

CITATION: *Sandford v South & Ors* [2025] NTSC 16

PARTIES: SANDFORD, Teena Joy

v

SOUTH, Adam Bushnell

and

DAVIS, Anita

and

SANDFORD-SOUTH, Allysa

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 2024-02077-SC

DELIVERED: 7 April 2025

HEARING DATE: 18 March 2025

JUDGMENT OF: Brownhill J

CATCHWORDS:

ADMINISTRATION AND PROBATE — Executor — Duties of executor -
Application for removal of executor – Whether executor “unfit to act” —
Whether due and proper administration of the estate in jeopardy – Executor
unfit – Order for his removal

INJUNCTIONS — Quia timet injunction — Where plaintiff seeks injunction to prevent imminent and substantial damage to interests of beneficiaries under estate — Clear likelihood that future conduct will cause substantial damage – Injunction granted

Dimos v Skaftouros (2004) 9 VR 584; *Lubis v Walters* [2009] NTSC 23; *Proud v Arkell* [2019] NTSC 35; *Rasco Pty Ltd v Lucas* [2017] VSC 703; *Trafford-Jones v McQuinn* [2021] NTSC 90

Administration and Probate Act 1969 (NT) ss 26, 41
Evidence (National Uniform Legislation) Act 2011 (NT) s 190

REPRESENTATION:

Counsel:

| | |
|------------------------------|----------------------------|
| Plaintiff: | A Wyvill SC with R Sanders |
| First Defendant: | Self-represented |
| Second and Third Defendants: | C Ford SC |

Solicitors:

| | |
|------------------------------|--------------------------------------|
| Plaintiffs: | Arafura Regional Community Solutions |
| First Defendant: | Self-represented |
| Second and Third Defendants: | Piper Grimster Jones Lawyers |

| | |
|-----------------------------------|---------|
| Judgment category classification: | B |
| Judgment ID Number: | Bro2501 |
| Number of pages: | 66 |

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Sandford v South & Ors [2025] NTSC 16
No. 2024-02077-SC

In the Estate of Darryl John South

**In the matter of an application under
s 41 of the *Administration and Probate
Act 1969* (NT)**

BETWEEN:

TEENA JOY SANDFORD
Plaintiff

AND:

ADAM BUSHNELL SOUTH
First Defendant

AND:

ANITA DAVIS
Second Defendant

AND:

ALLYSA SANDFORD-SOUTH
Third Defendant

CORAM: BROWNHILL J

REASONS FOR JUDGMENT

(Delivered 7 April 2025)

- [1] The plaintiff (‘Teena’¹) is an executor of the will of her late partner (‘Darryl’), who passed away on 10 June 2023. Teena and Darryl were in a de facto relationship from 16 May 1988 until Darryl’s death.
- [2] The first defendant (‘Adam’) is the adult son of Darryl and a former partner. The second defendant (‘Anita’) is the adult daughter of Darryl from that relationship. The third defendant (‘Allysa’) is the adult daughter of Darryl and Teena.
- [3] On 30 August 2023, probate of Darryl’s will was granted, appointing Teena, Adam and Anita as executors of the estate, which was then valued at around \$8.6 million.
- [4] The estate includes a wholesale nursery business known as Darwin Plant Wholesalers (‘Business’) and various parcels of land in Lambells Lagoon, used or associated with the Business. Under the will, two of those parcels of land were specifically gifted to Adam, one was specifically gifted to Teena and the Business forms part of the residue of the estate which was gifted to Teena, Adam, Anita and Allysa in equal shares.
- [5] Teena commenced these proceedings seeking to have Adam removed as an executor of the will and restrained from entering or remaining on some of the parcels of land.²

¹ For ease of reference, first names have been used in these Reasons to identify people.

² See the Amended Originating Motion filed on 23 August 2024, Part 2, [1] and [3]. At the hearing, the relief sought in Part 2, [2] was abandoned. Leave was given to amend the relief sought in [1] to add reference to the

- [6] Teena wishes to preserve and maximise the value of the Business and its assets that are located on the various parcels of land by continuing to operate the Business until it can be sold or wound up and the proceeds distributed to the four parties as the will provides. Her position is that the Business and the associated parcels of land will generate a greater financial outcome for the four beneficiaries if it is sold as a going concern than if it is wound up.
- [7] Adam resists Teena's application, arguing that he should remain as an executor, and that the parcels of land specifically gifted to him in the will should be transferred to him as the will provides. He says transferring the land to him would not prevent the ongoing operation of the Business or any sale or winding up.
- [8] Anita and Allysa support Teena's application. They intend to commence proceedings in this Court under s 8 of the *Family Provision Act 1970* (NT) seeking to amend the will to provide that the specific gifts of the three parcels of land to Teena and Adam comprise, if the executors so determine, the value of those parcels of land in lieu of their title.³ Their intention is to allow the executors to sell the three parcels of land along with the Business and pay the specific beneficiaries the value of the parcels gifted to them.

inherent jurisdiction of the Court, to amend the relief sought in [3] to seek final, rather than interlocutory injunctive relief, and to exclude the Superannuation Block from the injunction.

3 Exhibit DA1.

- [9] The legal principles applicable to the exercise of the Court's discretion to remove an executor in s 41 of the *Administration and Probate Act 1969* (NT) are not in dispute. Essentially, the Court must find that Adam is unfit to act as an executor of the estate by considering whether the due and proper administration of the estate has been put in jeopardy or prevented by reason of acts or omissions on the part of the executor. The welfare of the beneficiaries and the protection of their interests in the estate are the paramount concerns.
- [10] Those matters require factual findings as to what the welfare of the beneficiaries and the protection of their interests in the estate require, what conduct Adam has engaged in since Probate was granted, and whether that conduct renders him unfit to be an executor or puts the due and proper administration of the estate in jeopardy.
- [11] The legal principles relating to the grant of *quia timet* injunctive relief, which is injunctive relief granted to restrain wrongful acts that are threatened or imminent, are not in dispute. Essentially, the Court must make factual findings and be satisfied that what Adam is intending or threatening to do will cause imminent and substantial damage to the estate. The Court must have regard to the degree of probability of the apprehended damage, its degree of seriousness and the requirements of justice between the parties.

[12] For the reasons which follow, Adam will be removed as an executor of the estate and an injunction will be granted prohibiting Adam from entering or remaining on the relevant land.

The Business is part of the residue of the estate

[13] It is not in dispute and I find that, under the will, the four parties are equal beneficiaries to the residue of the estate. The residue of the estate in the Northern Territory to which these proceedings apply essentially comprises the Business.

The land held by the estate and/or associated with the Business

[14] The following facts are not in dispute and I find accordingly.

[15] Parcels of land in Lambells Lagoon are associated with the Business, as follows:

- (a) The production nursery itself is located at 180 Miniata Road⁴ ('Production Block'), which was owned by Darryl in his name solely. By clause 6.3 of the will, the Production Block is gifted to Adam.
- (b) Opposite the Production Block, across the road, is 115 Alphonatia Road⁵ ('Main Block'). The Main Block is used in the Business for propagation, quarantine, administration, a workshop and packing. It

⁴ Section 1619, Hundred of Guy from plan S 95/215C, Certificate of Title registered in Volume 626, Folio 600 of the Land Title Register.

⁵ Lot 13, Hundred of Guy from plan LTO73/011, Certificate of Title registered in Volume 625, Folio 223 of the Land Title Register.

also contains what was Teena and Darryl's principal residence, now the home Teena lives in. It was owned by Darryl in his name solely. By clause 6.1 of the will, the Main Block is gifted to Teena.

(c) Nearby is 220 Miniata Road⁶ ('Frangipani Block'). The Frangipani Block is used in the Business to propagate frangipani plants. It also contains a large bore which is used to supply water to the whole nursery. The Business holds a water licence which relates to the bore on the Frangipani Block and two bores on the Production Block. The Frangipani Block was owned by Darryl and Teena as joint tenants. Following Darryl's death, Teena is now the sole owner of the Frangipani Block. It is not part of the estate.

(d) Adjacent to the Main Block is 205 Miniata Road⁷ ('Orchard Block'). The Orchard Block was owned by Darryl in his name solely. It was purchased with money from the Business to provide for the future expansion of the Business. When purchased, it was a disused mango orchard with a house and shed. By clause 6.4 of the will, the Orchard Block is gifted to Adam.

⁶ Lot 1, Hundred of Guy from plan LTO73/011, Certificate of Title registered in Volume 650, Folio 235 of the Land Title Register.

⁷ Lot 12, Hundred of Guy from plan LTO73/011, Certificate of Title registered in Volume 823, Folio 708 of the Land Title Register.

(e) Adjacent to the Production Block is 210 Miniata Road⁸ ('Superannuation Block'). The Superannuation Block is owned by a self-managed superannuation fund trustee company which was created by Teena, Darryl and Adam in 2008. The Superannuation Block was purchased through their pooled superannuation funds. There is a house and demountable units on the Superannuation Block which are used for staff accommodation. It is not part of the estate.

[16] Adam owns and lives on a parcel of land adjacent to the Main Block. It is not part of the estate or the Business.

Is the Orchard Block used by the Business?

[17] There is a dispute between Teena and Adam as to whether the Orchard Block is presently used by the Business.

[18] By affidavit, Teena deposed that she and Darryl decided to purchase the Orchard Block for future expansion, with plans to build large glasshouses on it and possibly develop it for forestry.⁹ The Orchard Block was 'ear-marked' and bought for operating the Business. The Orchard Block is crucial to the future forestry operations and expansion of the Business.¹⁰

[19] By affidavit, Adam deposed that the Orchard Block had not been maintained for years, had never been involved in the operations of the Business and was

8 Lot 2, Hundred of Guy from plan LTO73/011, Certificate of Title registered in Volume 726, Folio 460 of the Land Title Register.

