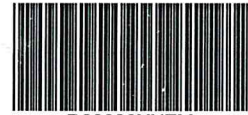




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I certify that the Respondent's
Submissions are suitable for
Publication in accordance with
paragraph 27 of the Practice
Note SC CA 01.

E. Anton

Ebony Tzoukas - Solicitor
on behalf of H+A Legal,
Solicitors for the Respondent. **Written Submissions**

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
List	Court of Appeal
Registry	Supreme Court Sydney
Case number	2025/00153997

TITLE OF PROCEEDINGS

First Appellant	Branka JAKSIC-REPAC
First Respondent	Dusko Dundjerski

FILING DETAILS

Filed for	Dusko Dundjerski, Respondent 1
Legal representative	Hector Menendez
Legal representative reference	
Telephone	02 9223 5704

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (Outline of Submissions - 22.10.25.pdf)

[attach.]

FILED: 22/10/2023 10:00 PM

**SUPREME COURT OF NEW SOUTH WALES
COURT OF APPEAL
2025/00153997**

BRANKA JAKSIC-REPAC v DUSKO DUNDJERSKI

RESPONDENT'S WRITTEN SUBMISSIONS

BACKGROUND

1. The late Mimi Milka Jaksic Berger ("**Mimi**" or the "**deceased**") was born on 19 October 1936 in Kosovo in the former Yugoslavia. She died on 10 November 2022 in New South Wales. She was 86 years old.
2. Mimi was not married at the time of her death, and she had no children. She had six siblings, each of whom predeceased her. Her family tree is set out at [2] of the Judgment (Red 61).
3. Mimi moved to Australia in around 1959. She was a successful artist and businesswoman.¹ At the time of her death, she had gross assets in excess of \$24 million.²
4. On 22 May 2015, Mimi met with Mr Bradley Campbell (solicitor) at the offices of Nicole Leggat & Associates. She executed a will on that same day.³ She appointed her niece, Bozica Dunderski ("**Bozica**"), and her grandnephew, Dusko Dundjerski ("**Dusko**") as her executors and trustee. She gave her artworks to Dusko, and otherwise divided her estate equally between Bozica and Dusko. The will was executed in accordance with the requirements of s. 6 of the *Succession Act 2006* (NSW). The original of that document has not been located.
5. Mr Campbell left Nicole Leggat & Associates on 31 March 2016,⁴ which led to that law practice being wound up.⁵ In February 2017, Mimi contacted Ms Leggat and asked her to provide a copy of Mimi's will.⁶ On 1 March 2017, Ms Leggat

¹ Paragraph [5] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 189).

² Affidavit of Benjamin John Dorman sworn 28 February 2025, (Black 263 – 269).

³ Paragraph [10] and Annexure G of the Affidavit of Bradley Campbell sworn 22 September 2023, (Black 134) (Black 392 – 394 and Blue 51 – 53).

⁴ Paragraph [12] of the Affidavit of Bradley Campbell sworn 22 September 2023, (Black 134).

⁵ Paragraph [4] of the Affidavit of Nicole Leggat affirmed 28 September 2023, (Black 141).

⁶ Paragraph [5] of the Affidavit of Nicole Leggat affirmed 28 September 2023, (Black 141).

sent a copy of the 22 May 2015 will to Mimi.⁷ Mimi then sent a copy of that will to her niece and named executor, Bozica, who was living in Switzerland.⁸ Mimi also told her friend, Dragan Radovic, that she had sent a copy of her will to Switzerland, so that Bozica and Dusko had a copy.⁹

