

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 3SR

30th July 2010

B e f o r e :

HIS HONOUR JUDGE HODGE QC
sitting as a Judge of the High Court

Between:

David Arnold Ashcroft	Claimant
- and -	
(1) Andrew Davison Barnsdale	
(2) Helen Mary Ashcroft	
(3) Richard David Ashcroft	Defendants

Mr Thomas Entwistle (instructed by Squire, Sanders & Dempsey) for the Claimant
The Defendants did not contest the claim and were not represented
Hearing date: Thursday 22nd July 2010

His Honour Judge Hodge QC:

Introduction: Relief and Parties

1. By a claim form issued under Part 8 of the Civil Procedure Rules on 21st May 2010 the Claimant seeks to rectify a deed of family arrangement varying the will of his late wife, Charlotte Mary Ashcroft, who died on 14th April 2006 aged 60. The 1st Defendant is the brother of the deceased. The 2nd and 3rd Defendants (who are both over 21 years of age) are the deceased's only children. The Claimant and the 1st Defendant are the two executors of the deceased's estate. The only party who appeared before me was the Claimant, represented by Mr Thomas Entwistle of counsel. The 2nd and 3rd Defendants have both filed acknowledgments of service indicating that they do not intend to contest the claim. I was told that the 1st Defendant (who has no beneficial interest in the deceased's estate, either under the will as originally executed or by virtue of the deed of variation) has signed a similar acknowledgment of service, but that this has not yet been received by the Claimant's solicitors; nor has it been filed at Court. I direct that (subject to any further direction) my order shall not be perfected unless and until an acknowledgment of service is received from the 1st Defendant indicating that he, too, does not intend to contest the claim.

Factual background

2. The only substantive evidence before the court comprises a witness statement from the Claimant dated 10th July 2010, together with a bundle of relevant copy documents from the files of the

estate's accountants (Butler & Co of Alresford, Hampshire) and its former solicitors (Kidd Rapinet of Farnham, Surrey) marked Exhibit 'MAA 1'. By her last Will dated 6th May 1980 the deceased appointed the Claimant and the 1st Defendant to be her executors and trustees. By clause 3 of the Will, the deceased gave to the Claimant absolutely "free of all duty and taxes payable at my death (a) the sum of TEN THOUSAND POUNDS (b) All my freehold property situated in Surrey or Hampshire and occupied or farmed by me or me and my husband." By clause 4 the deceased gave the residue of her estate to her trustees upon the usual trusts for sale and conversion. By clause 5 of the Will the trustees were directed to stand possessed of the net sale proceeds and the deceased's ready money (after payment thereof of her funeral and testamentary expenses and debts, legacies and all capital transfer tax payable on her death) upon trust (in the events which happened) for her two children absolutely. Clause 6 of the Will extended the trustees' powers of investment.

