

TERRITORY OF THE VIRGIN ISLANDS

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No. BVIHCV2024/0219

In the Matter of the Mental Health Act 2014

In the Matter of the An Application by Kenny Francis and Kisha Francis-Williams to Appoint a Receiver to Manage and Administer the Property and Affairs of Lucia Francis

BETWEEN:

KENNY FRANCIS

First Claimant

KISHA FRANCIS-WILLIAMS

Second Claimant

AND

LUCIA FRANCIS

Defendant

Appearances: Ms. Anthea Smith, Counsel for the Claimants
Ms. Marie Lou Creque, Counsel for the Defendant

Last submissions filed June 30th, 2025

**2025: May 26th
September 5th**

JUDGMENT

- [1] **ANDERSON J (Ag.):** This is a claim by 2 of the 4 adult children of Mrs. Lucia Francis to be appointed her Receivers pursuant to the Mental Health Act (the “Act”). The basis of the claim is by reason of her mental incapacity to conduct her affairs on her own behalf. Mrs. Francis was 80 years old at the time of the filing of the claim.

[2] By Fixed Date Claim Form filed on 18 June, 2024, the Claimants ask for the following relief: -

- 1) Lucia Francis be examined by Dr. June Samuels MBBS, DM (Psych), Consultant Psychiatrist of the BVI Health Services Authority to determine whether she is incapable of managing her property and affairs by reason of a mental disorder and that a report be provided to the Court within forty-five (45) days of the Order of the Court.
- 2) Rudolph Francis Attorney appointed pursuant to Power of Attorney No. 230/2023 dated 9 June, 2023 (the "POA") purportedly granted by Lucia Francis take no further action as Attorney pending the determination referred to in (1) above and/or until further Order of the Court.
- 3) Any psychiatrist or medical practitioner under whose care Lucia Francis has been for the past 18 months provide a medical report to the court detailing the period for which she has been under their care, the condition(s) for which she is under treatment and the nature of the treatment.
- 4) The Application to the Land Registry purportedly made by Lucia Francis (the "Partition Application") for the partition of Parcel 21 Block 5372A of the Anegada Registration Section ("Parcel 21" or "Keel Point") be stayed pending the determination referred to in (1) above.
- 5) Where the Court is satisfied after considering medical evidence that Lucia Francis is incapable of managing and administering her property and affairs by reason of mental disorder that the Claimants be appointed to manage and administer the property and affairs of Lucia Francis.

[3] Mr. Rudolph Francis mentioned above is Mrs. Francis' husband and the father of the Claimants. He was 82 years old at the time of filing the claim and he is referred to as "Mr. Francis Sr." for ease of reference. Husband and wife live together at Keel Point, Anegada.

[4] The First Claimant, Mr. Kenny Francis, also lives on Anegada. The Second Claimant, Mrs. Kisha Francis-Williams, lives in the United States of America (USA).

[5] The Partition Application referred to above was made under the signature of Mrs. Lucia Francis on 6 December, 2023. It is supported by an Affidavit of Mrs. Francis also dated 6 December, 2023. There is a cottage rental business located on Keel Point comprising 4 vacation cottages built by Mr. and Mrs. Francis. By the application, Mrs. Francis sought to partition and retain that part of the land containing the 4 cottages, being approximately 1.2 acres. The remaining 3.6 acres of the property she proposed, was to be retained by the other co-owners who are her children.

Issues agreed by the Parties

- [6] The Parties agreed the following issues by statement filed 20 February 2025:
- a. Whether Mrs. Lucia Francis knowingly appointed her husband Rudolph Francis as her attorney and whether that POA is void.
 - b. Whether Mrs. Francis knowingly applied to partition Parcel 21.
 - c. Whether the claim should be granted.
- [7] The granting of the claim depends on whether at the present time (or the time of her medical examination), Mrs. Francis is deemed incapable of managing her affairs by way of a mental disorder. The relief sought at (a) and (b) refer to events that occurred in July and December, 2023 respectively. Some retrospective analysis is therefore necessary.

Some relevant law

- [8] The Mental Health Act provides the framework for the treatment and management of people with mental health disorders. Section 37(1) empowers the court to make an order appointing as a receiver for a patient, a person or the holder of an office so specified in the order. The declaration of someone as a patient must be informed by medical evidence and a patient is defined in section 32(1): -
- “32(1) Where the High Court is satisfied, after considering medical evidence, that a person is incapable of managing and administering his or her property and affairs by reason of a mental disorder, the court may exercise the powers conferred on it under this Part: -

- a. (2) For the purpose of this Part, "patient" means a person in respect of whom the court is satisfied under subsection (1) as being incapable of managing and administering his or her property and affairs.

