THE HIGH COURT

[2026] IEHC 429

Record No. 2025/8148 PO

BETWEEN

IN THE MATTER OF THE ESTATE OF DOLORES FERGUSON, LATE OF THE MEWS, HOLMPATRICK, SKERRIES, IN THE COUNTY OF DUBLIN, A WIDOW, DECEASED

AND IN THE MATTER OF THE SUCCESSION ACT 1965

AND IN THE MATTER OF THE RULES OF THE SUPERIOR COURTS

AND IN THE MATTER OF AN IRISH WILL MADE BY DOLORES FERGUSON DECEASED IN 2021

AND IN THE MATTER OF THE PORTUGUESE WILL MADE BY HER IN 2005

AND IN THE MATTER OF AN APPLICATION BY JOHN FERGUSON, SON OF DOLORES FERGUSON DECEASED, AND EXECUTOR NAMED IN HER IRISH WILL OF 2021 AND ONE OF THE BENEFICIARIES NAMED IN HER PORTUGUESE WILL OF 2005

Judgment of Ms. Justice Siobhán Stack delivered 30 June, 2026.

Introduction

1. This is an application for various reliefs which appear to be, in substance, declarations to the effect that the Will of Dolores Ferguson, deceased (*"the Deceased"*), of 6 August, 2021, (*"the Irish Will"*) did not revoke an earlier will made by the deceased in Portugal on 5 April, 2005 *("the Portuguese Will"*). The Deceased died on 17 January, 2023, her husband, Tom, having predeceased her in 2019. According to her husband's death certificate, he suffered from dementia for a period of up to five years before he died. It is also clear from the instructions given by the Deceased to her then solicitor in connection with the preparation and execution of the Irish Will that her husband required care for some years before he died.

2. The Deceased was survived by all four of her children: John (the applicant), Paul, Lisa and Fiona. Pursuant to the Portuguese Will, the Deceased's four children are entitled to succeed to the Deceased's Portuguese estate as tenants in common in equal shares. The Portuguese estate principally comprises a holiday apartment which was purchased by the Deceased and her husband in 2000, and has been used since then not only by the Deceased and her husband, but also by their children and their families, for holidays. The provisions of the Portuguese Will reflect the use of the apartment as a shared family property.

4. The principal assets in the Deceased's estate are the family home in Skerries, County Dublin, valued at approximately €1,400,000, the Portuguese apartment, valued at approximately €450,000, together with a relatively modest residue valued at less than €100,000, comprising cash, a life policy, investments, and a car. The Deceased also left some jewellery, which is the subject of specific bequests in the Irish Will, and some personal chattels. The only liabilities of the estate are the Deceased's funeral expenses in the sum of approximately €11,000, and her testamentary expenses.

5. By virtue of her Irish Will, the Deceased left the family home to her son, John. However, it is charged with various payments (totalling €505,000) to the Deceased's other children, her grandchildren, and one of her friends, to whom the Deceased left a gift of €10,000.

6. A key fact which arises from the evidence is that the Deceased was concerned that John would succeed to the family home and should not have to sell it. However, in the course of giving the initial instructions for the Irish Will, the Deceased was advised that John might become liable to pay a significant sum in capital acquisitions tax as its value far exceeds the threshold for gifts from parent to child. (This sum was estimated at hearing as being in the region of at least €333,000.) While it was possible that John, who seems to have been living in the family home on the date of death, might be able to avail of relief against that tax, this was not certain.

7. In the event that John could not avail of relief, the Deceased instructed that there would be no bequests to her grandchildren and that the Will would provide for reduced payments to her remaining children. However, the bequest to her friend was to be retained. In this eventuality, the total payments would be €340,000.

9. John is named as the sole residuary legatee and devisee and he is also appointed as executor.

10. Critically for the purposes of this application, there is a general revocation clause at the commencement of the Irish Will, in the following terms:

> *"I, **DOLORES FERGUSON** of THE MEWS, HOLMPATRICK, SKERRIES, CO. DUBLIN **HEREBY REVOKE** all former Wills and Testamentary Dispositions heretofore made by me and declare this to be my last Will and Testament."*

11. Also of significance are the specific terms of the residuary clause which states:-

> *"**THE REST RESIDUE AND REMAINDER** of my estate both real and personal of every nature description and kind <u>and wheresoever situate</u> **I GIVE DEVISE AND***

***BEQUEATH** to John Ferguson for himself absolutely and **I APPOINT** him my residuary legatee and devisee."* [Emphasis added.]