3. The deceased's net estate was worth some £1,700,000. The principal assets were farmland at Dockenfield, Surrey worth some £585,000; shares and other investments worth some £995,000; and a share in a farming business worth some £80,000. Under the terms of the Will as executed, the Claimant was to receive £10,000 and the farmland whilst the residue passed to the children. This was inefficient for inheritance tax purposes because the farmland and the share in the farming business attracted agricultural property relief at 100%; but since the farmland passed to the Claimant, and so was subject to the surviving spouse exemption, the agricultural property relief was not utilised. Accordingly, the estate's accountants suggested drawing up a deed of variation by which the Claimant was to exchange the farmland for part of the share portfolio. On 20th June 2006 a meeting took place attended by the Claimant, his two children (the 2nd and 3rd Defendants), Mr Ian Fielder and Ms Cherry Dowsett (of Butler & Co) and Mr Gary Stones (of Kidd Rapinet). Apparently no attendance note was made of that meeting; but its subject matter had been anticipated by letters from Butler & Co to the Claimant dated 1st and 6th June 2006. According to paragraph 6 of the Claimant's witness statement, at the meeting it was agreed that a deed of variation should be prepared by which the farmland should be exchanged for an equivalent (in terms of monetary value) part of the share portfolio. The Claimant was to be treated as the residuary beneficiary so that the surviving spouse exemption should apply to the whole estate with the exception of that part of the share portfolio which was to be given to the children and the farmland (which, because of agricultural property relief, was not subject to inheritance tax in any event).
4. A deed of variation was prepared by Mr Stones and was completed on 24th August 2006. The parties were (1) the Claimant and the First Defendant as executors and (2) the Second and Third Defendants as the residuary legatees. Clause 1 recited that the residuary legatees desired and intended to vary the dispositions of the will in the manner set out in the Deed. Clause 2 (headed "Variation of Will") provided that the testator was to be deemed to have deleted clauses 3, 4 and 6 from the Will and should be deemed to have inserted the following clauses in the Will: "2.1(a) I GIVE the sum of £410,000,00 FOUR HUNDRED AND TEN THOUSAND POUNDS to such of my children as shall be living at the date of my death and if more than one in equal shares 2.1(b) I GIVE to my children as shall be living at the date of my death my agricultural farmland known as Great Holt Farm Dockenfield Farnham Surrey and if more than one in equal shares 3 I GIVE DEVISE and BEQUEATH all my estate both realty and personalty whatsoever and wheresoever not otherwise disposed of by this my said Will to my husband David Arnold Ashcroft". There was no clause 3 of the Deed. By Clause 4 (headed "Executor's Undertaking") the executors undertook to administer the estate in accordance with the variation made by the Deed. Clause 5 (headed "Reading back statement") gave notice to the Board of Inland Revenue in accordance with section 142 (2) of the Inheritance Tax Act 1984 and section 62 (7) of the Taxation of Chargeable Gains Act 1992.
5. The Deed of Variation is defective in several respects. I have already noted that it contains no clause 3 (the draftsman having apparently confused the substituted clause 3 of the Will with clause 3 of the Deed). The reference to the deletion of clauses 3, 4 and 6 of the Will was

erroneous: it was clause 5 (which contained the residuary gift) which required deletion rather than clause 6. Further, as Butler & Co noted in a letter to Kidd Rapinet of 18th September 2006, the Deed left the sum of £410,000 to the children although the June 2006 correspondence had suggested that this amount should be £410,772. But a more significant defect was soon to emerge. Following the submission of the Inheritance Tax Account (Form IHT 200) to the Inland Revenue, together with payment of the anticipated tax liability of some £50,000, on 20th December 2006 HM Revenue & Customs (“HMRC”) wrote to Kidd Rapinet enclosing a calculation showing some £33,000 to be due by way of additional inheritance tax. This arose because the gift of £410,000 to the children under the Will as varied was (by section 211 of the Inheritance Tax Act 1984) to be treated as free of tax and therefore had to be grossed up under section 38. Since, under the Deed of Variation, the Claimant was to be treated as the residuary beneficiary, it fell to him to bear the incidence of the inheritance tax. As the Claimant explains at paragraph 9 of his witness statement: “This was not what was agreed between the children and me and not what we had thought was the deed’s effect. Under Charlotte’s will the children, as the residuary beneficiaries, had borne the IHT which was payable. Our intention in entering into the deed was not that I would assume the IHT liability. If this aspect of the deed’s effect had been explained to me I would not have executed it but would have asked for it to be amended so as to ensure that the children continued to bear the IHT liability. I am advised that this could have been easily achieved by inserting the words ‘subject to inheritance tax’ in clause 2.1(a) of the deed.” However, the Claimant was advised that HMRC’s view of the Deed of Variation was correct; and he therefore paid the inheritance tax which was said to be due.

