

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ARCHIBALD W. LINGO,)
)
 Plaintiff,)
 v.) C.A. No.1622-MG
)
 DINAH H. LINGO,)
)
 Defendant.)

IMO: Eleanor Lingo,) C.M. No. 4483-S
 a Disabled Person.)

MASTER'S REPORT
(Decision after Trial)

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GLASSCOCK, Master

I. Background

This matter initially involved a dispute between the trustees of a testamentary trust established by William Lingo (the “Lingo trust”).¹ Subsequently, a related case was filed between the same parties concerning a proposed guardianship of the beneficiary of the William Lingo Trust, Eleanor Lingo (“Mrs. Lingo”). The matters were consolidated for purposes of trial. The matter was tried over six days and the parties have provided proposed findings of fact. The guardianship issues have been resolved, in large part, by my bench report of March 16, 2008. Seth Thompson, Esquire, who had previously been appointed interim trustee of the Lingo trust, was appointed guardian of the property of Mrs. Lingo.² Remaining before me are the allegations by the plaintiff, Archibald Lingo (“Archie”) that his sister and co-trustee, Dinah H. Lingo (“Dinah”) breached her duties as trustee for the Lingo trust.³ Also remaining are two other sets of issues. First, Archie contends that Dinah abused a power of attorney granted in her favor by Mrs. Lingo. Typically, vindication of a breach of fiduciary duty by an attorney-in-fact is the prerogative of the principal (or, here, her guardian) rather than a co-trustee. The second issue involves the validity of the power of attorney itself and of a will executed by Mrs. Lingo at the time she created the power of attorney, in August 2002. Of course, the issue of the validity of the will is typically a matter reserved to a judge acting in probate, after

¹The trust action was filed on September 13, 2005.

²IKOR, a guardianship agency, was appointed guardian of the person of Mrs. Lingo, and Dinah remains caregiver for Mrs. Lingo.

³ I use first names in this report, not out of disrespect, but to avoid confusion.

the death of the testator. With respect to both these sets of issues, however, it is appropriate that I adjudicate them in this forum. This is because the issues of breach of fiduciary duty on Dinah's part (as attorney-in-fact as well as co-trustee), as well as the circumstances surrounding whether the will and power of attorney were the result of undue influence, are so central to the guardianship matter that they necessarily formed a large part of the proceedings here. The issues were litigated fully by parties with every incentive to do so. Both Dinah and Archie seek resolution of these issues in this forum. With respect to the will, it is unfortunately clear that Mrs. Lingo suffers from advanced dementia and will never regain the testamentary capacity to amend or abrogate that document. The guardian of the property has consented on Mrs. Lingo's behalf to the resolution of the issues arising under the power of attorney and concerning the validity of the will here. Therefore, under the unique circumstances of this case, for reasons of efficient administration of justice and litigants' economy, and because a decision on the issues involved is not merely advisory but instead is central to the contested guardianship, I will address here both the validity of the August 2002 will executed by Mrs. Lingo and all alleged breaches of fiduciary duty by Dinah, whether acting as co-trustee or attorney-in-fact.

William Lingo ("William") was, together with Mrs. Lingo, the second-generation proprietor of a Rehoboth landmark, Lingo's Market on Baltimore Avenue. In addition to owning the market business and the real estate from which it operated, William and Mrs. Lingo during their marriage acquired several parcels of real property: twenty-two

commercial rental units along Baltimore Avenue, three dwelling units at 15 Cookman Street, dwellings at 310 and 312 Salisbury Avenue, and two rental units on Highway One, all in or near Rehoboth. William and Mrs. Lingo managed this property as a property rental business (“Lingo Bros.”). The Lingos lived in the house at 312 Salisbury Avenue.

In 1979, William and Mrs. Lingo created testamentary plans. Their ownership in the real property and certain other assets—shares of stock in Sussex Trust Company—were held not by the entirety but in common. Both William and Mrs. Lingo created a will that passed each testator’s one-half interest in this property to a testamentary trust upon the death of the testator. The beneficiary of each trust was to be the surviving spouse—who was entitled to the income for life—and the remainder beneficiaries were to be the testators’ two children, Archie and Dinah.

William died in 1981. His interest in the Lingo Bros. property and the stock certificates passed into the testamentary trust. Under the terms of the trust, the trustees were Dinah and Archie. This was an unusual trust, in that its primary asset was a half interest in the Lingo Bros. rental properties. The other half was still held individually by Mrs. Lingo.

In 2001, Dinah moved in with Mrs. Lingo at the latter’s home at 312 Salisbury Avenue. Mrs. Lingo was at this time around eighty-six years old. In August 2002, Mrs. Lingo created a will (the “2002 will”) superseding her earlier will. The earlier will, as described above, left the residue of her estate to Dinah and Archie, equally. In the 2002 will, Mrs. Lingo left everything to Dinah, and specifically disinherited Archie. At the

same time, she created a power of attorney naming Dinah her attorney-in-fact. Archie contends that the 2002 will was the product of undue influence.⁴ In the alternative, Archie argues that Dinah altered the will, so that the document that is before the Court is not the document executed by Mrs. Lingo. Archie also argues that the power of attorney was the product of undue influence, and that Dinah used the power of attorney to transfer assets to herself from Mrs. Lingo's personal estate and from the Lingo trust. After receiving the power of attorney, Dinah began to control the Lingo Bros. rental business, and according to Archie breached her fiduciary duties to Mrs. Lingo in the operation of that business. Archie seeks an order 1) declaring the will invalid, 2) directing that the property transferred from the trust and Mrs. Lingo's estate by Dinah be returned to those entities, and 3) requiring Dinah to account for her operation of the rental business. Archie also seeks to rescind a deed transferring real property from Mrs. Lingo to Dinah in 2005, on grounds of lack of capacity or undue influence.

Dinah seeks a determination that the 2002 will is valid. She concedes that she transferred property from her mother and from the trust to herself, but contends that those transfers were done with Mrs. Lingo's informed consent. Both parties ask to be relieved of responsibilities as trustees for the Lingo trust, and seek appointment of a successor trustee.

⁴ Originally, Archie contended that Mrs. Lingo lacked capacity to make a will in August 2002, but conceded at closing argument, and I find here, that insufficient evidence exists to demonstrate lack of capacity at the time the will was made.

