

Estates Extracts NSW

22 October 2026 GA Publishing 4/914 Military Rd Mosman NSW 2088

Table of Contents

62yo earlier son attracts additional provision.....	2
\$83m discovered	5
Construction of home-made Google will.....	7
Resulting trust defeats daughter's provision suit	10
Son's proprietary estoppel claims unsupported	12
Joint endeavour constructive trust	14
Backyard.....	18
Index.....	18

62yo earlier son attracts additional provision

***Iacovazzi v Reid and Anor* [2026] NSWSC 1235 (1 October 2026) Lindsay J**

Family provision of \$700,000 in addition to \$500,000 will gift to 62yo son from the testator's \$25m estate, comprising realty company (\$24m) and 6 strata units at Killarney Vale (\$1.5m).

Lindsay J detailed a written statement of the testator [21].

To *family provision claim formal requirements*, Lindsay J [24] – [28] said:

“As a son of the deceased, the plaintiff is an “eligible person” within the meaning of s 57(1)(c) of the *Succession Act*, with standing, under s 59(1)(a) of the Act, to make a claim for a family provision order.

“His application for a family provision order was made within the one year from the death of the deceased, limited by s 58(2) of the *Succession Act*.

“As an *eligible person* within the meaning of s 57(1)(c) of the *Succession Act*, it is not incumbent upon the plaintiff to establish, for the purpose of s 59(1)(b) of the Act, that there are “*factors warranting*” the making of his application.

“The two elements of the plaintiff's family provision claim that need to be addressed in these proceedings are:

first, whether, within the meaning of s 59(1)(c) of the *Succession Act*, and viewed at the present time, the plaintiff has been left without adequate provision for his proper maintenance, education or advancement in life by the will of the deceased.

secondly, if so, what (if any) order for provision “ought” to be made out of the estate of the deceased for the maintenance, education or advancement in life of the plaintiff pursuant to s 59(2) of the *Succession Act*.

In addressing those two questions, the Court may have regard to “matters” enumerated in s 60(2) of the *Succession Act*,” [28].

Then [30] “As to the paradigm within which a family provision claim must be determined, I repeat what I wrote in *Re Estate Mitchell; Gould v Bachell* [2026] NSWSC 516 at [83]- [92], with editorial adaption:

“[83] ... the questions for determination in these proceedings focus attention on the statutory tests embodied in section 59(1)(c) and section 59(2) of the *Succession Act* and the list of material factors for which section 60(2) provides, viewed from today's perspective.

[84] Although shorthand expressions like ... “*moral duty*” and “*need*” are commonly encountered in proceedings upon an exercise of family provision jurisdiction, they cannot serve as a gloss on the statute. The Court is obliged to notice, but not be diverted by, summary descriptions of a ... deceased person having a “moral duty” to make provision for a family provision applicant (or not) or an applicant having to identify a “need” for a grant of provision.

[85] The concepts of “*adequate*” and “*proper*” embedded in section 59 of the Act must be understood as relative to the facts of the particular case: *Pontifical Society for the Propagation of the Faith v Scales* [1962] HCA 19; (1962) 107 CLR 9 at 19.

[86] As generally understood, “adequate” is a word concerned with quantum whereas “proper” is a word directed to a standard of maintenance, education and advancement in life. Both words focus attention on the circumstances of the particular case viewed through the perspective of the deceased and contemporary community standards.

[87] In the exercise of its statutory powers in the determination of an application for a family provision order (in particular, subsection 59(1)(c) and subsection 59(2) of the Act), the Court generally endeavours to place itself in the position of the deceased, and to consider what he or she ought to have done in all the circumstances of the case, in light of facts now known, treating the deceased as wise and just rather than fond and foolish (*In re Allen* [1921] NZGazLawRp 155; [1922] NZLR 218 at 220-221; *Bosch v Perpetual Trustee Company Limited Trustee Co Ltd* [1938] AC 463 at 478-479; *Scales Case* [1962] HCA 19; (1962) 107 CLR 9 at 19-20), making due allowance for current social conditions and standards (*Goodman v Windeyer* [1980] HCA 31; (1980) 144 CLR 490 at 502; *Andrew v Andrew* [2012] NSWCA 308; (2012) 81 NSWLR 656) and, generally, consulting the specific statutory criteria referred to in subsection 60(2) of the Act so far as they may be material: cf, *Bassett v Bassett* [2021] NSWCA 320 at [171].

[88] That a plaintiff was left out of the deceased’s will does not, of itself, establish that he or she was left without “adequate provision” for his or her “proper maintenance *et cet*”.