6. In September 2018, Mimi met with a new solicitor, Mr Marc O'Brien of Redmond Hale Simpson. Mimi asked him to obtain her "lease and estate documents" from Ms Leggat.¹⁰ Mr O'Brien received a file from Ms Leggat in around September 2018. That file contained a copy of the will dated 22 May 2015, but not the original.¹¹ Mimi stated to Mr O'Brien that she believed that the original was with Nicole Leggat & Associates.¹² In any event, Mr O'Brien retained a copy of the will dated 22 May 2015 in the Redmond Hale Simpson safe custody file.¹³
7. Mimi fell and broke her arm in April 2022. During this time, her friend, Srdja Jankovic provided her with assistance.¹⁴ Mimi stated that as a sign of her appreciation, she wished to leave him her property located at 113A Commonwealth Street, Surry Hills.¹⁵ She also told him that her last will was held by Marc O'Brien.¹⁶ Mimi asked Mr Jankovic to prepare a document for her to sign to give effect to that gift.¹⁷
8. Following that conversation, Mimi executed another document, headed "Codicil to my last will and testament of Mimi Jaksic Berger" on 14 June 2022.¹⁸
9. The operative part of the document included the following:

⁷ Paragraph [6] of the Affidavit of Nicole Leggat affirmed 28 September 2023, (Black 141).

⁸ Paragraphs [26] – [28] and Annexure E of the Affidavit of Bozica Dunderski affirmed 12 December 2023, (Black 167 – 168) (Black 401 and Blue 60).

⁹ Paragraph [26] of the Affidavit of Dragan Radovic affirmed 21 November 2023, (Black 161).

¹⁰ Paragraph [2] of the Affidavit of Marc O'Brien affirmed 30 October 2023, (Black 150).

¹¹ Paragraph [4] of the Affidavit of Marc O'Brien affirmed 30 October 2023, (Black 150).

¹² Paragraph [4] of the Affidavit of Marc O'Brien affirmed 30 October 2023, (Black 150).

¹³ Paragraph [5] of the Affidavit of Marc O'Brien affirmed 30 October 2023, (Black 151).

¹⁴ Paragraph [32] of the Affidavit of Bozica Dunderski affirmed 12 December 2023, (Black 168).

¹⁵ Paragraph [30] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 194 – 195).

¹⁶ Paragraph [30] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 194 – 195).

¹⁷ Paragraph [33] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 194 – 195).

¹⁸ Paragraphs [39] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 196).

1. I leave my real estate located at 113A Commonwealth Street Surry Hills NSW to Srdja and Gordana Jankovic of 22 Clarence Road Rockdale NSW.
 2. I hereby confirm and republish my Last Will kept by Marc O'Brien, of Redmond Hale Simpson solicitors, in all respects other than those mentioned here.¹⁹
10. The codicil was not witnessed and therefore not executed in accordance with the requirements of s 6 of the *Succession Act 2006*.
11. On 18 July 2022, Mimi met with Mr Gordon Bryant (solicitor) of F. C. Bryant Thomas & Co. During that meeting, she told Mr Bryant that she had a current will, which was held by Marc O'Brien at Redmond Hale Simpson.²⁰
12. Mimi gave instructions to Mr Bryant that she wanted to give a property at 113A Commonwealth Street, Surry Hills to Srdja Jankovic and his wife, Gordana Jankovic. She wanted to leave Bozica and Dusko the balance of her estate.²¹
13. Mr Bryant prepared a draft will for Mimi, which he sent to her on 4 August 2022.²² Mimi never executed that draft. Mimi died unexpectedly on 10 November 2022.²³

PROCEEDINGS BEFORE THE PRIMARY JUDGE

14. By way of an Amended Statement of Claim filed 20 November 2023, the Respondent (the Plaintiff in the proceedings below) propounded the copy will dated 22 May 2015 and the informal codicil dated 14 June 2022. In the alternative, the Respondent propounded only the copy will dated 22 May 2015.
15. The Appellant (the Defendant and Cross-Claimant in the proceedings below) asserted that Mimi died intestate on the basis that:
- a) the deceased revoked the will of 22 May 2015 (Paragraph 3 of the Further Amended Defence filed 3 November 2023 (Red 18-21); and
 - b) the informal codicil dated 14 June 2022 was "not a valid testamentary document". The basis upon which this was asserted was somewhat

¹⁹ Annexure E to the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 428, Blue 87).

²⁰ Paragraphs [2] – [4] of the Affidavit of Gordon Bryant affirmed 28 September 2023, (Black 145).