II. Facts

Upon William's death in 1981, Archie took over the Lingo's Market business with Mrs. Lingo's consent. He did not purchase the business, which theoretically was an asset owned by Mrs. Lingo and William's estate. He did, however, lease the ground on which the business was located from Mrs. Lingo and the trust, for \$50,000 per year. Lingo's Market is open for approximately one hundred days each summer. Prior to 1981, Mrs. Lingo worked every day in the summer at the Market. She was not paid, but benefitted from any profits which she and her husband took from the Market. After Archie took over the business, from 1981 to 2005, Mrs. Lingo continued to work at the Market every day when it was open. She was, however, not compensated for this work. The exception to this scenario occurred in the 1990s. At that time, Archie became involved in a divorce proceeding with his wife, Bonnie Lingo ("Bonnie"). Archie and Bonnie had been separated for some time prior to the divorce action, and Archie was living with his mother at her Salisbury Avenue residence. In order to minimize Bonnie's recovery from the divorce, and in an attempt to mislead the Family Court, Archie paid all the profits from Lingo's Market during the pendency of the divorce action to Mrs. Lingo, as though the business were hers. When this ruse was no longer advantageous, Archie re-incorporated the market as "Archie Lingo's Market." Henceforth, Archie again retained all profits from Lingo's Market for himself. In around 1995, he left his mother's residence and moved in with a girlfriend, Anique.

Both Archie and Dinah over the years have had the use of properties owned by the trust and Mrs. Lingo, as residences, rent-free. In around 2000, Dinah returned from a several-year residency in Greece. At first she moved into a Lingo Bros. rental property but in around 2001 Dinah moved in with her mother. Until that time, Mrs. Lingo had been managing the rental properties on her own. While both Archie and Dinah claim to have helped her with the rental business by doing maintenance and collecting lease payments, it is clear to me that the rental business (which consisted of the Lingo Bros. property, owned half by Mrs. Lingo and half by the trust) was firmly in Mrs. Lingo's control. Between 2000 and 2002, Dinah began assisting the elderly Mrs. Lingo with the rental business. During this period, Mrs. Lingo provided Dinah with start-up money and rent-free accommodations on Baltimore Avenue to open a flower business. The florist's shop was not a success: it closed after the 2002 season.

In the summer of 2002, Mrs. Lingo contacted her attorney, John Brady, Esquire and told him she wanted to create a new will. Mrs. Lingo also asked Mr. Brady to prepare a power of attorney in favor of Dinah. In August 2002, Dinah drove Mrs. Lingo to Mr. Brady's office. While Dinah waited outside the conference room, Mrs. Lingo explained to Mr. Brady that she wanted to disinherit Archie and make Dinah her sole beneficiary. Mr. Brady drafted a will consistent with Mrs. Lingo's directions and on August 16, 2002 the will was executed by Mrs. Lingo, at Dinah's flower shop on Baltimore Avenue. At the same time, the power of attorney in favor of Dinah was executed by Mrs. Lingo. Mrs. Lingo kept the original will, which (according to Dinah)

was found by Dinah years afterward between the pages of a magazine hidden under a rug in Mrs. Lingo's home. Mr. Brady retained a copy of the will for his files.

Thereafter, Dinah quickly began assuming control of the rental business from Mrs. Lingo. She began writing most of the checks for the business. She hired friends, including her boyfriend, to do maintenance work on the rental properties. She transferred hundreds of thousands of dollars from Mrs. Lingo's personal estate and the accounts of the trust into her own name or into joint accounts with right of survivorship with Mrs. Lingo. In June 2004, Dinah and Mrs. Lingo put shares of Wilmington Trust Company⁵ stock which belong to either Mrs. Lingo or the Lingo trust into a joint investment account with Dinah. The value of the stock was in excess of \$1,000,000.

On September 16, 2005, Mrs. Lingo returned to Mr. Brady's office, accompanied by Dinah. Mrs. Lingo executed a deed transferring a residential property in Frankford, which was her sole property, to Dinah. A few days later, Dinah took Mrs. Lingo to the Family Court in Georgetown, where she sought a Protection From Abuse order against Archie, theoretically because he had yelled at Mrs. Lingo and pulled her arm while she was working at the Market during the previous summer. Mrs. Lingo failed to follow through with the action in the Family Court, however.

⁵ This was stock in the successor corporation to the Sussex Trust Company, and replaced the Sussex Trust stock formerly held in common by William and Mrs. Lingo.

III. Mrs. Lingo's Medical History

Mrs. Lingo through the 1990s and beyond remained a woman of remarkable stamina and capacity for work, putting in hours at Lingo's Market which would tire a person one-third her age. However, as she approached her 90s, she began to experience some health problems. In the late 1990s, Mrs. Lingo fell and broke her hip, and thereafter could not drive. Between 2000 and 2005, she developed circulatory and respiratory problems that lead to several hospitalizations at Beebe Hospital. The nurses' records of these hospitalizations noted that she at times appeared confused. In June of 2005, she experienced a bout of delirium at Beebe Hospital from which she appeared to recover.

On May 5, 2006, Mrs. Lingo's video deposition was taken in this matter. Under a rather grueling examination by Archie's counsel, it became clear even to a layman that Mrs. Lingo was suffering from dementia.⁶ She was manifestly confused, and was unable to answer basic questions as to her age, birthday, address, or the current year. It was clear to me on viewing the deposition that Mrs. Lingo, at least on that date in May 2006, was incompetent to contract or make medical decisions for herself.

After the deposition, Archie sought and obtained a medical examination under Chancery Court Rules, Rule 35. That examination was conducted in June 2006 by Dr. Alan Fink, a neurologist. Dr. Fink performed tests including a Folstein mini-mental examination on Mrs. Lingo.⁷ He found that she was mildly demented and developing

⁶ Mrs. Lingo's deposition was played in open court.

⁷ Mrs. Lingo scored 22 points out of a possible 30 on the mini-mental exam, demonstrating "mild cognitive impairment."

Alzheimer's disease. Her memory was "significantly impaired" and, in Dr. Fink's opinion, Mrs. Lingo was incompetent to handle her affairs.

In August 2006, Dinah took her mother to Johns Hopkins University Hospital in Baltimore where she was evaluated by Dr. Johnson-Greene, a neuro-psychologist. Dr. Johnson-Greene did a mini-mental exam and battery of additional tests and formed the opinion that Mrs. Lingo was "severely impaired." She was confused and unable to give Dr. Johnson-Greene her own medical or personal history. In Dr. Johnson-Greene's opinion, Mrs. Lingo suffered from Alzheimer's disease and had for several years. His "best estimate" is that onset of the disease began seven or eight years prior to the examination, in other words, well before 2002.