[9] A receiver must do as the court orders, directs or authorizes him or her to do in relation to the property and affairs of a patient. Orders must be made for the benefit of the patient and may take their particular circumstances into account. Sections 33 and 34 of the Act empower the court to confer wide powers on receivers including making provisions for any continuing obligations that a patient may have to family members, dependents or other people; or were expected to meet in the absence of a finding of mental disorder.

The Power of Attorney

[10] The Conveyancing and Law of Property Act 1961 (as amended) sets out the powers of the holder of a POA:

"54. (1) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and his own seal where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof."

[11] Where capacity to execute a POA is concerned, the starting point in the common law is a presumption of capacity and the burden of proof to displace the presumption is on those wishing to set it aside for lack of capacity.

[12] Mrs. Francis granted a POA to Mr. Francis on 6 June, 2023 and it was subsequently registered as a deed in accordance with the Registration and Records Act Cap 67. I saw no issues with the registration itself. The POA appointed Mr. Rudolph Francis as attorney of Lucia Francis to perform "...all and every act and thing whatsoever requisite and necessary to be done in my name within and without the Territory...". It also specifically appointed Mr. Francis to have "full authority" in relation

to Mrs. Francis' interest in Parcel 21." It also gave the attorney the power to make health care decisions for Mrs. Francis. It is apparent therefore that if the POA stands, Mr. Francis Sr. will have substantial power to make decisions including regarding Mrs. Francis' healthcare and her interest in Parcel 21."

Relevant Procedural History

- [13] Some relief was granted in the course of the matter: by order dated 24 July, 2024 the Court ordered Mrs. Francis' examination by Dr. June Samuels as set out in paragraph (1) of the claim. Dr. Samuels was to give a report by 24 August, 2024. Mr. Francis Sr. agreed to give an undertaking not to utilize the POA while the matter was ongoing and the parties agreed to stay the Partition Application at the Land Registry. By cooperation between the parties and their respective Counsel therefore, matters were arranged to mitigate against loss insofar as the Keel Point property was concerned.
- [14] A legal visitor was also appointed pursuant to section 40(1)(b) of the Act to visit Mrs. Francis for the purpose of determining whether she is capable of managing and administering her affairs. The legal visitor was to provide a report to the Court and the parties by 30 August, 2024. The Parties were permitted to put questions to the doctor and to the legal visitor and time was extended for all of this to be done before the hearing. Those questions and their responses formed part of the evidence before the Court. Both the legal visitor and medical expert also gave oral evidence.

The medical reports and the evidence of the medical expert

- [15] The first material medical examination of Mrs. Francis was by one Dr. Stubbs, a licensed psychologist. She assessed Mrs. Francis on 9 June, 2023, the same day that the POA was signed. The evidence was that Mr. Francis did so on legal advice in relation to her execution of the POA. Although he had Mrs. Francis examined, he never went back for the report and it appears that the POA was executed and later registered without the benefit of its content. Dr. Stubbs produced 3 medical reports, the second and third being variations of the first. In the first she opined that a fuller medical examination of Mrs. Francis was necessary; and that in the meantime perhaps a limited

power of attorney was in order, or “a supervised arrangement that ensures her interests are protected without fully transferring control”.

[16] Dr. Stubbs was not an expert witness before this Court and there was no opportunity for the parties or the Court to scrutinize her experience and qualifications as being appropriate for an assessment of a person of Mrs. Francis’ age and characteristics. Since a medical expert was eventually involved for the matters pursuant to the Act, I consider Dr. Stubbs’ 3 reports as being relevant only in relation to the POA and subject the observations made above.

[17] The designated medical expert was Dr. June Samuels, consultant psychiatrist. She produced a psychiatric report of 5 October 2024, later updated on 26 November 2024 with an addendum containing questions (and answers) from Counsel for the Defendant. There is much relevant commentary by Dr. Samuels and so aspects of her reports have been reproduced. Dr. Samuels said:

“...Based on the overall findings above, Mrs. Francis is assessed as having a Major Neurocognitive disorder, moderate cognitive impairment likely secondary to uncontrolled hypertension with renal impairment. There is also some indication of thyroid dysfunction and both issues require evaluation by a medical internist specialist. Additionally, and of significance, Mrs. Francis has some level of hearing impairment.