²¹ Paragraphs [6] – [7] of the Affidavit of Gordon Bryant affirmed 28 September 2023, (Black 145 – 146).

²² Paragraph [13] of the Affidavit of Gordon Bryant affirmed 28 September 2023, (Black 146).

²³ Paragraph [47] of the Affidavit of Srdja Jankovic sworn 21 December 2023; Paragraph [52] of the Affidavit of Dusko Dundjerski affirmed 21 December 2023, (Black 197 (Black 123)).

opaque, but the particulars to Paragraph 7 of the Amended Defence (Red 21) claim that Mimi did not intend the informal codicil to operate as a testamentary instrument.

16. It is now asserted in the Appellant's submissions that the Appellant also contended that the deceased did not know and approve of the contents of the informal codicil (see paragraphs 19 and 20 of the Further Amended Statement of Cross-Claim) (Red 37). However, the Appellant in her written submissions did not identify that as in issue for determination (see [16] – [17] of the Plaintiff's submissions dated 12 March 2023) (Red 151). No submission to that effect was made orally – the Appellant confined herself to an argument that Mimi did not intend the informal codicil to have operative effect (Transcript 73:5 – 74:6; Black 73 – 74).
17. The primary judge dismissed the Appellant's claim and admitted to probate the copy will dated 22 May 2015 and the informal codicil dated 14 June 2022. In so doing, his Honour concluded:
 - a) that the evidence did not establish that the original will was in the possession of the deceased when she died, such that no presumption of revocation arose (Judgment at [54], Red 74). In arriving at this conclusion, the primary judge referred to evidence that Mimi did not consider that the 22 May 2015 will was in her possession, namely:
 - (i) the conversation between Mimi and Mr O'Brien in September 2018 in which Mimi stated that the original will was held by Nicole Leggat & Associates. Mimi gave authority for Ms Leggat to release her file to Mr O'Brien,
 - (ii) the conversation between Mimi and Mr Bryant on 18 July 2022, during which Mimi stated that her will was held by Mr O'Brien, and
 - (iii) the conversation between Mimi and Gordana Jankovic in which Mimi stated that her will was held by Mr O'Brien;
 - b) even if a presumption of destruction arose, it was rebutted (Judgment at [55], Red 74), having regard to the following:
 - (i) the nature of the will of 22 May 2015 itself, being a carefully and professionally drawn document, making full and detailed provision for the disposition of the entire estate,

- (ii) the informal codicil referred to the will as if it existed, and the reference in the codicil to "my Last Will kept by Marc O'Brien" was manifestly a reference to the will of 22 May 2015, and
- (iii) the informal codicil, read together with the will of 22 May 2015, reflected the deceased's testamentary intentions; and
- c) even if the will of 22 May 2015 was revoked, it was revived by the codicil, which the deceased intended to form an alteration to her will within the meaning of s 8(2) of the *Succession Act 2006*. The primary judge referred to the "only reason" that Mimi did not comply with the formalities in s 6 of the *Succession Act 2006* being her "concern that the hospital staff would come to know of her properties". The fact that she wanted to sign the document to give her and Mr Jankovic "peace of mind" established that she intended for the codicil to have testamentary effect (Transcript 29:6-11; Black 29).

NOTICE OF APPEAL

18. The Notice of Appeal filed by the Appellant identifies 3 grounds of appeal, namely that:
- a) the primary judge erred in failing to find that the deceased had revoked the 22 May 2015 will on the basis that there was insufficient evidence to rebut the presumption of revocation, and there was evidence in support of the presumption that was not taken into account (Ground 1);
 - b) the primary judge erred in finding that the informal codicil revived the 22 May 2015 will, on the basis that as a matter of law, the codicil could not have the effect of reviving the will, and the codicil did not "reflect the testamentary intentions of the deceased" (Ground 2); and
 - c) the primary judge erred in finding that Mr and Mrs Jankovic were credible witnesses (Ground 3).

