

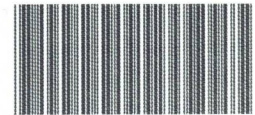
I certify that this document, the Appellant's Submissions in Reply (by Christian Vindin, Telephone: 02 9232 5180, Email: cvindin@twowentworth.com.au) are suitable for publication in accordance with paragraph 27 of the Practice Note SC CA 01.



Tihomir Novakovic of Novakovic Lawyers,
solicitors for the Appellant.



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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	Branka JAKSIC-REPAC, Appellant 1
Legal representative	Tihomir Novakovic
Legal representative reference	
Telephone	02 9826 5029
Your reference	TN: Jaksic

ATTACHMENT DETAILS

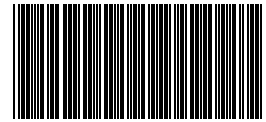
In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (2025.11.10 - Appellant's Submissions in Reply.pdf)

[attach.]



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SUPREME COURT OF NEW SOUTH WALES – COURT OF APPEAL

PROCEEDING: 2025/00153997: BRANKA JAKSIC-REPAC v DUSKO DUNDJERSKI

Appellant's Outline of Submissions in Reply to Respondent's Submissions of 22 October 2025

Background ([1]–[13]):

1. The Respondent's "*Background*" at [1]–[13] omits several material facts, which are set out below.
2. [4]: The will made by Mimi on 22 May 2015, the original of which was never located, was not seen by any solicitor after it was executed (**Transcript 10: 33-34; Black 10**) (**Transcript 13: 8-10; Black 13**), (**Transcript 16: 17-21; Black 16**), (**Transcript 51: 22-24; Black 51**). Campbell cannot remember whether he handed it over or retained it, but said the office seldom retained **originals** (**Transcript: 5; 39-40; Black 5**).¹ There is no evidence of a copy being given to Mimi at execution. There was no explanation by anyone about what happened to the original, or any record of its retention by the solicitor's office despite the operation of a safe custody register (**Transcript 13; 38-48; Black 13**) which had no reference.²
3. Several copies of the Will were in existence, including a copy of a copy created by O'Brien in 2018 (**Transcript 19: 15-18; Black 19**) given to Mimi. Notwithstanding the many testamentary documents that passed through Mimi's last possession, (see Appellant's Submissions [24], (**Red 163-164**)) when she died no testamentary document was found in her house³—neither an original nor a copy, not even the draft will prepared and sent to her only three months prior. Dusko resided in Mimi's home for 6 months upon her death yet located no such document.
4. [5]: A file copy of a letter from Leggat's firm, NL Legal (formerly Nicole Leggat and Associates ("NLA")), was addressed to Mimi and was said to enclose a copy of the will. However, the evidence does not establish that the request originated from Mimi personally or that Leggat personally handled dispatch. Leggat's sole direct communication with Mimi was years later, on 13 September 2022, concerning only a lease. In 2017 Bozica received a copy (in Switzerland) of the Will with no cover letter, following receipt of the 2013 Will in 2014. This does not confirm existence of the original at any time, either then or following to Mimi's death. Radovic's evidence that Mimi said she sent a copy to Switzerland, does not identify a particular will. *After* confirming having sent a copy, Radovic says Mimi showed him her "*last will*" and "*only will*" in existence. Despite not holding, reading or having it read or described to him at the time, he believes, but cannot know, if it was a copy, rather than the original.
5. [6]: O'Brien's 5 July 2018 letter records that Mimi had instructed him by then (**Transcript 44: 44-47; Black 44**), not September. O'Brien says Mimi requested that he obtain a "*copy*" of her will documents (**Transcript 18: 33-38; Black 18**). O'Brien said Mimi never "*spontaneously*" mentioned any will by date or otherwise (**Transcript 18: 48-50; Black 18**). She instructed him to act in lease matters only (**Transcript 18: 23-24; Black 18**). O'Brien's evidence that Mimi said *Leggat* was Mimi's "*prior lawyer*" must be mistaken. Mimi had no direct contact with Leggat herself prior to instructing O'Brien. Mimi said she'd contact Nicole Leggat and Associates to verify where the original was (after the September 2018 file uplift produced no original will). Mimi neither followed up, nor asked O'Brien to. O'Brien warned Mimi that her (broader) family may receive her estate on intestacy in the absence of an original will and gave her a copy to consider making a new one. Mimi decided not to make a new will (despite O'Brien's advice that she needs an original). There is no evidence O'Brien's safe custody entry of the copy was done on Mimi's instruction, or with her knowledge.

¹ Paragraph [11] and Annexure A of the Affidavit of Tihomir Novakovic sworn 4 March 2025, (Black 256) (Black 473).

² Paragraph [9] of the Affidavit of Nicole Leggat affirmed 28 September 2023, (Black 141).

³ Paragraph [58] of the Affidavit of Dusko Dundjerski affirmed 21 December 2023, (Black 123).

6. [7]: The state of Mimi's health was more critical that suggested. Mimi was an 86-year-old who fell and broke her arm a second time and was hospitalised from April to late June/early July 2022. Mimi wore a cast on her arm and was an inpatient in a rehabilitation facility. However, it was her severe lung condition that was the critical concern. Mimi told family she might not survive another episode;⁴ the hospital notified her next of kin of her mortality risk;⁵ Mimi expressed uncertainty about what might suddenly happen to her.⁶
7. [8]: Mimi had a history of promptly revoking wills (being those of 26/9/2007, 16/11/2009, 30/1/2015 and 13/2/2015) that benefitted Srdja and Gordana. Most notably, on 30 January 2015 Mimi made a will leaving the Surry Hills property to Srdja and Gordana (and nothing to Dusko), and on 6 February 2015 she gave a different solicitor, Campbell, instructions to make a new will, under the draft of which, the property was to be left to Australian Red Cross instead. On 9 February 2015 Mimi received a draft will in the mail (that was not located in her house after death). On 13 February 2015 she attended Campbell's office and amended her instructions, to give that property to Srdja and Gordana instead (again leaving nothing to Dusko). Subsequently, this will was torn up.
8. Dusko and Srdja gave conflicting evidence about whether Srdja was being paid to help Mimi. Radovic gave evidence that Srdja pressured Mimi to gift him property. Maria Lazaros gave evidence that Mimi complained "*people always want my money*" and that Srdja always argued with Mimi and that they were not speaking for periods of time, including around 9 October 2022. The preparation of the codicil (by Srdja, a lay person, downloaded from the internet) occurred in the context of Mimi's wills all having been prepared by a solicitor, and Mimi never having made a codicil before. Mimi qualified her intention to give a gift, with the intention to first see a solicitor *after* her discharge to "*write the will*." Srdja's concern he might not receive the property preceded (prompted) Mimi's assurances that he would. Reassurances occurred at a time Mimi had been receiving treatment for inflammation in her lungs two days before the codicil was signed. While Srdja mentions Mimi's reference to an earlier conversation about a "*declaration*" about the intended gift, in response to his expressed distrust of Dusko and Bozica, he omits to give evidence about what was said, in circumstances where he gives detailed evidence of other conversations around that time. Mimi told Srdja to prepare, what she repeatedly insisted was a "*declaration*" regarding an intended gift (despite Srdja's reference to it being a "*codicil*").
9. There is no independent evidence Mimi actually read the codicil before signing, only Srdja's evidence that Mimi looked at the (half-a-page) document (*without* reading it aloud) and then said, "*I read it. I then signed it.*" Mimi failed to insert the will's date (despite having a copy O'Brien gave her, a telephone in her hospital room she could call O'Brien with and despite Srdja having her house key). Mimi did not correct the ambiguous reference in the codicil to the will being "*signed and kept by O'Brien*". There is **no** evidence Mimi received a copy (via a photograph or otherwise). Srdja retained the codicil, for "*safekeeping*", not remembering where he kept it, believing it was not needed anymore.
10. [10]: Despite being told in advance that Srdja would bring the document next time, Mimi did not arrange witnesses, then deliberately did not have the codicil witnessed by staff and did not seek legal advice about the codicil. Mimi never acknowledged the existence of the codicil to anybody (including Gordana, despite telling her (after execution) that she would leave her a gift and will see a solicitor to make a will).
11. [9]: The Respondent relies on the codicil's text. Its wording presupposes, but does not prove, a subsisting original; it cannot establish non-revocation of a missing will.
12. [11]: Mimi gave Bryant written instructions she wished to "*make*" a will, made no reference to a codicil, and did not bring into the meeting a copy of her will or codicil. Mimi's statement to Bryant that her "*current will*" is with O'Brien is derivative and of low probative value. Bryant never saw an original or copy, and his file contains none. Bryant's 19 July 2022 letter records the custody (with O'Brien)