9 Affidavit of Teena Joy Sandford made on 5 June 2024 ('Teena's 1st Affidavit'), [31]-[32].

10 Teena's 1st Affidavit, [184].

not needed in any way for its operations.¹¹ The people living in the house on the Orchard Block are not employees of the Business, do not pay rent and have no lease or rental agreement.¹² The Orchard Block will cost him a minimum of \$100,000 to repair as ‘fit for purpose’. Adam annexed a letter written by Anita (undated) in which Anita said the Orchard Block ‘has never been involved in the operations of the nursery, and it has no direct impact on it’.¹³

[20] By affidavit in response, Teena deposed that the Orchard Block is used by the Business for a ‘biosecurity buffer’ to the nursery, the house on the Orchard Block is used by the Business for staff accommodation and the shed on the Orchard Block is used by the Business to store plant and equipment.¹⁴ The Orchard Block has not been developed since its purchase to minimise maintenance costs until the five acre grow house which Darryl had designed was ready to be developed.¹⁵ The house on the Orchard Block is rented to a subcontractor who works for the Business predominantly after hours and who has been paying rent to the Business under a ‘casual arrangement’ since

11 Affidavit of Adam Bushnell South made on 2 October 2024 (‘Adam’s 1st Affidavit’), [13]. See also Affidavit of Adam Bushnell South made on 10 March 2025 (‘Adam’s 2nd Affidavit’), [14].

12 Adam’s 1st Affidavit, [13].

13 Adam’s 1st Affidavit, Annexure ABS-7.

14 Affidavit of Teena Joy Sandford made on 8 November 2024 (‘Teena’s 2nd Affidavit’), [16].

15 Teena’s 2nd Affidavit, [17].

before Darryl's death.¹⁶ There is no degradation of the Orchard Block, let alone degradation requiring expenditure of \$100,000 to repair.¹⁷

[21] In oral evidence-in-chief, Teena said that she holds numerous quarantine licences to permit the Business to export plants to Western Australia, the Tiwi Islands, Groote Eylandt and overseas.¹⁸ She holds those licences because she has expertise in compliance with quarantine and biosecurity requirements, which no one else involved in the Business has. She said that for those licences to be continued, the nursery operations require strong biosecurity protections.

[22] In cross-examination by Adam, Teena denied that the Orchard Block is 'a pile of weeds', saying it was undeveloped but was being maintained.¹⁹ Asked whether Darryl only acquired the property so he did not have to put up with neighbours, Teena said that was part of the biosecurity issue, to reduce traffic, horses, cattle and other things to protect the biosecurity of the nursery. Teena denied that there were plenty of orchards and properties with cattle on them adjoining all the nursery blocks, saying there was one cattle farm on the other side of the road. In re-examination, Teena essentially said

16 Ibid.

17 Teena's 2nd Affidavit, [18].

18 Transcript, pp 19-20.

19 Transcript, pp 28-29.

that the Orchard Block was being used as a controlled buffer for biosecurity purposes.²⁰

[23] Anita deposed that she would prefer Adam to retain the Orchard Block but acknowledged that including it in any sale of the Business may be necessary.²¹ Anita said that since writing her letter annexed by Adam, she has spoken to Teena and understands that the Orchard Block is useful to the Business.²² In cross-examination, there was the following exchange:

Is it not true or true that the ... so called Orchard Block is not needed to run the nursery or the [Business]?---Currently, yes.

[24] Given the question, the answer is equivocal. To the extent that there was any inconsistency between Anita's and Teena's evidence about the use of the Orchard Block, I would prefer the evidence of Teena. In addition to the matters referred to below, Teena is the person running the day to day operations of the Business, and she has expertise in horticulture and biosecurity matters that Anita does not. Anita lives interstate and her knowledge and understanding of the Business and its requirements would necessarily be less than Teena's.

[25] I find Teena to be a reliable witness, both in relation to this issue and generally. Teena's credibility generally is dealt with below. In relation to this issue, Teena's evidence was plausible and consistent with written

20 Transcript, p 30.

21 Affidavit of Anita Davis made on 11 March 2025 ('Anita's Affidavit'), [4].

22 Anita's Affidavit, [4].

documents annexed to her affidavit disclosing payments of rent to the Business by the occupiers of the house on the Orchard Block.

[26] I do not accept Adam's evidence about the Orchard Block not being used by the Business. His evidence was inconsistent with the written documents referred to by Teena regarding payments of rent. Further, he lacks the expertise I accept that Teena holds regarding biosecurity hazards and protections and plant propagation. Further, as set out below, I find Adam to be an unreliable witness generally, which finding leads me to approach all of his evidence with caution.

[27] It follows that I accept Teena's evidence that the Orchard Block is currently being used by the Business as a controlled biosecurity buffer, to accommodate a subcontractor who does work for the Business and to store plant and equipment.

The Business, the Company and the roles of the parties

[28] The following facts are not in dispute and I find accordingly.

[29] The Business has been operating since before 1987 and was initially operated by Darryl as a sole trader. Teena worked as an employee of the Business before she and Darryl began their relationship. Teena has an Advanced Certificate in Tropical Horticulture, an Advanced Diploma in Horticulture and various other horticulture and management or business related qualifications.

- [30] In about 1998 or 1999, Darryl asked Teena to help him run the Business. Darryl put Teena in charge of biosecurity, plant health certificates, quarantine development and compliance, overseas licensing and international dispatch. Teena was also primarily responsible for the propagation and production of the plants themselves. Teena and Darryl managed the Business together until Darryl died.
- [31] Since Darryl's death, primarily Teena has run the Business, undertaking its day to day management, with assistance from its staff and an external consultant ('Duncan'). Duncan was Darryl's accountant from 1988 to 2020 and was engaged by Darryl in August 2019 to sell the Business. After Darryl's death, Teena engaged Duncan to provide advice and assistance in relation to the estate and the Business.
- [32] In July 2014, Teena and Darryl established DPW Contracting Pty Ltd ('Company') to employ the staff of the Business. Initially, Darryl, Teena and Adam were appointed as its directors and 13 shares of various classes were issued to the three of them. All staff wages were then processed through the Company.
- [33] The residual estate under the will included Darryl's shares in the Company. After probate was granted, those shares were distributed to the parties in accordance with the will.

[34] On 8 June 2024, Teena, Anita and Allysa passed a resolution to remove Adam as a director of the Company. Teena is now the sole director of the Company.

What is Adam's role in the Business?

[35] There may be a dispute between Teena and Adam as to the extent and nature of Adam's role in the Business, both before and after Darryl's death.

[36] Teena deposed that Adam undertook a landscaping business through the Business in the 1980s and 1990s in relation to which Darryl did the quoting, invoicing and administration and supplied the plants which Adam installed under Darryl's supervision. Adam was paid a salary by the Business for this work.²³ Adam went back to work in the nursery in around 1995 and maintained the irrigation systems and plant and equipment for the nursery. He was employed by the Business to do that work until about 2022 when Darryl asked Teena to subcontract the irrigation maintenance to someone else, and thereafter, Adam continued to maintain the plant and equipment of the nursery.

[37] Teena deposed that Adam was never involved in the management of the Business or the making of Business decisions.²⁴ He provided technical expertise to the Business to assist with decisions about irrigation equipment, security cameras, security and solar panels, but was not involved in

23 Teena's 1st Affidavit, [17]-[18].

24 Teena's 1st Affidavit, [19]-[21].

management or business decisions of the Business generally. When Darryl was alive, he would often discuss the Business with Adam and update him on developments and major purchasing decisions, but those decisions were made by Darryl and Teena without input from Adam.

[38] Historically, Adam had no involvement in the banking and financial arrangements of the Business.²⁵ All administration, BAS, bank reconciliation, payment of wages, reconciling of creditors and debtors and the operation and upkeep of MYOB data were managed by the office manager, both before and after Darryl died.

[39] An information memorandum prepared by Duncan to market the Business for sale after Darryl got sick stated that Teena was responsible for compliance, accreditation, stock control, quarantine, IT, sales and incoming production planning and logistics, Darryl was responsible for finance, HR, general operations, marketing, new product development and general management, and Adam was responsible for irrigation systems and equipment maintenance.²⁶

[40] Adam has not been an employee of the Business since approximately 2021.²⁷ Adam receives dividends from the profits of the Business from time to time along with the other shareholders. He has never been involved in the ‘green life’ of the nursery, from propagation to the point of sale, other than from

25 Affidavit of Teena Joy Sandford made on 4 March 2025 (‘Teena’s 3rd Affidavit’), [12].

26 Teena’s 1st Affidavit, [159], Annexure TJS-34.

27 Teena’s 2nd Affidavit, [4].

time to time being involved in the transportation and distribution part of the Business.

[41] Originally, Teena, Darryl and Adam had individual authority to make transactions in the Business and the Company bank accounts, and the administration manager ('Cheryl') was also given authority to do so as she processed payments on their instructions.²⁸ Darryl would approve all payments through the bank accounts but would not do so unless Teena had 'signed them off'. This continued after Darryl got sick, unless he was not well enough to approve the payments, in which case he would ask Teena to do so. After Darryl got sick, Adam's role was the same, i.e. he was not involved in the day-to-day management or financial aspects of the Business, but continued to maintain and oversee the equipment. He would generally not transact using the Business or Company bank accounts, even though he had authority to do so. His authority to transact through the bank accounts was set up as a 'back-up' in case Darryl and Teena could not approve payments. He did not use the bank accounts as far as Teena was aware.

[42] Adam deposed that he had worked with Darryl for over 40 years building and developing the nursery.²⁹ In cross-examination, Adam put to Teena that he had many years of experience of running the Business.³⁰ Teena said he had not had experience in the Business side of things, but in the

28 Teena's 1st Affidavit, [40]-[44].

29 Adam's 1st Affidavit, [3].

30 Transcript, p 27.

maintenance side of things. Adam put to Teena that he ran the Business ‘24/7’ when she and Darryl were on holidays ‘for months on end’. Teena said that he did some Business work and signed a few things, but it was rarely and minimal, and mostly Darryl ran the Business on those occasions by ringing Cheryl.

