as request 3 was refused. 44. Request 11 was related to any file notes in respect to the deceased's approval of the 2015 Will which was also refused for the same reason as requests 3 and 10. Paragraph 3(b) 45. In relation to request 3(b) this sought all or any correspondence relating to documents pursuant to which the deceased gave instructions for the preparation of the general power of attorney. The justification for this request was again that the best practice that the third defendant should have been to have taken notes of any instructions given in relation to preparation of a power of attorney. This request fails for the same reason that the requests were refused in relation to the requests for notes taken by the third defendant in relation to the discussions with the deceased about preparation of the 2015 and 2017 Wills. The reliance on best practice is not sufficient to displace the statement in the third defendant's affidavit that there is nothing further to disclose. Paragraph 3(c) 46. In relation to request 3(c) what was ordered was a disclosure of documents recording the sale of 3, Parcq du Rivage and the purchase of Les Quatre Saisons . The approach taken however was only to disclose documents relating to instructions given by the deceased. Advocate Begg's complaint therefore was that what had been ordered to be disclosed had not been produced. Why that was relevant was that his client wanted to see the complete picture to understand why the home where the deceased had lived for many years had been sold and why a different property had been purchased. His client also wanted to understand the mechanics of the transaction and the source of the money for the purchase. The context for this was that there was a high degree of mutual distrust and suspicion between the parties and discovery of the whole file would enable his client to understand what had happened. I was also satisfied that discovery of the whole file would enable the plaintiff to consider with her advocate her claims of undue influence and a lack of capacity. 47. However, I did not make an order requiring compliance with paragraph 3(c) because for the reasons set out below, I concluded it was more appropriate to make a general discovery order at this stage covering documents not already disclosed. The conveyancing file recording the full terms and background to the sale and purchase of realty which had taken place in 2018 was clearly disclosable under such an order. Paragraph 4 48. This request sought details of all financial and administrative transactions and providing all accounting documentation relating to the company known as Qu- Vib Limited and emails sent to a specific email address. 49. Paragraph 4 of the Act of Court however only required discovery of documents referred to in paragraph 4 of the third defendant's answer where he listed in a series of sub-paragraphs various transactions that Qu- Vib Limited had undertaken. Paragraph 4 of the Act of Court did not therefore make a general discovery order in respect of the dealings with Qu- Vib Limited and accordingly this part of the application was refused. However, the question of relevant documents from Qu- Vib Limited was dealt with in relation to my decision to make an order for general discovery. 50. The only other documents the third defendant was required to produce were any

documents he held evidencing in the agreement referred to at paragraph 9 of the order of justice and summarised at paragraph 8 above and that the 2017 Will of realty was in breach of that agreement. The application went however far beyond the order I made on 25 th August 2021 and so was also refused. Paragraph 7 51. In respect of paragraph 7, as noted above Advocate Young had already offered to deal with these matters immediately following the issue of the summons and repeated that in the course of his submissions. I accordingly felt it was not necessary to make any order albeit I also doubted that I had power to do so because I do not possess any jurisdiction to direct an executor about what steps he should take. It is also right to observe that the orders sought went far beyond discovery issues and were not on any view specific discovery applications. General discovery 52. Advocate Sharp contended and the other counsel accepted that what was now required was a general discovery order because this was the most efficient way, mediation having not succeeded, for all relevant documents to be produced. I agreed it was appropriate to make such an order in order for the action to progress. I made it clear that the general discovery order should extend to showing the full details of the sale and purchase of Jersey real estate in 2018, dealings with Qu- Vib Limited since 2007 and details of the third defendant's dealings with the affairs of the deceased again since 2007. I selected 2007 as this reflected the plaintiff's case that the 2007 Wills should take effect and so any dealing after that might be relevant to assertions of undue influence. 53. Following discovery I also ordered the plaintiff to produce any amended pleading so that the full nature of any allegations the plaintiffs wished to pursue against the defendants were clear. 54. I also directed the plaintiff to produce her medical evidence in relation to any allegations concerning a lack of capacity. I took this view because the medical records disclosed to date appeared to suggest that the deceased did have capacity after she made the 2017 Wills. It was therefore for the plaintiff to set out her evidence as to why that was not the case which would then allow the defendants a fair opportunity to respond. To require the defendants at this stage to produce their own expert report without the plaintiff having addressed the medical records disclosed in my judgment could lead to costs being incurred unnecessarily. 55. I also ordered general discovery because I did not want a piecemeal approach being adopted with a series of requests for documents emerging over a period of time. In that regard it is concerning that the documents sought were not requested in correspondence prior to the summons being issued. The suggestion of a general discovery order raised by Advocate Sharp could also have been considered by the plaintiff as a way of addressing the difficulties that specific discovery applications can give rise to, as has occurred in this case. Costs 56. In respect of costs the Defendants all sought their costs on the basis that the Plaintiff was the clear loser and that the application could have been avoided simply by the plaintiff agreeing to the suggestion of an order for general discovery. 57. Advocate Begg for the Plaintiff argued that the question of costs would be leftover until general discovery had been provided and that I should look at the key omission namely that the Defendants had not provided discovery in relation to the sale of 3, Parcq du Rivage and the purchase Les Quatre Saisons . 58. The decision I reached on costs was to accept the Defendants submissions. In my judgment the hearing was

avoidable had the Plaintiff agreed to general discovery that had been proposed by Advocate Sharp in his email of 5 th November 2021. If Advocate Begg's complaint had been that in respect of the sale and purchase documentation only and he sought that documentation to enable an unsuccessful mediation to resume he could have made such an application. However, what he sought was much more wide ranging and in a number of cases did not relate to the original order I had made. It would therefore have been unjust to require the estate or the Defendants to bear their own costs in relation to this application when in the round most of the applications made were unsuccessful.

Authorities Hanby Associates Limited v Anor v Oliver

[1990] JLR 337 . Royal Court Rules 2004, as amended, Page Last Updated: 01 Mar 2022 BAILII:  
Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://www.bailii.org/je/cases/UR/2022/>

CASE PAGE              <https://chat.esheria.ai/case-law/jersey/millard-v-cox-and-ors-2022-jrc-023-27-january-2022>

Prepared on 23 October 2026 · Esheria