FOLEY'S LIST

WILLS AND ESTATES:

RECENT PART IV DECISIONS

27 June 2012

Bill Gillies

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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
PRACTICE COURT

No. 6029 of 2010

WAYNE L DICKSON

Plaintiff

v

ALAN WESLEY DICKSON (WHO IS SUED AS THE EXECUTOR OF THE WILL OF ESTELLA VIOLET DICKSON, DECEASED)

Defendant

JUDGE:	EMERTON J
WHERE HELD:	Melbourne
DATE OF HEARING:	3 March 2011
DATE OF RULING:	8 March 2011
CASE MAY BE CITED AS:	Dickson v Dickson

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Ms C. McOmish	Slater & Gordon
For the Defendant	Mr R.B. Phillips	Aughtersons

HER HONOUR:

1 The plaintiff has applied to the Court for leave to amend his originating motion to include claims against the defendant based on what is said to be "equitable fraud" and breach of the executor's duty of even handedness between beneficiaries and potential plaintiffs. The plaintiff also seeks an extension of time in which to bring an application under Part IV of the *Administration and Probate Act 1958* (Vic) (the 'Act').

Background

2 The plaintiff and the defendant are the sons of Estella Violet Dickson, who died on 18 August 2009. The deceased made her last will on 8 December 2006 (the 'Will'). By the Will, the deceased appointed her younger son, the defendant, and her daughter-in-law, Geraldine Dickson, to be her executors and trustees and conferred a life interest on the plaintiff in a residential property at 2 Atlanta Court, Mill Park (the 'Mill Park property'), with the remainder interest passing to her residuary estate. The deceased left her residuary estate to the defendant. The estate in total was valued at over $5.6 million. The Mill Park property was valued at $600,000 in the inventory of assets of the estate. As a consequence, the defendant inherited by far the largest proportion of the estate.

3 The defendant obtained a probate of the Will on 22 December 2009. Accordingly, pursuant to s 99 of the Act, the plaintiff had until midnight on 23 June 2010 to commence a proceeding under Part IV of the Act. In fact, the proceeding was commenced on 8 November 2010, almost 11 months after the grant of probate and some four and a half months outside the six month period specified in s 99 of the Act.

4 In argument before the Court, it was common ground that the only asset that remained in the deceased's estate as of 8 November 2010 was the Mill Park property. The other estate assets were distributed to the defendant in accordance with the terms of the Will within six weeks of the grant of probate. Section 99 of the Act prevents those distributions from being disturbed and, accordingly, the parties agree

that only asset against which an order under Part IV of the Act could be made is the Mill Park property. As the defendant points out in his submissions, the amendments to the originating motion that the plaintiff seeks to make are directed to overcoming the prohibition under Part IV of the Act on disturbing assets that have already been distributed.

5 The plaintiff has sworn an affidavit in support of his applications in which he deposes to the difficult relationship he has with the defendant and to the fact that when he telephoned the defendant about a month after his mother's funeral to find out what was happening with his mother's estate, the defendant hung up on him. The plaintiff deposes that his daughter, Ms Amber Durante, telephoned the defendant and asked him what was going on with the estate and that he himself rang the defendant "about a dozen times and left messages for him to call me back about my mother's estate." He deposes that on one occasion, he managed to speak to the defendant and the defendant told him that he would find out what was happening with the estate. However, the defendant did not ever call the plaintiff back to let him know. The plaintiff says that Ms Durante left numerous messages for the defendant, but the defendant did not return her calls.

6 The plaintiff further deposes that he did not know what was in the Will and that he saw the Will for the first time in late July 2010 when Ms Durante obtained a copy of the Will from the Probate Office. He says knew nothing about Part IV of the Act and the time limit for bringing a claim until it was explained to him by his lawyers in September 2010.

7 Ms Amber Durante has also sworn an affidavit in support of the plaintiff's application. Ms Durante is the daughter of the plaintiff and the niece of the defendant. She deposes that she learned that her father's home in Atlanta Close was in the defendant's name from the plaintiff's partner, who had been informed of this when she contacted the local council about garbage collection. Ms Durante says that as a result, she encouraged the plaintiff to get in touch with the defendant to find out

what was happening with the deceased's estate. Ms Durante deposes that in about May 2010, the plaintiff told her that he had not been able to get in touch with the defendant and asked her to try to get in touch with the defendant for him. She telephoned the defendant on four or five occasions and left messages for him to return her call on both his home phone number and his mobile number, but the defendant did not return her calls. Ms Durante deposes that she telephoned the defendant between 2 and 9 May 2010. The defendant called her back on one occasion and they had a conversation which she says was the one and only conversation that she managed to have with the defendant after the death of the deceased. Ms Durante says she told the defendant that the plaintiff had been trying to contact him and that the plaintiff had asked her to contact the defendant and pass on a message asking the defendant to call the plaintiff. According to Ms Durante, the defendant said, "You have asked". She then told the defendant that the plaintiff had asked her to sort out the Will with the defendant. She said the defendant said, "I'll think about it". She passed this on to the plaintiff. It was at the suggestion of another relative that Ms Durante eventually contacted the Probate Office directly to obtain a copy of the Will. This occurred on 26 July 2010.

8 The defendant has sworn an affidavit in response. The picture that the defendant paints of plaintiff's relationship with his parents, and particularly his mother, is very different from the picture painted by the plaintiff in his affidavit. The defendant has exhibited earlier wills made by his mother and letters written by his mother to her solicitor on 1 February 2006 and 24 November 2006 explaining why she had provided for the plaintiff in the way that she had and why she had wanted to change her will. The letters express concern about the plaintiff's ability to manage money and about his repeated requests for money from his mother. The second letter refers to the deceased being harassed by the plaintiff for money and spending days crying and distressed over that harassment. The plaintiff himself exhibited a letter dated 8 December 2006 from his mother's solicitors stating that his mother felt intimidated and harassed by his repeated requests for financial assistance and that she felt

vulnerable and fearful about his requests. The letter asked the plaintiff to refrain from contacting his mother in the future and threatened legal proceedings if he did not.

9 In his affidavit in response, the defendant denies that the plaintiff rang or tried to contact him, as suggested. He deposes that after his mother died, the plaintiff did not say anything to him about the Will. He never asked about the Will or whether he had been left anything. The defendant says that he did not talk to the plaintiff at all about his mother's estate. He says further that he did not leave any messages or speak to Amber Durante about it either.