FINDING THAT MIMI DID NOT REVOKE THE 22 MAY 2015 WILL

Circumstances in which a presumption of revocation arises

19. A presumption that a will, the original of which cannot be produced after death, was destroyed by the deceased arises only in circumstances where the will can be last traced to the testator's possession: *Sugden v Lord St Leonards* (1876) 1 PD 154, 231; *Bar-Mordecai v Rotman* [2000] NSWCA 123 at [135]. Where the

will cannot be last traced to the testator's possession and instead remains with the solicitor who drafted the will, the presumption does not arise: *In the Will of Leonie Lyle Warren* [2014] QSC 101 at [12].

20. The Appellant's argument that the 22 May 2015 will was in the possession of Mimi rests entirely upon:
- a) the equivocal evidence of Mr Campbell, who drafted the 22 May 2015 and witnessed its execution, as to whether he retained the original document or provided it to Mimi.²⁴ Mr Campbell said that he "only kept a few wills at the office" and "would ordinary (sic) give the originals to the clients". He did not (and could not) assert that the original will was retained by Nicole Leggat & Associates. Equally, however, he could not rule out that the original will was given to Mimi;²⁵ and
 - b) an inference that is said to be drawn from the fact that, when Mr O'Brien received Mimi's estate file from Ms Leggat in September 2018, that file contained a copy of the will dated 22 May 2015, but not the original.²⁶
21. Any inferences that might be drawn from Mr Campbell's usual course of conduct and the manner in which he usually treated testamentary instruments must yield to positive evidence as to the location of the document. In this case, the only positive evidence, one way or the other, as to the location of the original will of 22 May 2015 supports a finding that the original will remained with Nicole Leggat & Associates. After Mr O'Brien obtained Mimi's file from Nicole Leggat & Associates, Mr O'Brien asked Mimi if she knew where the original will was located. Mimi's response was that she believed that the original was with Nicole Leggat & Associates.²⁷
22. Mimi's response to Mr O'Brien is consistent with the fact that, in February 2017, Mimi contacted Ms Leggat and asked her to provide her with a copy of the May 2015 will. ²⁸ It would be highly unusual for Mimi to have made that request if she had the will in her possession. The logical inference to be drawn from that

²⁴ Paragraph [11] of the Affidavit of Bradley Campbell sworn 22 September 2023, (Black 134).

²⁵ Paragraph [11] and Annexure A of the Affidavit of Tihomir Novakovic sworn 4 March 2025, (Black 256) (Black 472 – 474 and Blue 132 – 133).

²⁶ Paragraph [4] of the Affidavit of Marc O'Brien affirmed 30 October 2023, (Black 150).

²⁷ Paragraph [4] of the Affidavit of Marc O'Brien affirmed 30 October 2023, (Black 150).

²⁸ Paragraph [5] of the Affidavit of Nicole Leggat affirmed 28 September 2023, (Black 141).

request is that she believed Ms Leggat retained the original May 2015 will, presumably because the original will was never provided to Mimi.

23. In light of the equivocal evidence of Mr Campbell, and the positive evidence that Mimi believed that the original of the 22 May 2015 will was held by Ms Leggat, the primary judge was correct to observe that there was no evidentiary basis to find that the original will was given to Mimi (Judgment at [57], Red 75). It follows that no presumption of destruction arises and the Appellant's appeal fails at this first hurdle.

Rebuttal of any presumption that might arise

24. Assuming that a presumption of destruction arises (which is denied for the reasons set out in paragraphs 19 - 23 above), the question for the Court is to determine the strength of any such presumption and whether, in all the circumstances, that presumption is rebutted.
25. The strength of the presumption depends upon the character of the testator's custody over it. In *Sugden v Lord St Leonards* (1875) 1 PD 154 at 217–218 (quoted with approval in *Allan v Morrison* [1900] AC 604 at 610 and *Demediuk v Demediuk* [2019] VSCA 79 at [39]), Sir Alexander Cockburn CJ stated that “the presumption will be more or less strong according to the character of the custody which the testator had over the will”. In *McCauley v McCauley* (1910) 10 CLR 434 at 438, Griffith CJ stated that “[t]he probability that a will not forthcoming has been destroyed *animo revocandi* and not lost obviously depends upon circumstances. One important element to be considered is the nature of the custody in which it is kept.” And in *Demediuk v Demediuk* [2019] VSCA 79 at [39], Kaye, Forrest JJA and Champion AJA observed that:

The strength of the presumption of revocation may also depend on the nature of the testator's custody over the missing document. Obviously, if the testator was given to keeping the document under tight security, and it is missing at the time of his or her death, that circumstance would lend more heavily in favour of the presumption of revocation, than if the testator were lax about the manner in which he or she had kept and retained important documents such [as] a will.