[89] The *testamentary intentions* of a deceased person are generally to be respected, bearing in mind that Chapter 3 of the Act does not authorise the Court to “rewrite” a will or to re-order a deceased’s estate in the interests of “fairness”: *Slack v Rogan*; *Palffy v Rogan* [2013] NSWSC 522; (2013) 85 NSWLR 253 at [127], approved in *Sgro v Thomson* [2017] NSWCA 326 at [1]-[2] and [83]-[87].

[90] The testamentary freedom of a deceased person is not to be interfered with except to the extent that an applicant for a family provision order (such as the plaintiff ...) persuades the Court, on evidence, that an order can, and should, be made in accordance with the statutory criteria for which the *Succession Act* provides. An applicant for a family provision order bears the burden of proof and persuasion. A beneficiary named in a will does not have to justify his or her testamentary gift.

[91] The Court’s evaluative judgements under section 59 fall to be considered on the evidence adduced in proceedings for a family provision order, and at the time an order is under consideration.

[92] To that extent, the Court is in a position that differs from that of the deceased person whose estate is the subject of family provision proceedings.”

“To like effect the judgments of White J in *Slack v Rogan* and of his Honour (as White JA) in *Sgro v Thomson* is his Honour’s judgment in *Friend v Brien* [2014] NSWSC 613 at [34]-[37], [58] and [61]-[63],” [31].

His Honour: “Although, courtesy in large measure to the deceased’s financial assistance, he owns a modest home without debt and has in reserve about \$270,000

in cash (including the \$200,000 balance of the legacy due to him under the will of the deceased) his financial circumstances, present and future, are sufficiently bleak that counsel for the defendant counselled the plaintiff that there is no shame in making an application for a government pension or the like,” [36].

“Given the size of the deceased’s estate; the encouragement that the plaintiff believes he received from the deceased that he would receive a substantial benefit from the deceased’s estate; the plaintiff’s chronic ill health; and his straightened circumstances, and limited prospects for financial gain, I am satisfied that the plaintiff has been left without adequate provision in the sense required by s 59(1)(c) of the *Succession Act*,” [37].

Then [44], his Honour: “In all the circumstances of the case, having regard to the facts known to the Court at the present time, I determine that the plaintiff’s legacy should be increased from \$500,000 to \$1.2 million, of which \$300,000 has been paid, leaving the sum of \$900,000 due to the plaintiff.”

Orders, plaintiff’s ordinary costs from estate, defendant’s on the indemnity basis, “the burden of the provision made for the plaintiff, and of costs payable to the plaintiff and the defendants, be borne by the beneficiaries, Nico and Anthony,” in [45].

P: *Sanders K J, Tonkin B* ins *Dormer Stanhope*. D: *Ellison SC L* ins *Reid Lawyers*

\$83m discovered

***Sultana v Sultana & Anor* [2026] NSWSC 1224 (2 October 2026) Lindsay J**

After September urgency commencement, interlocutory hearing over 5 days in September. Mother's and father's estates of more than \$100m. One of the four children beneficiaries wanting probate revoked, and his two sisters removed as executors.

In [11], "At Anthony's death, his estate was thought to consist of properties and cash worth \$5,312,268. But additional assets of some \$83,426,463.93 were discovered during the administration of his estate."

Revocation of Probate – The Legal Test to be Applied [105] – [108]

"The relevant legal principles may be concisely stated. The Court has inherent jurisdiction to revoke the grant of probate: *Bates v Messner* (1966) 67 SR (NSW) 187 and *In the Goods of Loveday* [1900] P 154 at 156. In exercising this jurisdiction the question is "whether the due and proper administration of an estate had either been put in jeopardy or had been prevented either by reason of acts or omissions on the part of the executor or by virtue by matters personal to him, for example, mental infirmity, ill health or by virtue of the proof of other matters which established that the executor was not a fit and proper person to carry out the duties he had sworn to perform: *Mavrideros v Mack* [1998] NSWCA 286; (1998) 45 NSWLR 80 at 108 per Sheller JA," Lindsay J said [105].

"It is always appropriate and necessary for a Court, when asked to exercise this jurisdiction, to have regard to the testator's wishes as to the identity of an executor or a trustee and the overriding assumption must be that the testator thought the person chosen was worthy of trust "even when well aware when making a choice of existing hostility [from family members] towards the chosen executor or trustee, or of other grounds for doubt about the wisdom of the choice": *Baldwin v Greenland* [2006] QCA 293; (2007) 1 Qd R 117 at 129-130.

"A mere conflict of interest and duty will not result in restraint or removal of a personal representative; it must be shown that the personal representative prefers interest to duty and intends to neglect duty: *Morgan v MacRae* [2001] NSWSC 1017 at [25] and *Upton v Downie* [2007] NSWSC 1095.