[43] Adam did not put on any other evidence to establish the nature and extent of his role in the Business or his role in making payments on behalf of the Business via the bank accounts. Nor did he put on any other evidence to dispute Teena’s evidence about her role in the Business and how it was managed before and after Darryl’s death.

[44] Given that it was largely uncontested, I accept Teena’s evidence regarding her and Adam’s roles in the Business and his usual lack of involvement in its banking transactions as set out above. Accordingly, I find the facts set out in paragraphs [36] to [41], and [42] above.

When will the Court remove an executor?

[45] As set out above, Teena seeks an order that Adam be removed as an executor of the estate, and grounds her application on two alternative bases: (i) s 41 of the *Administration and Probate Act*; and (ii) ‘the inherent jurisdiction of the Court’.

The inherent jurisdiction of the Court

[46] The Court has a statutory power to revoke a grant of probate in s 26(1) of the *Administration and Probate Act*. That statutory power reflects the Court's inherent jurisdiction to revoke a grant of probate, which jurisdiction exists because the grant itself is an order of the Court, and the exercise of the statutory power will be guided by the same considerations as the Court's inherent jurisdiction.³¹

[47] The Court's inherent (and statutory) jurisdiction to revoke a grant of probate must be informed by the due and proper administration of the estate and the interests of the parties beneficially entitled thereto.³² Where circumstances clearly appear to have arisen after a grant of probate which impel the Court to the firm conclusion that the due and proper administration of an estate has been put in jeopardy or has been prevented either by reason of acts or omissions on the part of the executor or by virtue of matters personal to them, for example, mental infirmity, ill health, or by virtue of the proof of other matters which establish that the executor is not a fit and proper person to carry out the duties of executor which they have sworn to the Court that they will perform, the Court may exercise its inherent jurisdiction to revoke the grant.³³

31 See *Proud v Arkell* [2019] NTSC 35 (*'Proud v Arkell'*) at [62] per Grant CJ, citing GE Dal Pont and KF Mackie, *The Law of Succession*, LexisNexis Butterworths, 2013, [11.95].

32 *Ibid* at [64], citing *Bates v Messner* (1967) 67 SR (NSW) 187 at 191-192 per Asprey JA.

33 *Ibid* at [64]-[65], also citing *Mavrideros v Mack* (1998) 45 NSWLR 80 at 108 per Sheller JA (Priestly and Beazley JJA agreeing).

[48] By way of example, *Lubis v Walters*³⁴ concerned an administrator to whom a grant of letters of administration had been made, who had paid to himself cash assets of the estate in ignorance of his statutory duties and without reference to the interests of creditors or others. This was found to be ‘a serious dereliction of duty’ demonstrating unfitness for office. The grant of letters of administration was revoked. In coming to that determination, the Court considered (at [46]) the issue as set out above.

The statutory power to remove an executor in s 41

[49] The Court has a statutory power to order the removal of an executor in s 41(1) of the *Administration and Probate Act*. That power may be exercised where, after the grant of probate, the executor refuses or is unfit to act in the office, or is incapable of acting therein.

[50] Victoria is the only other Australian jurisdiction to have a provision equivalent to s 41. In Victoria, as the decision of the Victorian Court of Appeal in *Dimos v Skaftouros*³⁵ shows, it is now well established that the term ‘unfit’ in that provision has its ordinary meaning and relates to matters that affect the capacities of a person to perform an executor’s tasks,³⁶ which meaning is broad enough to comprehend neglect of duty and breach of duty.³⁷ Examples of neglect or breach of duty include unwarranted delay in

34 *Lubis v Walters* [2009] NTSC 23, cited in *Proud v Arkell* at [66].

35 *Dimos v Skaftouros* (2004) 9 VR 584.

36 *Ibid* at [88], [101]-[102], [121].

37 *Ibid* at [12], [104]-[105], [114].

administration of the estate, failure to communicate with beneficiaries, failure to account and unreasonable delay in paying beneficiaries their entitlement. The concepts of neglect and breach of duty in this context are equivalent to the concepts of neglect and breach of duty in respect of which a court may exercise its inherent power to remove trustees, and these concepts extend to where an executor prefers their own interests over those of the beneficiaries under the will.³⁸

[51] It is also well established in Victoria that the power to remove an executor is discretionary and the court will not lightly exercise its discretion to remove a person who has been chosen by the testator as the personal representative.³⁹ In exercising the discretion, the paramount considerations are the welfare of the beneficiaries and the protection of their interests in the estate.⁴⁰

[52] The language and context of s 41 in the *Probate and Administration Act* is very similar to the language and context of its equivalent in Victoria. It is entirely appropriate to apply the principles established in Victoria to the operation of s 41. This Court has previously done so.⁴¹ No party submitted otherwise.

38 Ibid at [90], [108], [110].

39 Ibid at [13] per Winneke P (Batt JA agreeing).

40 Ibid, and [110]-[114] per Dodds-Streeton JA (Batt JA agreeing).

41 See *Trafford-Jones v McQuinn* [2021] NTSC 90 at [8] per Grant CJ.

The alternative bases for the removal of Adam as executor

- [53] In principle, there is a difficulty with the alternative basis relied on by Teena because, as is apparent from the reasons set out above, the inherent jurisdiction of the Court referred to in the authorities relied on is the inherent jurisdiction to revoke a grant of probate, and Teena does not seek to have the grant of probate revoked.
- [54] Teena argued that the alternative basis was put in case the Court was not satisfied that Adam is unfit to be an executor, but was nevertheless satisfied that the due and proper administration of the estate had been put in jeopardy.
- [55] In the circumstances of this case, for reasons set out below, I am satisfied that Adam is unfit to be an executor, and that both an order for Adam's removal or an order revoking the grant of probate would be open. As Grant CJ observed in *Proud v Arkell* (at [128]), both courses are open where the administration of the estate has been put in jeopardy by reason of acts or omissions on the part of the executor or by virtue of matters personal to the executor, and the same test of 'unfitness' has application to both courses.
- [56] There is no reason to revoke the grant of probate where Teena and Anita are also appointed as executors who can attend to the due and proper administration of the estate.

Welfare of the beneficiaries and protection of their interests

[57] As set out above, the four parties are equal beneficiaries of the Business under the will.

[58] It is not in dispute, and I find accordingly, that the Business is a going concern, continues to operate in conjunction with the Company, and has equity of around \$3 million.⁴² The day-to-day management of the Business is undertaken by Teena and staff of the Business. The Business has ongoing contracts of employment with staff and ongoing contracts with customers for the supply of plants and other horticultural items.

[59] Adam submitted that he is not opposed to the ongoing conduct of the Business pending its sale as a going concern or a winding up, but that the due and proper administration of the estate requires that the Orchard Block and the Production Block be transferred to him in accordance with the terms of the will. Adam submitted that doing so would not prevent the sale of the Business as a going concern because: (a) the Orchard Block is not used in the Business; and (b) both Blocks could be leased from him, rather than sold, to any buyer.

[60] As set out above, I have found that the Orchard Block is used in the Business.

⁴² See Exhibit P1, the Annual Reports for the year ended 30 June 2024 for the estate.

[61] I accept that any buyer of the Business could enter into leasing arrangements with Adam if the Orchard Block and the Production Block were transferred to him under the will. There is evidence which demonstrates, and I find, that potential buyers would be prepared to acquire the Business together with a lease over at least some of the land on which it is conducted. Teena deposed that, while Darryl was alive but unwell, the Business was marketed for sale with a leasing arrangement over the Main Block (because that was where she and Darryl lived).⁴³ She further deposed that she has had discussions with four serious prospective buyers, and that, in September 2023, Teena received an offer to purchase the Business, the Production Block, the Frangipani Block, and the Superannuation Block for \$4.7 million, along with a request for a lease over the Main Block.⁴⁴

[62] However, there is also evidence which demonstrates, and I find, that:

- (a) At least one potential buyer is not prepared to acquire the Business together with a lease *from Adam* over the Production Block, due to difficulties they experienced in dealing with Adam in relation to a potential sale.⁴⁵
- (b) Another prospective buyer is interested in purchasing (i.e. not leasing) all of the land used by the Business but is not prepared to acquire the

43 Teena's 1st Affidavit, [159], Annexure TJS-34.

44 Teena's 1st Affidavit, [161]-[162].

45 Teena's 1st Affidavit, [162]-[163].

Business until all of the outstanding issues to do with the estate have been resolved.⁴⁶

[63] As referred to above, Anita and Allysa intend to commence proceedings in the Supreme Court seeking to amend the will to provide that the executors may distribute to Adam and Teena the value of the parcels of land gifted to them in lieu of the land itself, with the intention that the executors could, in their discretion, sell the Business and the land upon which it operates. Until those proceedings are commenced and determined, all that can be concluded is that there is a prospect that the will may be amended in that way.

[64] Teena deposed that, if the Business is liquidated and its assets sold, the four beneficiaries will receive a substantially lower outcome than if the Business is sold for its market value as a going concern.⁴⁷

[65] Anita and Alyssa relied on estimates made by Teena to the effect that the four beneficiaries would receive a much larger financial disposition under a sale of the Business and the land than they would receive if the Business was wound up and its assets sold. These estimates were made in the context of an offer made by Teena in February 2024 to purchase the Business, the

46 Teena's 1st Affidavit, [164].

47 Teena's 2nd Affidavit, [7].

Production Block, the Main Block and the Orchard Block and the beneficiaries' shares in the Company for \$5,075,000 less various costs.⁴⁸

[66] Teena estimated that, under her sale proposal, and leaving aside the shares in the Company and the distribution of Darryl's other residual assets such as cash at bank, each of the four beneficiaries would receive around \$380,000 for the Business. Teena also estimated that, if the Business were wound up and its assets sold, there would be a net loss totalling around \$51,000, so each of the beneficiaries would receive nothing for the Business, while Adam would receive the Production Block and the Orchard Block and Teena would receive the Main Block.

