Neutral Citation No. [2009] NICA 40 | **Ref: HIG7569**

Judgment: approved by the Court for handing down (subject to editorial corrections) | **Delivered: 24/6/09**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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BETWEEN:

GERALDINE FENNELL

Plaintiff/Appellant;

-and-

DAVID LEITCH, MERVYN ANDERSON, RONALD ROBINSON ERIC A W KYLE, VERA A WOODS, STEVEN L COCKROFT & JAMES R PRINGLE PRACTISING AS JOHNS ELLIOT, SOLCITORS

Defendants/Respondents.

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Before Kerr LCJ, Higgins and Coghlin LJJ

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***Not Final-Subject to confirmation of typographical error as to date of death. Error does not affect decision.**

HIGGINS LJ

[1] This is an appeal from a decision of Gillen J whereby he dismissed the appellant's claim against the respondent solicitors for 'negligence, breach of contract, undue influence, groundless accusations and violation of human rights.' The appellant is a retired research psychologist and a personal litigant in these proceedings. The respondents are the partners in a firm of solicitors who at one time represented the appellant in earlier proceedings and to whom I shall refer, collectively and individually, as the respondent.

[2] The appellant's uncle (the deceased) lived at 420 Upper Newtownards Road, Belfast (the property). He died on 30 January 1999. He left his estate, comprising the house, £280,000 cash and shares to his nieces and nephew, the plaintiff, her sister Rosemary and her brother Desmond. Mark Tinman, solicitor, of C & H Jefferson became the sole executor. It was the appellant's case that from 1992 until his death in 1999 she lived with the deceased and

cared for him. The period 1992 to 1999 were referred to as the 'caring years'. During his lifetime an order of care and protection had been made in respect of the deceased at the request of the appellant's brother and sister and the Official Solicitor was appointed as controller of his estate. It was the appellant's case that the deceased was perfectly capable of handling his own affairs and that the appointment of the Official Solicitor was unnecessary. Relations between herself and her siblings deteriorated.

[3] In October, 2002 the appellant instructed the respondent to represent her in litigation that the administrator of the estate of the deceased had commenced against her. Proceedings by way of summons in the Chancery Division were brought by the administrator of the estate, Mark Tinman, against the appellant seeking delivery of the title deeds to the deceased's home (which the appellant held) and authority to proceed with an interim distribution of the estate. On 25 November 2002 Girvan J ordered delivery up of the title deeds to Mr. Tinman and awarded costs against the appellant.

[4] The appellant instructed the respondent to pursue a claim against Mr. Tinman as personal representative of the deceased for money she claimed was due to her from her uncle's estate. This was for work and services rendered by her at the request of the deceased during the time she had cared for him prior to his death from 1992 to 1999. This claim was based solely on the appellant's evidence that during the time she had cared for her uncle he had told her how much he appreciated what she was doing for him and that it was his wish 'to make it good to her.' She understood this to mean that he would make specific provision for her in his will in recognition of her assistance to him. It later emerged that the appellant understood that the deceased was to donate a substantial sum to create a research trust in the field in which the appellant worked, to be called the Carolan Trust.

[5] The administrator counterclaimed for rental and repairs to the deceased's house where she was still living. The appellant was represented by counsel as well as the respondent. This claim came on for hearing on 15 December 2003. Prior to that date the appellant was advised clearly of the weakness of her claim. After the case commenced negotiations took place. On 19 December 2003 the claim was settled on the following terms –

> "IN THE HIGH COURT OF JUSTICE FOR NORTHERN IRELAND, CHANCERY DIVISION
>
> Between: GERALDINE FENNELL, Plaintiff
>
> And MARK TINMAN, Defendant
>
> It is hereby agreed between the parties hereto that the claim and counterclaim in the above proceedings

shall be adjourned generally with liberty to either party to re-enter same on the basis of the terms set out in the Schedule attached hereto.

Dated this 19th day of December 2003

SCHEDULE

1. The Plaintiff shall give up possession of 420 Upper Newtownards Road, Belfast on or before Friday 20th February 2004 (time being of the essence).

2. If the Plaintiff does not give up possession as aforesaid then the Defendant shall be entitled to obtain an Order for possession by consent together with such additional costs as may be incurred in relation thereto before the Chancery Judge on/after Monday 23rd February 2004 without the need to involve the Plaintiff.