"The plaintiff asks for urgent interlocutory relief and the continuation of existing relief granted. The defendants seek an adjournment and a later hearing. The parties' submissions for each of these outcomes are not fully set out here but are summarised in substance in the Court's consideration below. The exercise of the Court's discretion in the circumstances is broad and is also informed by the principles that would apply to the grant of final relief and the balance of convenience frequently considered in relation to the grant or the continuation of interlocutory junctions, a concept which is often better expressed as the balance of doing an injustice, as I recently discussed for example in *Hungry Joe Productions Pty Ltd atf The Hungry Joe Trust & Anor v DCF Lending Pty Ltd & Anor* [2026] NSWSC 920 [10]-[15]," his Honour said [108].

Then, "In considering what course the Court should take, the professional costs associated with the appointment of an independent professional administrator though significant, are not a major factor given the size of the estates," [114].

“The Court will appoint a special administrator to deal solely with this aspect of the administration of Anthony’s estate – the recovery of the Landen debt. Draft orders have helpfully been provided by the parties together with the names of potential special administrators. But the Court is of the view that the selection of the individual who should discharge these functions should only take place after the parties have had an opportunity to review these reasons for decision,” [117].

“Most of the other problem issues in the administration of these estates, in the short term can be appropriately managed by detailed orders and directions from the Court requiring accountability and action from the defendants in accordance with strict timetables, at the risk that if action and accountability is not provided, grounds will be created for their replacement as executors,” [119].

Costs reserved.

P/A: Brown J, Benecke N, ins Carbone D, of Sydney Law Practice.

1&2D: Salama F, Short M ins Mobberley M, of Makinson d’Apice Lawyers

Construction of home-made Google will

The Estate of Wade [2026] NSWSC 1225 (6 October 2026) Meek J

Meek J, from [1] “Fictional and true accounts of loving care, and in particular care for the elderly, are powerful, nay vital, because they help us to reflect on what it means to be humane, and inspire us to compassionate action.

“Fiction may distil or accentuate aspects of care in ways not readily discernible from real life. Thus, famed American author, Jessamyn West, penned that “Fiction reveals truth that reality obscures”.

“Often fiction is inspired by actual events. Such is the case with the debut fiction novel ‘The Notebook’ by Nicholas Sparks, the prolific Nebraskan born writer, who journals a romantic love story between a couple Allie and Noah, married for five decades, set in North Carolina, partly in the 1940s. It is exquisitely told in part through the lens of extracts of a notebook, read by Noah to prompt recollections in Allie’s failing cognition.

“The novel derives much of its acclaimed force through Sparks’ ability to potently evoke reader engagement with Allie and Noah and their story through a modestly colloquial and unadorned literary style. Pivotal points and moments of their relationship through to life’s end are chronicled, to sufficiently enable the reader to appreciate and empathise with the tender beauty of their final time together, in light of the rich tapestry of the joys and poignancy of their lives to that point.

“Coincidentally in the 1940s, well over half a world away in the New South Wales Northern Rivers town of Murwillumbah, another love story commenced and evolved between the late Victor Charles Wade (deceased), who died on 6 November 2023 and his wife Ivy Doris Wade (Ivy), who predeceased him by 22 months. By 19 July 2018 their marriage had endured for 71 years. The deceased recorded in a Will of that date (Will), a purpose bearing upon the residue of his estate stated as “Providing the most appropriate care for my loving wife”.

“The proper nature and effect of that care purpose in respect of the disposal by the deceased of his residuary estate lies at the heart of a dispute between a number of the deceased’s children. Specifically, the Court has been asked to construe the deceased’s expressed intentions in the Will in light of competing contentions as to the care purpose and also consider rectification of it — both as separate questions — in advance of the hearing of family provision claims by family members,” his Honour said [6].

In [42] “In a construction suit, if evidence is to be given as to the value of the deceased’s property at all, it is helpful to have evidence as the date of the Will that is the subject of the construction dispute, rather than “probate values”, years after the date of the Will.”

His Honour exposed *will construction principles* [47] through [87] and *will rectification principles* [88] through [92].

Later, [192] et fol, “Secondly Mr Crossland submitted that the gift of residue is an absolute gift to Dianne but qualified by a trust for Ivy.

MY WILL.

Being of able body and sound mind this is the last Will and Testament of me

Victor Charles WADE
[address]

in the state of New South Wales 2484 19 Day of JULY 2018

I revoke all other documents of testamentary intent previously made by me; this is my last will and testament.

I APPOINT - Dianne Vicki MCKENNEY
of [address]

to be my Executor/Executrix and Trustee of this my Will.

After the payment of my just debts, funeral and testamentary expenses and taxes I direct my Estate to be distributed in the following manner.

GIFTS - I give devise and bequeath the following gifts

To my son Richard, \$5000.00
To my son Gary, \$5000.00
To my son Paul, \$5000.00

My reason being that they have been financially well provided for throughout their life.