⁴ Paragraph [145] of the Affidavit of Branka Jaksic-Repac affirmed 25 February 2025, (Black 222)

⁵ Paragraph [29] of the Affidavit of Dusko Dundjerski affirmed 21 December 2023, (Black 120)

⁶ Paragraph [31] and [34] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 195).

assertion was “*as advised ... by Serge*”⁷ (being reference to Srdja), not Mimi or O’Brien. There is no independent evidence Mimi signed or said she signed the authority to release her documents from O’Brien to Bryant. Srdja delivered a signed copy to Bryant, who then issued it to O’Brien on 28 July 2022. There is no evidence Mimi followed up on the file transfer. Despite speaking with Leggat in the meantime, Mimi did not follow up about the original will or ask why it was not transferred in September 2018 (despite the recent authority to release (still not actioned)).

13. [13]: Mimi did not return to Bryant. The draft will was posted to her residence under cover letter of 4 August 2022, stating the office awaits Mimi’s approval so a meeting could be arranged (**Black 436**). It was not seen by any beneficiary and was not found after Mimi’s death. There is no evidence of Mimi communicating approval or signing the new will with or without a solicitor. At Mimi’s meeting with Leggat (Dusko being present) Mimi did not bring the new will for execution. Whilst the meeting was about a lease, given O’Brien’s intestacy advice, Mimi’s age and health, the logical inference from her not asking Leggat about the original May 2015 Will is that she did **not** consider NLA had it and, in any event, did not want it to be operative.
14. Any implication that Mimi’s “*unexpected death*” was a reason she did not sign the new will is untenable. Mimi did not take any steps to preserve the original or investigate in relation to its location from September 2018 until her death in November 2022. In context, any delay was neither rational nor inadvertent. Mimi’s death, three months after receiving a draft will, does not explain the failure to communicate approval or make changes to it (by Bryant or otherwise), arrange an execution meeting (including Bryant or otherwise) or to execute the new will or re-execute any will. Five weeks after receiving the draft—Mimi consulted Leggat yet made no mention of: (i) the missing original will (which she had still not followed up about); (ii) the codicil (on which she never obtained legal advice); or (iii) the draft will which she never executed. Her silence on these matters during consultation with the very solicitor said to have held the original will, was **inconsistent** with an intention that the codicil would operate “*without more*” as a testamentary instrument and revive the missing May 2015 will or that she had any intention to execute the draft will.

Proceedings before the primary judge [14] – [17]

15. [15] and [16]: The Respondent’s contention that the Appellant “*confined*” her case with respect to the informal codicil, to the issue of testamentary intention, is misconceived. It is not correct that she only “*now*” raises the knowledge and approval issue. The Fifth Defendant challenged the validity of the informal codicil, on grounds including that Mimi did not have the requisite knowledge and approval, from the outset of the proceedings.
- a. The Fifth Defendant’s pleadings address the issue. Particulars to [7] of her Defence (**Red 21-22**), including (a)-(d) and (g) are consistent with the issue. [19], [20] and [22(c)(iv)] of her Cross Claim explicitly address it (**Red 37-38**).
 - b. On 12 July 2024 the Plaintiff filed a document entitled “*Statement of Issues*” with consent (relating to the Plaintiff’s Statement of Claim and Fifth Defendant’s Cross Claim). Paragraph [2(b)] of the Statement of Issues (regrettably not in the Court Books, but presumably in the Court file) identifies it as an issue for determination.
 - c. The Appellant’s written submissions below were, as required, expressed *only* as an “*outline*.” Oral submissions at trial in relation to testamentary intention relate also to the issue.
 - d. The Appellant does not advance a new case on appeal but relies on the evidentiary foundation and inferences that were available in the Court below.

⁷ Paragraph [12] and Annexure E of the Affidavit of Gordon Bryant affirmed 28 September 2023, (Black 145) (Black 435).