3. In consideration of these terms the Plaintiff shall remove the household contents of 420 Upper Newtownards Road, Belfast on/before Thursday 19th February 2004 (time being of the essence).

4. The Plaintiff hereby acknowledges and accepts that these terms are in satisfaction of her claims against the Estate in these proceedings.

5. The Plaintiff agrees that the Defendant's costs of this litigation in respect of the Plaintiff's claim shall be borne by her, such costs to be taxed in default of agreement on the indemnity basis.

6. If the said costs referred to in Clause 5 above have not been agreed on/before Friday 20th February 2004 then the Defendant shall be entitled to obtain by consent from the Chancery Judge as soon as practicable thereafter an Order in the terms of Clause 5 above together with any additional costs arising out of any such application without the further involvement of the Plaintiff.

7. The Defendant accepts that these terms are in satisfaction of the Defendant's counterclaim herein.

8. In further consideration of these terms the Defendant agrees to pay the sum of £3375 (three thousand three hundred and seventy five pounds sterling) to the Plaintiff's Solicitors, Johns Elliot, on/before Friday 20th February 2004 (time being of the essence) in respect of the Plaintiff's claim, the said sum to come out of the Deceased's estate.

9. If the said sum referred to in Clause 8 above has not been paid on/before Friday 20th February 2004 then the Plaintiff shall be entitled to obtain by consent from the Chancery Judge as soon as practicable thereafter an order in the terms of Clause 8 above together with any additional costs arising out of any such application without the further involvement of the Defendant.

10. In further consideration of these terms the Defendant agrees to waive and/or abandon any claim against the Plaintiff in respect of any alleged variation and/or fluctuation in the share portfolio belonging to the Deceased.

11. In further consideration of these terms the Defendant agrees to waive and/or abandon any claim against the Plaintiff in respect of the present state of repair of 420 Upper Newtownards Road, Belfast.

12. Desmond Fennell and Rosemary Fennell hereby join in these terms and agree to be bound by them as if the reference to the Defendant were to them jointly and/or severally.

13. The Defendant shall seek to recoup its costs in the first place from the Plaintiff's share of the Estate and only in so far as the said share shall be insufficient to meet same shall the Defendant be entitled to seek enforcement against the Plaintiff's other assets wheresoever they may be.

14. In so far as the Plaintiff's share of the Deceased's estate has not been dissipated by the Defendants said costs then the said balance shall be paid to the Plaintiff's Solicitors, Johns Elliot, who are hereby authorized to give a valid receipt for same to the Defendant.

15. The Plaintiff acknowledges that any insurance policy in respect of the building and contents of 420 Upper Newtownards Road, Belfast is held by her on trust for the Defendant.

16. In the event that the claim and/or counterclaim in these proceedings is re-listed on the basis of these terms or otherwise then in the further event of compliance with all the terms mentioned herein the said claim and counterclaim ay be announced as settled on terms endorsed on Counsel's briefs with each party having liberty to apply.

Dated this 19th day of December 2003"

[6] On 23 December the appellant emailed the respondent –

"I am really in need for the review that I have asked for. I regret I allowed myself to be persuaded to settle. So much of the material was totally new and I had so many unanswered questions. I am realising that it is possible I won't be able to have the review I asked for till the New Year. It's too distant. Quite frankly, what is bothering me a lot is my counsel putting such pressure on me and the nature of the pressure he used, which suggested there was great plausibility in the appearance of criminal activity on my part. ….."

[7] On 29 December 2003 the respondents replied in these terms –

"In view of the regret you have expressed in allowing yourself to be persuaded to settle, we contacted the defendants' solicitors and asked them to put the proposed terms of settlement on hold. They have replied to us this morning stating that the settlement is binding and that it is not open to you to go back on its terms. If we do not confirm your agreement on this by close of business tomorrow they intend to apply to the court for a formal order in the terms of the settlement.

The legal representatives present from our office do not believe that counsel's conduct was inappropriate in any way. In their opinion he fully explained the position to you and informed you of the opinions that

were available. Both he and our representatives emphasised that they did not want you to settle against your will. There is however nothing wrong with counsel urging you to settle the case if he believes (as he clearly does in this instance) that it is in your best interests to settle, nor is there any inconsistency.