To my daughter Dianne, \$200,000.00 for the settlement of her loans.

My reason being that this would be an equitable outcome for my four children.

Victor Charles WADE
Victor Charles WADE

JB Woods
(Witness sign here)

W A Woods
(Witness sign here)

Page one

PROVIDED HOWEVER

That if any of said children shall predecease me leaving a child or children him or her surviving then such child or children shall take and if more than one (1) in equal shares the share which his her or their parent would have taken under this my Will had such parent survive me.

RESIDUARY ESTATE - And I give the residue of my real and personal Estate to

Dianne Vicki MCKENNEY
of [address]

provided Dianne Vicki MCKENNEY survives me by more than 30 days and if Dianne Vicki MCKENNEY does not then I give the residue of my real and personal Estate to

Edward Victor CONNELLY
of [address]

FOR THE PURPOSE OF - Providing the most appropriate care for my loving wife

Ivy Doris WADE
of [address]

Victor Charles WADE
Victor Charles WADE

JB Woods
(Witness sign here)

W A Woods
(Witness sign here)

Page two

“He referenced the joint judgment of Dixon CJ, Fullagar J, and Taylor J in *Duncan v Equity Trustees Executors and Agency Co Ltd* [1958] HCA 36; (1958) 99 CLR 513 at 517 citing the oft-quoted words of Lord Davey in *Hancock v Watson* [1902] AC 14 at 22:

“For, in my opinion, it is settled law that if you find an absolute gift to a legatee in the first instance, and trusts are engrafted or imposed on that absolute interest which fail, either from lapse or invalidity or any other reason, then the absolute gift takes effect so far as the trusts have failed to the exclusion of the residuary legatee or next of kin as the case may be.”

“Mr Crossland submitted that the residuary gift (if there is a trust) provides an absolute gift to Dianne qualified by trust for Ivy as:

(a) the gift of the residue to Dianne is capable of operating as an immediate and absolute beneficial disposition of the entire residuary estate – the reference to the ‘Purpose’ is, in terms of the structure of the will, separate and posterior;

(b) the substitutory gift to Mr Connelly is not expressed to operate if Dianne fails to perform a trust, becomes incapable of caring for Ivy, or dies while Ivy remains alive. If Victor intended the entire residue to be held exclusively for Ivy’s care, he would not have made the gift conditional upon Dianne’s survival rather than upon the continuing need to provide care for Ivy;

(c) again, the Will makes no provision for what should happen to the surplus of the residue after Ivy's death (in the event Victor predeceases Ivy)," [194].

"In relation to this argument, Mr Crossland also relied upon the above-mentioned scheme of the Will and presumption against intestacy," Meek J said [195].

In [203] "However, on balance I am satisfied that on the true construction of the Will, Dianne is entitled to the residue of the deceased's estate absolutely in her personal capacity and there is no intestacy of the residue."

"Dr Chapple SC's prime argument that the fifth bolded and capitalised wording '**FOR THE PURPOSE OF**' has mandatory rather than precatory force is because it has like formatting structure to the four earlier bolded and capitalised headings," [204].

"In light of principles I have outlined above, a prerequisite to relying upon punctuation or formatting is being satisfied that it has been used consciously and not haphazardly," his Honour said [205].

In [207] "However, the deceased signed the will in that form and, expressly subject to some remarks which I will make about structure under the second of Dr Chapple SC's propositions, I am prepared at least on this first proposition, to accept Dr Chapple SC's submission — that the bolded and capitalised wording '**FOR THE PURPOSE OF**' was intended to have an effect more than a mere hope or wish on the part of the deceased."

Declaration and orders.

P: *Crossland A* ins *Bolster & Co.* D: *Chapple SC*, S ins *Michael Vassili Lawyers*.

Resulting trust defeats daughter's provision suit

Reissis v Xafellis* [2026] NSWSC 1262 (14 October 2026) *Hammerschlag CJ in Eq

On cross claim, finding realty held on resulting trust for executors, thus without the estate in a family provision claim for a 25yo daughter of a 51yo testatrix whose will left superannuation \$23,196 to the plaintiff and her 30yo sister, the residue, principally a Padstow apartment sold for about \$900,000, funds in Court, to the executor grandparents.

"The Plaintiff is in straitened circumstances. She has a history of substance abuse and mental ill-health. She has three children, each one with a different partner. Her youngest child, a son, was born on 22 June this year. She is no longer in a relationship with that son's father, who at one point was the subject of an apprehended domestic violence order. This is not the full extent of her travails," Hammerschlag CJ in Eq said [3].

"At various times, she has lived in sheltered accommodation, community housing and her motor car. She has managed to rack up not less than \$6,000 in unpaid road tolls, \$5,600 in parking fines and a liability for a car accident of over \$6,000. Her outstanding debts exceed \$20,000. She has nothing," [4].