12. The problem which arises is that, on the face of the Irish Will, all previous wills (including the Portuguese Will) are revoked, and the Portuguese apartment falls into the residue and goes to John along with the family home. All four of the Deceased's children are adamant that this was not their mother's intention.

Whether the Deceased intended to revoke the Portuguese Will

13. It is settled that, in order to revoke an earlier Will, this must have been the intention of the testator, and extrinsic evidence is admissible to prove that intention: see *Re Browne, decd.* [2024] IEHC 13. However, where a testator has, with the benefit of legal advice, executed a will containing a general revocation clause, the extrinsic evidence required has to be clear and unequivocal, as the will itself is regarded as the best evidence of testamentary intentions. In *Re Browne, decd.* [2024] IEHC 13, where this Court stated (at para. 88, citing *Lamothe v. Lamothe* [2006] EWHC 1387 (Ch)):

> *"Where a will has been prepared on instructions, and has been read over to the testator and approved, cogent evidence would be required to show that the testator's intention was different from that apparently stated in the will. The terms of the will itself are evidence of intention which will not lightly be departed from, though the normal civil standard of the balance of probability applies."*

14. That approach is consistent with the approach of this Court in both *Re Turnham Jones, decd.,* [2022] IEHC 417 (Butler J.) and in *Re Courtney, decd.* [2016] IEHC 318 (Baker J.). However, the application of the test can lead to different outcomes, depending on the evidence available.

15. *Re Courtney*, *decd.*, concerned a testator who had lived in England for some time, and who had pursued a long-standing practice of executing testamentary documents in this jurisdiction which expressly related only to his Irish estate. That estate, like his estate in England, was very valuable. Having executed a will and several codicils in favour of beneficiaries resident in this jurisdiction with an Irish solicitor, he then executed a homemade will in England, only a matter of weeks before he died. This will comprised a pre-printed form where the testator fills in the spaces provided so as to make particular bequests. As part of the template, there was a general revocation clause which did not, on its face, confine itself to assets in the jurisdiction where it was executed.

16. The circumstantial evidence, therefore, was that the English will was executed without legal advice and it was entirely possible that the testator did not understand the effect of the general revocation clause which he had not inserted himself but which was already included on the pre-printed form. These are all points of distinction with this case, where the Deceased attended a solicitor to give instructions for her Will, attended on two more occasions to execute a Will in its final form, and had the Irish Will ready over to her before she executed it.

17. In *Re Turnham Jones, decd.*, Butler J. refused to admit to probate an Irish will which had been executed only a few weeks before the execution of a will in England. The Irish will was expressly confined to the Irish estate, whereas the English will purported on its face to revoke all previous wills. The beneficiaries named in the English will agreed that the testatrix had not intended to revoke the earlier Irish will and supported the application to admit the Irish will to probate in this jurisdiction.

18. However, there was no cogent evidence in that case to displace the intention of the testator as expressed by the terms of the English will, as the solicitors who drew it did not give evidence and the evidence of family members consisted of only general assertions as to what they believed the testator's intentions would have been. (Butler J. also took into account the

fact that the testator's death certificate mentioned that he had had dementia for a number of years before death, but that factor is not present here.)

19. In *Re Browne, decd.*, the testator had made a number of wills in his lifetime, commencing with a will executed in 1985 when he was young and newly married, and in which he dealt separately with his Irish and Australian estate. This was followed up by an Irish will in 2000 which revoked the 1985 will only insofar as it dealt with the Irish property, a subsequent Australian will in 2004 which – on the testator's express instructions – explicitly dealt only with his Australian estate, and a codicil to that will, executed in June, 2015. The last will of the testator was executed in a medical facility in August, 2015, a matter of only weeks before he died. While it had been drafted by the deceased's Australian solicitor, it was not executed in his presence and, therefore, he had not read it over to the deceased before he executed it.