.... Given her age, the recommended cut for this test [the MMSE test] is 26/30 [Mrs. Francis’ result was 20/30] and therefore she is having moderate impairment of cognitive function. Cognitive function is critical to the ability to reason and make important decisions by being able to recall and weigh the pros and cons of decisions being made within a context of life situations...”

[18] In her oral evidence, Dr. June Samuels gave a definite opinion that at the time of her examination on 9 August, 2024, Mrs. Francis suffered from a mental disorder such that she was incapable of managing her affairs. The diagnosis was that her dementia was secondary to other underlying medical issues. Treatment of those underlying issues would most often slow the progress of the dementia rather than reversing it.

The Legal Visitor

[19] The legal visitor Mrs. Asha Johnson-Willins met with Mrs. Francis alone on 11th September 2024 for about 90 minutes. She was brought by her husband who waited outside. Mrs. Johnson Willins found

Mrs. Francis to be well-groomed and pleasant. Mrs. Francis' long term memory was good – she recalled living in the United States Virgin Islands (USVI) and selling her home there along with her husband to purchase Keel Point with the help of a loan. She recalled building the cottages and intending to use them for short term rentals. She thought that the meeting was for her to answer questions “because her children want to take her away from her husband [whom she affectionately referred to as her “pouchy”] and place her in an “old folk’s” home”. She was upset by this thought and repeated it after every question.

- [20] Mrs. Francis did not recall making the Partition Application to the Chief Registrar of Lands. This position persisted with certain prompting by the legal visitor through showing her the Affidavit that she signed in those proceedings. The legal visitor said:

“...21. In response, she said that she gave no instructions to partition the property and that she wants to live there with her husband until she dies 22. It did not appear to me that she understood the effect of the Partition Application, because her wishes were inconsistent with it...”

- [21] Mrs. Francis did not know what a POA was. She appeared startled by her signature on it, saying that it was not her signature and she did not sign it. The legal visitor also said this:

“...26. I then explained to Mrs. Francis what a power of attorney did – and that it allowed another person to make decisions on her behalf. I asked her if she had given her husband permission to make decisions for her. She said that her husband was in charge and that he takes the lead and she followed, but that she has never agreed for him to make decision on her behalf. 27. She agreed he would take the lead on matters, but they would discuss it and make decisions together. She also said that she would never say that he could make decisions for her.”

- [22] Mrs. Francis also said that she did not have a lawyer and that she never had one. She remembered that her husband had a lawyer but “that’s his counsel” and not hers.

- [23] The legal visitor concluded that Mrs. Francis did not have current capacity to give instructions. She said: -

“7. I am sorry to say that I reached the conclusion that she is not currently capable of giving instructions. Despite her long-term memory appearing good, and Mrs. Francis being engaging and lucid throughout our discussion, I formed that view because (1) if she has instructed lawyers or signed the Power of Attorney, it was clear that she did not remember either; and (2) she struggled to understand the Power of Attorney or the Partition Application, even after its effect was explained to her.”

- [24] The legal visitor therefore had similar observations as the medical expert insofar as long-term recollection and current capacity were concerned.
- [25] Neither the expert nor the legal visitor could opine definitively as to capacity at the time of the signing of the POA or the Partition Application in 2023.

The Parties' Evidence

- [26] Both Claimants gave similar evidence on salient aspects of their claim. They said that their mother has been exhibiting signs of cognitive decline since around 2023. This was primarily because of memory loss and some difficulty in recognizing her daughter. She has long lived with and been in the care of her husband, their father. The Claimants are estranged from their father: they are aggrieved by an alleged, longstanding extramarital affair, and say that he disrespects their mother, sometimes even picking up the third party in his vehicle and taking her to work with their mother also in the vehicle. Further he has alienated the First Claimant Kenny Francis from his mother by physically preventing them from spending time together.
- [27] The Claimants said that they began to take advice on their rights as property owners. They said further that it was during the taking of advice on this issue that they became aware that there was recourse through the mental health legislation for help for their mother.
- [28] The Claimants both admitted that each of the 3 co-owners of the property, themselves and a brother who was not in these proceedings, took physical possession of 3 of the cottages. This took place around May, 2023. According to the Second Claimant, they took this course after receiving advice from a government official as to "what they could and could not do with the property". This effectively prevented either of their parents from earning income from the business. There was documentary evidence put in showing that the First Claimant received income, although what was done with the other 2 cottages was unclear. In any event, the rental income, the Claimants said, was used to fund this litigation. In August, 2023, the senior Francis wrote to each of the children asking them to vacate the cottages. On November 2, 2023 the Claimants wrote to their parents informing them that the 2 units they occupied would be used for rentals and requesting that their guests be allowed peaceful possession. The letter said that their guests would be advised "not to trespass on Unit 3