10 In relation to the affidavit of Ms Durante, the defendant says that he denies that the plaintiff or Ms Durante tried to contact him several times. He deposes that Ms Durante phoned his daughter in late March 2010. The defendant's daughter passed the message on to him, as he and his wife were away at the time. He rang Ms Durante back. His recollection of this phone call was that Ms Durante wanted real estate advice and that there was no mention of the Will or the plaintiff.

Amendment of the Originating Motion

11 The plaintiff seeks to amend the originating motion to include in the relief a declaration that the defendant holds the assets distributed to him pursuant to the Will as a constructive trustee for the plaintiff or, alternatively, an order that the real property of the estate of the deceased distributed to the defendant, or part thereof, be sold and the plaintiff be paid such sum from the net proceeds of sale as the Court may direct.

12 The basis for the proposed amendments is the plaintiff's allegation that the defendant did not inform him of the contents of the Will or the fact that probate had been granted when the plaintiff enquired of him as to the progress of the estate.

13 The plaintiff alleges that it was unconscionable for the defendant not to inform the plaintiff of the contents of the Will or the fact that probate had been granted.

Alternatively, he alleges that the defendant breached a fiduciary obligation owed to the plaintiff to inform him of the contents of the Will and the fact that probate had been granted. He contends that the defendant's conduct was so unconscionable as to evoke equitable intervention by the Court as a court of conscience.[1] He also relies on the principle that a personal representative has a duty to be even-handed between all beneficiaries of the estate, including persons entitled, or potentially entitled, as statutory beneficiaries under family provision legislation. According to the plaintiff, this gave rise to an obligation to inform the plaintiff of the contents of the Will and the fact that probate had been granted when the plaintiff enquired about his mother's estate.

14 The Court has a broad discretion to grant leave to amend pleadings for the purposes of determining the real question in controversy between the parties, to correct any defect or error in a proceeding, or to avoid a multiplicity of proceedings.[2] This includes amendments to allow causes of action to be litigated which could not be litigated if the amendment were not allowed. The question for the Court on the plaintiff's application to amend the Originating Motion is whether the plaintiff has a cause of action arising from the fact that the defendant did not inform the plaintiff of the contents of the Will or that probate had been granted. The defendant submits that the proposed amendments do not disclose a cause of action and the amendments should therefore be refused.

15 The defendant submits that there is no duty on an executor to inform a beneficiary of his or her entitlement under a will. He relies on a long line of authority to this effect.[3] The defendant says that the defendant's obligation to the plaintiff was to administer the deceased's estate so that the plaintiff received what he was entitled to receive under the Will. That has been done and the plaintiff now enjoys the benefit

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1 Young, Croft and Smith, *On Equity* need publisher, edition and year[5.20]; Du Pont and Chalmers, *Equity and Trusts in Australia*, need publisher and year 4th ed, [8.35].

2 Rule 36.01 of the Supreme Court (General Civil Procedure) Rules 2005.

3 See *Re Lewis; Lewis v Lewis* [1904] 2 Ch 656, 661-4; *Ee Mackay; Mackay v Gould* [1906] 1 Ch 25, 32-33; *Johnston v Maclarn* [2001] NSWSC 932 [17].

of his life interest in the Mill Park property conferred by the Will. Beyond that, so the defendant says, there was no duty on the defendant to encourage the plaintiff to litigate. The defendant points out that s 50 of the *Wills Act 1997* (Vic) is not applicable in the absence of a request by a person referred to within the section to inspect and copy the will. The defendant submits that there is no evidence that the plaintiff ever requested the defendant to provide him with a copy of the Will.

16 More generally, the defendant submits that his duty as an executor must be considered in the light of the fact that the Will was publicly available at the Probate Office and the plaintiff could have inspected it there at any time.

17 In support of his contention that the defendant's failure to inform him of the contents of the Will and the fact that probate had been granted gave rise to a breach of duty, the plaintiff relies principally on *Sadler v Public Trust*,[4] in which the New Zealand Court of Appeal considered a number of New Zealand cases about the general nature of the duty owed by an executor to potential claimants against an estate. It concluded that:

(a) a duty of even-handedness extends to potential claimants against an estate where an executor is aware that they wish to make a claim;[5]

(b) the duty extends to ensuring that an executor does not actively and dishonestly conceal relevant material about the estate from potential claimants who seek information about the estate;[6]

(c) the duty of even-handedness may extend to those of whose claim the executor ought to be aware, but the exact extent of any such duty has not been defined.[7]

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4 [2009] NZFLR 937 [26]-[35].

5 *Irvine v Public Trustee* [1989] 1 NZLR 67

6 *MacKenzie v MacKenzie* (1998) 16 FRNZ 487

7 *Irvine v Public Trustee* [1989] 1 NZLR 67 . Whether there is a general duty of even-handedness that extends to require executors to inform all potential claimants of the fact of death and when such a

18 The defendant points out that while the New Zealand Court of Appeal accepted that there was a duty of even-handedness, it was only where a potential claimant had notified his or her intention to make the claim.[8] The defendant submits that in the absence of knowledge that the plaintiff intended to make a claim, there was no duty on the defendant to inform the plaintiff of the contents of the Will or that probate had been granted. The defendant submits that the plaintiff bears the onus of satisfying the Court that there is evidence that the defendant was informed of the plaintiff's intention to make a claim against the estate. The defendant submits that the evidence of the plaintiff and Ms Durante in their respective affidavits falls short of saying that they informed him that the plaintiff wished to make a claim against the estate.

19 It is the plaintiff's case that the defendant ought to have been aware that the plaintiff would be dissatisfied with the terms of the Will and would be likely to seek legal redress, given that the defendant had been left the whole of a large estate, save for the very modest provision made for the plaintiff. In the circumstances, so the plaintiff says, the defendant had a duty, at the very least, to inform him of the terms of the Will. The plaintiff relies upon his evidence, and that of Ms Durante, that both he and Ms Durante repeatedly tried to make enquiries of the defendant about the estate, but the defendant either did not return their calls or did not get back to them when he said he would.