20. In my view, this case is different from both *Re Browne, decd* and *Re Courtney, decd*, as there is no evidence of a series of Irish wills dealing specifically with the Irish estate. There is, undoubtedly, a Portuguese Will dealing only with the Deceased's Portuguese assets, which was registered in Portugal in 2005. However, the Portuguese property was specifically mentioned in consultation with the Deceased's solicitor on 16 July, 2021, when she first attended to give instructions for the making of her Will. I come back to the evidence relating to that consultation below.

21. This case is also distinguishable in my view from *Re Courtney*, *deceased*, because this is not a case of a home-made will made on a pre-printed form which contained a general revocation clause, and in which there was, as a consequence, no evidence that the revocation clause was inserted on the initiative of the testator who merely filled in the spaces on the form.

22. On the contrary, the Deceased attended with her solicitor on three separate occasions in July and August, 2021, for the purposes of giving instructions for her Irish Will. I now turn

to the evidence relating to these consultations, before discussing the other evidence tendered by the deceased's children as to her declarations of testamentary intention.

Instructions given by the Deceased to the solicitor who drew the will

23. In my view, instructions given by a testator in the confidential setting of a consultation with a solicitor who is being instructed for the purposes of drawing up a will, will often be the strongest evidence of testamentary intention. In particular, evidence by family members of alleged statements by the deceased as to his or her testamentary intentions can frequently be ambiguous and even self-serving.

24. In this case, the Deceased first met with her solicitor in connection with the preparation of the Irish Will on 16 July, 2021. The solicitor has provided his handwritten memorandum containing his notes made during that first consultation. He has also supplied a typed version (as the handwriting is not always easy to read), which contains (in red font) some clarifying notes which he has inserted for the benefit of the Court.

25. The consultation seems to have opened with information that the Deceased had recently been on holidays in Portugal, and this led to her mentioning that she had an apartment there. Looking at the attendance note, the discussion appears to have turned rapidly to John's circumstances. As he was recently divorced, it appears the Deceased was concerned that he should benefit to a greater extent than his siblings. She was clear also that he had given a lot of help in caring for her late husband, and informed her solicitor that her other three children were living abroad and *"doing well"*. The Deceased clearly instructed that the house in Skerries was to go to John but was not aware of the value of the house, which was estimated at between €1 and €1.5 million.

26. The Deceased's solicitor then raised the issue of capital acquisitions tax which John might be liable to pay, given the value of the family home. He also raised the prospect of a claim by Fiona pursuant to s. 117 of the Succession Act, 1965, as the bequest to her was much lower than to her other two siblings. The Deceased explained that Fiona was particularly well off, hence the smaller bequest. However, the Deceased did not point out that Fiona was to get a quarter share of the apartment in Portugal. This is consistent, in my view, either with a belief on the Deceased's part that the process of preparing her Irish Will had nothing to do with her Portuguese estate, or with a belief that Fiona was not to have any share in the Portuguese apartment. In other words, it is ambiguous.

27. The discussion then appears to have turned to how John was to pay the tax on the bequest of the family home. I suspect it is reasonably common for family members to fail to appreciate the tax implications of their testamentary wishes until they are advised of them by a solicitor or other relevant professional. A discussion then ensued as to how John was to pay this tax, given that he could no longer get a 20-year mortgage due to his age. As part of a discussion as to whether other assets would be sufficient to pay the tax, the Deceased's solicitor mentioned the apartment in Portugal. However, there is no evidence of any specific response by the Deceased to this suggestion, and it is pertinent that the apartment was suggested by the solicitor, rather than the Deceased. Had the Deceased made the suggestion, that would indicate that she was willing to revoke her Portuguese Will and leave the apartment to John to pay the tax. But the evidence on this particular point is, once again, ambiguous. This evidence does, however, demonstrate that the solicitor believed he was dealing with all of the Deceased's assets, including the apartment in Portugal. This was probably a reasonable assumption, given that the Deceased never at any stage informed her solicitor that she had a will in Portugal.

28. Ultimately, it was decided that the Deceased would take advice from her accountant. There seems to have been a lot of uncertainty in the Deceased's mind as to

precisely how much cash she had, or what the value of the apartment in Portugal was. She did not know if John's new partner had assets which would be available to him to pay the tax. However, she seems to have been well aware that there would not be sufficient funds in the residue to pay the tax bill. (The Deceased's solicitor has sworn that he has a clear recollection of the Deceased instructing him that the residue was to go to John, even though it is not noted in his attendance.)