26. Moreover, where the will makes a careful and complete disposition of the estate and there are no other circumstances pointing to probable destruction, the presumption has been held to be so slight as not to exist: *Sugden v Lord St Leonards* (1875) 1 PD 154 at 180; *Taylor v Waters* (Powell J, NSWSC, 19 June 1992, unreported, BC9201800 at 11). To that end, in *Finch v Finch* (1867) LR 1 P & D 371 at 374–375, Sir James Wilde stated the following:

It is enough that the Court is satisfied that there is no proof that this will was not found in the depository of the testator. It is the non-existence of the paper at the time of death which leads to the legal presumption of revocation. A will is good unless revoked; but this will is not revoked, unless the legal presumption arises; and to support that presumption the Court must be satisfied that it was not in existence at the time of death. The evidence which has been produced does not satisfy the Court that it was not in existence at that time; on the contrary, looking at the expressed intention of the testator to leave the property to his daughter, and the fact that he continued to express that intention up to the last occasion when he spoke about the will, the Court is satisfied that his determination remained unaltered until the time of his decease.

27. In this case, any presumption that might arise must be weak. Although there is no evidence as to how Mimi stored her legal documents, there is evidence that she did not keep any accounting or taxation records in her home – all her “source documents” were held at her accountant’s office.²⁹ When she signed the informal codicil, she also left it with Mr Jankovic and did not retain it herself.³⁰
28. In any event, and regardless of the strength of any presumption that might arise, the weight of evidence supports a consistent belief on the part of Mimi that her will of 22 May 2015 remained operative, which comfortably rebuts any presumption that she destroyed it. In particular:
- a) in February 2017, Mimi requested a copy of the 22 May 2015 will from Ms Leggat.³¹ Mimi then sent that document to one of her executors, Bozica, in Switzerland.³² There was no reason for Mimi to do this unless she considered that the May 2015 will continued to be operative.
 - b) in 2017, Mimi told her friend, Dragan Radovic, that she had sent a copy of her will over to Switzerland. Mimi must have been referring to the 22 May 2015 will.³³
 - c) in September 2018, Mimi told Mr O’Brien that her will was held by Nicole Leggat.³⁴ Mr O’Brien was unable to obtain the original will from Ms Leggat, but retained a copy of the May 2015 will in safe custody.

²⁹ Paragraph [10] of the Affidavit of Maria Lazaros affirmed 30 October 2023, (Black 155).

³⁰ Paragraph [39] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 196).

³¹ Paragraph [5] of the Affidavit of Nicole Leggat affirmed 28 September 2023, (Black 141).

³² Paragraphs [26] – [28] and Annexure E of the Affidavit of Bozica Dunderski affirmed 12 December 2023, (Black 167 – 168) (Black 401 and Blue 60).

³³ Paragraph [26] of the Affidavit of Dragan Radovic affirmed 21 November 2023, (Black 161).

³⁴ Paragraph [2] of the Affidavit of Marc O’Brien affirmed 30 October 2023, (Black 150).