20 The Court need not decide at this stage whether it prefers the evidence of the plaintiff or the defendant as to whether the plaintiff tried to make enquiries of the defendant about his mother's estate. There is evidence from both the plaintiff and his daughter that such attempts were made. It is true that there is no evidence that either of them informed the defendant that the plaintiff intended to make a claim against the estate. However, in the circumstances of this case, if accepted at trial, the plaintiff's evidence about having made repeated attempts to contact the defendant

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duty, if it exists, might arise was left open by the Court (*Price v Smith* [2004] NZLR 329)

8 *Sadler v Public Trust* [2009[NZFLR 937 [14]-[15], [35], [36], [39], [41] (per Glazebrook J).

about the deceased's estate is capable of supporting an inference that the defendant avoided speaking to the plaintiff or Ms Durante and giving them the information that they were seeking so as not, as his Counsel put it, "to encourage the plaintiff to litigate", or so as to frustrate the plaintiff's intention to make a claim. The defendant's own evidence of the plaintiff's attempts over many years to extricate money from his parents is also capable of supporting such an inference. Given the size of the estate, the disparity between what was left to the defendant and what was left to the plaintiff, the plaintiff's longstanding attitude to the assets of his parents and his relatively impoverished circumstances, there is an argument that the defendant knew or ought to have known that the plaintiff would wish to make an application for a larger distribution under Part IV of the Act. In my view, therefore, the proposed amendments should not be refused on the grounds that they do not disclose a cause of action.

21 I am satisfied that the proposed amendments to the Originating Motion would enable the real questions of controversy between the parties to be determined. Amendment could also avoid a multiplicity of proceedings. Accordingly, I propose to give leave under Rule 36.01 for the plaintiff to file and serve an amended Originating Motion in the form attached to the summons.

Application for an extension of time under Part IV of the Act

22 In *McCann v Ward*,[9] Dixon J summarised the relevant considerations for determining such an application as follows:

> (a) Does the plaintiff have an arguable case? The merits of the plaintiff's case have relevance to the exercise of the Court's discretion as it is obviously futile to let a claim proceed which is flawed or hopeless.
>
> (b) What is the period of the delay and any explanation for it? The Court will ordinarily take into account such matters although the discretion conferred by the section is not confined by any rigid rules and even this consideration may not be a requirement in every case.
>
> (c) Is there any prejudice to the beneficiaries if time is extended? In this context the relevant inquiry is into the prejudice caused by the delay rather

9 [2010] VSC 452 [11] (citations omitted).

> than any disappointment which might be anticipated consequent upon readjustment of the interests being transferred under the will in order to make provision for the applicant.

23 In this case, no prejudice to the defendant is asserted. I am also satisfied that an explanation has been given for the delay, and it is of relatively short duration, being only 11 months. The plaintiff was unaware of the contents of the Will until July 2010. He was unaware of his rights under Part IV of the Act until September 2010, when he first consulted his solicitors. The proceedings were issued relatively soon after that, on 8 November 2010. While the defendant made much of the so-called "delay" between July 2010 and the issuing of proceedings in November, I consider any such delay to be relatively small and that it should not prevent an enlargement of time in which to bring an application under Part IV.

24 As to whether the plaintiff has an arguable case on a Part IV application, assuming that the Mill Park property has not been distributed for the purposes of s 99 of the Act, and having regard to the factors which the Court must take into account under s 91, I consider that the plaintiff's claim would be arguable in that it is not hopeless or groundless. The plaintiff is the son of the deceased, the estate is a comparatively large one and it has been distributed unequally between the deceased's two sons. Moreover, the plaintiff has an arguable case that he has financial need for further provision given his age, the state of his health, his employment prospects and his particular family circumstances.

25 Accordingly, the plaintiff's application for leave to bring the proceeding out of time is granted.

Terms of Reference – Succession Law

The Victorian Law Reform Commission is asked to review and report on the desirability of legislative or other reform in relation to the succession law matters set out in these terms of reference. The purpose of this reference is to:

a) ensure that Victorian law operates justly, fairly and in accordance with community expectations in relation to the way property is dealt with after a person dies

b) ensure that the processes to resolve disputes about the distribution of such property are efficient, effective and accessible

c) identify practical solutions to problems that may still be outstanding in Victorian law and practice following the recommendations of the National Committee for Uniform Succession Laws established by the Standing Committee of Attorneys-General (SCAG).

In particular, the Commission is asked to review and report on the following matters:

Wills

1. whether the current requirements for witnessing wills should be revised to better protect older and vulnerable will-makers from undue influence by potential beneficiaries or others
2. whether the current provisions that allow the Supreme Court to authorise wills for persons who do not have testamentary capacity should be revised
3. the need to clarify when testamentary property disposed of during the will-maker's lifetime will be adeemed and when it will be protected from ademption

Family provision

4. whether Part IV of the *Administration and Probate Act 1958* concerning family provision applications is operating justly and effectively, having regard to its objective of providing for the proper maintenance and support of persons for whom a deceased had a responsibility to make provision

Intestacy

5. whether Division 6 of Part I of the *Administration and Probate Act 1958* concerning the distribution of an estate on an intestacy is operating effectively to achieve just and equitable outcomes

Legal practitioner executors

6. whether there should be special rules for legal practitioners who act as executors and also carry out legal work on behalf of the estate, including rules for the charging of costs and commission

Administration of estates

7. how assets are designated to pay the debts of an estate and the effect that this has on the estate available for distribution to beneficiaries or to meet a successful family provision claim
8. whether a court should have the power to review and vary costs and commission charged by executors

Operation of the jurisdiction

9. whether there are more efficient ways of dealing with small estates
10. the costs rules and principles applied in succession proceedings, taking into account any developments in rules or practice notes made or proposed by the Supreme Court
11. any other means of improving efficiency and reducing costs in succession law matters.

In undertaking this reference, the Commission should have regard to, and conduct specific consultation on, any relevant recommendations made by the National Committee for Uniform Succession Laws established by SCAG. The National Committee has released reports and model legislation on wills (1997 and 2006), family provision (1997 and 2004), intestacy (2007) and the administration of deceased estates (2009). State and Territory Ministers have agreed to adopt the National Committee's recommendations as the basis for reforming succession laws in their respective jurisdictions with the aim of maximising national consistency.

The reference does not include consideration of the remaining recommendations of the National Committee, unless relevant to the above referred matters.

The Commission should also consider any legislative developments in both Victoria and other Australian jurisdictions since the National Committee released its reports.

The Commission is to report by 1 September 2013.