29. All in all, the first consultation appears to have moved, after a brief discussion of Fiona's position and why it was that she was getting less than the others, to a discussion of how John would pay the tax on the house if it were left to him. Figures were suggested for bequests to Paul, Lisa, Fiona, the Deceased's grandchildren, and to a friend of the Deceased. The Deceased also indicated that the amounts of the bequests to Paul, Lisa, and the grandchildren, were to reduce if it was discovered that John was not entitled to relief from the capital acquisitions tax. Specific instructions were then given for the bequest of the deceased's jewellery and even for the bequest of a sewing machine to her goddaughter. However, there is no evidence of any express discussion to the effect that the apartment would fall into the residue nor is there any evidence that the Deceased instructed that it was to go to anyone in particular. Apart from the suggestion by the solicitor that it might be used to pay the tax on the bequest of the family home, it does not appear to have features in the discussion or the instructions.

30. The principal conclusion to be drawn from the attendance is that the consultation wound up with instructions given to the solicitor to draft a will along the line of bequests in the specific amounts discussed (with alternate figures provided, depending on whether or not John was or was not entitled to tax relief). It was also indicated that the will was to be executed on a temporary basis while the Deceased discussed it with John and got tax advice and values, but she was clear that she wanted something *"in place now"*. (It should be noted that the Deceased

was 80 years old in July and August, 2021, and had not previously made a will which applied to her Irish estate, which was substantial.)

31. The Deceased's solicitor duly did up a will, and sent the Deceased a draft by letter dated 22 July, 2021 in which he advised her that they would need to meet and go through it again in some detail. As he said in his letter, the primary concern discussed was *"John's Inheritance Tax liability in the event that he inherited the house and his ability then to make the payments to his siblings and other beneficiaries."* The Deceased was advised that they would need to go through the figures and that she should get advice from an accountant before it was finalised.

32. It does not appear that the Deceased ever took that advice and it seems that she was quite anxious to ensure she had a will in place, because, on 3 August, 2021, the Deceased attended with her solicitor to execute her will. The solicitor did up an attendance on 5 August, 2021, of that meeting on 3 August, 2021, which stated:-

> *"[The Deceased] had a concern that John wouldn't be able to get a mortgage to make all the payments to his sibling brothers and accordingly she paired back the figures to assist him."*

33. It is noted that the Deceased again expressed a concern that John would have to get a mortgage of slightly less than 20 years. The will was executed late in the day, after the solicitor's secretary had left. The Deceased therefore made handwritten amendments to the legacies to be charged on the family home, initialled the amendments, and executed the will. The attendance of that meeting concludes:-

> *"[The Deceased] fully understood her assets which primarily comprised her house. She has helped out her children in many ways during their lifetimes and is leaving the house to John in light of the assistance he provided to her caring for her husband Tom."*

34. On 6 August, 2021, the Deceased had again attended with her solicitor. This seems to have occurred at the suggestion of the Deceased's solicitor, as he was not happy with the

appearance of the will executed three days previously, which had handwritten changes on it. The will was typed up to incorporate the changes made by hand on the previous date, but there were no further changes made and the Will of 6 August, 2021, is in identical terms to that of 3 August, 2021.

35. There were two attendances done of the meeting with the Deceased on 6 August, 2021. One of these is dated 6 August, 2021, and formally sets out that the Will was read over to the Deceased and she was asked if it was an accurate representation of her wishes, which she confirmed. This attendance also records the solicitor's belief that the Deceased understood the nature and effect of the Will, was fully mentally capable, and the fact that the client executed her Will in the presence of both the solicitor and his secretary. It is also explicit that the Will was read over to the Deceased. This attendance seems to have been prepared for the purpose of being kept with the Will.

36. The second attendance of the meeting of 6 August, 2021, is dated 9 August, 2021. This notes that the Will was executed, and left for indexing with the attendance of 6 August, 2021. Interestingly, it notes that the matter was to be diaried for two weeks later. This concludes:

> *"[The Deceased] is going to check the figures with John and then come back to me to see if she needs to change it."*

37. It appears from the Deceased's solicitor's affidavits that, although he diaried the matter for two weeks later, he did not contact the Deceased. Importantly, the Deceased did not contact him either. It therefore appears that she preferred to execute the will on the basis that she would change it later if she could find a more satisfactory way of satisfying herself that John could pay the tax on the bequest of the dwelling house, together with the pecuniary legacies for his siblings and others.