Mrs. Lingo was also evaluated by Dr. Neil Kaye, a forensic psychiatrist who is among her treating physicians. At the time of his August 2007 evaluation, he found Mrs. Lingo to be suffering from obvious dementia. Initially, Dr. Kaye believed the cause was "most likely" Alzheimer's disease, but after reviewing Mrs. Lingo's medical history, Dr. Kaye concluded her dementia was probably mainly vascular in origin and that the disease would have advanced in sharp steps relating to vascular incidents rather than through the gradual onset which is more typical of Alzheimer's. Dr. Kaye could not rule out Alzheimer's as a contributing factor to the dementia, however. In Dr. Kaye's opinion, based upon a review of Mrs. Lingo's medical history and third-party statements about her condition, Mrs. Lingo became incompetent between 2005 and 2006.

Dr. Kevin Wallace, Mrs. Lingo's primary care physician between 2003 and 2007, also provided evidence at trial. Although Dr. Wallace is not a specialist in dementia, he was the most intimately familiar of the medical witnesses with Mrs. Lingo's condition. Prior to 2006, Dr. Wallace saw no evidence of dementia during his treatment of Mrs. Lingo. He examined her in June of 2005 during her admission to Beebe Hospital and found her delirious, but not demented. In an examination a year later, in June of 2006, he determined that she was demented.

IV. Discussion

While this matter is ostensibly about Mrs. Eleanor Lingo⁸—the management of the trust of which she is the life beneficiary, the alleged misuse of her resources pursuant to a power of attorney, the disposition of her estate, and who should serve as her guardian—its genesis lies elsewhere. The true impetus for this litigation is the unfortunate mutual antipathy between Archie and Dinah. Their dislike goes beyond mere sibling rivalry and includes behavior unbecoming to business people of mature years, reaching its zenith—or nadir—in a public brawl between Archie and Dinah in August 2006 that required police intervention. The extreme dislike between brother and sister permeated the trial in this matter and tends to taint the testimony of the principals involved. This antipathy, quite sincere in its own right, is no doubt exacerbated by the fact that the outcome of this litigation will determine whether several million dollars in assets are ultimately inherited

⁸Mrs. Lingo, unfortunately, is no longer able to testify meaningfully about the issues here.

by either Archie or Dinah, upon the demise of the nonagenarian Mrs. Lingo. If the transfers to Dinah and the 2002 will fall, Archie will inherit half of the combined estate and trust; if they stand, he will inherit one-quarter only.

1) Is the document submitted into evidence as the 2002 will of Mrs. Lingo genuine?

Archie does not dispute that the three-page will of Mrs. Lingo submitted into evidence was signed by her and by witnesses and Mr. Brady as notary on August 16, 2002. Archie notes, however, that the individual pages of the will are not initialed by the testator. He theorizes that Dinah contrived to replace the original second page of the will, which presumably contained some innocuous disposition of Mrs. Lingo's property upon death, with a counterfeit page two containing a clause purporting to disinherit Archie.

While Mr. Brady recalls meeting with Mrs. Lingo and drafting her will, he cannot locate his notes taken during the conference and so his recall is understandably limited. Mr. Brady is quite familiar with wills that disinherit natural objects of a testator's bounty. When confronted with such a testamentary desire, Mr. Brady's rather unusual practice is to allow the testatrix to state in her own words her reasons for the disinheritance; he then transcribes those reasons from his notes more or less verbatim, typing them himself into the text of the will. The second page of the 2002 will at "Item Fourth" contains such a statement:

I make no provisions in this will for my son, Archie, except the same amount of love that he showed me after he started living with his French girlfriend, because he has been well provided for. This is because, Archie, you came to me and said 'Mother let me show you how to save money

by incorporating Lingo's Market.' You incorporated it as 'Archie Lingo's Market'. I trusted you my son, but you used me for his [sic] own money grubbing ways. I thought your wife Bunny was a piece of work, after living in our house rent free for years with her demands. But your French girlfriend is a real sick person. I work over 100 days a year in the Market, 12 hours a day without a break, and my son does not pay me or offer any help. My son makes me wait for the rent check until the end of the year so that he can get the interest and only pays half the rent. You only care about your French girlfriend, you treat you [sic] mother, your sister and your daughter the same, without any care.

Archie argues that the second page is demonstrably fraudulent, because one of the reasons given for Mrs. Lingo's intent to disinherit Archie is that he "only pays half the rent" for the Lingo's Market property. Archie points out that, *in 2005*, he actually did pay only half the rent that he owed on the Lingo's Market property. Since Mrs. Lingo's will was created in 2002, three years *before* he failed to pay the rent in full, the rationale stated on the second page of the will cannot have existed in the original 2002 document. Archie theorizes that sometime after 2005, Dinah fabricated a new second page using similar paper and the same font as the original second page, purporting to disinherit Archie. She replaced the original second page with the altered second page in the original of the will held by Mrs. Lingo. She then contrived to obtain Mr. Brady's copy of the 2002 will, substitute a copy of the counterfeit page two for *its* original, and replace the altered document in Mr. Brady's file.

I reject Archie's theory for a number of reasons. First, Archie began leasing Lingo's Market in 1981. The initial yearly lease was \$50,000. Over the years, the revenue and profitability of the Market operation grew apace, eventually doubling, but the

rental amount had not changed through 2002. So the statement made by Mrs. Lingo to Mr. Brady and written by him in the will from his notes may simply indicate an underpayment of rent, in the mind of Mrs. Lingo. Second, Mr. Brady testified that the personal statement of disinheritance of the type present on the disputed second page of the 2002 will was a device he often used in wills which disinherited a natural object of the testator's bounty. It is Archie's theory that the original second page did not contain a clause of disinheritance. If this is true, Dinah fortuitously fabricated a testamentary device, the personal disinheritance statement, which was not in the original will but which was of the very kind idiosyncratic to Mr. Brady's practice. That, obviously, seems unlikely. Moreover, accepting Archie's theory means that Dinah must have removed page two from the original, which remained in her mother's possession, recreated that page with a type face and bond consistent with the original, fastened the will back together, gone to Mr. Brady's office, managed to remove his copy of the will and replace page two in that copy with a photo-copy of the forgery she had made, and return it to Mr. Brady's files. This theoretical, clever conduct, however, is most inconsistent with the bone-headed anachronism which Archie contends proves that Dinah forged page two some time after he paid "only half the rent" in 2005: he theorizes that Dinah referred, in a document forged as though made in 2002, to an event which took place in 2005. By far the most reasonable hypothesis is that the will in evidence is in fact the will created by Mrs. Lingo.

2) Undue influence.

