ATTENDANCE NOTE

IAN SHEPPARD
RE: LATE FATHER'S ESTATE

DATED: 15TH MARCH 2007

JD attending Thomas Moore Buildings at 3.10p.m. or thereabouts and meeting with Emily Campbell of Counsel. Briefly discussing the position.

IS said that what he knows for certain is that he went to visit his father at his uncle Norry's and would have been with his father at about 3.00p.m. on the 12th October 2004. Therefore his father could not at the same time have been in Teignmouth signing the Will. EC advised that he needed to prove this. The onus of proof was on him and it was not on Margaret.

Going in before Master Bowles in Room TM6.07 at 3.50p.m.

James Aspling appeared for the Third Defendant (Solicitor from Wilsons): Robert Sheridan appeared for the First Defendant.

EC outlined the present position.

The Master commented that he had seen a relatively short witness statement from the Claimant and a response from the First Defendant and a very limited response from the Third Defendant although this was no criticism of the Third Defendant's evidence. Having read this, he wondered what need there was for a further directions to be given. He said that the Claimant's material is pretty slight at the moment.

EC said that she was asking for a three month stay possibly with directions to take effect immediately thereafter. The stay would enable the parties to attempt to resolve their differences through ADR. The Master interrupted saying that in principle he had no objection. EC said that there was an issue about the validity of the last Will and

the penultimate Will. Again the Master interrupted to say that he had not appreciated that at all and he enquired what the basis of the issue was. EC explained that there was an issue as to due execution namely that the witnesses had not signed in the presence of the testator. She said that the Claimant wished to pursue a number of enquiries. The First Defendant had helpfully dealt with a substantial number of enquiries but on the 12th March some additional documents had been received and these need to be considered because they opened additional lines of enquiry.

The Master said that if the enquiries went in a particular direction then presumably the Claimant would want to issue new proceedings and, in that case, the current proceedings would depend upon the outcome of any contested probate proceedings. He asked if there was an intestacy, how would the estate be distributed.

EC informed the Master that it would be distributed in the usual way with the widow receiving the statutory legacy etc. She said that these proceedings will need to be stayed.

EC also said that there was a question over the construction of the gift of Inkpen and that she did not understand that the Third Defendant had made its position clear on this point. The Master then looked at the Will and agreed that it was a rather odd provision.

RS for the First Defendant said that he was opposed to a stay and his principal reason is that affidavits had been served by the two witnesses to the 2004 Will. The Claimant is hinting at an intestacy but it is perfectly clear that the Will has been validly executed. The Master asked what the difference was between the two Wills and was told that the principal difference is that the Claimant will receive less under the 2004 Will. The Master commented that the Claimant needs to knock out both and to do rather better than £150,000.

RS said that it was for the Claimant to make a choice. Either the witnesses were not in the room, or they are lying.

The Master asked what the position was in relation to the 2005 Will. RS replied that an attempt to revoke the 2005 Will would not be opposed. The Defendant obtained the signature of her late husband and then took the Will to her parents. She was not aware of the provisions of the Wills Act. That is why we have been focusing on the 2004 Will.

The Master responded by saying that he took it that she had no understanding about the testamentary requirements in relation to the 2004 Will either. He said that it was an unhappy case as they so often are. He said that none of these cases are attractive. It is very difficult for the families. If it can be solved by ADR then all the better. He asked RS whether he was against a stay for that purpose. If there was ADR everything would go into the melting pot.

RS said that his client did not feel that there would be any point or merit in ADR and that it would only incur more costs.

The Master, rather pointedly, put it to RS that his client was anxious to go Court? RS said that he would not put it that way.

The Master said that the claim was issued in September 1996 [*should read 2006*]. If he were to grant a stay through to the end of June but with a trial timetable. He said that he would not expect to see a huge amount of pre trial material. He said that he could see the trial taking place by September or October and this was not a tremendous handicap. He said that he did not think that anyone would be disadvantaged if he gave some time. On the point of construction, which the Master said he had not fully appreciated, it would be sensibly if the parties went to trial with an agreed understanding of the consequences of the gift, but if not it would have to be determined at trial what the Will meant. It makes it a bit more complex but it is not beyond the wit of man to deal with.

RS said that the First Defendant wanted CAT to have Inkpen but she is not willing to give an undertaking. Assuming that there is money left over she wants CAT to have Inkpen and so to that extent the construction point does not really come into play.

invalid, he queried whether the Court can deal with the Inheritance Act claim on a false Will. He did not know of authority on the point.

EC said that the Court had to decide who is beneficially interested in the estate.

The Master commented that the Court might say that £150,000 is a reasonable sum for the Claimant to receive, but that the gift under the 2004 Will was not reasonable. The Court has to have a nice firm platform on which to make a decision. The issue about who gets the residue is a lesser question but the Court would want to resolve that issue. He said that issues have been raised which have to be thought about and the parties need time when not running up costs to sort out these issues.

EC agreed that the admission just made had to be thought through.

The Master said that until such time as one knows what may or may not be agreed, the best course was to stay generally but with everybody knowing the issues to be considered until the end of May and to bring back in early June for a Case Management Conference to see where it stands. He said that he was prepared to stay and not give further directions and to fix a CMC when the issues have been looked at. Nevertheless, he said that he would give it a trial period. He could not see why it would not be ready unless, of course, the Claimant took out contentious probate proceedings. On the limited material available to the Master, he thought that the case will take no more than 2 days.

The Master therefore made an Order staying the claim until 31st May 2007 and that a CMC was to be listed for the first open date after the 7th June 2007. The claim is to be tried by a Master on the first open two days after the beginning of September. Costs in the case.

The Master commented that when everyone came back for the CMC he would expect there to be a determination of whether the Claimant intends to challenge one or more Wills.

RS told the Master that his client would like the case transferred to Exeter. The Master asked why. RS said that this client lives in Exeter. The Master replied that he heard what RS had to say but it was not his normal practice unless there is some sort of matrimonial perspective. With all due respect, they do not have the expertise that can be found in the Chancery Division. He said that he would take some persuasion. He also commented that one would not get a trial in September in Exeter. He said that there are questions of construction which require expertise and he was not aware that Exeter had a Chancery section.

Leaving Court at 4.25p.m.

De-brief when all expressed amazement at the admission made by the First Defendant's counsel and query whether he had instructions to make such an admission. Nevertheless, one needed to think through the consequences.