38. Apart from the suggestion by the Deceased's solicitor during the first consultation on 16 July, 2021, that the apartment in Portugal could provide a possible means of paying the tax,

there appears to have been no further mention, at any of the subsequent consultations, of that apartment. It is also notable that the solicitor's attendance of 6 August, 2021, states that the family home was the principal asset. While this is true, the Portuguese apartment is also of considerable value and the fact that no explicit instructions as to how it was to be dealt with suggest that it was not to the forefront of the Deceased's mind when she executed the Will. It is unusual to dispose of real property by implication only, as part of the residue of an estate. Real property is more likely to form the subject of a specific bequest. The care which the Deceased took to leave a sewing machine to her goddaughter stands in somewhat stark contrast with the lack of any mention of the Portuguese apartment.

39. Furthermore, while the apartment was mentioned in the consultation, the Deceased did not tell her solicitor that she had already made a will in Portugal. Again, this is ambiguous. She may have been silent because she understood herself to be involved in disposing of her Irish estate only, or she may simply have been more concerned about the vastly more valuable family home in this jurisdiction. I think it is more likely that the Deceased did not mention the Portuguese Will because she did not think it was relevant to the consultation, i.e., that she did not understand herself to be disposing of her Portuguese estate. However, it is not entirely clear.

40. I am satisfied, on the balance of probabilities, that the Portuguese apartment was mentioned explicitly only in two respects: that the Deceased had just returned from a holiday there, and that it might be available to John to pay the tax. As the solicitor was not told about the Portuguese Will, he reasonably understood that he was dealing with all of the Deceased's assets and he did not explicitly exclude the Portuguese estate. Indeed, he drafted the residuary clause so as to apply to all of the Deceased's property *"wheresoever situate"*. This was read over to the Deceased.

41. While the situation is not entirely clear because no explicit instructions were given one way or the other, the fact is that the Portuguese apartment was mentioned only in the context

of an attempt to identify assets from which John could pay the tax which would arise on the bequest of the family home, and, importantly, that it seems to have been suggested by the solicitor rather than the Deceased. In my view, it is highly relevant that the Deceased never gave any explicit instructions as to who was to have her Portuguese estate.

42. Because there is nothing explicit, however, in the evidence, it may be that the evidence about the Deceased's instructions at consultation is not sufficiently clear to outweigh the evidence provided by the execution of the Will itself in terms which, on their face, revoke the Portuguese Will. Fortunately, I do not have to decide if that evidence would be sufficient, as I also have the benefit of other extrinsic evidence of the Deceased's intention. This takes the form of various statements by the Deceased in 2021 and 2022 which it is submitted amount to clear declarations of her testamentary intentions.

. *Declarations by the Deceased of her testamentary intentions*

43. Three of the Deceased's four children have given evidence of statements by the Deceased in 2021 and 2022 that the apartment was to be divided equally between the four of them on her death.

44. Dealing first with the statements which predate the first consultation with the solicitor, Paul has sworn that he had a conversation with his mother on 5 April, 2021, in which she said that the house would be left to John and the apartment would be left four ways between her four children. Lisa has also given evidence of a conversation with her mother on 20 April, 2021, to the effect that John would inherit the family home but would make lump-sum payments to his siblings, and the Portuguese property would be divided equally.

45. However, these conversations occurred before the issue of the tax liability had been raised. Given the importance which the tax liability assumed in the preparation of the Irish will,

it is possible that the Deceased decided that, in response to the solicitor's suggestion, John would need the Portuguese apartment to discharge the tax liability, thereby altering her obviously long-standing testamentary intentions so far as the apartment was concerned.

46. I therefore think it is preferable to approach the evidence of the Deceased's declarations of her testamentary intentions which pre-date the consultation of 16 July, 2021, on the basis that advice as to the tax consequences of the bequest to John might have altered those intentions. The consequence of this is that any declarations of the Deceased of her testamentary intentions which post-date that consultation assume a greater significance and must be given greater weight.