2012 CASES: Wills and Estates: Recent Part IV decisions.

Re Will and Estate of Angelo Marotta (deceased) (2011) VSC 324
Story v Semmens & Anor (2011) VSC 305
Greely & Ors v Greely [2011] VSC 416
Re the Will and Estate of Meshaki-Korjakin (2011) VSC 372
Re the will of Meshakov-Korjakin (dec'd) [2011] VSC 372
Leggett v Jansen & Others (2011) VSC 364
Hyatt and Poisson v Covalea (2011) VSC 334
Tavra v Petelin (2011) VSC 359
Clark v Burns (2011) VSC 394
Szmulewicz & Ors v Recht & Anor [2011] VSC 368
Whitehead v State Trustees Limited (2011) VSC 424
Harrison v Harrison (2011) VSC 459
Webb v Ryan and North [2011] VSC 461
Simpson v Cunning (2011) VSC
Whitehead v State Trustees (No 2) 2011 VSC 516
Amicucci v Di Tullio (2011) VSC 539
Re The Will of Dimitra Giofches (2011) VSC
Youn v Frank (2011) VSC 649
Amucci v Di Tullo (No 2) (2011) VSC 670
Re Estate of Carey deceased (2011) VSC 682
Stanley v State Trustees Limited (2012) VSC 24
McCann v Ward (2012) VSC 63
Harrison v Harrison (No 2) (2012) VSC 74
Manoccheo v Wilson (2012) VSC 76
Brown-Sarre v Waddingham (2012) VSC 116
Paola v State Trustees Limited (2012) VSC 158
Kavanagh v Reardon (2012) VSC 174
Vogdanos v Kriaias (2012) VSC 248

Brougham v Moore (2012) VCC 46
Isworth v Lancaster (2012) VCC 267
Barber and Broomfield (2012) VCC 400
Momo v Vicente (2012) VCC 407
McFadden v Bickford (2012) VCC 512
D'andrea v McKenzie (2012) VCC 659
Hanrahan and Ansell [2012] VCC 783

Wills and Estates: Recent Part IV decisions.

I have tracked through the last twelve months of decisions handed down by the Supreme Court and the County Court of all Part IV and some other associated cases. I don't propose to speak about them at length, but I shall say a few short words about some of them. With no disrespect to the judicial officers concerned, some are more important than others.

***Re Will and Estate of Angelo Marotta* (deceased) [2011] VSC 324,**
Zammit As J.

Claim by Testator's sister against the estate of the deceased. Defendant estate made an application for summary judgment pursuant to the *Civil Procedure Act* 2010. Angelo, the deceased, who ironically worked at State Trustees, had regular contact with his sister, who divorced from her husband in 1981. To some extent he stepped into her husband's shoes, so found the Associate Justice, to perform the role of father to her children. Relying on the decision of Dixon J in *Ottedan Investments Pty Ltd v Portbury Developments Pty Ltd* (2011) VSC 222, Her Honour, in circumstances where the Plaintiff's evidence was unchallenged, found that the claim was not fanciful but realistic. Her Honour disagreed with the approach of *Atthow v McElhome* (2010) QSC 177 and dismissed the application.

Her Honour faced the issue again in ***Story v Semmens & Anor* [2011] VSC 305** in which a grandchild of the deceased made a claim which brought forward another application for summary dismissal. The Plaintiff gave evidence that she was forty years of age; her mother had been dead for ten years and had had a typical loving relationship with her parents and siblings.

Of an estate worth $2.3 million the deceased left her estate to her surviving children. Her Honour, guided by His Honour Justice Mandie in *Petrucci v Fields* (2004) VSC 425 said it was open to the Court to find that according to prevailing community standards it was a matter of moral responsibility the deceased ought to have made some provision for her grandchild and therefore dismissed the application for

summary judgment. Grandchildren are an interesting issue. Some jurisdictions give them standing to make a claim.

In ***Greely & Ors v Greely*** **[2011] VSC 416**, Judd J considered whether relevant need was established in circumstances where the children of the deceased were estranged. His Honour ordered provision be made from the estste of the defendant. In circumstances where the size of the estate was estimated at under $400,000 His Honour made moderate awards.

In ***Re the will of Meshakov-Korjakin (dec'd)*** **[2011] VSC 372,** Mukhtar As J dealt with the Will that created a Trust for tertiary education and Russian literature and for the care of the elderly.

The Will was drawn in a rather difficult way, ironically by State Trustees, but the estate was valued at $3.4 million. There were a number of issues. First, the income from investments of the Will was required to be paid within one year from the date of death. That did not occur.

Second, the Will required that a university be found within one year which was willing and able to set up a scholarship to teach Russian. It was argued that the university found was not clearly willing to set up this scholarship, and further it was argued that the Will was void as against perpetuity and not a charity.

In finding that none of these matters stopped the Court from implementing the Will, His Honour said:

Outcome:

83. I think this can be stated in elementary terms. The University is willing to set up a scholarship. The Welfare Society will receive its gift. Whatever the oddities of this Will, there is the Attorney submitted nothing impractical or impossible about putting that into effect. The machinery provisions are efficacious, certainly not dysfunctional and there is no reason why State

> Trustees should not remain as trustee. The presence of a contingent interest makes it inappropriate to order a scheme.

In ***Leggett v Jansen & Others* (2011) VSC 364,** Justice McCauley allowed an application for an extension of time despite the fact that it was two months after a grant of probate, in circumstances where the circumstances of the delay were not particularly satisfactory and the estate was very small (that is, $360,000).

***Hyatt and Poisson v Covalea* (2011) VSC 334,** Zammit As J. The deceased died aged 82 with two children (the Plaintiffs), but left his entire estate to his carer, the Defendant. The estate was worth net about $270,000, but there was criticism of the Defendant's failure to obtain a proper valuation of the estate. In the end, the Court ordered specific legacies totaling $250,000 to the Plaintiffs, which effectively left the Defendant $20,000. (It should be noted that the Defendant's lawyers costs – there had been four firms of solicitors – totaled approximately $92,000. The present lawyer totaled $52,000 making a claim of $142,000. The second plaintiff's legal costs were $109,000 and the first plaintiff's legal costs were $43,000 approximately. So, legal costs were $276,000 after a four day trial.)

Her Honour at [158] noted that there had been three mediations, at least eleven directions hearings, an application for litigation guardian and four orders for affidavit material that could not be provided by the defendant.

The house has only just been sold and the Estate has still not been resolved.

***Tavra v Petelin* (2011) VSC 359**, Zammit As J, from an estate of $2.8 million gave provision to the deceased's only son, who was completely left out of the estate,of $1.9 million in circumstances where he was significantly disabled with head injuries from a motor vehicle accident, and needed a house to be purchased for him. Two things were notable: first that he gave actuarial evidence of his need into the future and what an appropriate sum for a nest egg would be; and second, there were no real competing claimants and the son's contact with the deceased was minimal.