occupied by Lucia Francis and Unit 1 occupied by Keith Francis". This exchange took place in the period that the Claimants now say that Mrs. Francis was not in her full mental faculties. I understood the evidence from the Claimants on this point to be that they wished to memorialize their assertion to any legal rights that they had over the business or the property. This appears as the first reference in the evidence of the overt assertion of ownership rights to the cottage business by the Claimants.

[29] In any event, Mrs. Francis's Partition Application followed on December 6, 2023. It alarmed the Claimants, who say that their mother put all her children's names on the Keel Point property to make it more difficult to sell. She wanted it to remain in the family. According to the Claimants, she expected to live the rest of her days there. Overall, the Claimants contend that if their mother were of sufficient capacity, she would not be pursuing this course. The POA that was given in 2023 was then re-registered in the partition proceedings, possibly to facilitate Mr. Francis Sr.'s use of it in the proceedings. The Claimants consider this entire course of action to be driven by their father's selfish interests which in no way benefit their mother.

[30] Each Claimant gave evidence to demonstrate their suitability as Receivers. I have included Mr. Francis Sr in this analysis, as my inherent jurisdiction and the Act both oblige me to consider who an appropriate Receiver would be. I am not confined to considering only the Claimants for the reason that they have brought the claim. In addition, in such a matter as this where there is a party who is need of the court's protection, the court may and should take an inquisitorial rather than an adversarial approach. I now examine further, the evidence of each party in turn.

Mr. Kenny Francis

[31] The First Claimant said that he has a cordial and loving relationship with his mother. He used to live with her in St. Thomas, USVI until she moved to Anegada in the 1990s. He also moved to Anegada at a point and now lives only 200 feet from her. This gives him close proximity to her so that he can supervise her affairs if granted Receivership. He owns a café where his mother eats.

- [32] He did not consider that he was disrespectful to his father although they did have a physical altercation which he says was instigated by his father. In his oral evidence he described the deterioration of their relationship as stemming from an unrepaid loan since 2014. He does not consider that his father has his mother's best interest at heart. He described an incident in January, 2025 where he went to the ferry dock and his father had already gone in, leaving his mother on the dock. He assisted her in getting on the ferry. Since 2023 his father has prevented his mother from coming outside to interact with her children and expressed that he wished for his mother to establish a relationship with her grandchildren. His sister, the Second Claimant, will relocate to help with the execution of any duties under a Receivership.

Mrs. Kisha Francis-Williams

- [33] Mrs. Francis-Williams also stated that she had a good relationship with her mother. She regularly visited. She stated further that her brother Kenny had a special relationship with their mother. She herself was always a daddy's girl, but the relationship with her father is strained as she does not agree with how her father is treating her mother. She clarified in her oral evidence that it is the First Claimant who is prevented from seeing their mother and that her father does not interfere with her in this respect. She visited her mother twice in 2023, seeing her in church and on the ferry dock.
- [34] She is a qualified accountant with 18 years' experience, and she would love to see Keel Point Cottages up and running where all the owners collect their equal share and her mom's portion goes to her care and well-being. In 2023 they requested a welfare check for their mother from Social Development Department (the "SDD"), but this was not done. She believes that their mother has clearly in need of proper medical and mental treatment for some time now having regard to the reports that have now been submitted to the Court.
- [35] She does not believe that her mother is unhappy with her father but does not think that she understands her medical condition to know that he is not dealing with her in her best interest. Together with her brother Kenny and as a result of their close relationship with their mother, she knows that they are fit to be her Receivers and look after her best interest.