47. The earliest of these declarations was made in late July, 2021, when the Deceased told John that she was leaving him the family home and he would have to make lump sum payments to his siblings. She said he might have to get a mortgage or that he might otherwise have sufficient funds himself. At para. 6 of John's supplemental affidavit sworn on 1 May, 2026, he states:

> *"She did not at any stage mention the possibility that such provision for my siblings might be raised by the sale or encumbrance of her Portuguese apartment. Nor did she suggest that it might be instrumental in the discharge of my tax liabilities. She simply did not mention it at all."*

48. That conversation is significant because, even though John does not give a specific date, it appears to have occurred between the first consultation with the solicitor on 16 July, 2021, and the execution of the first will with handwritten amendments on 3 August, 2021. As a result, it was made in light both of knowledge on the part of the Deceased of the tax liability that would arise from the principal bequest with which she was concerned, and the suggestion from the solicitor that the apartment might be sold to discharge it. However, she seems not to have taken up that suggestion, as she suggested to John that he should either borrow or source

funds elsewhere to pay the various bequests to his siblings. Indeed, I think the most probable explanation is that the Deceased, being now aware of the likely tax bill, was warning John that the house would come with significant financial obligations, for which he should be prepared.

49. There is also evidence of statements of the Deceased the following year. In October, 2022, Lisa told her mother of a damp issue in one of the bathrooms in the apartment, and the Deceased replied that she was not able to see to the maintenance of the apartment and that it was really for the four adult children to look after it as it was, in effect, theirs. This statement is, in my view, somewhat ambiguous as it could simply be a reference to the fact that she was now becoming more physically frail and, as it was being used by the four adult children, they should take over the maintenance. Although it does refer to the apartment being *"theirs"*, I am not sure that it would be sufficiently cogent, on its own, to justify ignoring the clear terms of a will drawn up with legal advice and read over before being executed.

50. The really critical evidence is that of Paul, who swore a supplemental affidavit in response to certain concerns expressed by the court after the first hearing date of this application. He avers to two conversations with his mother on 13 February, 2022, and 25 September, 2022. These conversations are very important. They both took place over lunch at the Deceased's family home and arose in the context of discussion of family matters, including the Deceased's intentions regarding the distribution of her assets and matters relating to the properties.

51. Paul states quite unequivocally that, on both occasions,:

> *"[T]he Deceased reiterated her position in relation to both the family home and the apartment in Portugal. She consistently maintained that the Portuguese apartment should remain in all four of our names. She was, on each occasion, emphatic and unequivocal in her assurances that I would be 'looked after' and that the Portuguese apartment would be shared equally among all four of her children."*

52. That evidence is not challenged in any way by John, who is the person who stands to be disadvantaged from a finding that the Portuguese will was revoked by the Irish Will. Although the absence of any dispute is not determinative – see *Re Turnham Jones* – it does lessen the danger of self-serving and unreliable evidence on the part of those who stand to benefit from the provision of evidence that a testator did not intend by their later will to revoke an earlier one.

53. Notwithstanding that that concern does not arise in this application, a court nevertheless has to have cogent evidence to look behind the clear and express terms of a general revocation clause included in a Will drawn up by a solicitor and read over to a testator prior to execution. There is an authoritative discussion of the admissibility of declarations of testamentary intention in *Re Barker; Nemes v. Barker* [1995] 2 V.R. 439, in the course of which Tagdell J. (at p. 446) stated that the evidence required must be *"clear and unequivocal"*.

54. It is a feature of probate cases that family members regularly present quite general or ambiguous statements as evidence of intention. In addition, there is a danger for a court in too readily accepting such evidence as admissible evidence of the intentions of a testator, given the obvious risk of self-serving and untruthful evidence on the part of a witness who has a significant advantage to gain from the acceptance of that evidence.

55. However, in this case, there are a number of factors which render it safe to accept the statements of which Paul has given evidence. First, Lisa has given evidence of a statement in 2022 which is probably not in itself sufficiently cogent but is, in my view, corroborative of Paul's evidence. Secondly, John – who is, in effect, the *legitimus contradictor* - does not dispute that his mother's testamentary intentions were to leave the apartment in Portugal between all four children. Thirdly, the evidence as to the nature of those statements is that they arose in conversations which specifically addressed the Deceased's testamentary intentions. They therefore carry greater weight as the Deceased was making a deliberate and express

statement about what she believed her testamentary documents to provide. Fourthly, all of the Deceased's children have testified to the Deceased's forthright nature and the fact that it is unlikely that she would have had any qualms about telling any of them what she wished to do in her will.