16. **[17(a)(i)]:** Despite the order in which the Respondent structures submissions, Mimi’s authority to NLA to release her file to O’Brien was given *before*, *not after* the expressed belief that NLA had her original will. Mimi told O’Brien, after he said he only had a copy, that she believed the original was with NLA. It wasn’t. O’Brien then warned Mimi of the risk of intestacy without an original, and later statements that it was with O’Brien are beneficiary-sourced and circular. The belief was expressly qualified by Mimi saying she would make an enquiry “*to see where it is*”; she didn’t. At best, the remark is neutral; her inaction from 2018–2022 supports the presumption of revocation. There is no evidence of transfer from Leggat to RHS, or from RHS to anybody else.
17. **[17(a)(ii)]:** Mimi’s statement was derivative and was not corroborated by Bryant’s contemporaneous file note. Bryant’s 19 July 2022 letter (see **footnote 7** above) (sent the day after the meeting) attributes Srdja, not Mimi (or RHS), as the source of his knowledge that RHS has custody of Mimi’s documents (including her “*current*” will). Bryant never saw an original, so relying on Bryant to corroborate Srdja is circular. Contemporaneous correspondence should prevail over later reconstructions. Bryant’s evidence does not prove custody or survival of an original and cannot negate last possession by Mimi.
18. **[17(a)(iii)]:** Despite the order in which the Respondent structures submissions, Gordana’s evidence is that Mimi told her O’Brien had her will, in **July** 2022, shortly after Mimi’s discharge from hospital, but *before* Mimi saw Bryant, *not after*. The evidence of Gordana (is also that of a beneficiary, also circular, and not meaningfully corroborative of Srdja who later told Branka he did not know whether Mimi had a will or who her solicitor was. This provenance and inconsistency mean the statement to Gordana cannot negate last possession by Mimi.
19. **[17(a)]:** His Honour misapplied the presumption of revocation, relying on Mimi’s belief-about-location statements to conclude the original was not in her possession, conflating belief-about-location with custody. This treated a belief as evidence of last possession by other(s); indeed, which belief? The judgment omitted consideration of positive custody evidence in favour of Mimi’s possession, placed too much weight on beneficiary-sourced references about location. Objectively, all relevant solicitors were eliminated as custodians post-execution, there was no safe-custody entry; no firm saw or held an original post-execution; the 2018 uplift produced only a copy; no testamentary document was found at death. Last known possession remains with Mimi and so the presumption is enlivened.
20. **[17(b)(i)]:** The will was solicitor written, as were numerous previous wills Mimi revoked. The Appellant respectfully rejects the contention that the disposition provisions for the “*entire*” multimillion dollar estate were “*carefully drawn*” and/or “*detailed*.” They occupied less than a page and lacked survivorship provisions, risking partial intestacy if Dusko predeceased Mimi.
21. **[17(b)(ii)]:** Use of words “*my Last Will kept by Marc O’Brien*” do not prove an original existed in 2022. **[16]–[18]** above in reply to **[17(a)(i)–(iii)]** address this. The word “*republish*” in the informal codicil presupposes, but does not prove existence of a subsisting original of which there is no evidence. The informal codicil is addressed at **[49]–[76]** below (about knowledge and approval regarding it, and its inability to revive the will, respectively).
22. **[17(b)(iii)]** The Respondent’s contention that Mimi’s testamentary intentions were reflected in the codicil, disregards the fact that:
 - a. Mimi did not tell Bozica or Dusko she decided to give the Surry Hills property to Gordana.
 - b. Mimi did not tell anybody (including Gordana herself, solicitors Bryant and Leggat) that she signed a document giving effect to the gift to Srdja and Gordana.
 - c. Mimi did not verify the accuracy of the words, “*signed and kept by Marc O’Brien*” which imply facts objectively incorrect; there is no O’Brien signature on any will and the 2018 Leggat to O’Brien uplift produced a copy only.

- d. Mimi did not annex to the codicil the copy will O'Brien gave her, annotate and re-execute or make reference to the date of the will, all of which were open to her.
 - e. Despite Srdja claiming Mimi was "*very private and protective about her assets*" and that it "*did not surprise*" him that Mimi would not want hospital staff involved, Srdja did not arrange or propose alternative witnesses. For instance, Mimi had longstanding friend, Radovic and accountant, Lazaros who Mimi had previously entrusted with knowledge of her testamentary affairs. Radovic gave evidence that Srdja pressured Mimi about signing a document purporting to give Srdja property, and Lazaros, knew Srdja and Mimi's relationship was disjointed and they argued a lot and were often not on speaking terms.
 - f. Mimi said she'd see a solicitor to give new "*will*" instructions after discharge; she did.
 - g. Mimi's instructions to Bryant about a new will differed in a significant respect from the provisions in her May 2015 Will in that Mimi's art collection was to be left to Dusko and Bozica rather than Dusko solely. The draft will itself differed significantly from the May 2015 Will and departed from the instructions Bryant gave evidence of. The executorship clause changed from jointly appointing Bozica and Dusko or their survivors, to Dusko only. Survivorship clauses were included for Srdja/Gordana's gift and residue. This was inconsistent with treating the May 2015 Will as operative and demonstrates unsettled testamentary intentions.
23. [17(c)]: Campbell/Leggat do not give evidence of inadvertent loss of the original nor does evidence explain where it went after 2018 (if it existed then), nor why Mimi did not re-execute it.
24. The trial judge's acceptance of the reason given by Srdja for absence of witnesses to the informal codicil is dealt with in detail in the Appellant's submissions at [80]-[84], (Red 173-174). See [51]-[57] below in reply to [33] in relation to the date, handwriting and signature on the document and [34] in relation to Mimi's reason for signing and the lack of corroboration of the reason for no witnesses. There is every reason to conclude Mimi intentionally sought to placate Srdja with her signature on the document, well-knowing that it required witnesses, and failing to arrange independent witnesses that were not hospital staff before the will was brought to her or when/after it was brought to her. She would not have expected it would be valid, let alone that it could revive a revoked (or even missing) will.
25. In a beneficiary-controlled process in hospital, Mimi seriously unwell, and with evidence of pressure on Mimi, there were suspicious circumstances which required a high level of satisfaction as to knowledge and approval, which the judgment simply did not address.
26. His Honour did not distinguish revival (s. 15) from dispensation with the formal requirements for execution of a testamentary instrument (s. 8) which presupposes revocation and requires express intention to "*revive*". Dispensation with formal requirements cannot stretch to establishing survival of a missing will.
27. Although the Plaintiff, at [21(b)] of his Defence (Red 51) pleaded revival in the event of revocation, it was not identified as an issue for determination in the Statement of Issues, was not argued in written or oral submissions. Nor was it established.
28. The presumption of revocation remains engaged and un rebutted.

Circumstances in which a presumption of revocation arises ([19]–[23])

29. [20]: The Appellant accepts the principle of law at [19] but distinguishes it from this case; as there is no evidence the will "*remains with the solicitor who drafted the will*," objectively, all relevant solicitors having been eliminated as custodians post-execution. The Appellant rejects the submission in [20] that Campbell's evidence "*was equivocal*." Not unreasonably, given the

passage of time, it is true he began from the standpoint of usual practice, (in the absence of records) but there were objective indicators, in particular no safe-custody entry for Mimi and the will never produced by Leggat. Campbell's evidence did not need to *yield* to positive evidence because the only positive evidence in this case *did* in fact support his best recollection, that he likely handed the original to Mimi. Campbell never saw an original post-execution.