Archie alleges that Mrs. Lingo's 2002 will was the product of undue influence exercised over her by Dinah.⁹ Undue influence occurs when a testator's will is overborne by another, so that the supposed testamentary document expresses not the intent of the testator, but the intent of another. A duly executed will is presumed to be valid. The burden is on Archie to show that each of the elements of undue influence are present before the will may be declared invalid.

The elements of undue influence are well-known. They are: (1) a susceptible testator; (2) the opportunity to exert influence; (3) a disposition to do so for an improper purpose; (4) the actual exertion of undue influence; and (5) a result demonstrating the effect of the exertion of undue influence. Estate of West, Del. Supr., 522 A.2d 1256, 1264 (1987).

The degree of influence to be exerted over the mind of the testator, in order to be regarded as undue, much be such as to subjugate [the testator's] mind to the will of another, to overcome his free agency and independent volition, and to compel him to make a will that speaks the mind of another and not his own.

West, 522 A.2d at 1263. As in determining other probate issues, the intent of the testator is the touchstone, no matter how foolish, unusual or unfair that intent may appear. Of course, enforcing the terms of a will procured by undue influence frustrates the testator's

⁹ Archie also alleges that the power of attorney executed at the same time as the will was the product of undue influence as well. I need not consider this argument directly, because the power of attorney has been revoked by the appointment of a guardian for Mrs. Lingo. Unlike the will making Dinah beneficiary, the power of attorney did not confer a benefit on Dinah (although it may have given her the opportunity to benefit herself wrongfully). Instead, the power of attorney imposed fiduciary *duties* on Dinah. Archie also alleges other acts of undue influence by Dinah over Mrs. Lingo; I address these, *infra*.

intent. So too, however, does the invalidation of a will on grounds of undue influence, where the will in fact expresses the testator's intent.

After his separation from Bonnie, and up until 1995, Archie lived with his mother in her home. At that time he left to move in with his girlfriend, Anique. Mrs. Lingo lived alone between 1995 and 2001. In the summer months she worked every day at Lingo's Market. She continued to manage her rental business. At some point during this time, Mrs. Lingo broke her hip and became unable to drive.

Sometime in the 1990s, Dinah moved to Greece. After an absence of several years, Dinah returned to the United States around the year 2000. She moved into one of the Lingo Bros. rental properties and resumed her relationship with her mother. In approximately 2001, Dinah moved in with her mother. She began to help her mother with the management of the rental business. In the summer of 2002, Mrs. Lingo asked a local attorney, Mr. Brady, to create a new will and a power of attorney in favor of Dinah. Dinah drove her mother to Mr. Brady's office. While Dinah waited outside the conference room, Mrs. Lingo described what she wanted in her will to Mr. Brady. She described in detail her reasons for wishing to disinherit Archie, reasons which Mr. Brady transcribed into the will. On August 16, 2002, Mr. Brady met Mrs. Lingo at Dinah's flower shop. She executed the will in front of witnesses. Dinah was present during the signing of the will.

Archie alleges that Mrs. Lingo was a susceptible testatrix, because she was of weakened intellect¹⁰ in the summer of 2002. He bases this in part on his own testimony that Mrs. Lingo's performance at the Market was becoming more error-prone. He also alleges that she began stealing money from the cash register as early as 2001, action which he associates with the onset of her dementia. Because no other witnesses testified to any evidence of inability on Mrs. Lingo's part to handle her cashier's duties through the summer of 2002, and because Mrs. Lingo continued in that position through the summer of 2005, I give Archie's self-serving testimony little weight.¹¹ Archie also points to the testimony of Dr. Johnson-Greene, who testified that Mrs. Lingo was severely demented when he examined her in 2006, that her dementia was most likely due to Alzheimer's, and that, given the normal progression of that disease, it is likely that her dementia manifested itself before the summer of 2002. Against this testimony is the testimony of Dinah's medical experts, who opined that her dementia in 2006 was of relatively recent onset. Archie's own expert, Dr. Fink, generally agreed with Dr. Johnson-Greene in his testimony, but his own examination in 2006 found Mrs. Lingo only moderately impaired, in a pre-Alzheimer's condition.

In addition to the rather inclusive medical testimony, a number of witnesses testified as to Mrs. Lingo's mental acumen as of 2002. For instance, Dr. Wallace, who

¹⁰A testatrix may be susceptible to undue influence as a result of a weakened intellect, while retaining testamentary capacity sufficient to create a will. See, e.g., *In Re Melson*, Del. Supr., 711 A.2d 783, 788 (1987)(holding that where the drafter of a will receives a substantial benefit thereby, and the testator is of weakened intellect, burden shifts to proponent of the will to show testamentary capacity, as well as lack of undue influence).

¹¹ I note that Archie entered a written lease with Mrs. Lingo in 2005 for the Lingo's Market property, apparently believing her competent to contract at that time.

saw Mrs. Lingo both as his patient and as a customer of Lingo's Market, saw no evidence of dementia in Mrs. Lingo prior to 2006. John Brady, Esquire, Mrs. Lingo's lawyer, testified that she appeared competent in her dealings with him, which included testifying in a matter which he tried in late 2003 or early 2004, during which she appeared in command of her mental faculties. According to Mr. Brady, during the August meeting at which her will was discussed, Mrs. Lingo did not appear pressured or stressed while discussing her testamentary desires. She was lucid, coherent and understood her assets and natural objects of her bounty, and knew how she wanted to dispose of her property.¹² James Johnson, witness to the will signing, leased a gift shop from Lingo's Bros. between 1996 and 2003. He saw Mrs. Lingo nearly daily through the summer of 2002 working at the Market. According to Mr. Johnson, she was never confused or disoriented in her duties. Robert Sessa, who also leased property from Lingo Bros., gave testimony nearly identical to that of Mr. Johnson as to Mrs. Lingo's coherence between the years 2000 and 2005. Other than Archie himself, no witnesses testified that Mrs. Lingo appeared incompetent before 2005, although Beebe Hospital records show that she was confused upon some of her admissions in the years between 2000 and 2005. Considering this evidence in addition to the medical testimony, I find by a preponderance of the evidence that Mrs. Lingo was not in an intellectually diminished state as of the summer of 2002.

¹²While I typically give an attorney's evaluation of the mental state of his testating client substantial weight, I do not rely significantly on Mr. Brady's testimony here, because it is unclear how much of that testimony was based on recollection of events, and how much on extrapolation from the will itself and from his usual practice in determining whether a testator's actions are voluntary and made with testamentary capacity.

Archie also points out that Mrs. Lingo was widowed and notes that the emotional burden of losing a spouse can lead to a condition of dependency fostering the opportunity for undue influence. Here, however, Mrs. Lingo had been a widow for more than twenty years. She had been living on her own for more than five years before Dinah moved in with her in 2001. I do not find Mrs. Lingo's widowhood to be a significant factor in my analysis.