In ***Clark v Burns* (2011) VSC 394** Hargrave J granted an extension of time to bring an application for provision where the delay was short.

In ***Szmulewicz & Ors v Recht & Anor* [2011] VSC 368**, Habersberger J was critical of the Defendant Executors obtaining a commission at 3.5% of the gross capital value of the estate and 5% of the income received by the Executors, in circumstances where the Will was prepared by the solicitors, and appointed the firm as a trustee. The Will stated:

Entitlement to charge

(a) Any trustee being a legal practitioner or accountant may act in a professional capacity and shall be entitled to charge indicate all professional charges for any business act done by him in a professional capacity in connection with my Will.

(b) In addition to 22 (a) above if any of the named executors proves this my will then, in addition to being paid for professional fees, he/they shall be entitled to obtain from my estate commission equal to 3.5% of the gross capital value of my estate with an amount equal to five percent of the income received by my executor, such charges are to be for the provision of non-legal and non-accounting work and in connection with a trust established by my will.

The Plaintiff asserted that the first deceased was in a fiduciary position to the deceased and should not put himself in a position of conflict between his duty as a fiduciary and his personal interest which, in clause 22 (b) gave a significant financial benefit to him and the accountant.

His Honour agreed and rejected the defendant's submissions and pointed to 10.1 of the Professional Conduct and Practice Rules 2005.

10. Receiving a benefit under a Will or other instrument.

10.1 A practitioner who receives instructions from a client to draw a will appointing the practitioner or an associate of the practitioner an executor must inform the client in writing before the client signs the will –

10.1.1 of any entitlement of the practitioner, or the practitioner's firm or associate, to claim commission;

10.1.2 of the inclusion in the will of any provision entitlement entitling the practitioner, where the practitioner's firm or associate, to charge legal costs in relation to the administration of the estate; and

10.1.3 the practitioner or the practitioner's firm or associate entitlement to claim commission, that person could appoint as executor a person who might make no claim for commission.

The claim for commission under clause 22(b) failed. The defendant was required to make an application for commission in the ordinary way. But, moreover, His Honour was highly critical of the defendants to give proper discovery in which 15 file notes and a previous Will of the deceased had not been discovered. His Honour was critical of it and held it as another example of the problem of having a solicitor's own firm representing him or her in litigation. "I cannot accept an independent solicitor would have given the same advice and would not have insisted that all the documents be discovered (paragraph 78)." The ramifications from this case have still not subsided. The Courts are now quite activist when it comes to Executor's commission. See Walker & Ors v D'Alessandro [2010] VSC 15 and Re Estate of Zsusanna Gray [2010] VSC 173 Re Estate of Zsusanna Gray (No 2) [2010] VSC 269 where a claim for 3.5% was reduced to 2%

In September 2011, ***Whitehead v State Trustees Limited* (2011) VSC 424** was delivered by Justice Bell. The Plaintiffs, a mother and her son, sought further provision from the deceased in circumstances where the deceased married, had no children, and made no provision for the Plaintiffs (in an admittedly old Will). He left an estate valued at $2.1 million to two elderly living siblings.

The Plaintiffs and the Deceased did not ever live together, but the First Plaintiff had been engaged to be married for ten years with the deceased before he died. The Plaintiff became pregnant to somebody else and the deceased was said to have treated her child like his son. Her son swore an affidavit saying that the deceased was the "bestest Dad in the whole world". The Plaintiff supported the deceased when he became ill and died from cancer. He apparently intended to make a new will with provision for the Plaintiffs before he died but did not do so. The deceased had never married and had no children. The Plaintiffs were 40 and 9 years old respectively. His Honour tracked a long history of provisions of the Family Provision Legislation (paragraph 21-34) and His Honour provides an exigis of the concepts of testamentary disposition, moral responsibility, persons for whom the deceased had responsibility to make provision out of good provision for proper maintenance and support. Interestingly, His Honour placed great weight on the fact that the deceased made a promise to support the Plaintiffs which could perhaps be viewed as an estoppel rather than as a responsibility. In other words, that he was required to look after them. Having said that His Honour gave a legacy of $450,000 to the First Plaintiff and $400,000 to the Second Plaintiff, which was approximately 40% of the estate.

An important decision and one in which the Court has gone outside what would be considered the traditional family constellation of responsibility. Required reading. The Appeal is due to be heard in late September.

In ***Harrison v Harrison*** **(2011) VSC 459** His Honour Justice Kaye dealt with circumstances where a defendant brother of the plaintiffs promised to provide for them from a bequest in their father's will where he was the executor. Thus, they sought no provision under Part IV of the Administration and Probate Act or legal advice. When the estate was distributed nothing was given to them.

A bitter 18 day case in which, in essence, the Plaintiff asserted that the Defendant would make provision for them out of their father's estate. As a result of that they didn't obtain legal advice to make an application for further provision under the Administration and Probate Act. It was reasonable to rely on the promises, it was

made in circumstances where they knew that the Plaintiffs rely on them, but contrary to the promises he made no provision and indeed resiled from those promises.

His Honour found that the promises were made, that there was an inducement to rely upon them, they had lost their entitlement to seek provision from the estate of the deceased and granted to each of them a percentage interest as tenants in common in the interest held by the Defendant from the deceased's estate.

An important decision and one which may become more frequent as children who have worked on the land for long periods of time seek their reward from the family. I believe this is a situation in which will, in the future, become more common. This also illustrates that troubles that can occur when there is a proprietary estoppel claim or other equitable remedies sought over and above further provision. (The Rules of Court don't easily cope with such situations and quite often a Writ and Statement of Claim is issued in tandem with a Part IV claim, although here the time for a Part IV claim had passed).

In ***Webb v Ryan and North*** **[2011] VSC 461**, the deceased widower's estate, with no children and dependents, faced a claim from long standing friends of the deceased and a long standing business relationship which the Plaintiffs said was sufficient to entitle them to make provision for them. Despite the Defendants saying that the claims fall way outside even the extreme margin of relationships which might under relevant statutory provisions of the Act, establish responsibility for the deceased to make provision, Her Honour Zammit As J refused to summarily dismiss the claim. Her Honour took the view the facts were vast, the Defendant had filed materials, the litigation was advanced and the Plaintiffs had an expectation the matter would proceed to trial. It was not a case in which the facts were confined, the parties were limited, and there was no dispute on the facts by the Defendant, and the Defendant acted early. (See *Jackson v Newns* (2011) VSC 32 which was a decision in which Mukhtar As J did allow an application for summary judgment.)