Slattery J had ordered interim provision \$10,000.

"Provision of between \$165,000 and \$250,000 is sought. It is not contested that the Plaintiff is in a state of need," [13].

"The basis on which the case was fought is that the only contested question is whether the Padstow property, and therefore the sale proceeds, are held by the Estate on resulting trust for the Grandparents. The contestants adopted the common position that if there was (and is) a resulting trust, the proceeds of the Padstow property are not available to be used for any provision," [14].

"By Cross-Claim, the Grandparents move for a declaration that the sale proceeds of the Padstow property are held on resulting trust for them. In the conduct of the proceedings, no distinction was drawn between the Grandparents," [15].

To *resulting trusts*, Hammerschlag CJ in Eq [16] et fol: "Before recounting the facts, I will state the pertinent legal principles. They are settled and have been referred to by the High Court in, amongst others, *Napier v Public Trustee (WA)* (1980) 32 ALR 153 (*Napier*), *Calverley v Green* [1984] HCA 81; (1984) 155 CLR 242 (*Calverley*) and *Bosanac v Federal Commissioner of Taxation* (2022) 275 CLR 37 (*Bosanac*). In *Calverley*, Deane J repeated observations made by the High Court in *Charles Marshall Pty Ltd v Grimsley* [1956] HCA 28; (1956) 95 CLR 353 at 364, that the principles are so well entrenched that in the High Court they "can...no longer be the subject of argument".

"They are:

(1) a trust of a legal estate in property taken in the name of another is taken to "result" to the person who advanced the money;

(2) this presumption of a trust is rebuttable by evidence from which it may be inferred that there was no intention on the part of the person providing the purchase money to have an interest in the property held on trust for him or her;

(3) it is also subject to the exception (relevantly here) that in the case of a transfer to a child there is a presumption (or inference in equity) of advancement that the beneficial as well as the legal interest will pass. The consequence is that there is then no presumption of a resulting trust but one to the contrary, namely that the property was an absolute gift or advancement. The presumption of advancement may also be rebutted by evidence; and

(4) both these presumptions have been described as “weak”, and each is a presumption of fact. They are no more than “traditional inference[s] based on logic and common sense which a tribunal of fact ordinarily draws from basic facts.”

Then [19] “The Plaintiff fails and the Grandparents succeed because:

(1) it is uncontested that the Grandparents put up all the purchase money; and

(2) the evidence displaces any presumption of advancement and gives rise to no inference that the Grandparents intended to make an absolute gift of advancement to the Deceased, but rather runs counter to any such inference,” [20].

His Honour detailed facts, particularly that the executors had purchased the unit from their own funds. His Honour hypothesised provision \$180,000.

Funds in Court ordered to cross claimant grandparents, less \$5,000 to plaintiff’s solicitors pursuant to earlier orders of Slattery J.

P: Sewell L ins Sparke Helmore. D: Tang KP ins Gramelis Attorneys Family Lawyers

Son's proprietary estoppel claims unsupported

***Charalambous v Charalambous* [2026] NSWSC 1276 (16 October 2026) Pike J**

“By that summons, the plaintiff, Kyriacos Charalambous (Kyriacos) seeks declaratory relief as to his ownership in two properties located in Randwick: 18 X Street (No 18) and 20 X Street (No 20). Relatedly, he also seeks orders pursuant to s 66G of the Conveyancing Act 1919 (NSW) for the appointment of trustees for sale of No 18 and No 20,” Pike J said [2].

In [4] “The first defendant, Alkiviades Charalambous (Alki) filed a cross-claim alleging that Kyriacos holds his 50% interest in No 18 on trust for Alki who already owns 50% of No 18 (having received that interest from his mother when she died). Alki is the youngest son of Kyriacos. Alki relies on a proprietary estoppel by encouragement or alternatively a proprietary estoppel by acquiescence,” his Honour said.

“The other defendants, Kyriacos’ three other children, each have an interest in No 20. They have filed submitting appearances,” [5].

Then, “At the centre of the claims advanced by Alki are a series of statements allegedly made to him by Kyriacos and his late wife (Alki’s mother) (Anna Gloria). The relevant statements pleaded cover the period from 1997 to 2009, although Alki also relies on a number of earlier statements,” [10].

“The approach to fact finding in these circumstances is well understood. I repeat what I said in *Van Rensburg v Adilinis* [2024] NSWSC 1146 (*Adilinis*) at [8]-[12], particularly what emerges from the well-known statements of McLelland CJ in Eq in *Watson v Foxman* [1995] NSWCA 497; (1995) 49 NSWLR 315 at 318-9. I summarised those principles at [8(a)-(d)] in *Adilinis*, including the need for caution when considering conversations where one of the parties to the conversation is now deceased,” [11].