Mr. Rudolph Francis' evidence

- [36] Mr. Rudolph Francis was not formally appointed as a Next Friend or Guardian Ad litem but nonetheless advanced evidence on Mrs. Francis's behalf. I found Mr. Francis to be a witness of some frankness. He did not hesitate to confirm in oral evidence that he had an extramarital relationship with the person that the Claimant identified, but that it had ceased for a number of years. I do not consider this issue to be material and mention it only because it is identified as a source of some of the Claimants' outrage. I also observe that Mr. Francis Sr. neither demurred nor appeared to be arrogant when admitting this behaviour. It was simply so.
- [37] He admitted partitioning and selling a portion of the property some years prior; and said that it was to raise funds because the business was not generating sufficient income. He gave no evidence of Mrs. Francis specifically asking for any of her portion in Parcel 21 to be partitioned or sold in the present time. He frankly stated that she would do anything that he wanted, but he could not give any particular wish by her for its sale. When asked by the Court what his intentions were if he were granted Receivership, he stated that he would sell his wife's portion of the property and that they would move to Aruba. There was no mention at all of how his wife's needs would be met in this new country, which he himself did not have a deep connection to. Indeed, he had already identified a purchaser.
- [38] He gave no evidence as to why the POA was necessary at the time that it was executed, what he and his wife may have discussed in relation to it, or of what it might have been used for. He offered no evidence whatsoever in relation to his wife's specific wishes for Parcel 21 at the time of the grant of the POA or after even though the POA specifically mentioned that property. He acknowledged taking his wife for a mental capacity assessment in relation to her signature of the POA. It did not appear that Mr. Francis concerned himself as to whether he should have gone back for those results and accepted that he had not done so. He took his wife regularly to see her usual doctor, Mr. Vanterpool. He did not seem to appreciate that the findings of the psychiatrist suggested that his wife's cognitive decline might be affected by underlying issues.

- [39] Despite the appearance of a general lack of regard for his wife's wishes regarding Keel Point, Mr. Francis did not strike me as being uncaring of his wife. Certainly, Kenny Francis' evidence suggested a history of extra marital affairs, and he complained that his father sold his parents' property in St. Thomas, USVI and divided some of the money amongst the children, although his mother had wanted to keep it. This behaviour would have taken place when Mrs. Francis was younger and presumably of full mental capacity and yet the marriage persisted. I got the distinct impression that the conduct of the Francis' marriage was of a more conservative lean and in that dynamic, he was used to asserting himself and his wishes.
- [40] Mr. Francis Sr expressed frustration and disappointment at the actions of his children and that he did not want to be around them. At one point he usefully stated that he had no objection to the Claimants assisting with the care of their mother. Less helpfully, he also stated that he did not want to be anywhere near them. The theme of aversion to his son was more pervasive and he said that he might stay on the property if his son were not there. The Court must now consider what to make of this evidence in this situation.

Who Should Be a Receiver

- [41] I accept the findings of Dr. Samuels that Mrs. Francis' mental state deems her unable to manage and administer her property and affairs on her own. I therefore find accordingly that she should be deemed a patient within the meaning of the Mental Health Act. I consider that Receivership is an appropriate course. In light of that finding, the matter of who to appoint as her Receivers arises.
- [42] The Act does not give preferential treatment to relatives to become Receivers. The Court considered some relevant principles in **Sharmaine Fahie**¹ a pre-Act case and in **Stilton v Stilton** a post-Act case and they remained more or less the same. The court in **Fahie** approved the following passage from Halsbury's Laws of England 4th Ed, Vol. 30 para 1265:

"Choice of person to be appointed receiver. In appointing a receiver the court will prefer relatives to strangers, but a husband or wife, if any, has no paramount claim, and preference will be given to a receiver who can frequently visit the patient and supervise his affairs...The proposed receiver should reside within the jurisdiction, although this is not

¹ Claim No. BVIHCV 2008/0266

always insisted on... Regard will be had, as far as possible, to any expressions or wishes of the patient on the subject, but a receiver may not be appointed to investigate his own dealings.”²

- [43] In cases where there are complex family dynamics, it was expressed that independent receivers might be appropriate. In addition:

“... In exercising the Court’s discretion in appointing a Receiver the Court must take into account, all of the circumstances of the case and the fitness of the parties proposed, and will choose the persons that the Court considers will best serve the interest of the estate. In so doing, the Court will seek to appoint a person who is competent to act on his own initiative. The Court will be reluctant to appoint someone as a Receiver if that person does not have in depth knowledge of the property or affairs that belong to the estate.”³

- [44] I find it useful to start my analysis with my observations of Mrs. Francis at the trial. I shared the legal visitor’s observations that that Mrs. Francis was well groomed. I would add that she had the appearance of someone in good health notwithstanding the medical evidence that she suffered from various ailments. From her interaction with Counsel, her hearing impairment was apparent but she did not seem confused about anything. She moved well, she was verbal and she was generally expressive. I also observed throughout the hearing that she expressed support for her husband several times saying “Thank God for my husband!”. Towards the end of the hearing when parties were moving about the courtroom, she showed visible pleasure at seeing her daughter. I had no opportunity to observe any interaction with her son one way or the other.