30. The Appellant's argument that the original was in Mimi's possession does not rest *entirely* on matters raised at [20], which, in isolation, may be equivocal. Instead, this conclusion rests on the cumulative weight of the circumstantial matrix. See Appellant's submissions dated 25 September 2025 at [2(b)] (Red 157), [11] (Red 160-161), [12] (Red 161), [15] (Red 161), [19] (Red 162), [11]/[12]/[20] (Red 161, 162), [22] (Red 163), [24(f)] (Red 164), [52(d)] (Red 170).
31. [21]: Mimi's statement to O'Brien, cannot strictly be characterised as "*positive evidence*" of a firsthand observation or actual knowledge that her original will was kept by NLA after execution. Rather, it was an expression of tentative belief three years later. Its probative value is weakened by the following:
- a. O'Brien's evidence was sworn 5 years after the fact, and is a reconstruction not corroborated by contemporaneous documentary evidence of Mimi having made this particular statement;
 - b. Neither Mimi's oral instructions, the written authority, nor the cover letter regarding Mimi's request for files/documents held by NLA specifically mentioned the 22 May 2015 Will. At that time, O'Brien was acting in relation to several leases. It was O'Brien who first raised the issue of the will, saying it was missing after receiving the whole file (including original leases with which Mimi's matter was concerned).
 - c. Mimi immediately qualified her expression of belief by stating, "*I will contact them to see where it is*"; she never did. At best, O'Brien's evidence is only capable of showing that, at that relevant moment in September 2018, Mimi did not know where the original was.
 - d. Mimi received advice from O'Brien that he held *only* a copy, and so she risked intestacy.
 - e. Mimi never followed up on her statement that she would contact NLA to verify the location of the original, despite meeting Leggat two months before her death; nor did she instruct O'Brien to do so.
 - f. On 13 September 2022 Mimi instructed Leggat herself, having been a former client only of Campbell, when employed by NLA. Leggat was engaged with respect to a lease matter, and they never discussed testamentary matters of any kind. This engagement itself supports the inference that Mimi did not believe Leggat was holding her original will, or that NLA misplaced it. This undermines the plaintiff's submission that the original will must have remained with NLA after execution, also because:
 - i. the loss of an original will without explanation is hardly a matter for a person who was *not* "*ignorant of the consequences of having or not having*" a will (**Transcript 11: 9-10; Black 11**), to overlook in selecting legal representation.
 - ii. Mimi was known to change her legal representation (evidence of at least 14 such changes being before the court).
 - iii. By her meeting with Leggat, it had been weeks since Bryant sent O'Brien an (outstanding) authority to release Mimi's documents. Mimi could have, but did not,

personally retrieve from Leggat or at least enquire about the original if Mimi believed NLA ever had it or still had it; Mimi did not retrieve it or make any such enquiry.

32. O'Brien's evidence must yield to the combined weight of evidence that the original was handed to Mimi upon execution. Ultimately, it was Mimi's subsequent inaction, not her initial speculative belief, that is most demonstrative of the location of the original.
33. [22]: A request by an individual for a copy of a document does not prove their lack of possession of the original. It is plausible Mimi needed a copy for administrative purposes. This inference is supported by Bozica's evidence that she made a copy of Mimi's will to give to Dusko, and Dusko's evidence that Mimi told him to make more copies (not having another to spare) after he told Mimi he received a copy from Bozica. Further, Lazaros confirmed she would either "*pick documents up*" or otherwise "*received documents in the mail*", a practice that implies Mimi typically chose not to, or could not, access a scanner/photocopier. In any event, there is no evidence the request originated from Mimi or that it was made to Leggat, personally. See above [4] in reply to [5].
34. [23]: A fair reading of [20] – [23] and the Appellant's submissions is that there is ample positive evidence of post-execution custody with Mimi, not Campbell or Leggat/NLA. Mimi's expression of belief that NLA has the original is what is equivocal. If she simply didn't know where it was, it was reasonable to say she would check with a firm of solicitors who *might* hold it, NLA. In 2018 O'Brien received all the documents Leggat had, and then Mimi was told by him the original was missing. Of course, if she *had* destroyed the document, it would be reasonable to contact NLA about the location of the original to make sure it was the original, not a copy, that she had destroyed (unless Mimi found it). But all that matters is that no solicitor held the original. Accordingly, far from there being "*no evidentiary basis*" for the presumption to arise, the overwhelming circumstantial evidence is that Mimi held the original after execution, so that in the absence of any evidence as to what happened to it in the meantime its absence on her death gives rise to the presumption. The issue on which the Appellant says the trial judge erred is in finding it was rebutted.

Rebuttal of presumption that might arise ([24]–[29])

35. [27]: Solicitor custody evidence for the original does not exist. There is no safe-custody entry or empty security packet of NLA. The 2018 uplift produced a copy-only. Leggat never saw the will. Campbell never saw the will after execution. There was no subsequent transfer to anyone. There was no original found at death. No firm asserts post-execution custody. In the circumstances, neither the absence of evidence as to how exactly Mimi stored her legal documents, nor any insinuation that Mimi was careless with documents, equates to innocent-loss of the May 2015 original will, and cannot displace the presumption of revocation.
36. Srdja's retention of the unwitnessed codicil he prepared, which Mimi referred to as a "*declaration*", indicates beneficiary control of the document, not possession or survival of the original will it purports to amend. This is perfectly consistent with Mimi's intention to placate Srdja with an informal, she believed invalid, document. This inference is consistent with Srdja's evidence Mimi's execution of the document was motivated by an express desire for them both to have "*peace of mind*": they both did, for very different reasons. Srdja's evidence that he was given the document for "*safekeeping*" is inconsistent with the following evidence:
- a. he was careless in putting the document "*somewhere*" unspecified, because he "*didn't think that...[he] will need it anymore,*"

- b. the lack of evidence of anybody except Srdja being aware of the existence of the codicil, including his wife, Gordana who was a joint beneficiary of his gift.
 - c. his statement to the Appellant after Mimi's death that he didn't know if Mimi had a will
37. In the circumstances, the codicil being kept by a beneficiary (particularly at a time when Mimi knew the original May 2015 will was at least missing, if not destroyed by her) heightens suspicion (with knowledge and approval not having been addressed) and supports an adverse inference. It does not weaken the presumption of revocation.
38. That Mimi's accountant held all her business records does not indicate carelessness, quite the reverse, and in any event is not evidence of Mimi not being in possession of her original will; the Respondent's conflation is a non-sequitur. Against Mimi's history of having last possession of original, copy and draft wills, the absence of taxation records at home proves nothing about Mimi's custody or treatment of testamentary documents. With respect to all but one of Mimi's approximately ten (known) original wills, she either personally collected or had the original delivered to her. Several were then destroyed by her. This pattern demonstrates (i) originals were ordinarily in Mimi's personal custody, and (ii) she actively revoked prior wills *animo revocandi*.
39. Dusko had prolonged access to Mimi's residence after death (residing there for months) yet produced no evidence of how any important documents were kept, destroyed or otherwise. An available inference is that such evidence would not have assisted the Respondent
40. [28] The evidence referred to at [28(a)] up to and including the first sentence in [28(c)], shows, at highest, a consistent belief of continued operation of the May 2015 will until September 2018, after which only a belief in the existence of copies is shown. The evidence does not explain the missing original at death. The trial judge failed to give sufficient weight to conduct inconsistent with the continued operation of the will. Notably, Mimi was advised that O'Brien only held a copy and that the absence of the original could result in intestacy. Despite this, she took no steps to locate, replace, or re-execute the document. The total absence of any testamentary documentation in her possession at death further supports the presumption that the will was revoked before death. Accordingly, historical actions at [28(a)]-(first sentence in [28(c)]) must be viewed in light of cumulative evidence of later intention and conduct.
41. [28(a)]: There is no evidence the request for a copy originated from *Mimi* or that it was made to *Leggat*, personally. See above [4] in reply to [5]. In any event, it is too sweeping to say that "*there was no reason for Mimi to do this [send a copy will to Bozica] unless she considered that the May 2015 will continued to be operative.*" While such an act may suggest contemporaneous intention at that time, it cannot rule out subsequent revocation or destruction, particularly given Mimi's documented history of revoking and destroying earlier wills.
42. [28(b)]: Radovic's evidence does not identify which will Mimi referenced, leaving open the real possibility that Mimi meant her 2013 will, in which Bozica and Dusko were the beneficiaries. The fact that Mimi may have said this to Radovic speaks only, at most, to the content of some unidentified will—not to the existence or continued operation of the May 2015 will at the date of Mimi's death. There is no evidence directly linking Mimi's communication with Radovic to the relevant will, and nothing in these actions displaces the presumption of revocation arising from the original's absence at death.
43. [28(c)]: See also [5], [16] and [29]-[32] in reply to Respondent's submissions [6], [17(a)(i)], [20(b)] and [21], respectively. O'Brien's evidence that Mimi said *Leggat* was Mimi's prior lawyer is