At [118] through [125] Pike J considered principles to *proprietary estoppel by encouragement* and *proprietary estoppel by acquiescence*, noting *Kramer v Stone* (2024) 281 CLR 484; [2024] HCA 48 at [36]- [41].

“In considering the first requirement of a “clear and unequivocal” promise, in *Thorner v Major* [2009] 1 WLR 776; [2009] UKHL 18, Lord Walker of Gestingthorpe stated at [56] (in a passage approved by Bathurst CJ (with whom Bell P and Leeming JA agreed) in *Trentleman v Owners of Strata Plan No 76700* (2021) 106 NSWLR 227; [2021] NSWCA 242 at [124]) that “to establish a proprietary estoppel the representation must be clear enough. What amounts to sufficient clarity...is hugely dependent on context”, [121].

“A representation is sufficiently clear and unambiguous if it is reasonable for the representee to interpret it in a particular way, provided the representation is clearly capable of bearing that meaning and it is reasonable for the representee to rely on it:

Galaxidis v Galaxidis [2004] NSWCA 111 at [93] per Tobias JA (with whom Giles and Hodgson JJA agreed),” [122].

“Unequivocal, in this context, means leaving no doubt or ambiguity: *Penya v Penya* [2026] NSWCA 73 at [44] per Bell CJ,” [123].

“Detriment is not analysed in a narrow or technical way. A balance sheet-like approach in which the opportunities available in the counterfactual are quantified and valued is not required. A broad enquiry of all relevant circumstances is required. Countervailing benefits which have occurred to the party invoking the estoppel can be taken into account: see *Soulas v Pagones* (2023) 416 ALR 181; [2023] NSWCA 243 at [377]-[389] per Ward P (Meagher and Mitchelmore JJA agreeing),” Pike J said [124].

Later, “An important factor weighing against a finding that Kyriacos clearly and unequivocally said that No 18 would be, or was, Alki’s is the absence of any objective material in support. There is no contemporaneous document in which Alki asserted that his father had made the promises, or that he believed he owned the whole property,” [147].

“Alki’s will, made in 2017, is inconsistent with that belief. The correspondence in 2020 was an opportunity for Alki to assert that his father had previously made promises or at least that Alki believed that he was the 100% owner of No 18. He did neither,” [148].

Contemporaneous evidence did not support the proprietary estoppel by acquiescence claim.

“...orders sought by Kyriacos for the appointment of trustees for sale should be made,” in [167], costs for further submissions.

P: *Waters M* ins *A Plus Legal*. D: *Stevens A*, *Lee J* ins *T H Walker*

Joint endeavour constructive trust

***Mangala v Phabmixay* [2026] NSWSC 1275 (16 October 2026) Pike J**

Plaintiff executor v sister and brother-in-law registered proprietors of Green Valley realty, the estate asserting whole interest on constructive trust by proprietary estoppel by acquiescence, alternatively half “under the joint endeavour constructive trust doctrine”, the latter successful.

Pike J: “I proceed on the basis that contemporaneous records (to the extent they exist) are likely to provide the most reliable evidence of what occurred or, at the very least, provide a generally reliable reference point from which to assess the reliability of witness testimony: see *ET-China.com International Holdings Limited v Cheung* (2021) 150 ACSR 461; [2021] NSWCA 21 at [25]- [30] per Bell P (Bathurst CJ and Leeming JA agreeing). The inherent probabilities in the circumstances are also a strong guide,” [13].

In [14] “Reasonable satisfaction should not be produced by inexact proofs, indefinite testimony or indirect references: see Emmett J in *Warner v Hung, Re Bellpac Pty Ltd (recs and mgrs apptd) (in liq) (No 2)* (2011) 297 ALR 56; [2011] FCA 1123 at [48],” his Honour said.

“Where the only person who can contest an issue is deceased, close scrutiny of the claim is required: see *Dable v Peisley* [2009] NSWSC 772 at [130]- [131] per Ward J,” in [15].

Then, “The only witnesses in the defendants’ case were the defendants themselves. Again, I am cautious about accepting their oral evidence. At times it strained credulity. The centrepiece of their defence –that Sone gifted them \$182,384.79 because she and her parents were living with Mone and Sthong at the time – is one example of this. A second but related aspect is that Sone thereafter lived with them, although at times with her parents. This evidence has a real air of unreality about it. Sone was an adult working woman who had her own home, which she was paying off. The defendants’ account would require her to sell that home simply to move to a safer area, give her sister and brother-in-law all the equity in it, and then live with them. Meanwhile, her parents would live on their own in a new home bought by Mone and Sthong using the net equity apparently gifted to them, with Sone occasionally living at the new property,” [22].