[67] Given the context in which these estimates were made, that the factual and other assumptions underlying these estimates were not expressly stated in the correspondence, and the absence of any independent expert evidence to sustain them, I am not prepared to find that the compared positions of the beneficiaries would be as Teena estimated.

[68] Nevertheless, in the absence of any evidence to the contrary, I accept Teena's evidence that a sale of the Business (including the Company) as a going concern would yield a greater return for each of the beneficiaries than if the Business (and the Company) were wound up and its assets sold.

⁴⁸ Teena's 1st Affidavit, [179], Annexure TJS-39. Teena's offer was refused, largely because Adam wanted to receive the Production Block and the Orchard Block as gifted to him under the will. Teena has recently suffered health issues and no longer wishes to purchase the Business.

[69] On the basis of the above evidence and findings, I find that the Business will yield its greatest value pending the resolution of these proceedings and the proceedings to be commenced by Anita and Allysa, and the distribution of the estate, if it continues to operate as a going concern. I find that to be so, whether ultimately the Business is sold as such or is ultimately wound up.

Should Adam be removed as an executor because he is ‘unfit’?

[70] Teena relied, individually or collectively, on various things she said Adam has done since the grant of probate to establish that he is unfit to be an executor of Darryl’s will.

[71] Most of these things were sought to be proved by direct evidence from Teena, coupled with corroborating documentary evidence (some of which would be admissible as business records) and other hearsay evidence including Teena’s evidence of what she was told by other people about what Adam had done or said. Some of these things were sought to be proved solely by hearsay evidence.

[72] At the hearing, Teena applied under s 190(3) of the *Evidence (National Uniform Legislation) Act 2011* (NT) for an order that Part 3.2 of that Act does not apply in relation to the affidavit evidence relied upon by both Teena and Adam. The application was made on the principal basis that the application of those provisions would cause or involve unnecessary expense or delay within s 190(3)(b). Adam did not oppose the application. I was satisfied that the basis for the application was made out and granted it.

Given Adam's consent, the order could also have been made under s 190(1)(c).

[73] As a consequence of that order, hearsay evidence, i.e. evidence of a previous representation made by a person, contained in Teena's and Adam's affidavits is admissible to prove the existence of a fact that it can reasonably be supposed that the person intended to assert by the representation.

[74] Before addressing the particular matters relied on by Teena, it is necessary to state my conclusions in relation to my assessment of the general credibility of Teena and of Adam.

Credibility of Teena

[75] Generally speaking, I consider Teena to be a credible witness. Much of her affidavit evidence was consistent with and supported by documentary evidence. Her affidavit evidence was detailed, including as to matters of history which were not found in documentary evidence. She was frank about her relationship with Adam and how they were never close. She was also frank about Darryl's intentions and wanting to gift the Production Block and the Orchard Block to Adam in the hope that the Business could be carried on by Teena and Adam together, and her reservations about how that would work. Teena's affidavit evidence is also logical and plausible. Teena's oral evidence, including when she was cross-examined by Adam, struck me as Teena's genuine efforts to give full and honest answers. She was prepared to make concessions, such as accepting that Adam did some work in the

Business when she and Darryl were on holidays, and accepting that, as the Orchard Block was gifted to Adam under the will, it would ultimately be his as long as there was no ‘dispute’ by Anita and Alyssa.⁴⁹ When Adam put to Teena that she never did what he said and did not listen to what he wanted, Teena’s answers that Adam was very erratic and hard to understand seemed genuinely accompanied by feelings of sadness or resignation, without malice or anger. Teena’s evidence that she has tried, in difficult circumstances particularly following Darryl’s death, to continue to operate the Business and to do the best she could for all of the beneficiaries under the will struck me as heartfelt and genuine.

Credibility of Adam

[76] Generally speaking, I consider Adam was not a credible witness. In his affidavit evidence, he was prepared to make serious and unsupported allegations against various people, as follows:

- (a) Teena’s ‘misconduct involving other people and other parties of people who I strongly contested and disapproved of due to there [sic] shady past’, apparently referring to a claim by Duncan to have reached an agreement with Darryl for the sale of the Business before he died.⁵⁰

49 Transcript, p 29.

50 Adam’s 1st Affidavit, [5], Annexure ABS-3.

- (b) Teena and other people using the whereabouts of the certificates of title to the parcels of land ‘to blackmail me in to doing what they want’.⁵¹
- (c) Teena spending \$20,000 of the Business’s money on irrigation to improve her own property to help her ‘facilitate and enhance the sale of the business to herself which is insidertrading [sic] and fraud’.⁵²
- (d) Teena padlocking him off ‘my gifted properties so Teena can turn my properties into rubbish so Teena can pay less for them’.⁵³
- (e) Cheryl being given a car valued at \$35,000, Adam saying something about that gift and then being accused of staff harassment, which is ‘just more black mail’.⁵⁴
- (f) Teena breaching the domestic violence order by being told by Dave what Adam had said to him about the truck.⁵⁵
- (g) Teena having ‘fraudulently acquired’ Darryl’s water licences and many vehicles without the signatures of the three executors.⁵⁶
- (h) If Adam is restrained from entering on the estate properties, Teena ‘will continue to lie and commit fraud in the estate’.⁵⁷

51 Adam’s 1st Affidavit, [8].

52 Adam’s 1st Affidavit, [11].

53 Adam’s 1st Affidavit, [11].

54 Adam’s 1st Affidavit, [12].

55 Adam’s 2nd Affidavit, [3].

56 Adam’s 2nd Affidavit, [7].

57 Adam’s 2nd Affidavit, [8].

- (i) Adam's arrest was 'very aggressive' and the Police officer that arrested him and issued the domestic violence order 'has himself been charged with aggravated assault for choking or suffocating'.⁵⁸
- (j) Teena and Duncan trying 'to frame me as mentally unfit by lying to the department of mental health', referring to his medical progress notes from early November 2023 to 24 December 2025, which record various requests by Teena and Duncan for mental health welfare checks on Adam due to their concerns about his behaviour and his welfare.⁵⁹

[77] A number of these matters are referred to further below. In relation to the assertion in paragraph (e) above, Adam agreed in cross-examination that he had given his consent as executor for Cheryl to have the car.⁶⁰ He denied that this fact was important information that he had left out of his affidavit.

[78] During cross-examination, Adam was often evasive and guarded, he prevaricated or completely changed his answers, was occasionally flippant, and did not appear to appreciate the seriousness of giving evidence in court.

[79] For example, Adam was asked if he read Teena's 1st Affidavit.⁶¹ Despite the fact that Adam had deposed two affidavits responding to material in Teena's 1st Affidavit, his first answer was: 'Part of'. His second answer was: 'I don't remember ... It was a long time ago.' His third answer was: 'Not completely,

58 Adam's 2nd Affidavit, [9].

59 Adam's 2nd Affidavit, [13], Annexure ABS-14.

60 Transcript, p 44.

61 Transcript, pp 37-38.

no'. He denied that he read in the affidavit Teena's serious allegation of assault against him. Asked if he understood that was the allegation she was making in the affidavit, he said he understood that it was an allegation.

[80] Similarly, Adam was asked if he understood Teena was also making an allegation about him causing criminal damage to a ute owned by a Pickles employee.⁶² His answer was that a customer wanted a load of rocks. He rejected that it was a 'serious' allegation, saying it was damage, but not serious.

[81] Similarly, Adam was referred to Teena's affidavit where she stated that a named person ('Dave') had told her that Adam had instructed him to put the truck away.⁶³ Asked if Dave is an employee of the Business, Adam said: 'Not to my knowledge'. It was put to Adam that Dave is a truck driver. Adam said: 'Is he?'. Asked if he was saying he does not know who Dave is, he said: 'I know who [Dave] is'. Asked why he didn't say that when he was first asked, Adam repeated that he knows who Dave is. Asked again why he didn't say that when first asked, Adam said: 'I know who [Dave] is – as goes for what role he may play, I'm not sure'. Asked if Teena was correct that Adam had asked Dave to put the truck away, he said: 'Possibly, I'm not sure, I don't remember'. Asked if Dave had explained to Adam that Teena told him to leave the truck out because Pickles were coming to do a valuation, Adam said: 'Is it not true that I'm an executor trustee of the

62 Transcript, p 38.

63 Transcript, pp 38-39.

estate?'. When told he must answer the question, Adam denied Dave had told him what Teena said.

[82] Similarly, when asked about seeing Teena with two people from Pickles, Adam said he could not confirm or deny whether they were from Pickles.⁶⁴ He said he asked them for identification. He denied he knew they were the valuers. He agreed he started swearing at them. Asked what he said to them and what language he used, Adam said he asked them for ID. It was put to Adam that he just agreed he swore at them and he was asked what language he used. Adam said: 'English'. Asked what words he used, Adam said: 'Remove yourselves'. Asked what swearing words he used, Adam said: 'What the eff are you doing here without my authority?'. He agreed he told them to fuck off.

[83] Similarly, Adam was asked if he has a Facebook profile.⁶⁵ He said: 'A fake one'. Asked if it was him that established or runs that profile, Adam said: 'No, a server runs it. What I post or may not post on Facebook has nothing to do with me, it's up to Facebook ... Facebook decides what can and can't go there, what can be posted and what can't be posted.' Asked about screen shots from a Facebook profile under his name, and whether they were posts he had made, Adam said: 'Can't confirm or deny that'. Adam then agreed that he provided the words set out in the screen shots to Facebook. One of the posts said: 'Looks like its [sic] some batteries and the Adelaide river for

64 Transcript, pp 40-41.

65 Transcript, pp 44-45.

me’. Adam said he knew the man who was convicted of the murder of two women by tying them to car batteries and throwing them into the Adelaide River. Adam said he had posted that because he was frightened that that would be done to him. Asked if he was friends on Facebook with staff of the Business, he said: ‘I can’t confirm that’. Adam denied that this post was intended to intimidate those staff.