The claim against your late uncle's estate depends almost entirely upon your oral testimony. When the case was adjourned on Friday 19 December, after your having had five days in the witness box, counsel felt he had to draw to your attention that in his opinion the oral evidence given by you would have created a negative impression with the court and would have been unlikely to lead to a successful outcome to your claim.

Senior counsel for the defendant based his preliminary submissions to the court on your oral evidence. In Mr McBrien's view the defendants' counsel was able to make the case fairly easily that in various instances your version of the events was improbable. As there are no surviving witnesses to your conversations with your late uncle the defendants' counsel was entitled to comment on how he saw your dealings with third parties such as bank managers, solicitors and court officials. It is Mr McBrien's assessment of this evidence and of the points made by opposing counsel that the court will likely have formed a view that is unfavourable to you.

Notwithstanding the view that Mr McBrien took of the oral evidence he argued strongly that the court should refuse the defendants' application for a direction that the defendant had no case to answer. The legal representatives from our office heard you compliment counsel on the submissions he made to the court on your behalf.

As regards the terms of settlement, our representatives also understood you to compliment Mr McBrien on the manner in which he conducted the negotiations on your behalf. …..

> If you decide to proceed further with the case the first hurdle which has now to be overcome is that the settlement may already be binding upon you. If we succeed on this point the next is the possibility that the court, in response to the submissions put by defendant's Senior counsel, will direct on your evidence the defendant has no case to answer. The consequence of this is that your claim will be dismissed with all costs awarded to the defendant and there would be no further opportunity to negotiate terms. The defendant's counterclaim would also proceed against you.
>
> If however you were also to succeed on the second point and the case proceeds Mr McBrien has advised that it could last for another two weeks by the time all the other witnesses give their evidence. In those circumstances we would need a further substantial payment from you so that we will be in a position to pay counsel when the case is over."

[8] On 31 December 2003, following a consultation at which the appellant received further advice, the respondent wrote to the legal representatives for the administrator confirming the settlement reached on 19 December 2003. In February 2004 following an application to come off record the respondent ceased to represent the appellant.

[9] The learned trial judge identified five separate matters in respect of which the claim for negligence against the respondent was made –

> 1. The defendants' preparations for the interlocutory hearings of 25 October 2002 and 15 December 2003;
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> 2. The defendants' conduct of these hearings and the trial commencing 15th December 2003("the action");
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> 3. The defendants' advice and improper pressure on the plaintiff to settle the action;
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> 4. The defendants' failure to properly advise her in the aftermath of the settlement and in particular as to the contents of the settlement and
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> 5. The defendants' decision to come off the record on or about prior to the hearing before Weir J on 23 February 2004 to deal with the terms of the settlement .

[10] In a careful and detailed judgment in which every relevant issue was assiduously examined the learned trial judge set out between paragraphs 40 and 59 the legal principles governing an action alleging professional negligence against a solicitor. No objection has been taken to his faultless conclusions on the applicable law. Central to the claim made by the appellant was the question whether the litigation on which she had embarked against the administrator had any real or substantial chance of success. After examining in detail the legal issues involved and the advice received by the appellant, the judge concluded that her legal advisers were correct and that the litigation had no real or substantial chance of success and at best was speculative. He therefore found at paragraph 61 that -

> "She has failed to prove that she lost the opportunity to pursue a claim that had something of value ie. that it had a real and substantial rather than merely a negligible prospect of success."

[11] The learned trial judge then considered whether the settlement of the action was a binding settlement which the appellant had freely entered into. Central to this issue was whether the appellant had been pressurised into agreeing to settle. The trial before Gillen J lasted 16 days during which the judge had ample opportunity to observe the appellant. At paragraph 89 he set out his conclusions about the appellant in these terms –

> "[89] I watched this plaintiff very carefully during the course of the trial which went on for 16 days. She was in the witness box for the greater part of the trial. I therefore had a first-hand opportunity to observe her over a lengthy period. She struck me as a highly qualified, articulate and intelligent person well versed in the art of assembling an argument and dealing with objections to it. I took the opportunity to ensure that she had frequent breaks during the course of her evidence, largely because of her years and the stress that I recognise this case must have had upon her. I am bound to say however that I never observed her to drop her guard in any way during the course of cross-examination and although at times she was clearly tired, her mind was ever alert. She often engaged counsel combatively and was never slow to insist on proper explanation where she was unsure of some proposition that was being put to her I found it quite inconceivable that, as alleged by her, she was in such a weakened state at the time of the settlement that she was unable to voice her concerns either as to