inaccurate. See above [5] in reply to [6]. Accordingly, Mimi's instruction (which was in July, not September) to obtain her documents from Leggat and not Campbell, in the absence of evidence of her knowledge that Campbell left NLA, is of low probative value. In any event, an unverified belief as to the location of a will does not rule out prior revocation that the testator forgot about, or subsequent revocation. In any event, it is misconceived to characterise the original's absence as merely being "*unable*" to be obtained, in circumstances where O'Brien made repeated efforts to obtain the original will between July and September 2018 in the context of a formal uplift from a firm with a safe custody system, which usually hands originals to clients, and where there is no direct evidence that the original was ever held by NLA (including no safe custody record) or transferred to O'Brien, or that its absence in the transferred file was inadvertent. The only available inference is that there was no original at Leggat's office to produce. The assertion that Mimi told O'Brien that her "*will was held by Nicole*" is misconceived, as Mimi said, "*I believe*" and immediately qualified this statement by saying, "*I will contact them to see where it is*", a follow-up action she never performed or instructed O'Brien to perform. Mimi's instructions focused on lease matters, with no explicit mention of any will, which was only raised by O'Brien, not Mimi (consistent with her lack of instructions for O'Brien to follow up himself even after he warned her of the risk of intestacy in the absence of the original). There is no evidence that Mimi instructed O'Brien to deposit the copy will into safe custody and no original was found at death. This is not consistent with the will remaining operative at death.

44. Crucially, the matters raised at [28 (d)]-[28(fg)] must be considered in the context of the 2018 will uplift producing a copy only, with no evidence of inadvertent loss, Mimi's knowledge that O'Brien held only a copy and of the risk of intestacy, her subsequent prolonged inaction (2018 to 2022) and no subsequent transfer of the original, and in the context of references to her will originating from evidence of beneficiaries and Bryant whose knowledge of O'Brien holding Mimi's will was attributed to Srdja.
45. [28(d)]: It is not correct that Srdja or Gordana were told by Mimi in April 2022 that O'Brien held the will. Mimi told them separately, and Mimi did not refer to her "*last*" will on both occasions, but only to Srdja. Srdja's evidence is that he was told in May and Gordana's is that she was told in July. Crucially, at the time of the conversation with Gordana, Mimi's discussion of the location of her will did not include reference to the recently signed codicil, made in her favour, retained by her husband Srdja for safekeeping. Gordana's evidence was that the purpose Mimi to which Mimi would see a solicitor was to prepare a will which reflects the gift of "*property she is going to give us.*" This is inconsistent with an acknowledgement of the operation of Mimi's May 2015 Will (which according to the Respondent, was updated by the codicil) or the codicil itself. In any event, the evidence of Srdja and his wife, Gordana constitutes evidence from self-interested beneficiaries whose gift under a codicil depends on the existence of the will it purports to revive. Their evidence is corroborated only by each other (in circumstances where the independence of Bryant's evidence of the location of the will is compromised by his source being Srdja). Further, Srdja's evidence is inconsistent with Branka's unchallenged evidence that Srdja told her he did not know whether Mimi had a will or who her solicitor was.
46. [28(e)]: The Respondent's submission that O'Brien's possession of a copy only does not diminish the codicil's probative value is misconceived. That circumstance is material: Srdja, a beneficiary whose gift depended on the will's continued operation, drafted the codicil referring to what can only have been a copy. Properly construed, the phrasing reflects Mimi's recurrent failure to distinguish between originals and copies, rendering the codicil's reference equivocal. The

statement “*signed and kept by O’Brien*” is inaccurate, as no will bearing his signature exists. Mimi’s failure to verify or identify the will’s date, despite holding the copy O’Brien gave her, accords with the evidence that she did not read it aloud or have it read to her, and that she confirmed having read it only after execution. Any ambiguity arising in those circumstances must be construed against Srdja, the beneficiary-author. Further, the codicil’s suspicious circumstances—a beneficiary-drafter, deliberate absence of independent witnesses, and Mimi’s later instructions to Bryant to prepare a new will departing from earlier provisions—demonstrate cessation of reliance on the May 2015 will. The assertion that the will “*continued to be operative*” presupposes the existence of a subsisting original at death. The evidence is otherwise: after being warned in 2018 of the copy-only risk of intestacy, Mimi neither located nor re-executed an original, and none was found at death. The codicil’s phrasing is therefore circular and unreliable, incapable of establishing survival of the original or rebutting the presumption of revocation.