[84] I do not accept the submission put on Teena’s behalf that Adam’s explanation about the post was unconvincing. On its face, it is not expressed as a threat to anyone, and it is readily open to a construction that Adam would be the victim of such treatment, not the assailant. I do not accept that this Facebook post was intended by Adam as a form of threat or intimidation, although I do accept Teena’s evidence that it was perceived that way by herself and a staff member.⁶⁶

[85] Finally, as set out below, in relation to some serious matters, I found Adam’s evidence to be untruthful.

Did Adam assault Teena on 20 December 2023?

[86] Teena deposed that on 20 December 2023, she had arranged for a valuation company (‘Pickles’) to come and value the Business’s plant and equipment in preparation for a sale of the Business.⁶⁷ She had asked her lawyer to inform Adam of this. She asked the truck driver (‘Dave’) to leave the truck

⁶⁶ Teena’s 1st Affidavit, [102]-[103], Annexure TJS-15.

⁶⁷ Teena’s 1st Affidavit, [85]-[92].

out for valuation. Later that day, Dave told Teena he had been told by Adam to put the truck away. Dave said he told Adam that he was leaving the truck out because Pickles were coming to do a valuation. Dave said that Adam got aggressive towards him. Teena went to the workshop and asked Adam for the keys to the front-end loader so Pickles could do a valuation. Adam said to Teena that when Pickles arrived he would kick them off the property. He refused to give Teena the keys. Teena said that Pickles would be attending, no matter what. Adam said 'like fuck they are and if they go anywhere near my land they will find out'. Adam walked to Teena's buggy, took the key out and threw it into bushland about 20 metres away. Teena tried to move past, but Adam blocked her. She went to look for the key but could not find it. Teena went to Adam's buggy to get its key to start her vehicle. Adam grabbed her by the forearms 'really hard'. Teena was scared Adam would hurt her. A contractor of the Business was present and yelled for Adam to let her go, but he did not. Teena grabbed Adam around the neck for about one second to make him let her go. It was the only way she could stop him. She then threw Adam's key away because she was upset at what he had done. Teena had made an audio recording on her phone of some of this interaction.

[87] Later that evening (after the incidents referred to below), Police attended and Teena made a complaint against Adam.⁶⁸ Adam was arrested and taken off the property. He was charged with aggravated assault. Police issued a domestic violence order prohibiting Adam from entering the Main Block and

68 Teena's 1st Affidavit, [96].

from contacting Teena, directly or indirectly, except via legal counsel, which order was confirmed by the Local Court on 12 March 2025.⁶⁹ On that date, Adam was found not guilty and acquitted of the assault charge.⁷⁰

[88] Teena gave oral evidence that Adam did grab her by the forearms and she demonstrated how he did that, holding both of her hands and forearms together in front of her face. She said she grabbed his neck to make him let her go. I find that the audio recording discloses the following conversation:

Teena: What's wrong now?

Adam: [inaudible] someone's coming to look at the truck.

Teena: That's right. You knew that on email. We're doing valuation. I need the key ---

Adam: Like fuck you are.

Teena: I need the key to the loader, please.

Can I have the key to the loader?

Adam: No.

Teena: Why not?

Adam: What for?

Teena: To get it valued.

Adam: It's not yours.

Teena: It's not yours either.

Adam: Well, none of the shit's yours, so ---

Teena: OK.

69 Exhibit P3.

70 Exhibit DB2.

Adam: --- you can't value anything that's not yours. Who's evaluating it?

Teena: Pickles Auctions.

Adam: Huh! Hah! Yeah. If they come anywhere near my fucken land, they'll find out.

Teena: OK, well I've got you on tape recording, so I'll use it in court against you.

Don't thump me. Leave me alone. Don't take my key off my electric car.

Gosh, you're such a baby, aren't you. Why don't you go home to your mother, you little boy, and cry.

Adam: [inaudible]. Stupid bitch---

Teena: Yeah, yeah---

Adam: If I see anybody here, [inaudible]---

Teena: They're here. They're booked. It's in the email. You know it's happening.

Adam: I don't give a fuck about your email. I've sent---

Teena: Alright, help me find this key you've chucked out, please.

Adam: Hey?

Teena: Help me find my key.

Adam: No.

Teena: No? Alright.

Such a baby. You really are.

Adam: [inaudible]

There's no sale. That's it. No one's buying anything---

Teena: Don't... don't thump me, don't be physical---

Adam: Don't touch me.

[inaudible over sounds of a struggle]

Teena: Just let me go.

Adam: Settle down.

Teena: I will not settle down.

Adam: There's no place---

Teena: ---you have turned me off. My fucken key---

Adam: [inaudible]

Teena: Where's your fucken key? I'll take it out. Throw it away too. There you go. You happy? Hope you enjoy it. Stupid prick.

Adam: Losing anyway.

Teena: Good. Good.

Adam: [inaudible] fuck off. You'll be going to fucken Pickles.

Teena: Well, we got this on recording now.

Adam: Well, you can go [inaudible].

Teena: OK. Go for it. I got a bruise on my arm now too. I'll take a photograph of that.

Adam: I got a bruise [inaudible].

[89] Adam deposed that he was found not guilty of the charge of assault because he did not assault Teena and she lied to Police about that.⁷¹

[90] In cross-examination, Adam denied that he grabbed Teena by the arms, saying he did not do anything and Teena grabbed him by the neck.⁷² Adam said that this interaction occurred 'on my gifted block'.

[91] I do not accept Adam's version of these events. For the reasons set out above, I have found him not to be a credible witness generally. Further, his

⁷¹ Adam's 2nd Affidavit, [9].

⁷² Transcript, p 40.

evidence that Teena initiated the physical interaction by grabbing Adam by the neck without him physically touching her beforehand is implausible and inconsistent with the audio recording, particularly Teena's words: 'Just let me go' and 'I got a bruise on my arm now'.

[92] I accept Teena's version of these events. It is generally consistent with the audio recording and, as set out above, I found her to be a credible witness generally.

[93] Consequently, I find, on the balance of probabilities, that on 20 December 2023, Adam physically assaulted Teena by grabbing her by the forearms, and holding her hands in front of her face, to which Teena responded by grabbing Adam briefly around the neck to make him let her go.

Did Adam intentionally or recklessly cause damage to a ute belonging to a Pickles valuer?

[94] Teena deposed that on 20 December 2023, about an hour after the incident between her and Adam referred to above, she was showing the Pickles valuers equipment when Adam came, was being aggressive, swearing at the valuers and telling them to 'fuck off'.⁷³ Dave later called Teena saying Adam was dumping rocks into the back of the Pickles ute. When Teena and the Pickles valuers went to the ute, Teena saw that its tub was filled with large rocks. Adam came up, took photos and called out: 'Doesn't the customer want their rocks anymore?'.

73 Teena's 1st Affidavit, [93].

[95] Teena annexed an incident report written by one of the Pickles valuers.⁷⁴ He said that Adam was highly agitated, verbally abused the Pickles valuers and told them to leave the property immediately. He said that Teena asked Adam to calm down. Adam asked for identification, which was given. Adam became more abusive then walked away saying this is not over. When the inspections were done, they went back to the ute and saw that the tub was filled with large rocks. A staff member apologised and said she had tried to stop Adam but he had nearly run her over. The rocks were removed from the tub. Adam drove up and took photos of the ute. The tub had holes in it and there was damage to the wheel arches of the ute. The damages was estimated to cost \$2,500 to repair and recompense was claimed from the Business. A photograph attached to the report shows the rocks in the ute.

[96] In cross-examination, Adam said he could not confirm or deny that the people with Teena were from Pickles.⁷⁵ Asked if he knew they were valuers, Adam said he asked them for ID. He denied he knew they were valuers. Adam agreed that he started swearing at them. Adam denied he was very angry, agreeing that he tells people to fuck off when he's not angry. Adam agreed he put the rocks in the ute shown in the photo. He denied he knew the ute belonged to the valuers or the people he told to fuck off. Asked who he thought owned the ute, he said: 'A customer who wanted a load of rocks'. Adam agreed that he was found guilty by the Local Court of causing damage

74 Teena's 1st Affidavit, Annexure TJS-13.

75 Transcript, pp 40-42.

to the ute. He agreed that he was convicted on his own admission of guilt. Asked why he gave evidence denying it, Adam said he did not know it was Pickles' ute.

[97] Asked if he has any regrets about the damage he did to the ute, Adam said: 'Not really, no'.⁷⁶ Asked if his failure to have any insight into his bad behaviour is why he should be removed as an executor, Adam said: '[Teena] and [Duncan] are just as bad.'

[98] On the basis of Teena's evidence, and Adam's conviction in the Local Court, I am satisfied that, on 20 December 2023, Adam intentionally or recklessly caused damage to the Pickles ute by dumping a load of rocks into its tub. I do not accept Adam's evidence that he thought the ute belonged to a customer. The ute was clearly overloaded and damaged by what Adam did, making his evidence implausible. I find Adam was aware that Pickles valuers were present, and that he was aware, at the time he dumped the rocks into it, that the ute belonged to the Pickles valuers.

Did Adam intentionally or recklessly cause damage to a car belonging to Duncan?

[99] Teena deposed that on 20 December 2023, after the incident with the Pickles ute referred to above, she asked Duncan to come and discuss what had happened.⁷⁷ While Teena and Duncan were driving around the property, Adam came up to them, yelled at them and took photos, then drove off.

⁷⁶ Transcript, p 42.

⁷⁷ Teena's 1st Affidavit, [95].

When Tina and Duncan returned to where Duncan's car was parked, they saw Adam standing next to it. Adam got into his buggy and sped off. Teena saw that the windscreen, side windows and canopy of Duncan's car had been broken, the gear stick was broken off and there were dents on the bonnet and side of the car. Teena annexed photos of the damage to Duncan's car.⁷⁸

[100] In cross-examination, Adam was asked if he inflicted the damage to Duncan's car shown in the photographs.⁷⁹ He said: 'I was found guilty of it'. Asked again, he said: 'I was convicted of it'. Asked if he was saying that the Local Court had found him guilty of damaging that car but he was not prepared to admit it himself, Adam said: 'Correct'. Asked if he was lying by not saying frankly and honestly that he did it, Adam said: 'All I can say is the judge found me guilty of damaging' the ute.