> her state of health or her ability to understand what was being explained to her. She marshalled her regular and lengthy submissions throughout with professorial authority. She did not strike me as a person who would be easily pressurised into agreement with something which she did not fully understand or support. Although I consider that she manifested a crippling lack of insight into the salient issues which were relevant to this litigation nonetheless I am satisfied that she fully understood the terms of the agreement against the background of the weaknesses in her case and the cross-examination which she had undergone. Whilst lay persons may often have difficulty understanding legal agreements even if it is explained to them, I do not believe this plaintiff laboured under such a disability. She is a woman firm of purpose and resilient in adversity who delivered her evidence in a direct and assured style well able to meet and effectively deal with points raised by experienced senior counsel in cross-examination."

[12] The judge was satisfied that, having received proper advice, the appellant decided to bring the proceedings to an end and freely entered into an agreement to settle the proceedings and intended so to do. He concluded that the agreement of which she had full knowledge was drawn up in proper legal form and that it was binding in law upon her.

[13] The appellant had contended that following the settlement she would retain the house as part of her share of the estate and that she was not obliged to give up possession of it. However the learned trial judge was emphatic that the terms of the Schedule to the settlement were clear that if she did not give up possession an order for possession would be obtained from the court. Between paragraph 110 and 117 the judge considered whether the respondent was negligent or in breach of contract in any manner during the conduct of the proceedings against the administrator. He concluded that they were not and at paragraph 117 stated –

> "[117] I am satisfied on the evidence before me that on numerous occasions Mr Leitch and Ms McIlvenna, carefully and skilfully, explained to the plaintiff the necessity to focus her attention on proving her case and not on the irrelevancies that arose out of the unhappy past from her point of view. But all to no avail. I consider that she was so immersed in the past that even the passage of time has failed to lend focus

> to her understanding of the key issues in the litigation. I therefore find no negligence in the strategy that was advocated by the defendants and which, in my judgment, was clearly accepted by the plaintiff at the outset of the case but which she failed to come to terms with thereafter."

[14] On the same basis he considered the interlocutory hearings of 25 October and 15 November and the final hearing between 15 and 19 December 2003 and reached the same conclusions. It was claimed by the appellant that she had been inadequately prepared for cross-examination by counsel in the December proceedings. The judge concluded that she was a formidable witness and illustrated, by reference to her evidence and the presentation of the case before him, what led to this conclusion. It was his view that, rather than negligent or inadequate preparation by solicitor or counsel, the difficulties the appellant encountered when giving evidence over five days arose from the nature of the case she was attempting to make. At paragraph 150, 151 and 152 the judge set out some of the difficulties the appellant encountered.

> [150] In the course of the trial before Girvan J the plaintiff was confronted by further problems in circumstances where I am satisfied she had not told Mr Tinman the full content of the assets in the estate. In particular she had not mentioned the Bloxam shares and money in the Northern Irish Bank. Although the administrator MT had requested her assistance in this regard in correspondence, her evidence was that she had simply overlooked replying because she was deflected by other matters. She claimed that she had told the Office of Care and Protection and in particular Master Hall, although it is clear from a memorandum that he firmly denies this. She was obviously cross-examined about the Tinman failure not only by counsel but also questioned by the judge. Her answer that she simply forgot about the request was clearly deemed inadequate. Similarly her failure to inform the bank in the Republic of Ireland that her uncle was dead although she continued to apply for dividends to his account was difficult to explain. Understandably the judge sought an explanation for this. Similarly she had not informed her aunt's bank when she had died. This was an obvious attack on her credibility which her advisers could neither have anticipated nor dealt with in advance.