Archie alleges that once Dinah moved in with Mrs. Lingo, Dinah's hostility towards him caused him to stop visiting Mrs. Lingo's home, ending what he maintains was a close relationship between him and his mother. According to Archie, Dinah's hostility towards him and his resulting reluctance to visit his mother at home allowed Dinah to isolate Mrs. Lingo, making her susceptible to undue influence. Archie's analysis ignores the fact that at the time the will was created in August 2002 Mrs. Lingo had been working for more than two months at Lingo's Market, seven days a week, ten to twelve hours per day, as she did each summer. She worked along side Archie daily at the Market. Dinah did not work at the Market that summer. Therefore, during most of her waking hours it was Archie, not Dinah, who had the greatest access to Mrs. Lingo. While I have no doubt that Archie is correct that his sister's hostility towards him, which was surely reciprocated, made any visits to his mother's home unlikely to be pleasant, it is simply untrue that Mrs. Lingo was isolated with Dinah at this time.

Finally, I note that Mrs. Lingo was able to meet alone and at length¹³ with Mr. Brady, her attorney, to discuss the changes she wished in her testamentary scheme. She was able to describe to him, without Dinah's immediate prompting, her reasons for wishing to disinherit Archie. A private meeting with the scrivener of the will makes the susceptibility to, and exercise of, undue influence less likely.

I therefore find that Mrs. Lingo was not a susceptible testatrix. The evidence does not indicate that she was showing signs of deteriorating mental faculties at the time she made the 2002 will. Mrs. Lingo was not isolated from family members other than Dinah. She had access to her attorney, without Dinah's interference, to assist in the formulation of her will.

Archie argues that Item Fourth of the 2002 will, containing Mrs. Lingo's purported reasons for disinheriting Archie stated in Mrs. Lingo's own words, demonstrates diminished capacity on Mrs. Lingo's part and undue influence on the part of Dinah for a number of reasons. First, he points to the statement that "[Archie] came to me and said 'Mother let me show you how to save money by incorporating Lingo's Market'. You incorporated it as 'Archie Lingo's Market'. I trusted you my son but you used me for his [sic] own money grubbing ways.'" Mrs. Lingo's statement apparently relates to the time, in the 1990's, when Archie went through a divorce. Archie, for a period of two years, paid the profits from the Market to his mother to conceal his true income from his wife and the Family Court. After the divorce, once this deception was no long favorable to

¹³The private meeting between Mrs. Lingo and Mr. Brady—with Dinah not in attendance—lasted 20 to 25 minutes.

him, he reincorporated the Market, formerly “Lingo’s Market, Inc.” as “Archie’s Market, Inc.” According to Archie, since these actions were taken several years before the 2002 will was created, the dissatisfaction with them expressed in the 2002 will are more likely to reflect Dinah’s opinions than his mother’s. This is a non-sequitur. It does not strike me as unlikely that Mrs. Lingo resented being used in the manner described, even years after the fact.

Next, Archie points to the statement “I thought your wife Bunny was a piece of work, after living in our house rent free for years with her demands.” According to Archie, Dinah is much more likely to have mistaken his ex-wife’s name as “Bunny”—rather than her actual name, “Bonnie”—than was Mrs. Lingo. But more likely than either is that this was simply a scrivener’s error. In addition, Bonnie Lingo did live in a Lingo Bros. property, rent free, before and after her divorce from Archie.

Archie next refers to the statement “But your French girlfriend is a real sick person... . You only care about your French girlfriend.” Archie points out that it is a characteristic verbal tic of Dinah’s to use national origin as an adjective in describing individuals: *i.e.*, French girlfriend. If this is true, it is not unreasonable that Mrs. Lingo may have picked up that usage after having Dinah live in her house for some months. Finally, Archie points to Mrs. Lingo’s statement “I work over 100 days a year in the Market, 12 hours a day without a break, and my son does not pay me or offer any help... . You treat you [sic] mother, your sister and your daughter the same, without any care.” Archie argues that his mother never complained about working conditions in the Market,

and in fact enjoyed working there. Therefore, he theorizes, these sentiments reflect Dinah's opinion, not that of his mother. The statement that Mrs. Lingo worked 100 days a year, without a break, and without pay, is true. It is also true that Archie paid both his daughter and his girlfriend \$3000 per month for the work in the Market that Mrs. Lingo performed for free. It is not unthinkable that this usage could have bred resentment in Mrs. Lingo.¹⁴ Archie testified that the Market was his mother's "life," and she could well have resented the actions taken by Archie.

That is not to say that I believe Dinah did not influence her mother in the changing of her will. Dinah and Archie's antipathy to each other must have been well-known to Mrs. Lingo, and in the privacy of their home I have no doubt that Dinah made repeatedly clear to her mother what she perceived to be her brother's bad character and his various slights to both of them. Because Mrs. Lingo was not of weakened intellect, and because she was not isolated either in general or from Archie during this time, the behavior which I have assumed occurred on Dinah's part does not rise to undue influence. The "employment of flattery, appeals to the affections or pity of the [testatrix], or persuasion or importunity falling short of coercion" do not constitute *undue* influence. West, 522 A.2d at 1265. In other words, the evidence is insufficient to demonstrate that Dinah's influence resulted in a will that reflected only Dinah's intent, and not that of Mrs. Lingo.

¹⁴ Archie also points to the language "My son makes me wait for the rent check until the end of the year so that he can get the interest and only pays half the rent." As described above, Archie contends that this statement demonstrates the fraudulent nature of page 2 of the Will; in the alternative, he argues that it is evidence of confusion on Mrs. Lingo's part, because up to that time he hadn't paid only "half the rent". As I noted above, the statement may be an allegorical expression for Mrs. Lingo's belief that Archie was paying less than the market value, and that he was not paying even the full amount agreed to because he was depriving her of interest by not paying the rent until the end of the year.