In ***Simpson v Cunning*** **(2011) VSC 466** Hargrave J held that a house of the deceased was sold by her Power of Attorney in circumstances where he formed a

clear opinion that she was not capable of making decisions or providing instructions with regard to any of her affairs generally.

As it was sold during the deceased's lifetime the question was whether or not the gift had been adeemed. There was controversy as to whether or not the deceased truly lacked capacity and the Executor applied to the Court for directions.

His Honour found that although on the face of it the gift had been adeemed that the general principle is subject to some exceptions of which there is some controversy. His Honour suggested that there be urgent legislative intervention to resolve the doubt about the extent of the exception to the ademption principle and in circumstances here recognised the further exception to that principle where the deceased lacked testamentary capacity, that the deceased if possessed of testamentary capacity, would have intended that the donee of the asset in the will to have the remaining proceeds of sale and the remaining proceeds of sale can be identified with certainty. Thus, His Honour found that the gift of the house was not therefore adeemed.

Ademption becomes more and more important as people downsize and move into high and low care accommodation.

In ***Whitehead v State Trustees (No 2)*** **2011 VSC 516,** Bell J addressed the issue of costs. In both cases the Plaintiffs made offers of compromise which were less than the judgment they received. Although His Honour thought it was a powerful public interest in considering the payment of costs on an indemnity basis, His Honour found that it was an unusual case and that the Defendant State Trustees were legitimately entitled to defend the will and test the evidence of the Plaintiffs generally.

As well, as the actual value of the estate was not known until after the trial was finished and the property was auctioned for $1.55 million against an estimate of $950,000. So, given that that influenced the size of the provision and was known

until after judgment the Defendant was not manifestly unreasonable in rejecting the offer.

His Honour said that although the standard order for costs of unsuccessful Defendant is that it should be on an indemnity basis unless it has acted unreasonably in defending the application, His Honour found there was no reason for making a different kind of order.

His Honour also found that once the sum by way of interest then interest should be paid from the date of judgment and that interest to be paid is the amount actually earned as opposed to some rate of interest which is specified by the Court. (Again, a principle worth noting).

In ***Amicucci v Di Tullio* (2011) VSC 539** Lansdowne As J ordered provision in circumstances where the Defendant did not participate at trial, the Applicants agreed on the orders but not the facts and circumstances, the matter was essentially undefended.

In ***Re The Will of Dimitra Giofches* (2011) VSC 553** is a decision of His Honour Justice Habersberger. It is the first instance that I could find of a decision made by His Honour in the Probate List. A fairly straight forward argument over whether or not the deceased had capacity. A slightly unusual argument in as much as an interested party to the Will who appeared to oppose the application was really saying that whilst they did not file material in opposition, the evidence was not sufficient to find that there was testamentary capacity. His Honour summarised the relevant principles (referring to *Kantor v Vosahlo* (2004) VCSCA 235 and *Nicholson v Knaggs* (2009) VSC 64) and after considering in detail the medical evidence, he was affirmably satisfied that there was capacity.

Another interesting decision of His Honour's is ***Re Estate of Carey deceased* (2011) VSC 682** in which His Honour determined that Letters of Administration on Intestacy should be granted to the daughter of the deceased as opposed to a trustee company (State Trustees Limited) authorised by the son of the deceased to apply for

Letters of Administration. Despite a potential conflict of interest and duty on the part of the daughter (because of the loan owed by her to the estate), His Honour was satisfied that Letters of Administration should be granted to her. (It might be added that the potential conflict of interest was, in the scheme of things, relatively minor and fully accounted for in the affidavit evidence.)

In ***Youn v Frank* (2011) VSC 649**, Daly As J dealt with an intestate estate valued at roughly $650,000. That sum had declined by the time of the hearing as the property, the principal asset of the estate, had declined in value, there were large borrowings but legal fees of between $70,000 to $90,000 had been incurred since the date of the mediation. This the Associate Judge said:

"This deterioration in the value of the estate over a period of a mere 8 months stands as a stark reminder of the perils of litigation."

Her Honour took the view that as the accepted authority showed that a primary obligation of the Testator was to provide to the best of his or her ability some security for a surviving spouse, neither the intestacy provisions of the Act nor the stated intentions of the deceased made adequate provision. Her Honour solved the issue by giving specific legacies to each of the children of $75,0000 – they did not make a claim - and left the balance to the Plaintiff claimant which would have left her with approximately $300,000. A sensible and practical way to resolve a difficult problem.

In ***Amicucci v Di Tullio (No 2)* (2011) VSC 670,** Lansdowne As J had to deal with an offer of compromise in which the Plaintiffs sought that the Defendant personally bear a larger part of debt to the estate and the legal costs. Although the case was undefended and it is hard to take anything from a case in which there is no opponent to the submissions, Her Honour said, in circumstances in which a Calderbank offer was made to one Plaintiff, but warning was not made to the Defendant to make clear that if it was not accepted by him, he as the executor would have to pay the costs personally. It only warned that the Plaintiff might apply for an order that the estate pay her costs from the date of the letter on an indemnity basis.

So Her Honour ordered that the Plaintiff's costs be paid on an indemnity basis from the dates of the offers, but not that it would be paid personally by the Defendant.

A more sensible argument may have been that the Defendant not be awarded his costs at all. But that is being wise after the event.

One of the Plaintiffs sought an order that their costs be fixed. Her Honour refused to do so and said that the appropriate order was that it be by all of the Defendants.

In ***Stanley v State Trustees Limited*** **(2012) VSC 24** Kaye J refused an application for an extension of time to bring a claim in circumstances where there was a small estate, no reasonable explanation for the failure especially where the Defendant had granted the Plaintiff an extension of time but failed to commence proceedings in that extended time, also in circumstances where the former de facto of the deceased was aware of the time limit.

Although His Honour felt that the size of the estate and the fact that the grant of the application would expose it to incurring costs they were not issues of prejudice. However, they were not irrelevant issues. The estate would incur additional costs which were disproportionate to the size of the estate in circumstances where the claim was weak. There was no sufficient basis produced to His Honour upon which an indulgence should be granted and therefore he rejected the application.