47. [28(f)]: See above [17] in reply to [17(a)(ii)]. Mimi gave written instructions on 18 July 2022 that she wishes to “*make testimony*” (being a reference to a will) (**Black 430**) which on face value demonstrates both that there is *currently* no will operative or not (otherwise she could have instructed Bryant to “*amend*,” “*update*,” or “*change*” her will). Despite beneficiary sourced evidence of Srdja that Mimi’s purpose in seeing Bryant was to “*formalise*” his and Gordana’s gift, and of Gordana, that Mimi said “*I will see a solicitor to update my will*,” Mimi did not mention the existence of or location of the codicil to Bryant or record it in her written instructions. She did not bring a copy of her will to the meeting, or the codicil that purports to republish her will. In the circumstances, Mimi’s agreement that she has a “*current*” will which is with O’Brien is not probative evidence that she considered it remained operative. In any event, Mimi’s new instructions and the draft will that was ultimately not signed, differ from that of the May 2015 Will and codicil, and regardless of the will not having been executed, demonstrate that Mimi was reconsidering her testamentary intentions, which is inconsistent with the continued operation of the earlier signed will, particularly where the original is missing.
48. [29]: The Appellant rejects the submission that Mimi considered her will operative “*at all times*” from May 2015. That was far from “*clear*” on the evidence. On 18 July 2022 Mimi gave fresh instructions for a new will, and ultimately had a will prepared that departed from the provisions of the May 2015 will. While Mimi never executed the draft will, she also never said or did anything in support of the continued existence of the May 2015 will in the period 19 July 2022 to November 2022. Sending or referring to a copy of a will does not preclude later revocation. An unverified belief about the will’s location does not establish NLA’s actual custody. O’Brien’s formal uplift of a copy alone, in the absence of transfer of the original, having warned Mimi of the risk of intestacy, cannot form the basis for any rational testator’s understanding that the existence of a copy renders the original operative. Evidence of references to a will after its disappearance, originating from beneficiaries or having been elicited in a derivative manner ought to be considered with caution. A deliberately unwitnessed codicil prepared by a beneficiary is insufficient to show survival of the original. An immediate plan to see a solicitor to make a will after having signed a codicil is not consistent with the notion that Mimi considered her will (then updated by an informal codicil) operative at all relevant times. The absence of every single original, draft and copy of any testamentary document that had ever passed through Mimi’s possession, including copies of the May 2015 Will and the new draft will, in circumstances where she had a known history of revocation by destruction is consistent with revocation *animo revocandi*, not conduct affirming the continued operation of her will.

Informal codicil - testamentary intention ([30]–[34])

49. [31] The Respondent's submissions purport to confine the issues regarding the codicil as being whether the Court was correct to dispense with the formalities, and nothing more. They are not.
50. [32] Acceptance that the informal codicil on its face purported to state Mimi's testamentary intentions does not equate to acknowledgement that its validity cannot *also* be challenged by the Appellant on grounds of a lack of knowledge and approval in suspicious circumstances. See below [67]–[74] regarding knowledge and approval in reply to [35]–[37].
51. [33]: **Drafted with formality:** The Appellant disagrees that the codicil, sourced online and otherwise prepared by Srdja, a lay person who is also a beneficiary, was "*drafted with formality*". This was Mimi's only known testamentary document not prepared by a solicitor. There was no identification of the date of the "*last will*." Srdja himself gave evidence that he understood Mimi would see a solicitor to "*formalise*" the codicil.
52. **Handwriting and date:** The Respondent's submission that the codicil was "*dated by Mimi*" is not accepted by the Appellant, who from the outset of the proceedings disputed the date was in Mimi's handwriting. It was pleaded that the handwriting of the date differs significantly from the handwriting of the signature (at [7(g)] of the Fifth Defendant's Further Amended Defence (Red 22)). Despite [18(b)] of the Plaintiff's Amended Statement of Claim (Red 5) including particulars that "*the document [codicil] was dated by Ms Berger*", there is no evidence that the date on the codicil was written by Mimi.
53. Only Srdja saw Mimi handle the codicil. Mimi was an elderly person who had broken her arm (for the second time) and had not been discharged from the inpatient rehabilitation until late June/early July. Srdja did not provide evidence about the date on the document—when/whether/how Mimi wrote it, whether he wrote it, or if anyone else did so. These omissions in evidence must be interpreted against the Respondent. Since Srdja said he prepared the codicil but only mentioned Mimi reading and signing it, it is possible the date was added by him before she signed. As a result, the pleading is unsubstantiated.
54. In the absence of evidence as to who inscribed the date on the codicil, and in light of the Respondent's submission that the date suggests finality, the handwriting of the date on the codicil (Blue 87) should be closely examined. At [7] of Bryant's affidavit, he referred to Mimi having handwritten part of her instructions (Black 145). The handwriting of the date on the codicil does not resemble Mimi's handwriting a month later on Bryant's file note dated 18 July 2022 (Blue 90). The handwritten date on Mimi's codicil does however closely resemble Srdja's handwriting on a claim form (Blue 74). Srdja says at [19(a)] of his affidavit (Black 192) that he filled out this form for Mimi on 8 March 2022 and that "*the handwriting on the claim form is mine [his]*."
55. *Brown*⁸ (at [33]) concerns documents wholly in the deceased's handwriting or adopted as their own; which is not the case in these proceedings, where it cannot be said that the codicil was "*filled in, in the handwriting of the deceased*." Accordingly, the date in this case cannot suggest "*finality*," or, if it does, the inference is weak. Even if the Court was correct to dispense with the formalities (which the Appellant denies), the unresolved issue as to authorship of the date, (in the context of suspicious execution circumstances) undermines knowledge and approval (which requires strict proof) and cannot establish republishing or revival of the May 2015 original will.

⁸ *Re Application of Brown; Estate of Springfield* (1991) 23 NSWLR 535 at 539–540 (Powell J).

56. The Appellant submits the purportedly implied testamentary intention arising merely from Mimi's signature at the foot of the Codicil must yield to the overwhelming suspicious circumstances that vitiate a finding of finality. Pursuant to s. 8(3)(a) of the *Succession Act* 2006 (NSW) ("**Succession Act**"), the Court may specifically have regard to any evidence relating to the manner in which the document or part was executed. The informal Codicil was prepared by its beneficiary, Srdja, presented and executed in a hospital setting and unwitnessed, supposedly at *Mimi's* insistence (lacking independent corroboration of any kind which need not have been limited to hospital staff involvement). This objectively suspicious process is compounded by the observable volatility in letter formation and stroke quality across five relatively contemporaneous documents (**Blue 84-90 and 93**), and Srdja's failure to account for the date's authorship. This combination undermines the conclusion that this manner of execution bore the necessary indicia of testamentary intention and/or knowledge and approval, especially given Mimi's repeated, immediate statement that she would make a will with a solicitor upon discharge
57. None of the authorities at [33] address the missing-original problem.
58. [34] The explanation for not using hospital staff to witness Mimi's signature, does not remedy the missing formality and suspicious circumstances. The absence of neutral witnesses, when Srdja managed the process and knew Mimi's preferences, raises suspicion. Neutral witnesses could have been arranged and not doing so suggests a lack of independent confirmation of testamentary intent. This omission allows the inference that such evidence would not favour the Respondent. The evidence that Mimi gave the explanation "*herself*" is of low probative value in the absence of independent corroboration of the reason and of the fact of Mimi signing.
59. The Respondent's submissions fail to address the irrational basis for Mimi's excuse for refusing witnesses. Mimi is said to have expressed fear of being charged for her entire hospital stay, justified by a charge already imposed for the removal of her cast.⁹ However, that justification is inconsistent with the evidence establishing that Mimi had a cast on throughout her hospitalisation; Srdja stated that Mimi "*had a cast on her arm while staying in hospital*", "*was moved into inpatient rehabilitation with her cast on*,"¹⁰ and Gordana confirmed Mimi was "*discharged from inpatient rehabilitation*."¹¹ The inherent contradictions in this explanation compromise the probative value if not the credibility of Srdja's evidence relied upon in support of testamentary intention.
60. The probative value of Mimi's "*peace of mind*" comment, is compromised by the fact that Srdja did *not* give affidavit evidence of this being said in the context of a discussion with Mimi at the time of execution, but *prior* to preparation of the informal codicil. At [37] of Srdja's affidavit (**Black 196**) Mimi said she would sign the document so Srdja has "*proof of my decision*". However, it was not until the hearing, that Srdja mentioned the "*peace of mind*" comment *also* in the context of *execution* (**Transcript: 29: 10-11; Black 29**).
61. During cross-examination, Srdja agreed that he understood Mimi's reason for signing the codicil was to give Srdja "*and Gordana*" peace of mind. However, Gordana gave evidence that neither Mimi nor Srdja told her (during Mimi's lifetime) that Mimi signed a document in hospital about giving her some property (**Transcript 34: 17-33; Black 34**). Accordingly, its

⁹ Paragraph [37] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 196).