56. I therefore accept Paul's evidence, which I consider to be corroborated by Lisa's evidence as to the conversation in October, 2022, and John's evidence of his conversation with his mother in late July, 2021. I am therefore satisfied that the Deceased made several clear and unequivocal statements in February and September, 2022, that the apartment would be divided between the four children. Given that it was the Portuguese Will rather than the Irish one which expressly provided for this, these statements can only be understood as evidence of a belief by the Deceased, throughout 2022, that her Portuguese Will was still in effect and would govern the distribution of her Portuguese estate.

57. As a result, I am satisfied that the Deceased understood, in giving her instructions for her Irish Will, that she was dealing only with her Irish estate, and that her Portuguese estate would continue to be disposed of in accordance with her Portuguese Will. I am satisfied that she did not mention the Portuguese Will because she did not think it was relevant, and she did not give express instructions that the Portuguese apartment was to go to John because she understood that it would be disposed of in accordance with the terms of the Portuguese Will. I am therefore satisfied that the Deceased did not intend, in executing her Irish Will, to revoke her Portuguese Will.

Conclusion

58. It is clear from the cases cited above that the law is now well settled: a general revocation clause contained in a will, particularly where the will is executed having taken legal

advice and where the will has been read over to the testator before it is executed, will usually be taken as evidence of the testator's intention to revoke all former testamentary dispositions, including any foreign will. There is no presumption arising out of the fact that there happens to be in existence a foreign will dealing with property located in another jurisdiction. The evidence required before a court will fail to give effect to the clear terms of a revocation clause must be cogent, that is, it must be clear and unequivocal. However, the test remains one to be satisfied on the balance of probabilities as to the intention of the testator, and there is no presumption either way.

59. While the evidence of the Deceased's instructions given in the course of the consultation of 16 July, 2021, certainly raises doubts as to whether the Deceased intended to dispose of the Portuguese apartment in her Irish Will, particularly as she never gave any specific instructions as to who was to get the apartment, that evidence on its own might not, in my view, be sufficiently clear and unequivocal to overcome the explicit terms of both the revocation clause and the residuary clause in the Irish Will. It cannot be forgotten that it is the existence of a written will, executed and witnessed in accordance with s. 78 of the Succession Act, 1965, which provides the best evidence of testamentary intentions.

60. However, I am persuaded by the evidence of the two conversations between Paul and the Deceased, which took place in February and September, 2022, as corroborated by the statement made to Lisa in the same year and by the conversation with John in late July, 2021, that the Deceased believed that the Portuguese apartment was still going to be divided between her children in equal shares and that the express statements of the Deceased to Paul in 2022 demonstrate that the Deceased understood that her Irish Will related to her Irish estate only.

61. In my view, on the balance of probabilities, the deceased did not intend the Irish Will to revoke the Portuguese Will.

62. I will therefore make a declaration that the Irish Will did not revoke the Portuguese Will. I understand from the affidavit of Portuguese law filed in support of the application that Portugal has acceded to Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 (*"the Succession Regulation"*), and that, as a matter of Portuguese law, the Deceased is regarded as having chosen Irish law to govern her succession in accordance with Article 22 of the Regulation. As a result, it is also Irish law which governs the revocation of the Portuguese Will, in accordance with Article 24. It was on that basis that an application was made to this Court to determine the effect of the revocation clause contained in the Irish will.

63. In this case, the Deceased herself was not explicit in giving instructions to her solicitor about how she intended to dispose of her Portuguese estate, and she did not mention that she already had a Portuguese Will. In the circumstances, it was reasonable for her solicitor to assume that she intended to dispose of her Portuguese estate also. However, it might be preferable if solicitors, when taking instructions for a will, would ask if the testator has any foreign assets and, if so, whether it is intended that the will would apply to those assets. If specific instructions were taken on that point and noted in the solicitor's attendance recording the instructions for the will, applications of this kind would be not be necessary.