6. Initially, the parties to the Deed of Variation sought to correct the mistake by executing a Deed of Rectification dated 20th September 2007. This included a recital that: “The intention of the parties to the Variation was (a) to delete clauses 3 and 5 of the Will; (b) to replace the specific devise in favour of the husband of the Testator with a gift of residue to him of approximately equal value; (c) to replace the gift of residue to the Residuary Legatees with a specific devise and pecuniary legacy in their favour of an amount approximately equal to the previous residuary gift having regard to the burden of inheritance tax which was payable out of residue; (d) that the specific devise and pecuniary legacy under clause 2 of the Variation should bear their own inheritance tax such that the husband of the Testator should receive approximately the same value as he would have received had the provisions of the Will remained unaltered and that the Residuary Legatees should receive approximately the same values as they would have received under the terms of the Will disregarding any adjustment in the inheritance tax liability as result of the Variation.”
7. This Deed of Rectification was submitted to HMRC under cover of a letter dated 20th September 2007. The letter recorded that it had come to the attention of the parties to the Deed of Variation that “it contains a number of errors which were plain from any review of the terms of it in conjunction with the terms of the Will and also the Deed did not correctly carry out their intentions. For example, the Deed deleted the clauses of the Will which contained nothing more than the standard trust for sale and also the investment powers of the trustees. On the other hand, the residuary gift under clause 5 was left in place and yet the Deed of Variation purported to make a different residuary gift as well. In addition, the parties wanted the specific gift under clause 2 of the Variation to bear its own tax, as otherwise the entitlement of the testator’s surviving spouse would be adversely affected and that was not the intention.” The letter concluded by asking HMRC to revise the inheritance tax position of the estate in accordance with the Variation as rectified. By letter dated 19th October 2007 HMRC responded, asserting that “given the number and nature of the alterations referred to in the Deed of Rectification, this cannot be accepted as having any effect for inheritance tax purposes unless the parties apply to the Court for rectification of the Deed of Variation.” In a later letter dated 29th May 2008, HMRC confirmed that if the court were to approve rectification of the Deed of Variation, HMRC would be bound by that. The letter also confirmed that HMRC would not seek to be joined as a party to the application for rectification. On 1st September 2009, HMRC wrote asking that the court’s attention should be drawn to the cases of *Racal v Ashmore* and *Allnutt v Wilding*.

8. The Claim Form seeks an Order rectifying the Deed of Variation (1) by substituting '5' for '6' in Clause 2.1; and (2) by substituting for Clause 2.1(a) the following words: "I GIVE the sum of £410,772 FOUR HUNDRED AND TEN THOUSAND SEVEN HUNDRED AND SEVENTY TWO POUNDS subject to inheritance tax to such of my children as shall be living at the date of my death and if more than one in equal shares." The Claimant seeks no order as to costs. Having heard oral submissions on Thursday 22nd July 2010, I reserved judgment in order to re-read the supporting witness statement and the exhibited documents in their entirety.

Submissions

9. For the Claimant, Mr Entwistle submitted that rectification should be granted in the terms sought. For the conditions for rectification, he referred me to paragraphs 14-09 to 14-18 of *Snell's Principles of Equity*, 31st edn (2005). First, there must be evidence of the parties' intention which was sufficiently strong to contradict the inherent probability that the written instrument truly reflected their intention. He referred me to the Claimant's witness statement and the documents exhibited, especially those preceding the execution of the Deed. It was said that these clearly envisaged that the change to be effected by the Deed was that the land at Dockenfield, which passed to the Claimant under the Will, should be exchanged for an equivalent part of the share portfolio, and that the remainder of that portfolio was to be the only chargeable part of the estate (so that all other assets, except for the tax-exempt land at Dockenfield, should pass to the Claimant). There was no suggestion in any of the contemporaneous documents or otherwise that the Claimant was intended to assume any liability for inheritance tax.
10. Secondly, in cases (such as this) of common mistake, it must be shown that there was a prior agreement between the parties; that this was still effective when the instrument was executed; that by mistake the instrument failed to carry out that agreement; and that, if rectified, the instrument would carry out the agreement. In this case, the agreement between the parties was that certain assets in the deceased's estate should be exchanged between them; but they did not agree that the burden of inheritance tax should thereby be altered. It was said to be sufficient for rectification that the words which were used (or, in this case, which were *not* used) did not give effect to the parties' common intention. Thirdly, there must be no convenient alternative remedy. This was said to be clear from HMRC's letter of 19th October 2007, referred to at paragraph 7 above.
11. Mr Entwistle then turned to the two authorities referred to in HMRC's letter of 1st September 2009. *Racal Group Services Ltd v Ashmore* [1995] STC 1151, a decision of the Court of Appeal, concerned a covenant by a company to pay an annual sum to charity. Since the last payment under the covenant was to be made less than three years after the execution of the deed, an intended tax advantage was not secured. The Court of Appeal upheld the decision of Vinelott J to dismiss a claim to rectify the date of the final payment on the footing that the company had failed to establish to the required standard that the covenant did not give effect to its true intention. In the course of his leading judgment (at 1156), Peter Gibson LJ accepted Vinelott J's summary of the effect of the authorities at [1994] STC 416, 425: "In my judgment, the principle...is that the court will make an order for the rectification of a document if satisfied that it does not give effect to the true agreement or arrangement between the parties, or to the true intention of a grantor or covenantor and if satisfied that there is an issue, capable of being contested, between the parties or between a covenantor or a grantor and the person he intended to benefit, it being irrelevant first that rectification of the document is sought or consented to by them all, and second that rectification is desired because it has beneficial fiscal consequences. On the other hand, the court will not order rectification of a document as between the parties or as between a grantor or covenantor and an intended beneficiary, if their rights will be unaffected and if the only effect of the order will be to secure a fiscal benefit." Mr Entwistle submits that here, although the relief sought will reduce the estate's liability for inheritance tax, it will also change the burden of inheritance tax, and so alter the parties' rights and liabilities, benefiting the Claimant at the expense of his children.