¹⁰ Paragraph [29] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 194).

¹¹ Paragraph [15] of the Affidavit of Gordana Jankovic sworn 21 December 2023, (Black 184).

execution could not have been for the purpose of giving Gordana any peace of mind **(Transcript 29: 19-21; Black 29)**.

62. The Appellant rejects the submission that only documents signed with testamentary intent could have provided Mimi with “*peace of mind*.”
- a. Rana Saab, Mimi’s then solicitor sent an email to Dusko on 27 February 2020, in the context of a carer visa application. It stated, “*Ms Berger requires assistance and is unwell*” and despite the department of immigration’s preference that “*care is provided by a person living here*” Mimi “*does not trust anyone in her home or near her*” **(Blue 69)**.¹² This is consistent with the respondent’s evidence was that Mimi told him in June 2022, “*Srdja was holding the keys for my house the whole time I was in hospital. I think he was going there every day.*” He also gave evidence that between June and August 2022 he had to regularly reassure Mimi that he would visit as soon as possible.
 - b. Lazaros provided indirect, independent evidence adverse to the notion that Mimi had testamentary intent with respect to making a codicil in Srdja’s favour by establishing a context of vulnerability and profound conflict surrounding the codicil’s execution. On 17 June 2022 Srdja sent a text message to Lazaros annexed to her affidavit **(Blue 81)** after failing to reply to Lazaros’ text regarding Mimi’s condition on 10 June 2022, and in the context of nobody having answered her calls made directly to Mimi’s room, where Srdja visited every day. His text said, “*Mimi was sick last week and was in St George Hospital [last week being Monday 6th June 2022 to Sunday 12th June 2022]*”, omitting to account for the day preceding, including and following execution, and that “*Yesterday [16 June 2022] she was back in Calvary [hospital] for rehabilitation*” where Srdja said Mimi had her cast still on (indicating the codicil had been signed whilst Mimi’s cast was on). Lazaros stated that Mimi never mentioned to her about giving something to Srdja. Furthermore, Lazaros recalled Mimi and Srdja “*were always having arguments and not talking for periods of time*”. This conflict was ongoing, as Mimi and Srdja “*were in an argument and not speaking*” until about 9 October 2022, which severely undermines the implication that the codicil was a final testamentary act that presupposes an amicable relationship. Lazaros also gave evidence of Mimi’s general suspicion regarding her wealth, noting that Mimi said “*people always want my money*”, which gives rise to the inference that the informal codicil, prepared by Srdja, was made under suspicious circumstances.
63. The evidence above provides independent evidence of Mimi having impliedly been distrustful of Srdja, and not hospital staff as Srdja says. The act of signing a codicil deliberately without witnesses, to give Mimi “*peace of mind*” is perfectly consistent with Mimi’s intention to placate Srdja with an informal, she believed invalid, document. This would have given Mimi peace of mind that the assurances she historically gave to Srdja, (in circumstances where she was unwell and had a disjointed relationship with Srdja), about his eventual receipt of property from her estate, would finally come to an end.
64. The Respondent’s reliance on Mimi’s statement that signing the codicil gave her “*peace of mind*” does not establish that she intended it to operate as a testamentary instrument. A person who intended a document to dispose of her estate would not immediately express a wish to replace it, particularly through a solicitor chosen by Srdja rather than one of her own. The more

¹² Paragraph [37] and Annexure G of the Affidavit of Dusko Dundjerski affirmed 21 December 2023, (Black 121) (Black 410).

plausible inference is that Mimi, who was “*very private and protective about her assets*”¹³ signed the codicil to reassure Srdja, not to effect a binding testamentary disposition.

65. **Reading the codicil:** Srdja was cross-examined in relation to whether and how Srdja knew if Mimi *actually* read the codicil (**Transcript 28: 40-50: Black 28**). Srdja gave evidence at [37] of his affidavit (**Black 196**) that what Mimi said to Srdja *after* reading the document was “*I will sign it*”. At the hearing, Srdja then says the reason he knows that Mimi actually read the codicil when he saw her looking at it, despite her not having read it aloud, is because she told him, “*I read it. I then signed it.*” The inference is that Mimi must have said “*I read it. I then signed it*” *after* she already executed it. Srdja merely gives evidence of what Mimi *said* she did, not what she actually did. The probative weight of the evidence that Mimi signed the Codicil in Srdja’s presence or at all, is compromised by her self-report: “*I then signed it.*” This is superfluous if Srdja was physically observing the signature, thereby raising an inference that Mimi’s statement was a retrospective self-report of execution that did not occur in Srdja’s presence.
66. [30]-[34]: The explanation for not using hospital staff as witnesses, does not directly address several critical concerns: (i) the codicil was unwitnessed and drafted by a beneficiary; (ii) evidence of a desire to avoid involving hospital staff does not sufficiently explain why Mimi did not seek alternative witnesses which was an available option but was not pursued; (iii) references to “*proof of my decision*” and “*peace of mind*” pertain to Srdja having evidence of Mimi’s future intention rather than demonstrating testamentary intent for a document yet to be created; (iv) Mimi’s statement that she would consult a solicitor to amend her will contradicts any notion that she intended this codicil to take immediate effect; and (v) strict proof of knowledge and approval is lacking due to beneficiary authorship, absence of neutral parties, and inconsistencies such as the dating not being in Mimi’s handwriting; (vi) Though s. 8 of the *Succession Act* may dispense with certain formalities for this document, it does not establish that the 2015 original will existed, nor does it revive a revoked will, as revival requires the physical existence of a valid will. Accordingly, the primary judge’s reliance on “*peace of mind*” and reasoning related to hospital staff does not support a finding of testamentary intention in this instance.