- [45] There were, in fact, no allegations of physical neglect of Mrs. Francis either historically or at the present time. No one complained that she was not fed, clothed or cared for adequately on a daily basis. She got her medication so far as could be gathered and she was taken to the doctor regularly. It was not in dispute that Mr. Francis Sr was responsible for Mrs. Francis’ daily care, dressing and meals. Mr. Francis Sr. is very much someone with whom it will be necessary to contend. He has been Mrs. Francis’s companion for many years and it is apparent from her outbursts in court that he is a source of not only familiarity but some emotional comfort. Having seen and heard the witnesses, I find that Mr. Francis Sr. has proved his ability to take care of the needs of her person.

² Claim No. BVIHCV 2008/0266 at paragraph 26

³ Claim No. BVIHCV 2008/0266 at paragraph 29

- [46] In their post hearing submissions, the Claimants asserted that Mr. Francis advanced no evidence about the amount of Mrs. Francis's social security payment and how that sum is utilized and if it is utilized for her care and best interest. This complaint did not come up on their original case but the issue arose during the hearing when both were questioned about their evidence that their mother was sustained from pension/social security payments from her former USVI employment. Neither could quantify what these payments were when asked by the Court. The questioning was to understand what they knew about her financial status (or their father's) when they interrupted the cottage rental business. Mr. Francis did not come to the court specifically seeking any orders and was not accused of financial abuse. I do not find merit in this belatedly made complaint.
- [47] What was apparent was that Mr. Francis Sr. does not give much or possibly no regard to his wife's likely wishes with respect to the property. This does not in my mind equate to him financially abusing her, particularly given the history of their marriage as related by the Claimants themselves. It is also apparent that he must either be assisted or directed to ensure that she is comprehensively treated for her various medical conditions, particularly those which may have an impact on her cognitive health. He did not object to his daughter taking part in his wife's medical and financial affairs and his daughter likewise did not suggest that getting along with her father was impossible. The issues appeared to be around all of the parties working together and his desire to alienate Mrs. Francis' interest in the property and possibly move her from Parcel 21.
- [48] I am not persuaded that Mr. Kenny Francis is an appropriate person to be appointed as a Receiver of his mother's affairs. The manner in which he gave his oral evidence was impactful in its appearance of restrained anger. His openly contentious relationship with his father also gives some pause. No doubt it seems to be influenced by his love for his mother, but it does not bode well for the creation of a peaceful and supportive environment for her. Indeed he said that his mother has previously asked him to "keep the peace" with his father. On the Court's questioning he offered no insight as to how he intended to navigate the difficult father-son relationship. In Mrs. Francis' current living arrangements, and where both Claimants said that they would not separate their parents, the Court finds it difficult to appreciate how father and son are likely to co-operate with each other in the joint management of Mrs. Francis' affairs.

- [49] When cross examined by learned Counsel about the partitioning whereby the cottages would be separated from the rest of the property, he described the latter as “3 acres of nothing”. This was curious since it is the First Claimant who enjoys the benefit of running a separate business on the property, possibly 2. His witness statement also gave the impression that he lived at Keel Point long-term in that he described his close physical proximity to his mother as being a benefit of any Receivership order in his favour. However, in his oral evidence and later in his sister’s evidence, it appeared that Mr. Francis not only had a house elsewhere (stated to be unfinished), but according to his sister would move back there “when this was all over”. This impression of a lack of frankness about his living arrangements did not inspire confidence. It also contrasted with his father’s evidence, which was forthright even when its content was not particularly favourable.
- [50] In a situation such as this it is necessary for parties to find constructive means of resolving their difficulties with one another. I gathered that reliance would be had on the Second Claimant for this purpose and I now turn to consideration of her suitability.
- [51] Mrs. Francis-Williams expanded on her written evidence, doubling down on her willingness to come immediately to the BVI to help take care of her mother. She stated that she worked remotely and has adult children, so that relocating to Anegada would pose no difficulty. Her profession and evidence of previously helping her parents with bookings for the business, Mrs. Francis Williams has requisite skills for the responsibility of Receivership and the running of Keel Point Cottages. These should re-enforce the patient’s financial security.
- [52] She was upset and hurt by her father’s actions but did not display open hostility. She was also more generous in her assessment of her mother’s state of mind as it relates to her father.
- [53] There might have been more strident and frequent efforts towards involved visitation with her mother. From the written evidence that she visited Anegada in June and October, 2023. Under cross-examination these did not appear to be involved or even the primary reasons for her visits. She did not visit her mother at all in 2024. Unlike the case advanced by her brother, Mrs. Francis-Williams appeared to have a better chance of unimpeded access to her mother.