3) Breach of Trust Prior to 2002

When William Lingo died in 1981, his one-half interest in the family real estate passed into the testamentary trust in favor of Mrs. Lingo. Under the terms of the trust Mrs. Lingo is to have the income for life. The trust is to be terminated upon her death and be distributed to Dinah and Archie. Mrs. Lingo had a reciprocal will with similar provisions. Under the terms of the Lingo trust, Archie and Dinah were to act as trustees. This was an awkward trust vehicle indeed, funded as it was with a one-half interest in the real property which formed the Lingo Bros. rental business. Mrs. Lingo owned the other one-half individually. Should the trustees and Mrs. Lingo have disagreed as to the disposition of trust property, the only clear remedy to resolve those disputes would be through a partition of the real property, potentially destroying the Lingo rental business. In fact, before 2002, the trust did not operate as such. Mrs. Lingo continued to operate the rental business as though the real property comprising that business were hers alone. While both Archie and Dinah testified that they provided at various times some services to the Lingo rental business, they were not acting as trustees in any actual sense. Mrs. Lingo continued to operate the rental business in the same manner as had historically been the Lingo family practice, up until 2002. She relied on oral leases, kept poor records and generally acted in an informal way.

When Dinah returned from Greece in 2000, she began to assist her mother in the rental business. Dinah approached the business with the informality characteristic of her mother, albeit without her mother's careful and frugal spending practices. She continued,

for instance, her mother's practices of poor record-keeping and renting valuable commercial properties upon oral leases. Archie, as co-trustee, had long since acquiesced to this conduct. Neither of the trustees undertook any true fiduciary duties on behalf of the trust prior to Dinah becoming attorney-in-fact for her mother in 2002. Because of the unique nature of this trust and its obvious domination by Mrs. Lingo as a half-owner individually of the rental properties, and because the life and remainder beneficiaries of the trust acquiesced to Mrs. Lingo's control and management of the trust corpus, I do not find any breaches of fiduciary duty requiring a surcharge or other relief on the part of either trustee between 1981 and August 2002.

4) Self-Dealing

After becoming Mrs. Lingo's attorney-in-fact, Dinah began to assume greater control of the real estate business. Creation of a power of attorney imposes a fiduciary duty of loyalty in favor of the principal upon the attorney-in-fact. Self-dealing by an attorney-in-fact is permissible, but only with the principal's consent after full disclosure. Otherwise, self-dealing transactions are voidable by the principal. Once such a transaction is challenged, the burden of persuasion to uphold its validity is on the attorney-in-fact. *See Schock v. Nash*, Del. Supr., 732 A.2d 217, 224-26 (1999). By the time she was granted the power of attorney, Dinah had already begun to co-mingle her funds with the funds of the trust; this process continued after August 2002. According to Dinah, her mother insisted that she take a salary of \$24,000 per year and a yearly "gift" of \$11,000, thus justifying in Dinah's mind her use of the Lingo Bros. account as her own, up to those

amounts. There is no evidence of a salary or gift agreement between Dinah and Mrs. Lingo, other than Dinah's self-serving testimony, however. Dinah has failed to justify her self-dealing withdrawals from the Lingo Bros. account on that ground.¹⁵ As part of her management of the rental business, Dinah began to hire her friends to do work on Lingo Bros. properties, including notably her boyfriend Kevin O'Connell. Most significantly, Dinah began using the power of attorney to remove large sums of money from Mrs. Lingo's estate.¹⁶ For instance, Dinah's transfers to herself from Mrs. Lingo's individual or trust property include (1) a 2004 transfer of \$249,000.00 received by Mrs. Lingo from the sale of individually owned family real estate, which Dinah placed in a Baltimore Trust account in her own name, and eventually transferred to a Merrill Lynch account in her own name; (2) \$150,000.00 in trust and personal funds which Dinah placed into a WSFS account in her name only, also in 2004; and (3) an April 15, 2005 withdrawal of trust funds in the amount of \$3,000.00 which Dinah used to create an IRA. Because these transfers were made using the power of attorney which made her a fiduciary for Mrs. Lingo, all these self-dealing transactions are voidable unless they are entirely fair to Mrs. Lingo. In other words, the transfers are only justified if they were made with Mrs. Lingo's knowing consent.

Dinah, of course, testified that everything she did was at her mother's direction.

Dinah, however, lacks credibility. In addition, Dinah's actions bespeak a guilty

¹⁵ There was also no evidence submitted at trial from which a quantum meruit value of Dinah's work on behalf of the rental business, if any, could be calculated.

¹⁶ It does little good to try to disentangle which sums were converted income from the Lingo trust and which sums were the personal property of Mrs. Lingo, since all income of the trust property was Mrs. Lingo's under the terms of the Lingo trust.

conscience. For instance, Dinah testified that, until the pendency of this action, she had no idea that Mrs. Lingo's 2002 will disinherited Archie in favor Dinah. Dinah's own witness, however, Robert Sessa, contradicted that testimony, testifying that Dinah had discussed with him the contents of the will around the time it was made. When Dinah found that she would have to submit her mother to a court-ordered mental examination by a neurologist who would be testing her for dementia, potentially finding Mrs. Lingo incompetent to ratify Dinah's self-dealing, Dinah obtained a prescription from her family doctor for Mrs. Lingo for the drug Aricept, a memory-enhancing drug. Dinah started Mrs. Lingo on a regimen of Aricept *the day before* she was examined by Dr. Fink, and ended it almost immediately thereafter. Shortly before trial in this matter was scheduled, Dinah re-titled a WSFS account containing around \$150,000 she had removed from her mother's estate. Previously, the account had been in Dinah's sole name; Dinah changed it to a joint account with right of survivorship with Mrs. Lingo. During the pendency of this action, Dinah also closed the IRA account she had created with her mother's funds, replacing the money in the Lingo Bros. account.

In her testimony at trial, for the first time, Dinah claimed that a writing existed in which Mrs. Lingo instructed Dinah to take a large sum from Mrs. Lingo's funds for herself. According to Dinah, she had provided this telltale directive to her attorneys. This testimony was clearly fabricated. Dinah's testimony at trial was evasive, inconsistent and at times obviously false. In other words, Dinah's self-serving testimony is not credible and she has utterly failed to show that the amounts removed from her

mother's funds were at her mother's direction with her mother's informed consent, or were otherwise entirely fair. I can only conclude, therefore, that these were the acts of a faithless fiduciary, that a constructive trust attaches to the funds in favor of Mrs. Lingo and that they must be returned to her.¹⁷

5) The Transfer of the Frankford Property

On September 16, 2005 Dinah took Mrs. Lingo to Mr. Brady's office to sign a deed transferring residential property in Frankford, Sussex County (the "Frankford Property") that was the sole property of Mrs. Lingo, to Dinah. Mr. Brady testified that he introduced Mrs. Lingo and Dinah to his real estate assistant, but that he didn't speak to Mrs. Lingo other than to exchange pleasantries and that he made no effort to ascertain whether she was competent to make the transfer. The deed was executed and recorded. Archie argues that Mrs. Lingo was incompetent to make the transfer or was the victim of undue influence. A transfer from one person to another without value in return is presumed to be not a gift, but rather a transfer for some purpose of the transferor's. The burden is on the party receiving the property to demonstrate that a gift occurred. This presumption is reversed in the case of a transfer to a close relative, such as from a mother to a daughter, however. In that case, the burden is on the one contending that the transfer was not a gift to demonstrate that the transfer was for some other purpose. Hudak v. Procek, Del. Supr., 727 A.2d 841, 843 (1999). One making a gift, like any individual entering a property transaction, is presumed to have the mental capacity to accomplish the

¹⁷ These funds are Mrs. Lingo's property and must be available to her during her lifetime. The fact that Dinah is the ultimate beneficiary of Mrs. Lingo's estate does not justify the removal of these funds from Mrs. Lingo during her lifetime.

transaction. *See, e.g., Barrows v. Bowen*, Del. Ch., No. 1454-S, Allen, Ch. (May 10, 1994)(Mem. Op.) at 4.