- d) in April 2022, Mimi told her friends, Srdja and Gordana Jankovic, that her last will was held by Marc O'Brien.³⁵
 - e) on 14 June 2022, Mimi signed a document which expressly recited that her last will was held by Marc O'Brien, of Redmond Hale Simpson solicitors.³⁶ The fact that what Mr O'Brien held was only a copy is of no relevance. It provides compelling evidence that Mimi considered that her 22 May 2015 will continued to be operative.
 - fg) on 18 July 2022, Mimi met with Mr Bryant. During that meeting, she told Mr Bryant that she had a current will, which was held by Mr O'Brien at Redmond Hale Simpson.³⁷
29. It follows, therefore, that the primary judge was correct to find that, even if a presumption of destruction arose on the evidence, any such presumption was "well and truly" rebutted (Judgment at [55], Red 74). It is clear that at all times from May 2015, Mimi considered that her May 2015 will was operative. Any conclusion that Mimi destroyed her will with the intention of revoking would be wholly inconsistent with that evidence.

FINDING THAT THE INFORMAL CODICIL REVIVED THE WILL

30. The Appellant only has standing to challenge the informal codicil in the event that the Court finds that the 22 May 2015 will was revoked. For the reasons set out above, the primary judge was correct to conclude that the 22 May 2015 will was not revoked.
31. However, if the informal codicil is to be considered, the question for determination is whether the trial judge was correct to dispense with the formalities required by s 6 of the *Succession Act 2006* by reference to s 8 of the *Succession Act 2006*.
32. There is no doubt that the informal codicil purported to state Mimi's testamentary intentions (which was accepted by the Appellant's counsel during the course of submissions). The only question for the trial judge was whether Mimi intended the

³⁵ Paragraph [30] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 194 – 195); Paragraph [16] of the Affidavit of Gordana Jankovic sworn 21 December 2023 (Black 184 – 185).

³⁶ Annexure E to the Affidavit of Srdja Jankovic sworn 20 December 2023, (Black 428, Blue 87).

³⁷ Paragraphs [2] – [4] of the Affidavit of Gordon Bryant affirmed 28 September 2023, (Black 145).

document without more to form an alteration to her will (Transcript 73:5-27; Black 73).

33. The codicil was drafted with formality and was signed and dated by Mimi. Those are significant factors that support a finding that Mimi intended the document to operate as a codicil to her will. A signature, placed at the foot of a testamentary document, carries with it the implication that the testator intended the signature to give testamentary effect to the document: *Wood v Smith* [1993] Ch 90 at 111. In *Re Application of Brown; Estate of Springfield* (1991) 23 NSWLR 535, Powell J stated at 539-540 that "...in cases where the subject document is either wholly written out, or, being on a will form, has been filled in, in the handwriting of the relevant deceased, and in cases where the subject document bears the signature of, or some mark made by, the relevant deceased indicating his intention to adopt it as his own, I would have little difficulty in finding myself satisfied that it was intended by the relevant deceased that the subject document should constitute his will." Similarly, the act of dating a document self-evidently suggests its finality; often indicating that the document is in its final form and intended to be operative: *Re Estate of Kiepas (dec'd); Twemlow v Kiepas* [2004] NSWSC 452 at [31].
34. The Appellant emphasises the fact that the codicil was not witnessed (Appellant's submissions at [82] – [83], Red 174). However, Mimi herself explained that she did not want any hospital staff to witness the document because she did not want them to know that she had properties.³⁸ Nevertheless, she stated that she would sign it so that Mr Jankovic had "proof of my decision" and "for your and my peace of mind" (Transcript 29:6-11; Black 29). A document that was not intended to have testamentary effect could not provide Mimi with any "peace of mind". The primary judge was correct to conclude that Mimi intended the codicil to have testamentary effect (Judgment at [62], Red 76).

Knowledge and approval of the codicil

35. The Appellant seeks to challenge the informal codicil on the basis that Mimi did not know and approve of the contents of the codicil (Appellant's submissions at [65] – [75], Red 172 – 173). Admittedly, there was a vague pleading to that effect (see paragraphs 19 and 20 of the Further Amended Statement of Cross-Claim, Red 37). However, that argument was not maintained in the hearing below. The Appellant in her written submissions did not identify that as an issue for determination (see [16] – [17] of the Plaintiff's submissions dated 12 March 2023,

³⁸ Paragraph [37] of the Affidavit of Srdja Jankovic sworn 20 December 2023, (Black 196).