- [54] Another observation was Mrs. Francis-Williams' inability to articulate why she sanctioned the hostile possession of the Keel Point cottages. Each of the 3 children felt that 1 of the cottages was theirs, even though there was no cogent evidence of any such discussion or agreement with either of their parents to this effect. It is not disputed that it was the senior Francises who built the cottages and primarily ran the rental business and only their 2 names appear on the trade licence that allows the business to operate. None of them gave evidence of historically collecting income. Yet, possession that halted the flow of income to either of their parents was their preferred means of asserting their rights. Mrs. Francis-Williams removed herself from direct responsibility by saying that she and the First Claimant were not present when their brother made the decision to take over the cottages. She was not intimately familiar enough with her mother's income, in my view, to reasonably decide to interrupt possible inflow from the business for any purpose.
- [55] In sum I am not convinced that Mrs. Francis-Williams has demonstrated sufficient independence in her decision-making to act as sole Receiver. It is commendable on one view that she acted in solidarity with her siblings. As Receiver however, her obligation will be to act in the patients' best interest even if it upsets other family members.
- [56] The Court's primary objective is to ensure that the needs of the patient are being met. In a situation such as this where there are complex family dynamics, I consider that a Public Guardian or some other similarly designated body would be ideal for someone in Mrs. Francis' position. I am not aware of such an avenue, and I am reluctant to appoint a private third party, as no information is before me as to the financial health of Mrs. Francis's estate.
- [57] On a general view of the evidence, it appears that the Claimants are not particularly involved in the affairs of the patient, nor have they appeared to have made strident efforts to do so before commencing this claim. On the other hand, Mr. Francis Sr who is not a party per se to the matter, is intimately involved in his wife's affairs and her care. In all of the circumstances, I consider joint Receivership between father and daughter to be the most appropriate arrangement. I consider further that professional assistance to help the parties to contend with one another is in order; and will therefore make a counselling order.

[58] In these particular circumstances it is essential that the Receivers are in the same jurisdiction. I find therefore that any powers conferred on Mrs. Francis should be contingent on fulfilment of her offer to live on Anegada to assist with her mother's personal needs, particularly her medical needs. No doubt the presence of Mrs. Francis' daughter will enhance the quality of her daily life and might ease the re-establishment of wider familial relations.

[59] I consider further that any power conferred on the Receivers must include a hedge against any future decision to dispose of any part of Keel Point in Mrs. Francis' lifetime. The Receivers' powers will therefore be limited accordingly.

Whether the POA was void

[60] I have not seen any working in the POA granting any proprietary interest to Mr. Francis Sr. so as to make it irrevocable **Michael Joseph v RBTT Bank Caribbean Ltd⁴**.

[61] Receivership orders now being in place on the basis of mental incapacity, the question of whether Mrs. Francis had capacity at the time that she executed the POA is no longer relevant. The POA is therefore set aside and rendered void.

Keel Point Cottages

[62] For the avoidance of any doubt, however, I make no finding that the Claimants had an ownership stake in the business Keel Point Cottages. I find it necessary to make this point, as it appears that the advice received by one of the siblings from a government official may have conflated ownership of Parcel 21 with ownership of the business and thereafter caused a different approach to handling of some of the business assets being the cottages. This in turn affects how future income will be split and applied to the patient's benefit. What was presented to the court – including by the Claimants themselves – was more suggestive of the senior Francis being owners of the business and their children playing supporting roles. The Claimants rendered early assistance to their parents but did not control the cottages themselves prior to 2023. They disputed their father's evidence that

⁴ SLUHCV 2007/0067 at paragraphs 64 – 65

the business was doing poorly and that this necessitated his earlier sale of a portion of the property, but they did not assert specific evidence of what was happening either. They did not cause or procure Mr. Francis Snr's removal from the business documents after he sold 'his portion' of the property. No business bank accounts were shown or produced with their names on them. However since it was not specifically in issue in the proceedings, I decline to make a finding one way or the other, as parties may have deployed additional evidence if this been at the forefront of their minds.