[101] Adam was convicted by the Local Court of intentionally or recklessly causing damage to Duncan's car.⁸⁰

[102] On the basis of Teena's evidence, and Adam's conviction in the Local Court, I am satisfied that, on 20 December 2023, Adam intentionally or recklessly caused damage to Duncan's car.

78 Teena's 1st Affidavit, Annexure TJS-14.

79 Transcript, p 42.

80 Exhibit DB2.

Adam's attempts to have money transferred to him from the estate's bank accounts

[103] Teena deposed that between 14 and 16 March 2024, she had some exchanges with Anita during which Anita indicated that she and Adam wanted the money in the estate bank account (the bank account through which the Business operates) and the money in the Company bank account (the bank account through which staff wages and associated expenses are paid) to be distributed to the beneficiaries under the will.⁸¹ Anita told Teena that Adam was going to the bank on 19 March 2024 to close the estate bank account and pay the money out.

[104] On 19 March 2024, the bank's business manager sent emails to Teena asking for approval to transfer to Adam \$360,000 from the Company's bank account, being around 30% of the balance of around \$1.2 million, and to transfer to Adam \$125,855, being around 25% of the balance, from the estate bank account.⁸² Teena did not approve those transfers.⁸³

[105] Adam did not dispute that he made these requests of the bank, and I find accordingly.

[106] On the basis of what Anita told Teena and the proportions referred to in Adam's requests, I find that Adam's intention was to be paid what he

81 Teena's 1st Affidavit, [112]-[113].

82 Teena's 1st Affidavit, [116]-[117], .

83 Teena's 1st Affidavit, [118].

perceived to be his share under the will of the funds in the estate's bank account and the funds in the Company's bank account.

[107] At that stage:

- (a) the estate was in the process of being administered, which process had necessitated and was likely to continue to necessitate incurring of expenses (such as legal fees) payable by the estate from its bank funds; and
- (b) the day-to-day operations of the Business (which formed part of the residual estate under the will) included the payment of business expenses necessary for its operations through the estate bank account and the payment of staff wages and associated expenses (such as payroll taxes) through the Company's bank account.

[108] If Adam was paid 25% of the estate's funds, the other beneficiaries would bear the burden of any expenses paid by the Business or estate expenses paid from the estate bank account thereafter, and he would not.

[109] Further, if Adam was paid 25% of the estate's funds and 30% of the Company's funds, the Business's ongoing operations may have been jeopardised.

[110] Further, Adam's duty as executor of the will is to ensure the due and proper administration of the estate and its distribution to *all* beneficiaries in

accordance with the terms of the will. Adam was acting only to distribute his share of the estate to himself.

[111] Consequently, I find that Adam's intention in seeking to make these bank transactions comprised him acting to prefer his own interests over those of the beneficiaries collectively.

Did Adam 'freeze' the bank accounts in retaliation?

[112] Teena deposed that, on 22 March 2024, she was informed by the bank that Adam had cancelled authority for operation of the bank accounts with the effect that no transactions could be undertaken through the accounts without all authority holders contacting the bank or executing a new authority.⁸⁴ Teena tried, unsuccessfully, to have the bank 'unfreeze' the accounts.

[113] Adam deposed that he froze the bank accounts because the bank had told him that if he suspected any forms of fraud, he was to inform the bank immediately, and he had seen on a bank statement that Teena had spent \$20,000 on irrigation 'to improve one of her part owned property with my father' in order 'to help Teena facilitate and enhance the sale of [the] business to her self', which is 'fraud'.⁸⁵

[114] Teena deposed in response that the \$20,000 irrigation was for the Frangipani Block (owned by Teena since Darryl's death), which is used by the Business

84 Teena's 1st Affidavit, [119]-[121].

85 Adam's 1st Affidavit, [11].

to grow plants. The irrigation expenditure has enhanced the value of the Business and makes it more saleable.⁸⁶

[115] In cross-examination, Adam denied that he froze the bank accounts because payments were not made to him from those accounts as he had requested.⁸⁷

[116] I accept Teena's evidence that the \$20,000 expenditure by the Business was for a legitimate business purpose and was in no way fraudulent. Given the undisputed fact that the Frangipanni Block was used by the Business for its plant growing operations, I do not accept Adam's evidence that the \$20,000 transaction gave rise to any real suspicion on his part that Teena had or would commit fraud in relation to the bank accounts.

[117] Given Adam's usual lack of involvement in the Business's financial and banking activities, that he had sought and been refused payments to himself from the bank accounts only three days before cancelling the banking authority, and his conduct relating to banking transactions thereafter (see below), I find that Adam did not cancel the banking authority in a genuine effort to protect the estate funds from fraud, but in retaliation against Teena for her having prevented Adam from receiving the funds he sought from the bank accounts.

86 Teena's 2nd Affidavit, [12]-[13].

87 Transcript, p 44.

Did Adam refuse approval of Business expenses to secure payment of dividends?

[118] Teena deposed that, after Adam cancelled the bank account authority, in order to keep the Business operating, Teena paid staff wages and other costs of the Business with her own money.⁸⁸ She twice sought reimbursement from the bank accounts, which had to be approved by Adam. Adam approved the first reimbursement, but refused the second, which totalled over \$80,000, stating that he would approve it after Teena approved the distribution of \$560,000 in fully franked dividends from the Company account to himself, Anita and Alyssa. No company resolution had been made at that time for the distribution of dividends.

[119] Teena deposed that she signed a new authority giving herself and Adam jointly authority to operate the bank accounts.⁸⁹ Adam then approved two further requests for reimbursement or direct payment of business expenses from the Company account. Teena also sought advice from the Company's accountant regarding a suitable amount to be distributed to shareholders in light of Adam's request for funds.⁹⁰ The accountant recommended a total dividend of \$200,000 and, in accordance with that recommendation, Teena sought authority to distribute that sum by payments of \$60,000 to Adam and herself and \$40,000 to Anita and Allysa. That transaction was approved by

88 Teena's 1st Affidavit, [122]-[126].

89 Teena's 1st Affidavit, [128]-[130].

90 Teena's 1st Affidavit, [132].

Adam on the same day it was sought. Adam also approved further payments of wages through the Company's bank accounts.⁹¹

[120] Teena deposed that around this time, in response to an email seeking Adam's approval of business expenses from the Company bank account, Adam sent an email to the Business attaching a 'Commercial/Industrial Lease Agreement' signed by Adam for the Orchard Block and the Production Block, which defined Adam as the lessor and the Company as the lessee and rental of \$7,500 per month.⁹² The email also included an invoice seeking payment to Adam from the Company of \$7,500 for rent for the month of April 2024. Adam then sought approval from Teena for a payment for the rent through the Company bank account.

[121] Teena deposed that, on 8 May 2024, Adam sent an email to the Business's bookkeeper asking when he would be paid his rent, and stating that he would not approve any payments from the bank account until he was paid.⁹³ On that day, Teena inadvertently approved the rent payment through the bank account when she was approving other business expense payments. The next day, the wages payment awaiting Adam's approval was approved by him.

[122] Teena deposed that on about 21 May 2024, her lawyers sent Adam a letter in response to his request for approval of a further payment of rent, informing him that rent payments would not be approved in the future as he was not

91 Teena's 1st Affidavit, [134]-[135].

92 Teena's 1st Affidavit, [136]-[138].

93 Teena's 1st Affidavit, [139]-[141].

the owner of the Orchard Block or the Production Block.⁹⁴ The following day, Adam rejected all payments awaiting his approval, with the reason Adam cited being ‘Make room for wages approval’. Wages were not due to be processed until the following day. Again, Teena was required to make those payments from her own money, placing her under personal financial pressure.

[123] Teena deposed that her lawyers sent Adam a letter asking him to consent to increasing the daily transaction limit on the bank accounts as the delays and other issues concerning payments had caused payments to be rejected when that daily limit was exceeded.⁹⁵ Adam’s response was as follows:

Not really sure what you are going on about and who you are.

Let’s take a look at what has been stolen from me land titles to the value of 3.2 million by [Teena] [Duncan] and [the estate’s solicitor] trying to sell my property to someone else.

Teena has all so stolen 4 trucks 300k 6 motor vehicles Hyundai front end loader 170k water license 21 thousand dollars from the company and the list goes on any one who thinks this is ok has no morals what so ever

Regards Adam.

[124] Teena deposed that Adam had subsequently refused to approve further wages and other business expenses through the bank accounts, requiring her to again pay for them from her own money, and that the future expenses would exceed her personal funds.⁹⁶ Having to seek Adam’s approval for

94 Teena’s 1st Affidavit, [142]-[145].

95 Teena’s 1st Affidavit, [146].

96 Teena’s 1st Affidavit, [147]-[151].

payments from the Company's bank account was untenable, causing her and the bookkeeper great stress, and causing Teena significant financial pressure. It was for this reason that Teena proposed a motion to remove Adam as a director of the Company. As set out above, that motion was passed by Teena, Anita and Allysa.

[125] Adam did not give any evidence to contradict Teena's evidence about these matters.

[126] I accept Teena's evidence and make findings in accordance with her evidence set out above.

[127] On the basis of these facts, I find that Adam has repeatedly obstructed the payment of legitimate expenses of the Business, and by doing so has knowingly jeopardised the ongoing operations of the Business. Given my finding above that the interests of the beneficiaries are best served by the continued operations of the Business pending the outcome of proceedings and a sale or winding up, I find that Adam's conduct has put in jeopardy the interests of the other three beneficiaries under the will. I further find that Adam has done so in pursuit of his own personal interests in obtaining what he perceives to be his share of the funds the subject of the residual estate, and by demanding payments of rent in respect of land which he does not own under the terms of a purported lease which was never entered into by the Business or the Company.

Has Adam prevented distribution of property in South Australia?