12. Mr Entwistle went on to draw my attention to a passage in the judgment of Peter Gibson LJ at 1157 where he accepted that, in the case before him, there was an issue capable of being contested between the parties affected by any order for rectification. That was said to be sufficient to enable the court to entertain a claim for rectification when, unlike the situation in the earlier case of *Whiteside v Whiteside* [1950] Ch 65, there had been no supplemental deed of rectification. Mr Entwistle recognised that, in the present case, a deed of rectification had been executed; but he submitted that the existence of a deed of rectification could only preclude the court from exercising its powers of rectification where, as a result of the deed, there was no longer an issue between the parties which was capable of being contested (as in *Whiteside v Whiteside* itself). That was not the situation here because HMRC refused to accept the efficacy of the Deed of Rectification for inheritance tax purposes; and the Claimant had not sought to challenge the correctness of that position.
13. In *Allnutt v Wilding* [2007] EWCA Civ 412, [2007] WTLR 941, a decision of the Court of Appeal affirming Rimer J, the trustees of a discretionary settlement sought to rectify it after the death of the settlor on the grounds that his solicitor had made an error in drawing up the settlement because he had not appreciated the need to confer interests in possession on the beneficiaries, with the consequence that the settlement had not given effect to the settlor's underlying intention of making a potentially exempt transfer of funds in order to avoid paying inheritance tax. It was held that the lower court had been fully entitled to reject the claim for rectification on the basis that the object of that remedy was to enable parties to correct mistakes in the way their transaction had been recorded, and not to enable them to change the substance of the transaction they had entered into. There, the settlor had executed the settlement he had intended to execute, and there was no operative mistake in the way that his intentions had been recorded; the only mistake was the assumption that the payment would be a potentially exempt transfer, and that was a mistake that fell outside the ambit of the remedy of rectification. At paragraph 6 of his leading judgment, Mummery LJ referred to observations of Millett J in *Gibbon v Mitchell* [1990] 1 WLR 1304 at 1309 on the distinction between a mistake as to the effect of a transaction, and one merely as to its consequences or the advantages to be gained by entering into it. Those observations had been made in the context of the court's jurisdiction to set aside a voluntary transaction on the grounds of mistake; but Mummery LJ made it clear that the principle applied equally to a claim to rectify a voluntary transaction on the grounds of mistake.
14. Mr Entwistle submits that nothing in *Allnutt* precludes rectification in this case. He says, first, that the distinction between the "effects" and the "consequences" of a transaction only applies to the rectification of a *voluntary* transaction, whereas the Deed of Variation in the present case was the product of an agreement between the parties. Secondly, and in any event, he says that in *Allnutt* the terms of the settlement were in accordance with the intention of the settlor whereas, here, the Deed of Variation has failed to give effect to the parties' true agreement.

Applicable legal principles

15. With the exception of the first limb of Mr Entwistle's submission about the effect of the *Allnutt* case, which I reject, I accept the Claimant's submissions. In my judgment, it would be contrary both to principle and to authority to confine the distinction (which I acknowledge is not always an easy one to grasp) between a mistake as to the meaning or effect of a document (which may be amenable to rectification) and one as to its consequences (which is not) to cases involving voluntary transactions. I consider that it applies to all claims for rectification. So far as principle is concerned, the relevance of the distinction does not depend upon the nature of the document which it is sought to rectify. Rather, it is a limitation which is inherent in the nature of the equitable remedy itself: the function of rectification is to enable the court to put the record straight by correcting a mistake in the way in which the parties have chosen to record their transaction; it does not empower the court to change the substance of that transaction or to correct an error in the transaction itself. So far as authority is concerned, there is no warrant in *Allnutt* itself (or in any of the other cases) for confining the distinction to cases of voluntary transactions; and in *Oun v Ahmad* [2008] EWHC 545 (Ch) (which involved a claim to rectify a land contract)

at paragraphs 47 – 51 Morgan J treated the observations of Mummery LJ in *Allnutt* as applying generally, and as being a sufficient guide to the established principles as to the availability of rectification.