Later, [143] – [144], to *Estoppel by acquiescence principles*, Pike J noted: “The elements required to establish an estoppel by acquiescence were recently set out by the High Court in *Kramer v Stone* (2024) 281 CLR 484; [2024] HCA 48 at [55].

“Where B is seeking to establish an estoppel by acquiescence against A the elements are:

- (1) B must be mistaken as to their legal rights;
- (2) B must spend money, or do some act, on the faith of their mistaken belief;
- (3) A must know of their own rights;
- (4) A must know of B's mistaken belief; and
- (5) A must encourage B in B's expenditure of money or other act, either directly or by abstaining from asserting a legal right."

The testatrix had made payments "... towards a joint endeavour with Mone and Sthong in relation to the purchase and ownership of the Property," in [149].

"In relation to the third element, I do not accept that Mone and Sthong believed that they were the legal owners of the entirety of the beneficial ownership of the Property. Whilst they were no doubt aware that the Property was recorded in their names only, they were part of a joint arrangement with Sone to purchase the Property," [150].

"As to the fourth element, it follows that Mone and Sthong were not aware that Sone had a mistaken belief that the Property belonged to her alone," [151].

"The fifth element similarly fails because of the failure to establish the requisite legal right," [152].

To *joint endeavour constructive trust principles*, at [156] "In *NSW Trustee & Guardian v Toghias* (2022) 110 NSWLR 86; [2022] NSWCA 225, Mitchellmore JA at [62] identified, by reference to what Parker J said in *Woods v McKinlay (No 2)* [2021] NSWSC 1510 at [231] the following elements:

- (1) The formation of a joint endeavour by the parties;
- (2) The acquisition of property pursuant to that joint endeavour; and
- (3) The premature termination of the joint endeavour, leaving one party with a legal interest which that party was not intended to enjoy beneficially in those circumstances."

Noted *Joudo v Joudo* [2024] NSWSC 232 at [125] - [127] upheld on appeal in *Joudo v Joudo* (2024) 115 NSWLR 607; [2024] NSWCA 258.

At [158] "The underlying principle being applied emerges from the judgment of Deane J in *Muschinski v Dodds* [1985] HCA 78; (1985) 160 CLR 583 at 620 and approved by the majority in *Baumgartner v Baumgartner* [1987] HCA 59; (1987) 164 CLR 137 at 147-148; [1987] HCA 59:

".....the principle operates in a case where the substratum of a joint relationship or endeavour is removed without attributable blame and where the benefit of money or other property contributed by one party on the basis and for the purposes of the

relationship or endeavour would otherwise be enjoyed by the other party in circumstances in which it was not specifically intended or specially provided that that other party should so enjoy it. **The content of the principle is that, in such a case, equity will not permit that other party to assert or retain the benefit of the relevant property to the extent that it would be unconscionable for him so to do”.**

Then, [159]

“In *Cetojevic v Cetojevic* [2006] NSWSC 431 (*Cetajovic*), Campbell J stated at [43]:

“In accordance with the principles set out at paragraph [59] in *West v Mead* [2003] NSWSC 161 where there is a joint relationship or endeavour, and an asset is acquired for the purpose and in the course of, and the joint endeavour comes to an end without attributable fault on anyone’s part (as clearly happened here), a starting point for ownership of the asset is that the beneficial interest ought be shared equally. That application of the maxim *equity is equality* places an onus of attributing any other conclusion on a person who asserts that the title should be held unequally”.

Pike J: “For the reasons set out above, I am satisfied that Sone (on the one hand) and Mone and Sthong (on the other hand) entered into a joint endeavour to purchase the Property. This is the inescapable inference from the objective material at the time of purchase – Sone’s net equity from the sale of the Bonnyrigg Property was to be contributed to the purchase of a new home for Sone and her parents, while Mone and Sthong borrowed to fund the purchase. Sone, and Mone and Sthong were each to contribute to the loan repayments,” [160].

“Mone and Sthong have not established a basis for a different conclusion, namely that the title should be held unequally. In fact, on my assessment of the respective contributions of the two groups, as set out above, the contributions are roughly equal. It would be unconscionable in the circumstances for Mone and Sthong to maintain the full legal title,” [164].

“In my view, it is appropriate to hold that the Property should be held on a constructive trust under which one half of the Property is held for the estate of Sone. In order to properly do justice between the parties, this interest should be subject to the mortgage which is presently in existence in relation to the Property,” [165].

The executor further advanced breach of trust in respect of \$182,384.79 given by the testatrix to the first defendant who contended gift.

“The relevant principles were not in dispute. Counsel for Mone and Sthong referred to the judgment of Kirk JA (with whom Mitchelmore JA agreed) in *Li v Ye* [2025] NSWCA 227 at [27]- [45],” [168].