Red 151). No submission to that effect was made orally – the Appellant confined herself to an argument that Mimi did not intend the informal codicil to have operative effect (Transcript 73:5 – 74:6; Black 73 – 74). The Appellant should not now be permitted to assert that Mimi did not know and approve of the codicil.

36. In any event, the terms of the codicil gave effect to the testamentary intention that Mimi communicated to Mr Jankovic in May 2022.³⁹ Where a testator executes an instrument that gives effect to his or her instructions, it follows that the testator must know and approve of that instrument: *Peacock v Knox* [2025] NSWCA 160 at [216], referring to *Astridge v Pepper* [1970] 1 NSW 542 at 548; *Harrison v Petersen* [2000] QSC 415 at [56]; *Hookway v Hookway* [2016] TASSC 28 at [259]. That is because “the purpose of the enquiry into knowledge and approval is simply to ascertain whether the will represents the testator’s true intention”: *Perrins v Holland* [2010] EWCA Civ 840 at [68]; *Maile v Maile* [2025] EWHC 2494 (Ch) at [174].
37. That Mimi intended to devise the property at 113A Commonwealth Street, Surry Hills to Srdja and Gordana Jankovic is also confirmed by the fact that when she met with Mr Bryant on 18 July 2022, she gave those same instructions to him.⁴⁰

Republication and revival of the 22 May 2015 will

38. The Appellant asserts that the primary judge erred in treating the codicil as being capable of republishing the 22 May 2015 will (Appellant’s submissions at [93], Red 176). The primary judge made no such error. The primary judge found that Mimi did not revoke the 22 May 2015 will and that it was operative at the time that Mimi executed the codicil. Having made that finding, there can be no sensible argument that the codicil was not capable of republishing a valid and subsisting will.
39. The primary judge held that, even if the 22 May 2015 will had been revoked, the codicil would have had the effect of reviving it. There is nothing controversial in an informal codicil reviving a previously revoked will: *Slack v Rogan* (2013) 85 NSWLR 253 at [29] – [49]; *Estate of Demetrios Katsikas* [2018] NSWSC 555 at [2].
40. The Appellant asserts that because the codicil only sought to “confirm and republish” her 22 May 2015 will, she could not have intended to revive it because

³⁹ Paragraph [30] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 194-195).

⁴⁰ Paragraph [6] of the Affidavit of Gordon Bryant affirmed 28 September 2023, (Black 145).

she thought that it remained operative (Appellant's submissions at [97], Red 177). With respect, that submission proceeds on an incorrect premise. The focus is not Mimi's understanding of the precise legal status of the 22 May 2015 will (and therefore whether her intention was to 'republish' her earlier will as opposed to 'reviving' it). Rather, the appropriate question is whether Mimi intended for the 22 May 2015 will to be operative (as amended by the informal codicil). That intention is demonstrated by Mimi's express 'confirmation' of the 22 May 2015 will (see *Slack v Rogan* (2013) 85 NSWLR 253 at [49]; *In Re Earl of Caithness* (1891) 7 TLR 354 at 355; *McLeod v McNab* [1891] AC 471 at 476).

Credibility of Srdja and Gordana Jankovic

41. The Appellant seeks to impugn the credibility and reliability of the evidence of Mr Jankovic (Appellant's submissions at [87], Red 175). No submission to that effect was made on behalf of the Appellant at the hearing below, and the purported inconsistencies on which the Appellant now seeks to rely were not the subject of any cross-examination. There is no basis to challenge the primary judge's conclusion that Mr Jankovic was a credible witness (Judgment at [31], Red 68).
42. In any event, the evidence of Mr Jankovic on which the primary judge relied (namely, the instructions that Mimi provided as to her testamentary intentions, and her statement that her will was held by Mr O'Brien) is corroborated by the conversation that Mimi had with Mr Bryant in which she made similar statements.

CONCLUSION

43. For the reasons set out above, the appeal should be dismissed with costs.



Simon Chapple SC
13th Floor St James Hall



Daniel Yazdani
13th Floor St James Hall

22 October 2025