The estate was only worth $267,000. And she had died intestate. Letters of Administration were granted on 14 January 2011. The Originating Motion was issued on 29 December 2011.

The Plaintiff was aware from at least 23 March 2011 of when Letters of Administration had been granted and on 3 May 2011, advised they would commence proceedings.

In ***McCann v Ward*** **(2012) VSC 63,** Hargrave J upheld a claim by a step-daughter in a large estate and granted her $750,000 which enabled her to pay out a

considerable number of mortgage debts and other debts leaving her a legacy of approximately $100,000 for living expenses into the future. The size of the estate was contentious: somewhere between $10 million to $14 million. The children of the first marriage did not have need. His Honour also took into account the relative urgency of an applicant's need for provision was a relevant factor adopting what was said in *McCosker v McCosker* (1957) HCA 82 (1957) 97 CLR 566 to 571-2.

In ***Harrison v Harrison (No 2)* (2004) VSC 74** Kaye J dealt with the costs in his 2011 decision. His Honour adopted what was said in *Major Engineering Pty Ltd v Helios Electroheat Pty Ltd No 2* (2006) VSCA 114 at paragraph 5:

"Where there is a mixed outcome in the proceeding, such as here, the apportionment of the comparative importance of the relevant claims in the proceeding ..... can only be carried out on the broad basis, it being primarily a matter of impression and the valuation rather that arithmetic precision. It is also the case of the function of an order for costs is compensatory. His Honour granted the successful Plaintiffs 70% of their costs.

***Manoccheo v Wilson* (2012) VSC 76** it was another decision of Habersberger J in the Probate List. In that case His Honour was asked to remove a co-executor who was living in the deceased's house without paying rent and was not co-operating with attempts to sell the property. His view of the value of the property was unrealistic. His Honour set out a neat statement of the law (paragraphs 36-38) and took the view that the Defendant as co-executor and sole occupant of the property, had lived there for two years without paying any rent, was clearly in a position of conflict and interest. Especially had he agreed to pay rent under deeds of agreement.

His Honour ordered that the Defendant pay the Plaintiff's costs which were to be paid from his share of the proceeds of sale of the property in which he was living.

In ***Brown-Sarre v Waddingham* (2012) VSC 116** Justice Habersberger approved the Plaintiff entering into a settlement deed and an amended settlement deed, opposed by the deceased and the deceased's son. This was an application

under Rule 54:02(2) of the Supreme Court Rules which allowed the Court to make an order approving any decision to compromise litigation involving the deceased's estate made by an administrator. It was not so much a question of considering the exercise of the discretion, but rather the Court to satisfy itself of the propriety of the application. Which His Honour did.

In ***Paola v State Trustees Limited* (2012) VSC 158,** Zammit As J found that the step-sons were entitled to make a claim against the intestate estate of the deceased. The deceased was considerably older than the Plaintiff's mother and although adoption was considered when the relationship commenced there was no real benefit to pursue adoption. It was conceded that the deceased played a role of the father to the three Plaintiffs and he was the only father they had ever known. They emigrated together from South Africa to Australia in 1975 but separated in 1983. The estate was valued at $558,000. There was no competing need. The two Plaintiffs received $100,000 and the third Plaintiff received $200,000. It was conceded that he had a worse financial position than the others being a disability pensioner and unemployable.

In ***Kavanagh v Reardon* (2012) VSC 174** His Honour Justice Habersberger dealt with a specific gift upon the death of a son who received the specific gift together with his sister, fell under residue or not. Section 45 of the Wills Act which provides that dispositions are not to fail because issue have died before the testator, appear to help. The difficulty was, that although clause 3 said "gave the property to the son" the son predeceased the mother, but gave the residue of his estate equally to her children and if a child predeceased the testatrix then their children would take the parent's share. His Honour found that section 45 did not apply because a contrary intention appeared in the Will so the gift of her property to the deceased failed because the property have gone into residue. It was not saved by section 45.

In ***Vogdanos v Kriaias* (2012) VSC 248** McMillan J granted an extension of time to commence proceedings where the delay was 25 days. The delay was short. There was a credible explanation and the claimant acted promptly.

The County Court has been active as well. In ***Brougham v Moore* (2012) VCC 46** Judge Misso dealt with a stepson of the deceased who made a claim in circumstances where the deceased had inherited the whole of the claimant father's estate which was the whole of the estate. The Plaintiff's financial resources were modest and he was aged 61. Indeed, the claimant had help build up the estate by maintaining the deceased in her old age. His Honour followed *McKenzie v Topp* (2001) VSC 267 and *Petersen v Micevski* (2007) VSC 280.

In ***Isworth v Lancaster* (2012) VCC 267** His Honour dealt with terms of settlement arising from a Part IV claim which said:
"The Plaintiff's right to reside in the Flat terminates, and the defendant shall be entitled forthwith to take possession of the Flat, if the plaintiff allows any person, in substitution for himself, to reside in the Flat, or if he takes up occupation of another property as his principal place of residence."

Although His Honour was troubled by the evidence of the Defendant and his sons – as the Plaintiff asserted that the Defendant was no longer living there and his son was – His Honour was still able to find that the Defendant was absent from the flat for significant periods of time and that it was not the residence of the Defendant and that in those circumstances the Defendant should give vacant possession to the Plaintiff within 30 days. (Sometimes it is nice to have a life interest on title, which, obviously, was done here.)

In ***Barber and Broomfield* (2012) VCC 400** His Honour faced a claim by the widower of the deceased. They met in 2000, married in 2002. The deceased died in 2010. The claimant had no assets. The deceased owned a house. Although a legacy of $10,000 and a right of residence was granted to the Plaintiff and the parties had a prenuptial agreement which the Court can have regard (*Gigliotti v Gigliotti* (2002) VSC 279), given the estate was small, no more than $200,000 His Honour took the view that the claimant be given a life interest and he be given the right to sell the property and apply the net proceeds to the acquisition or payment of alternative accommodation and that at the date of his death remained the formal residency of

the deceased's estate and distributed to her children accordingly. Unfortunately, the house was sold to pay the costs of the litigation.

In ***Momo v Vicente* (2012) VCC 407** His Honour, in circumstances where the only child of the deceased brought a claim out of time against the intestate estate of the deceased in circumstances where there were no competing moral claims, His Honour extended the time to bring the claim and conveyed the only asset of the estate to the Plaintiff and made no order as to costs, so the executor, the second husband of the deceased, but not the father of the claimant, paid his own costs.