[128] Anita supports Teena's application for Adam to be removed as an executor, including on the basis that he has delayed the distribution in accordance with the will of the properties in South Australia.

[129] By clauses 6.2 and 6.6 of the will, three properties in South Australia are gifted to Teena and, by clause 6.4 of the will, another property in South Australia is gifted to Teena, Adam and Anita in equal shares.

[130] Teena has deposed that a South Australian re-seal of the grant of probate (which would permit the transfer of those properties in accordance with the will) has not yet been obtained.⁹⁷ The reason for that is that Adam has refused to cooperate unless the Production Block and the Orchard Block are transferred to him.

[131] Adam did not give any evidence to contradict Teena's evidence about these matters.

[132] I accept Teena's evidence and make findings in accordance with her evidence as set out above.

[133] On the basis of this evidence, I find that Adam's refusal to cooperate to enable the grant of probate to be re-sealed in South Australia has been undertaken in an effort to force the transfer of the Production Block and the

97 Teena's 1st Affidavit, [59].

Orchard Block to him, and is another instance of his pursuit of his own interests over those of the beneficiaries collectively.

Conclusion: Adam is unfit to be an executor of the will

[134] I have found that Adam has physically assaulted Teena, has criminally damaged the property of other people, has obstructed and jeopardised potential sales of the Business, and has acted to prefer his own interests over those of the other beneficiaries, including by efforts to obtain money from the estate's and the Company's bank accounts and in ways that jeopardised the ongoing operations of the Business.

[135] Those matters are more than sufficient for me to conclude, as I do, that Adam is unfit to act in the office of executor within the meaning of s 41(1)(c) of the *Administration and Probate Act*.

[136] There are additional matters, referred to below, which support that conclusion.

[137] I will order the removal of Adam as executor of Darryl's will.

[138] That order will leave Teena and Anita as the executors of the will. I am satisfied that they are willing and able to duly and properly administer the estate in accordance with the terms of the will.

Should Adam be restrained from entering on the land?

Legal principles applicable to the grant of a quia timet injunction

[139] The other relief sought by Teena in these proceedings is an injunction restraining Adam, until further order of the Court, from entering or remaining on the Frangipanni Block, the Production Block, the Main Block or the Orchard Block.

[140] The legal principles applicable to the grant of such injunctions, known as ‘*quia timet* injunctions’ were not in dispute. They are conveniently summarised in the decision of the Supreme Court of Victoria in *Rasco Pty Ltd v Lucas* [2017] VSC 703 at [84]-[86]. Those principles are as follows:

- (a) To be granted *quia timet* relief, a plaintiff must show that what the defendant intends or is likely to do will cause immediate and substantial damage to their property or business.
- (b) While the onus is on the plaintiff to demonstrate that the defendant is likely to cause such damage, there is no fixed or absolute standard of proof required before the injunction will be granted.
- (c) In deciding whether to grant a *quia timet* injunction, the court will have regard to the degree of probability of apprehended injury, the degree of seriousness of the injury, and the requirements of justice between the parties.

- (d) A *quia timet* injunction is granted to prevent a threatened infringement of the rights of the plaintiff, who must show that what the defendant is threatening and intending to do will cause imminent and substantial damage to the plaintiff.
- (e) The word ‘imminent’ means that the injunction must not be granted prematurely. The degree of probability of future injury is not an absolute standard. What is to be aimed at is justice between the parties, having regard to all the relevant circumstances. However, this is not to be taken as conveying that future injury need not be shown to be likely at all.
- (f) *Quia timet* injunctions are not to be granted unless the imminence of the act to be prohibited is sufficiently clearly established to justify the court’s intervention.

What is Adam intending or likely to do?

[141] Teena argued that Adam is intending and/or likely to continue to engage in conduct which he has engaged in since the grant of probate, which has adversely impacted on the Business’s staff and the conduct of the Business. Teena deposed to that conduct as follows.

[142] On 25 July 2023, she heard Adam say to an officer of the Business’s insurance broker (‘Peta’) that ‘you guys are a bunch of frauds’ and ‘really

went to town on' Peta.⁹⁸ Adam said all the workers' compensation cases the Business had ever had were illegal. He wanted Peta's boss's number to go above her. Peta later told the Business's administrative assistant that Peta was worried that Adam would be the Business's new contact person with the insurance broker because, if that was the case, the broker would not deal with the Business anymore.

[143] On 5 September 2023, Teena, Anita and Adam met to discuss various issues in the Business.⁹⁹ Teena told them that a part-time staff member had mistakenly told biosecurity people to come out anytime for citrus canker inspections, which had caused Teena some problems because she had not yet told those people about Darryl's passing and her need for more time to get everything ready for inspection. Adam started shouting and demanding to know who the staff member was so he could fire them. Teena, Adam and Anita then 'had a yelling match' about Adam's treatment of staff.

[144] On 25 September 2023, Teena, Adam and Anita again met to discuss how to move forward. Adam said that because he had the largest parcel of land, he was now in charge, and because he had worked in the Business the longest, he would have the most say.¹⁰⁰

[145] Around 18 October 2023, without consultation with Teena and with the assistance of staff, Adam undertook works to connect the Orchard Block to

98 Teena's 1st Affidavit, [65].

99 Teena's 1st Affidavit, [66].

100 Teena's 1st Affidavit, [67].

one of the bores used by the Business on another parcel of land.¹⁰¹ Those works involved digging trenches and installing pipes through or under nature strips and driveways over two blocks of land. The Business's water licence has a usage allocation per year. If that allocation is exceeded, it can jeopardise the allocation in future years and the renewal of the water licence. The costs of power to operate the water pumps, the water licence and renewal fees are paid by the Business.

[146] On 6 January 2025, Teena was informed by Police that Adam had made a complaint that she had 'stolen' his water access to his residential block (not part of the estate).¹⁰² Teena denied this and deposed that Adam had routed the irrigation system servicing the nursery to his residential block which was causing the water usage to exceed the allocation, so the connection to Adam's residential block was terminated. Adam has access to a bore on his residential block. He had previously told Teena he did not want to pay for electricity to run that bore.

[147] In response, Adam deposed that Teena has 'fraudulently acquired' Darryl's water licences and 'domestic supply is not metered' by the government department.¹⁰³

[148] On 23 October 2023, Adam demanded that the bookkeeper pay Anita and Allysa \$40,000 each from the Company for what he said were their shares of

101 Teena's 1st Affidavit, [69]-[70].

102 Teena's 3rd Affidavit, [9].

103 Adam's 2nd Affidavit, [7].

his purchase of the frontend loader.¹⁰⁴ Teena had earlier told him that it would be necessary to get a valuation done before Adam could purchase the loader. When the bookkeeper asked Teena what she should do about Adam's demand, to avoid conflict between Adam and the bookkeeper, Teena told her just to pay it and said she would sort it out. Teena later sought advice from the accountant who told her that the loader belonged to the estate, not the Company, so could not be paid for by the Company. The payments from the Company were subsequently authorised as dividends to shareholders.

[149] On 23 October 2023, Adam's wife and her friend took plants from the nursery costing \$55 and did not pay for them.¹⁰⁵ When Teena told Adam about it, his response was: 'All good'. No payment for the plants has been received.

[150] On 27 October 2023, a staff member took propagation mix from the nursery and told Teena he had paid Adam for it.¹⁰⁶ No payment has been paid to the Business for this.

[151] On 3 November 2023, a staff member told Teena that Adam had requested him to pay rent to Adam for his accommodation on the Superannuation Block because that land now belonged to Adam.¹⁰⁷ There was already in place an arrangement where the staff member paid rent to the Business out

104 Teena's 1st Affidavit, [71]-[73].

105 Teena's 1st Affidavit, [76].

106 Teena's 1st Affidavit, [77].

107 Teena's 1st Affidavit, [78].

of his wages. The staff member had paid rent to Adam as well as rent to the Business for the period of one to two weeks. Adam has not given the rent payments to the Business.

[152] Around 3 November 2023, Adam took from the office without permission a work computer and bank dongle used by the bookkeeper to process the pays.¹⁰⁸ Teena asked Adam to return them so the pays could be processed. He responded saying: ‘When I get the passwords I will return it’. When Adam did return the computer and bank dongle, the computer was not working and had to be repaired by a contractor.

[153] Adam’s actions meant that the Business had no access to its banking system for a period, requiring Teena to make the necessary payments from her own money, the main Business operating account and MYOB system had to be reconfigured, all customers had to change their payment details to the Company’s bank account, nursery products had to be recalled from suppliers and labelled with new barcodes, and new codes had to be allocated to products distributed in the Territory and other States.¹⁰⁹ This resulted in a substantial increase in the workload for the administration manager and the accountant, at a substantial cost to the Business. The mixing of the two bank accounts also impacted on the liquidity of the Business.

108 Teena’s 1st Affidavit, [79]-[80].

109 Teena’s 3rd Affidavit, [14]-[15].

[154] The Business has security cameras operating on a system that was set up to permit Teena and Adam to log into an ‘app’ on their phones or computers and monitor the cameras.¹¹⁰ Around 11 February 2024, the password credentials were changed without Teena’s knowledge or permission (meaning she could not log in) and Adam changed to his personal email address the email address to which correspondence about the security camera system is sent. More recently, Adam removed a number of parts from the security cameras, rendering them inoperable.

[155] On 10 February 2024, Adam had an argument with a contractor of the Business (‘Tony’) over the phone.¹¹¹ Tony had opened the main gate to the Production Block and within seconds Adam had called Tony and demanded Tony’s key to the Production Block. Adam told Tony he was a director, it was his land and Tony had to do what Adam said. Tony told Adam he would not listen to Adam until the estate dispute was resolved. Adam swore at Tony several times, threatened him and said he would be ‘getting the cops onto’ Tony. Tony phoned Teena to tell her what happened. He was upset.