[151] Her difficulties continued to accumulate as the trial progressed. The issue of the relationship between her uncle and the Northern Bank raised its head in cross-examination by Mr Stephens. Mr McIlwrath, the manager who had taken over from Mr Lewis, was asserting the case that over eight months he had been making efforts to see the deceased but had been frustrated in doing so. He had claimed that he had been given excuses such as that her uncle was out for a walk, that he was unwell or that he did not wish to speak to Mr McIlwrath. The suggestion was that she was attempting to keep the deceased away from contact with the bank. The plaintiff claimed before me that her solicitor had failed to provide her with documentation which would have shown the bank was, in her words "up to no good". It was her case that the documentation revealed that the bank had meetings with her brother and sister. In particular on one occasion her sister had "kidnapped" her uncle whilst out on a walk and had taken them to the Northern Bank where he had been prevailed upon to sign a letter which froze the household account and attracted the yearly sum which was given for his maintenance. It was her case that the failure on the part of her solicitor to appraise her of this information had restricted her ability to deal with questioning on this matter. I reject this argument entirely. It is but one more example of the plaintiff failing to confine her focus to the issue at hand. I find no basis for her assertion that the Northern Bank was "up to no good". She claimed that the motivation of the bank was the desire to keep the account of her uncle and prevent him transferring money to another bank. In order to do this the bank was prepared to resort to the subterfuge that she alleged. This seems highly improbable and her speculation in this regard would in my view have had no material effect upon the trial other perhaps than to further damage her credibility. The evidence of Mr McIlwrath, if he had been called, would in my view have been damaging to her.

[152] A further assertion that the plaintiff made against he bank was that it had negligently failed to transfer money from the Isle of Man to an Anglo Irish bond which was paying far greater interest than the

> money in the Northern Bank. Again she asserted that the bank officials had refused to do this or carry out the instruction of the deceased simply because they were anxious to keep the large sum of money in the account within the bank. The plaintiff was questioned about the value of her own Anglo Irish bond which was worth £250,000. She was asked as to whether any money from her brother or aunt had made up that investment. The plaintiff indicated that this was a very hurtful gratuitous allegation. It was a line of attack that was difficult to anticipate and in any event there was nothing that could have been done to protect the plaintiff from it. However the fact of the matter was that this was a legitimate avenue for defence counsel to explore in a case where they were alleging that the plaintiff had been looking after the deceased solely for her own ends. She had been seeking a power of attorney on behalf of the deceased and accordingly that fuelled the line of cross-examination that was adopted.

[15] It is clear from these passages that the credibility of the appellant was in issue. The learned trial judge was satisfied that the exposure of the weakness of her case while under cross-examination led to her legal advisers giving her sound advice about the case and the cost implications. He was further satisfied that she had come to appreciate the difficulties that lay in her case and that this had led to her decision to settle the proceedings.

[16] The appellant challenged the decision of the respondent to apply to come off record. The judge was satisfied that at the time the application was made the respondent could no longer continue to act on her behalf. The appellant was disputing the terms of the settlement entered into on 19 December. In addition she was failing to carry out the terms of the settlement and was blaming the respondent for bringing it about. The judge concluded that they were well justified in their action and that he could not conceive of any other solicitor acting differently. The judge concluded his judgment with this comment at paragraph 163 –

> "[163] The conclusion that I have come to overall in this case is that this plaintiff has become so immersed in the past that she cannot yet find closure on the historical events. The passing of time normally lends distance to such feelings but that has not happened in this case. She has become so overwhelmed with her dispute with her siblings that she has proved unable to take a rational and detached view of what was

> relevant or irrelevant in any of the litigation on which she has embarked. The spiralling costs of her unsuccessful litigation to date have not deterred her from the path upon which she has set her course. I shall listen to arguments about costs in this case, but if the orthodox approach of costs following the event is my conclusion in this case, then the costs of this lengthy litigation are likely to be very substantial indeed. It may well be that my judgment that her case has been bereft of plausible expectation of success from the very start will similarly have no effect upon her views on the future course that she intends to follow. I trust however that even at this stage she will attempt to stand back and rationalise where her present thinking is leading her."

[17] The appellant appealed against the decision of the learned trial judge on the following grounds –

> "His Lordship erred in:
>
> 1. When establishing points in favour of Respondents, misinterpreting facts in documents discovered by the parties, including:
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> a. Correspondence written by Respondents to Appellant.
>
> b. Other aspects of the written record.
>
> 2. Misinterpreting evidence given by Appellant including, as regards:
>
> a. Respondents' handling of the interlocutory hearings as revealed in discovery.
>
> b Need to obtain Defendants' discovery in advance of the hearing,
>
> c. Being "the accused."
>
> d. State of mind during the settlement.

3. Relying on documents discovered by the parties in the absence of discussion of such documents during the hearing.

4. Reporting facts favourable to the opposition while omitting relevant facts favourable to Appellant's position.

5. Inferring Appellant's emotional state and cognitive competence at the time of the original hearing and settlement from her performance before him in the recent hearing.