Informal Codicil - Knowledge and approval ([35]–[37])

67. [35]: The Appellant rejects the Respondent’s submission that she should not be permitted to assert that Mimi did not know and approve of the codicil, and relies on [15] above which is also in reply to [15] and [16].
68. Even if the Court was correct to find that Mimi had the requisite testamentary intention, in the presence of suspicious circumstances at the time of preparation and execution, the Court was bound to consider if Mimi knew and approved of the contents of, and understood the nature and effect of, the document she intended (which the Appellant denies) to operate as a testamentary instrument. The Court did not address this issue. The issue of knowledge and approval was properly pleaded and remained relevant based on evidence such as beneficiary authorship, hospital setting, absence of independent witnesses, and a date/signature discrepancy—classic suspicious circumstances. In such situations, the propounder must prove knowledge and approval clearly and affirmatively. Whether or not the issue was pressed in submissions does not extinguish a pleaded issue; the judge was required to address it.

¹³ Paragraph [23] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 193); Paragraph [41] of the Affidavit of Srdja Jankovic sworn 21 December 2023, (Black 196);

69. See also [52]-[56] above in relation to the issue of authorship of the date and signature in reply to [33] and [58]-[64] above in reply to [34] relation to the issue of the absence of witnesses and explanation for this.
70. [36]: The Appellant rejects the submission that the purported “*testamentary intention that Mimi communicated*” in May 2022 was contemplated in relation to the codicil in June 2022.
71. The Respondent's submission at [36] that knowledge and approval follows because the codicil “*gave effect*” to Mimi’s intentions misconceives both the context of the conversation between Mimi and Srdja and the purpose of the legal enquiry. The question is not whether the codicil happens to reflect an intention earlier expressed by Mimi, but whether Mimi knew and approved the specific instrument she executed. The purpose of the enquiry into knowledge and approval is to determine whether *that* document (i.e the codicil) expresses the testator’s true testamentary intention, not whether it accords with an intention expressed at some earlier time or in another context.
72. Not one witness that was ever entrusted with knowledge of Mimi’s testamentary affairs, was aware of the existence of a document which gave effect to the gift contained in the codicil. Whilst Mimi may have said, “*I have decided to leave to you and your wife the property...*” on Srdja’s evidence, Mimi qualified her earlier statement by saying, “*As soon as I am out of the hospital, I will go and update my will...Find me a solicitor in Rockdale [local to Mimi and Srdja] who can write the will.*” These statements make plain that Mimi only intended to give effect to the gift of the property via the creation of a will by a solicitor after discharge. Subsequent conduct reinforced *this* was her intention, not that her testamentary intention would be contained in a document prepared by Srdja and signed by her but not witnessed.
73. [37]: Whilst Mimi instructed Bryant to prepare a will upon discharge from hospital, giving Surry Hills property to Gordana and Srdja, these instructions cannot support the argument that Mimi intended the *codicil* to operate as a testamentary instrument. It supports the opposite conclusion (that Mimi’s earlier instructions were indeed directed toward the making of a new will, rather than toward the codicil that was executed). This is particularly so in circumstances where not only did Mimi not arrange alternative witnesses for the codicil despite knowing two witnesses were required (if not from the codicil's face, then from the several wills she executed with the preparation and advice of solicitors), where the will which was mailed to Mimi's residential address (being the same address to which Bryant successfully delivered prior correspondence), where the will was never signed despite Mimi having visited solicitor Leggat shortly before her death in front of whom she could have signed it, and the will was never located in her house after her death. Further, the draft will prepared by Bryant ultimately included a provision in the gift to Srdja and Gordana that their survivors take if they do not survive Mimi.
74. [35]-[37]: (i) The instructions provided to Mr Jankovic originated from a beneficiary and lacked corroboration. (ii) The codicil was drafted by a beneficiary, unwitnessed, and executed under suspicious circumstances with neutral witnesses available but not used. (iii) A discrepancy in date and handwriting means any inference of a signature and date on the codicil (including the manner in which it was signed) does not establish knowledge and approval. (iv) Immediately after signing, Mimi intended to consult a solicitor for further will amendments and later issued formal instructions, yet the 2022 draft remained unsigned—her actions contradict treating the codicil as final. (v) The Respondent’s submissions do not address the missing original. Given these facts, there is no basis to infer knowledge and approval from the “*instructions*,” and strict proof has not been provided.

Informal Codicil - Republication and revival of the May 2015 Will ([38]–[40])

75. [38]: Republication presupposes a subsisting will.
76. [39]: Revival under s. 15 of the *Succession Act* requires clear intention to restore an instrument that is no longer operative. The Appellant's submissions dated 25 September 2025 in relation to revival at [94]–[101] (Red 176–177) highlight the distinction. An informal codicil referring to a copy held by a solicitor cannot, of itself, prove the physical existence of the missing original or revive a will destroyed *animo revocandi*. This separation of doctrines is advanced in reply to the Respondent's reliance on s 8 of the *Succession Act* for the codicil and separate invocation of revival.

Credibility of the Respondent's witnesses ([41]–[42])

77. [41]: The Respondent's dismissal of the Appellant's challenge to Srdja's credibility, merely labelling the issues as "*purported inconsistencies*", is unsatisfactory. The critical contradictions inherent on the face of the evidence remain unresolved (and were not attempted to be resolved by the Plaintiff at trial), thereby diminishing the probative value of Srdja's self-serving assertions. Even taking appellate restraint into account, beneficiary-sourced assertions cannot replace the need for objective proof explaining the absence of the original will. The conflicts weaken the reliance that can reasonably have been placed upon his evidence to rebut the presumption of revocation. For the Court to have reached its conclusion that the presumption was revoked relying on Srdja's evidence, there should have been some consideration and determination of the material inconsistencies/contradictions in that evidence.
78. [42]: The assertion in [42] that Srdja's evidence regarding Mimi's testamentary intentions and her belief that her will was held by O'Brien is corroborated by Bryant, is fundamentally flawed because Bryant's knowledge was derivative and circular, lacking the requisite independence. Bryant's contemporaneous 19 July 2022 letter explicitly records that the custody assertion regarding O'Brien holding the "*current will*" was made "*as advised ... by Serge*" (Srdja), not Mimi or the solicitor's firm. This derivative reliance, which is dependent on Srdja, cannot lend weight to Srdja's self-serving account, particularly given Srdja's own contradictory statement to the Appellant, Branka that "*I do not know if Milka [Mimi] has a will ... I do not know if she had one and who is her lawyer*".
79. Mimi's subsequent conduct following execution of the codicil further confirms her unsettled testamentary intentions, contrary to the implication that the codicil represented a final, confirmed act. As Mimi said she would, she instructed Bryant she needed "to *make*" a will, without making any reference to the codicil's existence, her instructions including a significant departure from the May 2015 Will regarding the art collection gift and executorship. Her failure to execute this August 2022 draft (despite the opportunity to amend and/or execute it before Leggat) is consistent with uncertainty.
80. The presumption was enlivened by the absence of any testamentary documents being found after death and it was not rebutted. Mimi was not treating the informal codicil as operative, let alone the May 2015 will which the codicil (wrongly) identified and which she knew was not in existence. The appeal should be allowed.



Dated: 10 November 2025

Counsel for the Appellant