16. However, as will appear, I accept Mr Entwistle’s alternative submission that the Deed of Variation fails to give effect to the true agreement of the parties. So long as a mistake relates to the meaning or effect of a document (rather than the consequences of, or the advantages to be gained from, entering into it), relief may be available even though the actual words of the document were deliberately adopted by the parties. It is now firmly established that the fact that the parties intended to use a particular form of words in the mistaken belief that it was achieving their common intention does not prevent the court from giving effect to their true intention. Further, it seems to me that where (as here) the mistake results from the inadvertent *omission* of a word or phrase from a document, and it is sought to introduce additional words into the document to cure that mistake, it may, in practice, prove easier to discharge the evidential burden of establishing the existence of a mistake than in the case where words have been inadvertently *included* in the document which it is sought to rectify. This is because parties may not always appreciate the legal effect of the omission of particular words. Moreover, it also seems to me that the satisfaction of the requirement of an outward expression of accord (if, since *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38; [2009] 1 AC 1101, this differs from the requirement of proof of a mistake in expressing the parties’ prior consensus, as objectively construed) may require some modification in its application to a case where the mistake relates to the *omission* of a particular word or phrase from a document which is required in order to achieve its intended effect: inevitably, it may be more difficult for parties outwardly to express an intention to include a word or phrase when they have failed to appreciate the need for them.
17. In the present case, the claim to rectification was formulated in response to a claim by HMRC for additional inheritance tax. In my judgment, the effect of the authorities is that the court cannot rectify a document *merely* because it fails to achieve the fiscal objectives of the parties to it. A mere misapprehension as to the tax consequences of executing a particular document will not justify an order for its rectification. The specific intention of the parties as to how the fiscal objective was to be achieved must be shown if the court is to order rectification. The court will order the rectification of a document only if it is satisfied by cogent evidence (sufficient to counteract the effect of the parties’ subscription to the relevant document) that: (1) the document does not give effect to the true agreement or arrangement between the parties, and (2) there is an issue, capable of being contested, between the parties; it being irrelevant, first, that rectification of the document is sought or consented to by all of them; and, secondly, that rectification is desired because it has beneficial fiscal consequences. Conversely, the court will not order rectification of a document if the parties’ rights will be unaffected, and if the only effect of the order will be to secure a fiscal benefit for one or more of them.

Application to the facts

18. The mistaken reference to clause 6, instead of clause 5, of the Will is a clear and obvious error of numbering on the part of the draftsman which the court can readily correct as a matter of construction, and without any order for rectification. The appropriate remedy is to declare that the reference, in Clause 2.1 of the Deed of Variation, to clause 5 of the Will should be construed as referring to clause 6 of the Will.
19. As is so often the position in uncontested claims for rectification of deeds of family arrangement, in the present case I am not required to make any findings of primary fact on the basis of conflicting evidence. Rather, my task is to evaluate the uncontradicted evidence, and to decide whether it is good enough to discharge the standard of cogent proof required in order to satisfy the requirements of a claim for rectification. In the present case, I am satisfied on the evidence, to the required standard of proof, that the true intention of the parties to the Deed of Variation was not in any way to alter the incidence of the burden of the inheritance tax chargeable upon the deceased’s estate but merely to reduce the amount of tax payable to HMRC. Evidence of the true