Without reciting again the medical evidence as to competency presented here, I note that Mrs. Lingo was clearly incompetent to contract or transfer property as of the time of her video-taped deposition in May 2006. Dr. Johnson-Greene, with whom Dr. Fink ultimately concurred, determined that Mrs. Lingo suffered from Alzheimer's disease, which had resulted in advanced dementia, and that she must have been suffering from dementia for several years before 2006. Dinah's experts, Drs. Kaye and Wallace, testified that her dementia was of more recent onset, probably vascular in etiology, and that her dementia had manifested between 2005 and 2006. The last year during which Mrs. Lingo was able to work as a cashier at Lingo's Market was the summer of 2005. According to Archie, Mrs. Lingo was making numerous errors and was in reality unfit for her duties that summer. Dinah, of course, testified to the contrary. Neither testimony is particularly persuasive.

I note that in early 2005, on a hospital admission unrelated to her mental condition, Mrs. Lingo had an episode of acute disorientation and was clearly incapable of acting on her own behalf. Her treating physician, Dr. Wallace, testified that she recovered from this episode and returned to a non-delirious state. However, Dinah's expert, Dr. Kaye, conceded this may have been a symptom of the onset of dementia.

The deed transfer occurred in September 2005. Several months earlier, Mrs. Lingo had an period of acute delirium. Several months later, Mrs. Lingo showed clear signs of

incompetence at her deposition. I find it more likely than not that Mrs. Lingo, at the time Dinah brought her to Georgetown to transfer the farm property to Dinah, was suffering from dementia sufficient to render her incompetent to gift. The presumption of competence to execute the deed is therefore rebutted.¹⁸

As of 2005, Dinah was Mrs. Lingo's caregiver, housemate and confidant. Dinah was surely aware of the decline in her mother's faculties at this time. Where a party to a contract, by reason of mental defect, is unable to act in a reasonable manner in relation to the transaction, and the other party to the transaction has reason to know of this condition, the contract is voidable. *E.g.*, Barrows (Mem. Op.) at 4. Because the evidence indicates that Mrs. Lingo, by reason of dementia, was incapable of reasonable action with respect to the transfer of the Frankford property, and because Dinah was aware of that condition, the gift of the Frankford property from Mrs. Lingo to Dinah is voidable.¹⁹

6) Establishment of the Joint Investment Account

In June 2004, Dinah and Mrs. Lingo met with Kenneth Martin, an investment advisor and son of a friend of Dinah's, to open an investment account using Mrs. Lingo's funds. The account was opened with Wilmington Trust stock, valued at over \$1,000,000,

¹⁸ Dinah points to the testimony of Carl Ballato as demonstrating Mrs. Lingo's competence in September of 2005. Mr. Ballato assisted Mrs. Lingo (and Dinah) to request a Protection From Abuse order, against Archie, from the Family Court, within a few days of the transfer of the Farnkford property. Mr. Ballato indeed testified that Mrs. Lingo appeared lucid at the time. But the entire episode does not reassure me of Mrs. Lingo's competence. The PFA request occurred *after* Lingo's Market had closed for the 2005 season. It involved Archie's purported mistreatment of Mrs. Lingo *as an employee of the market*. But Mrs. Lingo should have been aware that she would not be in contact with Archie, at the market or otherwise, for at least the nine months before the market re-opened in the summer of 2006 (in fact, Mrs. Lingo never returned to work at Lingo's Market). Moreover, Mrs. Lingo failed to follow through with the PFA request at a scheduled Family Court hearing, or thereafter. I note that Dinah took Mrs. Lingo to apply for the PFA shortly after *Dinah* had herself been arrested for assault upon *Archie*. The entire PFA request incident raises questions about Mrs. Lingo's competence and the extent of Dinah's influence over her as of September 2005.

¹⁹ The discretion whether to void this transaction is left with the guardian of the property of Mrs. Lingo.

which was either the property of Mrs. Lingo solely, the property of the Lingo trust, or some combination of the two. None of the property used to open the account was Dinah's property. The investment advisor testified that Mrs. Lingo directed that the account be set up as a joint tenancy, with Dinah as the co-owner of the account. Martin asserted that Mrs. Lingo was to all appearances competent and in control of her faculties at that time. He also testified, however, that Mrs. Lingo wanted the account entitled jointly "in case something happens to me." Mrs. Lingo had recently made Dinah her sole beneficiary, so it is unlikely that she meant the account as a testamentary devise. I find, therefore, that the placement of Dinah's name on the account "in case something happens to me" expressed her intention that Dinah would be able to make decisions with respect to the account, on Mrs. Lingo's behalf, in case she became unable to manage the account herself. This is a classic convenience account. *See, e.g., Estate of Howell*, Del. Ch., No. 17760, Noble, V.C. (Dec. 20, 2002)(Letter Op.) at 5. There is nothing indicating that Mrs. Lingo meant an *inter vivos* gift of the funds, and the presumption that a gift was intended is rebutted. Although the contingency that Mrs. Lingo referred to—her inability to manage her funds—has come to pass, Mrs. Lingo has a guardian other than Dinah. Therefore, any amounts converted by Dinah from this account must be returned to Mrs. Lingo or to the trust.²⁰

²⁰ I make no finding here whether the contents of the investment account is the property of Mrs. Lingo or the Lingo trust. The trustee/guardian of the property shall take any actions necessary to determine which of the Wilmington Trust shares are the property of the trust, and which are the property of Mrs. Lingo. He shall report his findings on this issue to the parties within 45 days. Either party may take exception to these findings, and I retain jurisdiction to resolve this issue.