The case is also significant for two reasons. First, it is the only case in which I am aware where a Court has dealt with an extension of time application at the same time as a Part IV claim and, second, where the entire estate has been transferred from the estate to the Plaintiff and no order made for costs in circumstances where the conduct of the Defendant was criticised.

In ***McFadden v Bickford* (2012) VCC 512** His Honour the Plaintiff appeared in person in what was a very very small estate. Six witnesses were called for the Plaintiff who also tendered two affidavits in the history of medication and the Defendants tendered seven affidavits. The claimant was the second husband of the deceased (she was his third wife). They lived in a house that had been purchased by the deceased's first husband. She left the house and the residue of her estate to three of her children and two of her grandchildren and made no provision for the Defendant. The estate, of only being $120,000 consisted essentially of a house in very poor condition. His Honour was faced with the difficult way of making provision for him. The house was ordered to be sold. The Plaintiff got $20,000 for contingencies and a balance of $100,000 was to be held in trust for him for the purchase of suitable accommodation and that upon his death it would form the residuary estate that would then be given to the children and grandchildren. It was accepted that at least two of the children were in modest financial circumstances.

In ***Hanrahan and Ansell* [2012] VCC 783** His Honour dealt with a circumstance in which the three sons of the deceased in which it was agreed that money from the

estate would be settled on one of the children's grandchildren rather than the beneficiaries. Unfortunately, he died before the transfer could be made and the sum of $100,000 had not been transferred. The Court determined that trust had not come into existence and the $100,000 that should have been transferred which was not transferred, should be transferred with a compound interest rate of 12% until the date of payment. The Defendant was also ordered to pay the costs.

In ***D'andrea v McKenzie* (2012) VCC 659** His Honour Judge Smith dealt with an application by a de facto partner of the deceased. Although the relationship was contested and there was competing need, His Honour provided for a 40% share of the estate to go to the de facto partner of ten years. That would give the claimant the ability to purchase a home and still have a nest egg for future contingencies.

Conclusion

There are a few lessons you can draw from the last twelve months.

1. The Supreme Court and the County Court are making themselves far more user friendly for Probate matters. Thursday morning in the Probate Court has now turned into a Probate List on Friday, where His Honour Justice Habersberger and now Her Honour Justice McMillan has made a point of dealing with matters expeditiously. That is a benefit for practitioners. Both Courts are listing matters expeditiously; in the County Court you have the benefit of a trial date from first directions.

2. Costs are an issue. The Courts are more and more aware and concerned about the extent of practitioner's costs. There is going to be more litigation about costs and also about the circumstances in which solicitors give themselves charging clauses, and the amount of their commissions.

3. Be careful about where you commence and how you mediate. For estates of less than $1,000,000 it is really worth considering the County Court. Think carefully if you want a private mediation or a Court mediation or case

conference. In very small estates I strongly suggest that people do their best to have an early intervention by mediating even before proceedings are issued. Even though you might think a claim by a third cousin is vexatious and doomed to failure, you might find that an offer of a small amount prior to commencing proceedings is better than getting to mediation and finding you have spent more than what the Plaintiff is worth anyhow, and, worse, getting to trial and even more money is spent.

4. Summary judgment will only work in clear cases where you rely only on the Plaintiff's affidavit. Extensions of time will usually be granted unless you have ignored repeated warnings. Courts loath interfering in small cases.

5. My experience tells me that there will be more examination of the decline of the deceased. Especially in the relationships that exist prior to death. I am sure disappointed potential beneficiaries will more and more commence claims against those who were close to the deceased. For example claims against well remunerated carers and even professional advisors. In Dickson v Dickson, Emerton J (8 March 2011) refused to strike out an Originating Motion that alleged an Executor had breached a fiduciary duty in failing to inform a beneficiary of the contents of a will.

6. It is very important to make sure that you know what you are doing when you draw a Will and that you have your wits about you. At the very least you must identify to those to whom the Testator has a moral obligation and the size and extent of the assets of the estate. If the Testator has made a previous Will, have a look at it and if for example the last Will was only made a month ago and the fresh Will intends to leave somebody out, you had better get clear instructions about what is going on.

7. Finally, the government has appointed Dr Ian Hardingham Q.C. to review succession law matters. There are 11 specific areas under review, including: ademption, family provision, intestacy legal practitioner executors, whether a

court should have the power to review and vary costs and commissions, and more efficient ways of dealing with small estates.

Bill Gillies

Aickin Chambers
26 July 2012

2012 CASES: Wills and Estates: Recent Part IV decisions.

Re Will and Estate of Angelo Marotta (deceased) (2011) VSC 324
Story v Semmens & Anor (2011) VSC 305
Greely & Ors v Greely [2011] VSC 416
Re the Will and Estate of Meshaki-Korjakin (2011) VSC 372
Re the will of Meshakov-Korjakin (dec'd) [2011] VSC 372
Leggett v Jansen & Others (2011) VSC 364
Hyatt and Poisson v Covalea (2011) VSC 334
Tavra v Petelin (2011) VSC 359
Clark v Burns (2011) VSC 394
Szmulewicz & Ors v Recht & Anor [2011] VSC 368
Whitehead v State Trustees Limited (2011) VSC 424
Harrison v Harrison (2011) VSC 459
Webb v Ryan and North [2011] VSC 461
Simpson v Cunning (2011) VSC
Whitehead v State Trustees (No 2) 2011 VSC 516
Amicucci v Di Tullio (2011) VSC 539
Re The Will of Dimitra Giofches (2011) VSC
Youn v Frank (2011) VSC 649
Amucci v Di Tullo (No 2) (2011) VSC 670
Re Estate of Carey deceased (2011) VSC 682
Stanley v State Trustees Limited (2012) VSC 24
McCann v Ward (2012) VSC 63
Harrison v Harrison (No 2) (2012) VSC 74
Manoccheo v Wilson (2012) VSC 76
Brown-Sarre v Waddingham (2012) VSC 116
Paola v State Trustees Limited (2012) VSC 158
Kavanagh v Reardon (2012) VSC 174
Vogdanos v Kriaias (2012) VSC 248

Brougham v Moore (2012) VCC 46
Isworth v Lancaster (2012) VCC 267
Barber and Broomfield (2012) VCC 400
Momo v Vicente (2012) VCC 407
McFadden v Bickford (2012) VCC 512
D'andrea v McKenzie (2012) VCC 659
Hanrahan and Ansell [2012] VCC 783