6. In the absence of Respondents' calling witnesses from their law firm, assuming or inferring the content and tone of their discussions with Appellant including as regards:

a. Informing Appellant that they were recommending a 'high road' strategy, stating their rationale for so doing and explaining what "high road" entailed.

b. Counsel's various written communications to Respondents.

c. Technical problem regarding Appellant's wish to have inheritance assigned to Carolan Research Trust.

6. Failing to recognise that the "high road" strategy required that Respondents have concern to protect their client's credibility, and take reasonable steps to help her be a credible witness.

7. Failing to include in weighing his judgment:

a. Respondents' failing to live up to their "assurance that we will do everything we possibly can to present as effective a case as possible"(November 14, 2002, par 78) by, e.g., failing to:

i. Get to what is really at issue for their client (par. 49, 50), to have discussion and give advice

regarding her request to view her case as one where some residuary legatees ganged up on another; to keep the client informed of relevant events and timely explain legal issues (par 42, v, vi), and to use timely request for information from the opposition (par 52).

ii. Ensure that Appellant had all the relevant facts at the settlement.

b. The significance of the content of Respondents' answers to Appellant's interrogatories, to which no reference is made in the judgment.

c. The significance of the interlocutory hearings, and preceding exchanges with the Administrator, for Appellant's belief regarding the house coming to her as part of her share in return for agreeing that funds be distributed to her siblings.

d. The significance of the note regarding setting up the trust, which Appellant pointed to as the eventual quid pro quo, as making concrete the consideration with reference to the testator's funds in Northern Bank, Isle of Man.

e. Appellant's right to a fair trial, including a level playing field with relevant information available in advance to both parties."

Not all of these grounds were pursued.

[18] The appellant disputed many of the facts and circumstances in the history of the proceedings. The valuation of the property at £72,500 or £80,000 was one such matter. She argued that many points should have been taken and submissions made in the defence of the interlocutory proceedings by the administrator. She claimed that much relevant material was not dealt with by the trial judge. In relation to the settlement she claimed that she had agreed that her siblings would receive £72,500 and that she would get the house.

Many of her submissions related to documents which she said that she had not been shown by her advisers, either at all or only when it was too late for her to assimilate them. These included the file from King and Gowdy, Solicitors, relating to earlier proceedings and documents from the Northern Bank relating to the deceased's account. She claimed that she had settled the case without knowing the contents of some documents or the full facts. She said she was not informed that she would have to vacate the property within two months of the settlement.

[19] The appellant also claimed that she had not been adequately advised in advance of the hearing and in particular was not informed of, and did not agree to, the strategy adopted by her legal advisers, which was referred to as the 'high road strategy'. The essence of this strategy was to concentrate on her case that the deceased said 'he would make it good to her' and to leave to one side her complaints against her siblings and the involvement of the Official Solicitor. Essentially her case was twofold – 1. she should have been allowed to make her case against her siblings and in relation to the Controllership and not left to defend her position in cross-examination and 2. that her ignorance of certain documents and the lack of advice given beforehand rendered her a vulnerable witness who in cross-examination did not answer as well she might have and thereby failed to put her case forward in the best possible light.

[20] Mr Morrow QC, who with Mr Good appeared on behalf of the respondent, submitted that the learned trial judge correctly identified the relevant issues in the case and dealt with them. He was also right in his assessment that the strategy adopted was the correct one. To have embarked on her complaints relating to her siblings and the Controllership would have unnecessarily lengthened the proceedings thereby incurring extra costs as well distracting the court and the legal representatives from the real issues. There was ample justification for the judge's finding that the appellant was obsessed with what she saw as injustices in the past and was unable to see clearly what her case against the administrator was in fact. Her approach to the appeal was an attempt to retry the issues that were before the trial judge. He submitted that the documents to which the appellant referred related to matters of which she had first hand personal knowledge and had lived through (a fact acknowledged by the appellant in her reply). Having the documents would not have increased her chance of succeeding in the litigation. A proper settlement was reached after she received appropriate and comprehensive advice. That settlement was confirmed when she agreed to be bound by the terms of the settlement at the consultation on 31 December 2003. When the appellant later sought to dispute the settlement and failed to implement its terms, her solicitors were entitled to apply to come off record. It was submitted that at all times she was properly advised and that her case had been presented in the best possible manner.