intention of the Claimant and his children is contained in paragraph 9 of the Claimant's witness statement. Although none of the other parties have filed any evidence, they do not seek to contest the claim (even though it is in the immediate financial, if not the familial, or even possibly the ultimate financial, interests of the 2nd and 3rd Defendants to do so); and the recitals to the 2007 Deed of Rectification afford hearsay evidence of the parties' true intentions. Moreover, the evidence of the Claimant is entirely consistent with the underlying probabilities. Under the terms of the Will as executed, the assets which were left to the Claimant passed to him free from any liability for inheritance tax; and the burden of the tax chargeable to the estate fell upon the children as residuary beneficiaries. Since the whole genesis and objective of the Deed of Variation was to mitigate the amount of inheritance tax chargeable upon the estate, it would have made no economic sense to relieve the children of any part of their pre-existing liability for tax in circumstances where this would result in an additional charge to tax (because of the effect of grossing-up) which would fall upon their father. Furthermore, had there been any intention to change the basic position as to the incidence of the burden of inheritance tax, I am satisfied both that this would have been addressed in the contemporaneous documentation, and that it would have been translated into some consequential change in the amount which was to pass to the two children by way of pecuniary legacy under the Deed of Variation. The very omission of any reference to such matters is, in my judgment, capable of amounting to an outward expression of the parties' true accord; and if it is permissible to have regard to post-transaction evidence for this purpose (which may depend upon whether an outward expression of accord is essentially an evidential factor or rather constitutes a substantive legal requirement of a successful claim for rectification), then the recitals to the Deed of Rectification and the form of the Acknowledgments of Service would satisfy this requirement.

20. I am satisfied that this is not a case where the parties merely proceeded under a misapprehension as to the true fiscal consequences of the Deed of Variation as actually drafted. Rather, the Claimant has demonstrated a specific common intention as to how the parties' fiscal objectives were to be achieved; and he has established that, owing to a mistake in the way in which that intention was expressed in the Deed of Variation, effect has not been given to that intention. Underlying the parties' adoption of the Deed of Variation was the common intention, unarticulated and unexpressed, that the Claimant should receive his entitlement under his late wife's will, as varied, free from all liability for inheritance tax, thereby replicating the position under the Will as executed. There was never any intention to vary the burden of, or the incidence of the parties' liability for, inheritance tax. To the extent that the Deed of Variation had this effect, then it was executed under a relevant mistake, because it failed to give effect to the parties' true intention. To paraphrase the approach of Sir Raymond Evershed MR in *Whiteside v Whiteside* [1950] Ch 65 at 74, the mistake consisted in using language to perfect an agreement which in law had some result different from the common intention: the fact that the mistake arose from the legal effect of the language used in the Deed of Variation provides a ground for the exercise of the court's reforming power. The truth is that the parties, and their professional advisors, failed to appreciate that, in order to achieve their true objective, they needed to insert the words "subject to inheritance tax" in clause 2.1(a) of the Will as varied.
21. So far as the 1st Defendant is concerned, I acknowledge that, as a disinterested co-executor, he may have entertained no intention beyond that of being ready to go along with the wishes of the three beneficiaries of the estate. In my judgment, that is sufficient to warrant an order for rectification. The position is analogous to the case of a voluntary settlement, where it is clear that there is jurisdiction to order rectification if there is cogent proof of a relevant mistake on the part of the settlor, notwithstanding the absence of proof of any mistake on the part of any of the trustees.
22. I am also satisfied that, notwithstanding the 2007 Deed of Rectification, there still remains an issue, capable of being contested between the parties, which will be addressed by an order for rectification. HMRC's letter of 19th October 2007 makes it clear that HMRC cannot accept the Deed of Rectification as having any effect for Inheritance Tax purposes unless the parties obtain

a Court Order rectifying the Deed of rectification. The Claimant does not seek to challenge HMRC's position; and, since HMRC are not a party to this litigation, it is not open to me to do so (although I make it clear that I express no opinion on the correctness of HMRC's stance, particularly since the Deed of Rectification was itself made within 2 years of the death of the testatrix, and purported to confirm that the notices to the Board of Revenue given by the Deed of Variation should be treated as notices given in respect of that Deed as rectified). Conversely, by their letter of 29th May 2010, HMRC confirm that if the Court orders rectification of the Deed of Variation, HMRC will be bound by that. It follows that an order for rectification will have practical consequences, in terms of altering HMRC's treatment of the ultimate incidence of the inheritance tax chargeable in respect of the pecuniary legacy to the two children effected by clause 2.1(a) of the Will, as varied by the Deed of Rectification. Such an order will also avert any dispute between the Claimant and his two children as to whether (by virtue of the Deed of Rectification) they should be liable to reimburse him for the additional inheritance tax (amounting to some £33,000) for which he has already accounted to HMRC, since this will presumably be repaid to him following the making of the order.

Conclusion

23. For these reasons, I therefore uphold the claim for rectification. Counsel should lodge an appropriate Minute of Order. There will be no order as to costs.