7) Management of the Lingo Rental Properties after 2002

After Dinah became attorney-in-fact for her mother in 2002, she assumed responsibility for the rental business consisting of both trust-owned and personally-owned property. Dinah's record keeping was slovenly. She mingled her own funds with the funds in the Lingo Bros. account, which contained the receipts from the rental business. In addition to the salary which Dinah claims Mrs. Lingo paid her for this part-time occupation, Dinah testified Mrs. Lingo instructed her to take yearly "gifts." Dinah did not withdraw the salary or gifts on a regular basis, however. Instead, she paid personal expenses and taxes from the Lingo Bros. account, and argues that whatever she took from the account was owed her as a part of her unwithdrawn "salary" and "gifts." In other words, she treated the account as her own property. Dinah hired friends, including her boyfriend, to do rather extensive repair work on the rental properties. In running the rental business, Dinah stood in a fiduciary relationship to Mrs. Lingo (and to Archie as a remainder beneficiary of the William Lingo trust). In the period after 2002, Dinah deliberately excluded Archie from any access to trust record keeping. She bears the burden of accounting for the income from the rental business. Dinah shall produce an accounting for the business for the period from August 2002 until the appointment of Mr. Thompson as interim trustee during the pendency of this action. She will be assisted by a court-appointed forensic accountant. Dinah will be responsible to Mrs. Lingo for any sums unaccounted for and to Mrs. Lingo and the William Lingo trust for any waste to real property assets. The cost of the forensic accountant shall be borne by Dinah.

V. Archie's Attorney Fee Request

Archie asks that a portion of his attorney's fees be paid from Mrs. Lingo's estate. He points out that he has worked a benefit for Mrs. Lingo in having a trustee appointed for management of the trust properties and in having independent guardians of the person and property appointed for Mrs. Lingo. He seeks one-third of his fees, which are over \$1,000,000. It is true that the establishment of a guardianship was appropriate and that Archie's actions in that regard worked a benefit for Mrs. Lingo. Therefore, Archie may submit a statement of his attorney's fees devoted to obtaining a guardianship for Mrs. Lingo; I will allow those fees, as reasonable, to be paid from Mrs. Lingo's estate.

This action has resulted in the appointment of a competent trustee for the Lingo trust, which is a benefit to Mrs. Lingo and to the remainder beneficiaries. It is also true that the trust action and the accompanying breach of fiduciary duty claims have resulted in a recovery to Mrs. Lingo. This may be of only theoretical benefit to her, however, as Mrs. Lingo's remaining days are necessarily few. The real consequences of the recovery here will be to Mrs. Lingo's estate as a decedent. There is no question in my mind that the bulk of this litigation—in both the anachronistic will contest and the trust and breach of fiduciary duty litigation—was conducted by Archie with his own inheritance in mind. In addition to that incentive, this action was also an attempt to vindicate his antipathy toward Dinah.

Typically, litigation in Delaware is subject to the American rule on attorney's fees, under which each party bears his own fees. *E.g.* Postorivo v. AG Paintball Holdings, Inc.,

Del. Ch. No. 2991, Parsons, V.C. (August 20, 2008)(Mem. Op.) at 24. It is true that Archie was a nominal trustee (although he had never assumed the duties incumbent on a fiduciary) and that trustees may obtain legal counsel at the expense of the trust in order to advance the interests of the trust. It is also true that when litigating on behalf of a potential ward, fees are often shifted where the litigation works a benefit on the ward. A court must tread with care, however, lest the funds of an incompetent parent serve as an incentive to litigate the interests, not of that parent, but of the child. Once the accounting I have ordered has been completed, and once the trustee has submitted his plan for recovery of assets, the extent of the benefit rendered to Mrs. Lingo and to the trust will be clear. At that time, in addition to seeking fees in connection with the guardianship, Archie may submit a request for payment of his fees and expenses which resulted in a benefit to Mrs. Lingo and to the trust. This submission should include a statement indicating what services were provided in relation to the establishment of the guardianship, to the will contest, and to the fiduciary-duty claims. I retain jurisdiction to determine the amount of Archie's fees and expenses that are recoverable, and whether they are payable from Mrs. Lingo's estate, from the trust, or from Dinah's distribution upon termination of the trust, or otherwise.

VI. Conclusion

In 2002, Mrs. Lingo had two children who could not tolerate each other. Archie had proved himself able to prosper as a Delaware Bay and River Pilot, and as a business

man; Dinah had proved much less able to support herself. Both children were going to inherit very valuable real property from the Lingo trust upon Mrs. Lingo's death, regardless of any testamentary disposition on her part. And Dinah was living with and looking after Mrs. Lingo; she favored Dinah over Archie. As a consequence, Mrs. Lingo changed her will to provide that her property was to go to Dinah on her death. Of course, pursuant to the terms of the Lingo trust, one-quarter of the family real estate holdings (one-half of the trust property) will still go to Archie upon Mrs. Lingo's death. Archie's share will still be valued in the millions of dollars. Mrs. Lingo also made Dinah her attorney-in-fact and entrusted her business interests to Dinah.

There is no doubt in my mind that Dinah loves her mother and meant to care for her for life. In fact, the attorney ad litem appointed for Mrs. Lingo in this matter, noting the loving relationship between mother and daughter, recommended that Dinah be appointed guardian over the person of Mrs. Lingo. There is also no doubt, however, that Dinah came to regard Mrs. Lingo's property as her own, and disposed of it as she saw fit, converting hundreds of thousands of dollars of Mrs. Lingo's funds into her own accounts, treating the trust account as her personal checking account, hiring her boyfriend to do extensive renovations on trust property, etc. While Dinah no doubt saw that as her right as her mother's beneficiary, in fact it was the act of a faithless fiduciary. Therefore, Dinah must return those amounts which she converted using the power of attorney, and must account for the income and management of the rental property business after August 2002. While I have appointed an independent guardian of the person of Mrs. Lingo, Mrs.

Lingo is still living in her home with Dinah, and Dinah is providing care and companionship. It is in Mrs. Lingo's interest that that relationship continue. I will leave it up to Mr. Thompson, the guardian of the property and interim trustee, to determine how best to proceed to recover the amounts which Dinah should repay to her mother in the manner most likely to protect Mrs. Lingo's interests and continue to maintain her current living arrangement.

Within ninety days of Dinah's filing of the accounting required by this report, Mr. Thompson shall submit a plan 1) for the recovery of sums which Dinah should restore to Mrs. Lingo and the Lingo trust, in a manner consistent with Mrs. Lingo's best interest, and 2) for the management of the trust and personal estate, going forward.

/s/ Sam Glasscock, III
Master in Chancery