Conclusions

[21] Skeleton arguments were lodged by both the appellant and the respondent. The respondent's set out with great clarity the legal issues raised in the case. In view of the matters relied on by the appellant in the course of the hearing of the appeal, it is not necessary to deal with all the legal arguments or the case-law. No criticism was made of the learned trial judge's approach to the law or his identification and narrowing of the issues. The appellant's complaints about documents and the advice she received did not sound on the central and critical issue in the case, namely whether her action against the administrator had any real or substantial prospect of success. The learned trial judge's finding that the appellant's case against the administrator had no real or substantial chance of success was not challenged, nor could it have been. We agree with his conclusion that the case against the administrator had no real prospect of success for the reasons which he gave between paragraphs 61 and 87 of his judgment. His finding is unassailable. The gravamen of the case against the administrator lay in the conversations which the appellant had with the deceased and the care she provided for him during the 'caring years'. Her dispute with her siblings and disagreement with the Controllership were irrelevant to that case. The strategy adopted by her then legal advisers was the appropriate strategy to adopt. Wherever the terminology 'high road strategy' originated from, it was the only strategy to espouse in the circumstances.

[22] We agree also with the judge's conclusion that no negligence or breach of contract was established relating to the interlocutory hearings. The appellant complained about points not being taken and strategies not being adopted. Here again, the central issue was critical. That the appellant had impeded the administrator by wrongly failing to hand over the title deeds of the property was, as the judge found, unanswerable. Whatever arguments she wished to put forward in the course of the interlocutory proceedings they were irrelevant when faced with her failure to hand over the title deeds. The appellant seemed unable to accept or understand clear advice relating to what was at issue in the interlocutory proceedings.

[23] In his judgment at paragraphs 128 to 155 the learned trial judge has set out his findings relating to the progress of the proceedings between 15 and 19 December 2003. Two main difficulties in the appellant's case were exposed – 1. the vagueness of the undertaking given by the deceased 'to make it good to her' and 2. the absence of a specific sum which would be left to the Trust. Thus, even if one took the appellant's evidence at its height the legal basis of the claim was deficient on these fundamental issues. The danger was as the learned trial judge recognised – that the appellant was seeking from the court something which the court could not give her.

[24] The course of the cross-examination of the appellant was highlighted. During this she was asked about her knowledge of the extent of the estate and what she had told the administrator about it. The true size of the estate was clearly relevant. It became clear that she had failed to mention some shares and a bank account. Her answer that she had simply overlooked the administrator's request for assistance about the extent of the estate was not impressive. Other matters were raised relating to documents and signatures. Thus the appellant's credibility was clearly under attack and this had to be taken into account in giving the appellant sound and proper advice.

[25] In his judgment the learned trial judge carefully traced the progress of the litigation before settlement was reached. He concluded that once the weakness in the case had been exposed it was the duty of counsel and her solicitor to advise her as to the serious cost implications should the case continue and be lost. His conclusion that it was the effect of the cross-examination and the comments of the Chancery Judge together with the advice from her lawyers which led to her agreement to the settlement is beyond challenge.

[26] The trial before Gillen J lasted 16 days and the trial judge had, as he stated, a first-hand opportunity to observe the appellant over a lengthy period. In addition he had (as we have) the exchanges of correspondence between the appellant and the respondent, particularly those relating to the settlement. There is no reason to question his conclusion that the appellant is 'a highly qualified, articulate and intelligent person well versed in the art of assembling an argument and dealing with objections to it'. This court had first hand experience of this also. Nor is there any reason to doubt the correctness of his conclusion that she would not be easily pressurised into agreement. We have carefully considered all the evidence relating to the settlement and its subsequent confirmation and are satisfied that the judge was correct that it was a binding settlement freely entered into for the reasons which he gave between paragraphs 88 and 109 of his judgment.

[27] Once the appellant questioned the settlement in January 2004 and failed to implement its terms the ordinary relationship between solicitor and client, which is founded on mutual trust, broke down. In those circumstances the respondent was entitled, if not duty bound, to apply to the court for an order permitting them to come off record. The Judge's finding to this effect (despite the minor error in attribution of the source of a note) is not open to challenge.

[28] None of the grounds of appeal have been made out. The conclusions reached by the trial judge are unimpeachable and the appeal is dismissed.