[156] On 11 February 2024, Teena went to the Production Block to get things ready for staff to work on the following day. The padlock she had put on the gate on Friday was gone and another padlock was on the gate. Teena went around the perimeter to check on the other padlocks on the Block and they were all gone. At the last gate, Adam was there with his partner. The

110 Teena’s 1st Affidavit, [81]-[84].

111 Teena’s 1st Affidavit, [98].

padlock from the gate was gone, the gate was open and Adam had parked a caravan on the Production Block. Teena was concerned about the old and dirty caravan and the risk it posed to the Production Block's biosecurity.

[157] On 12 February 2024, Teena went to the Production Block early in the morning. The loader had been parked in front of the production gate.¹¹² Adam was the only person with a key to the loader. The loader being parked there meant that Teena and staff could not access the Production Block with vehicles to make deliveries or conduct business. Teena had to purchase a spare key from the loader manufacturer to be able to move the loader.

[158] On 25 March 2024, Tony spoke to Teena and he was very upset.¹¹³ Tony lives with his partner on the Orchard Block and pays rent to the Company for that accommodation.¹¹⁴ Tony told Teena that Adam was demanding that he and his partner pay Adam rent or vacate the accommodation. Teena annexed a letter written by Tony and his partner about Adam's demands.¹¹⁵ The letter states that Adam's partner was at her workplace, Adam came in and Adam said to her it was time to move out, which she found upsetting.¹¹⁶ The letter also refers to texts sent between Adam and Tony, as follows:

Adam: Hi Tony I have not received any money for months time to start looking for some where to stay.

112 Teena's 1st Affidavit, [100].

113 Teena's 2nd Affidavit, [17].

114 Teena's 1st Affidavit, [105]; Teena's 2nd Affidavit, [17].

115 Teena's 2nd Affidavit, [17].

116 Teena's 1st Affidavit, Annexure TJS-17.

Tony: I don't know about your money But I pay rent every Thursday for nearly 2 years Documented every week I guess that will happen soon enough

Adam: No signature from my [sic] and who the fuck has been receiving the money not me.

Better text me the receipts otherwise you have two weeks to move out

[159] Teena annexed a further letter written by Tony and his partner following a further interaction with Adam.¹¹⁷ The letter states that Tony's partner was at her workplace when Adam came in. He spoke to Tony's partner and asked if she was still living in Adam's house. She said yes. Adam asked why, with an intimidating voice. Tony's partner asked Adam not to give her a hard time at work and to speak to Tony. Adam kept asking why they were living in his house, saying he is the owner of that property and they had to go. Tony's partner kept asking Adam to leave her alone as she was at work. Tony's partner was very upset by this.

[160] In response to another matter regarding Tony deposed to by Teena, Adam deposed that he had not seen or been near Tony, and that:¹¹⁸

... as far as I am aware [Teena] and [Tony] state that he works on the estate so [Tony] and his partner can live on my gifted property [the Orchard Block] for little or no rent and state again there is no written rental agreement signed by me or my father.

[161] On 23 April 2024, Adam emailed Cheryl asking her to phone him. She did so. Cheryl asked about Adam's approval of some payments and he

117 Teena's 2nd Affidavit, Annexure TJS-54.

118 Adam's 2nd Affidavit, [6].

responded: 'What about the dividends?'. Cheryl told him that was being done differently because of the daily transaction limit, but she had nothing to do with that. Adam asked Cheryl how much the wages were given that the daily limit was \$40,000. Cheryl said she did not know as she had not finished them yet. Adam said there should be enough. Adam asked again where the wages were. Cheryl told him again she had not completed them but he would receive an email. He said he does not receive emails. Cheryl asked him how he would approve the wages payments if he did not receive emails. Adam told her to call him when they were done. Cheryl said she would email. Adam asked how long it would take. Cheryl said she did not know. Adam told Cheryl he wanted to come and get his computer. Cheryl said she did not know about that, it was not up to her, it was up to the lawyers. Adam said he wanted to come in. Cheryl said that would depend on the lawyers. Adam asked how he should communicate. Cheryl told him to speak to Teena's lawyer. Adam said Teena's lawyer will not speak to him. Cheryl said she could not do anything about that. Cheryl asked why Adam told her to phone him. He said he wanted to sort things out. Cheryl told him there is nothing she could do regarding access to the properties. Adam said: 'So just so you know this is going to be a problem if I cannot communicate the banks will shut you down again. I need my computer and other things.' Cheryl told him she was an administrator and came to work to do her job. Adam replied: 'The only reason I let you be administrator is to pay stuff. I didn't let you sign in the bank for nothing.' Cheryl said she did not know

anything about that, the legal stuff was nothing to do with her and Adam should communicate with the lawyers. Adam said: 'It sounds like you are telling me what to do.' Cheryl said it was out of her hands, she does not tell Adam what to do and she would email when the pays were ready. A little later in the conversation, Adam said he was not going to receive emails. Cheryl said he would need to receive emails in order to approve the payments. Adam said he would not check every five minutes. Cheryl said she would send an email when complete. Adam asked when that would be. Cheryl said she should be done by 10am.

[162] Teena deposed that she was concerned that Adam's behaviour towards staff was causing them to feel unsafe and unwilling to go to work.¹¹⁹ Teena was aware of a former staff member who had indicated an intention to make a workers' compensation claim because of Adam's demands for rent from him. She was concerned that claims might be brought against the Business by other staff. She arranged for a consultant to interview staff, provide them with well-being support and to conduct a workplace health and safety audit. Teena is aware that around 11 staff members have described experiences to the consultant of Adam being intimidating and harassing them while at work, leading to them considering quitting their jobs. Teena annexed an affidavit made by the consultant in which he summarised what staff had told him about Adam's behaviour towards them, including:¹²⁰

119 Teena's 1st Affidavit, [110]-[111].

120 Teena's 2nd Affidavit, Annexure TJS-58.

- (a) Staff do not feel safe with Adam around.
- (b) Adam makes threats to staff about their jobs and perceived allegiance to Teena.
- (c) Partners of staff have been accosted by Adam at the nursery, including in the presence of customers.
- (d) Staff actively try to avoid Adam.
- (e) Adam is constantly on the road in front of the nursery, watching them coming and going. Sometimes he accosts them.
- (f) Many staff find Adam's demeanour and approach aggressive and unpredictable.
- (g) Many staff are considering alternative employment if Adam is not stopped.

[163] Other than as referred to above, Adam did not provide any evidence to contradict Teena's evidence about these matters. To the extent that Adam's evidence is responsive, I reject it because it is essentially in the form of a general denial, is inconsistent with the supporting documentary evidence provided by Teena, and I have found Adam not to be a credible witness.

[164] Consequently, I accept Teena's evidence about these matters, and make findings as set out above.

[165] On the basis of these findings and the findings I have made above in relation to Adam's conduct demonstrative of his unfitness to be an executor, I am satisfied that Adam is very likely to continue to interfere with the ongoing operations of the Business by intimidating and harassing Teena and staff and to obstruct and adversely impact the day to day operations of the Business, in the pursuit of his own interests. Adam has paid little heed to the law, has engaged in criminal conduct at the nursery, has purported to direct staff and threaten their jobs, has removed or tampered with property belonging to the Business, and has persistently jeopardised the day to day operations of the Business, all directed to pressuring Teena into agreeing for Adam to be provided with money from the estate and the Production Block and the Orchard Block under the will.

[166] It is relevant here to note that, in cross-examination, Adam gave evidence that it was very unlikely that he would engage in criminal behaviour again because he would be sent to jail.¹²¹

[167] Despite that statement, I accept Teena's submission that Adam lacks insight into the extent of his improper behaviour and that lack of insight enhances the risk that he would engage in criminal behaviour again.

[168] Adam's conduct has directly caused substantial adverse impacts to the operations of the Business, as set out above. These impacts go to the

121 Transcript, p 42.

probability that his likely future conduct will also cause substantial damage, in the sense of a real interference with the Business's operations.¹²²

What are the requirements of justice between the parties?

[169] Adam did not give any evidence about the consequences to him if he were to be restrained from entering or remaining on the Production Block, the Main Block, the Frangipanni Block or the Orchard Block.

[170] Consequently, the requirements of justice are all one way in this case, namely, to prevent Adam from engaging in the likely future conduct referred to above.

An injunction will be granted as sought by Teena

[171] In these circumstances, it is appropriate to order a *quia timet* injunction prohibiting Adam from entering or remaining on the Production Block, the Main Block, the Frangipanni Block or the Orchard Block.

[172] It is appropriate for that order to continue until the Court otherwise orders, given the pending administration of the will and the likely proceedings by Anita and Allysa to amend it.

Disposition

[173] I make the following orders:

122 See *Rasco v Lucas* at [89] and the authorities there cited.

- (1) Pursuant to s 41 of the *Administration and Probate Act* (NT), Adam Bushnell South is removed as an executor of the will of Darryl John South.
- (2) Until the Court further orders, Adam Bushnell South is prohibited from entering or remaining on the following land:
 - (a) 180 Miniata Road, Lambells Lagoon, in the Northern Territory of Australia (Section 1619, Hundred of Guy from plan S 95/215C, Certificate of Title registered in Volume 626, Folio 600 of the Land Title Register) (referred to in these proceedings as ‘the Production Block’).
 - (b) 115 Alphonatia Road, Lambells Lagoon, in the Northern Territory of Australia (Lot 13, Hundred of Guy from plan LTO73/011, Certificate of Title registered in Volume 625, Folio 223 of the Land Title Register) (referred to in these proceedings as ‘the Main Block’).
 - (c) 205 Miniata Road, Lambells Lagoon, in the Northern Territory of Australia (Lot 12, Hundred of Guy from plan LTO73/011, Certificate of Title registered in Volume 823, Folio 708 of the Land Title Register) (referred to in these proceedings as ‘the Orchard Block’).

- (d) 220 Miniata Road, Lambells Lagoon, in the Northern Territory of Australia (Lot 1, Hundred of Guy from plan LTO73/011, Certificate of Title registered in Volume 650, Folio 235 of the Land Title Register) (referred to in these proceedings as ‘the Frangipani Block’).

[174] I will hear the parties as to costs.