“The fact remains that the objective intention of the parties at the time that the money was handed over was that the money would not become Mone’s absolutely but rather would be used for a particular purpose,” in [171].

“Mone did not use that money for the agreed purpose and thus acted in breach of trust.

“Had it been necessary to determine this claim, I would have upheld it,” Pike J said [173]

Orders for agreement or submissions.

P: Kulkarni, N ins Integrity Legal Specialists. D: Flaherty D ins Hinde Ginges Boyd Lawyers

Backyard

“An ‘em dash’ is width of a capital letter ‘M’,” Meek J, Estate of Wade.

“Although, courtesy in large measure to the deceased’s financial assistance, he owns a modest home without debt and has in reserve about \$270,000 in cash (including the \$200,000 balance of the legacy due to him under the will of the deceased) his financial circumstances, present and future, are sufficiently bleak that counsel for the defendant counselled the plaintiff that there is no shame in making an application for a government pension or the like,” Lindsay J, Iacovazzi.

“At Anthony’s death, his estate was thought to consist of properties and cash worth \$5,312,268. But additional assets of some \$83,426,463.93 were discovered during the administration of his estate,” Lindsay J, Sultana.

Index

Following pages

Index

A

A Plus Legal, 13
adequate, 2
Adilinis, 12
Andrew v Andrew, 3

B

Baldwin v Greenland, 5
Bassett v Bassett, 3
Bates v Messner, 5
Baumgartner v Baumgartner, 15
Bolster & Co, 9
Bosanac v Federal Commissioner
of Taxation, 10
Bosch v Perpetual Trustee
Company Limited Trustee Co
Ltd, 3

C

Calverley v Green, 10
Cetojevic v Cetojevic, 16
Chapple SC, S, 9
Charalambous v Charalambous,
12

Charles Marshall Pty Ltd v
Grimsley, 10
Crossland A, 9

D

Dable v Peisley, 14
Davey, 8
Dormer Stanhope, 4
Duncan v Equity Trustees
Executors and Agency Co Ltd,
8

E

eligible person, 2
Ellison SC L, 4
equity is equality, 16
Estoppel by acquiescence
principles, 14
et cet, 3
ET-China.com International
Holdings Limited v Cheung, 14

F

factors warranting, 2

family provision claim formal
requirements, 2

Flaherty D, 17

Friend v Brien, 3

G

Galaxidis v Galaxidis, 13

Gramelis Attorneys Family
Lawyers, 11

H

Hammerschlag CJ in Eq, 10

Hancock v Watson, 8

Hinde Ginges Boyd Lawyers, 17

Hungry Joe Productions Pty Ltd
atf The Hungry Joe Trust &
Anor v DCF Lending Pty Ltd &
Anor, 5

I

Iacovazzi v Reid and Anor, 2

In re Allen, 3

In the Goods of Loveday, 5

Integrity Legal Specialists, 17

J

joint endeavour constructive trust
principles, 15

Joudo v Joudo, 15

K

Kramer v Stone, 12, 14

Kulkarni, N, 17

L

Lee J, 13

Li v Ye, 16

Lindsay J, 2, 5

M

Mangala v Phabmixay, 14

Mavrideros v Mack, 5

Meek J, 7

Michael Vassili Lawyers, 9
moral duty, 2

Morgan v MacRae, 5

Muschinski v Dodds, 15

N

Napier v Public Trustee (WA), 10
need, 2

NSW Trustee & Guardian v Togias,
15

P

Penya v Penya, 13

Pike J, 12, 14

Pontifical Society for the
Propagation of the Faith v

Scales, 2
proper, 2
proprietary estoppel by
acquiescence, 12
proprietary estoppel by
encouragement, 12

R

Re Estate Mitchell; Gould v
Bachell, 2
Reid Lawyers, 4
Reissis v Xafellis, 10
resulting trusts, 10
Revocation of Probate - The Legal
Test to be Applied, 5

S

Sanders K J, 4
Scales Case, 3
Sewell L, 11
Sgro v Thomson, 3
Slack v Rogan, 3
Slack v Rogan; Palffy v Rogan, 3
Soulas v Pagones, 13
Sparke Helmore, 11
Stevens A, 13
Succession Act, 2–4
Sultana v Sultana & Anor, 5

T

T H Walker, 13
Tang KP, 11

testamentary intentions, 3
The Estate of Wade, 7
Thorner v Major, 12
Tonkin B, 4
Trentleman v Owners of Strata
Plan No, 12

U

Upton v Downie, 5

V

Van Rensburg v Adilinis, 12

W

Warner v Hung, Re Bellpac Pty
Ltd, 14
Waters M, 13
Watson v Foxman, 12
West v Mead, 16
will construction principles, 7
will rectification principles, 7
Woods v McKinlay (No, 15