- [63] Whatever the true position is, must be set out in any reporting by the Receivers who are now under statutory obligations to act in the patient's best interest. In the reporting obligations that will be imposed, the Receivers must therefore give account of monies earned from this business; the application of such monies; and justification for how they are so applied.

Orders

- [64] The Orders of the Court are therefore as follows: -

1. Mrs. Lucia Francis by reason of mental disorder, is incapable of managing and administering her property and affairs and is therefore deemed a patient as defined by section 32(2) of the Mental Health Act.
2. Kisha Francis Williams and Rudolph Francis are appointed Joint Receivers of the property and affairs of Lucia Francis with such powers as are incidental to and necessary to the exercise of their functions as joint receivers including those specifically mentioned in the Schedule hereto and subject to the limitations set out herein.
3. If for any reason Mr. Rudolph Francis cannot take up or continue the Receivership, he may nominate another party to do so and such nomination shall be brought to the attention of the court for its approval by way of an ordinary, on notice application with such evidence as Mr. Francis may deem necessary to support the nomination.
4. The Joint Receivers are to act jointly and not independently of each other.
5. The Receivership of Kisha Francis-Williams is contingent upon her being primarily resident in Anegada, BVI.

6. The Receivers must undergo family counseling. If no agreement can be reached on a service provider within 21 days, then such counselling shall be carried out by Dr. Jardine Torno or Ms. Sasha Stoutt, whomever is available first in time.
7. A report on the conduct of the Receivership must be submitted within the first four (4) months of this Order and thereafter at 6-month intervals to the Court, to the Social Development Department and to the Attorney General. Such reports must include but not be limited to the following:
 - i. Sufficient details of the financial affairs of the patient to show how monies earned or otherwise received on her behalf have either been retained or applied.
 - ii. An account from a licensed medical practitioner as to the treatment undergone by Ms. Francis for any of her currently identified ailments in the reporting period, including the number of medical visits undertaken further to such treatment.
 - iii. Report on attendance to counselling as ordered by this Court.
8. The Power of Attorney dated June 6, 2023 and registered as Instrument No. 203 of 2023 granted by Lucia Francis to Rudolph Francis is hereby declared void and of no legal effect.
9. The Second Claimant Kisha Francis-Williams shall, following the making of this Order, ensure that a copy of the Order is served on the Chief Registrar of Lands, the Social Development Department and the Attorney General within 7 days of the making of this Order.
10. The Receivers are to liaise with the Social Development Department which is hereby ordered to prepare and submit a report to the Court and the Attorney General on the patient Ms. Lucia Francis ten (10) months after the making of this Order.
11. If the Attorney General was not previously served with a copy of this claim, then the Attorney General has liberty to apply within 35 days after service of this Order on any matter of concern.
12. Each party shall bear their own costs and such costs must not be derived from any part of the estate of Mrs. Lucia Francis.

SCHEDULE

1. The Receivers for the affairs of Lucia Francis are empowered to take all necessary steps in relation to the care and attention of the said Lucia Francis including all medical and/or psychiatric or any other professional care, including the giving or withholding of consent for treatment.
2. The Receivers may reimburse out of the property of Ms. Lucia Francis, without interest, money applied by any person:
 - i. In the payment of debts of the patient
 - ii. For the maintenance and benefit of the patient or her husband
3. To acquire any property in the name of or on behalf of the patient
4. Take reasonable care of the patient's clothing, furniture, vehicles and other personal effects. Primary responsibility for this is vested in the Receiver Mr. Rudolph Francis unless he otherwise delegates same.
5. To institute suit on behalf of the patient and take conduct of legal proceedings in the name of the patient or on the patient's behalf.
6. With the express approval of the court, to execute a Will for the patient, making provision which could be made by a will executed by the Patient if the patient were not suffering from a mental disorder, whether by way of disposing of property or exercising a power or otherwise.
7. To exercise any supervisory authority over the patient.
8. To apply on behalf of the patient for any assistance, services or benefits available through any agency of any government.
9. To make arrangement with such agents, consultants, assistants and employees the JR may consider necessary or desirable to secure their assistance in the exercise of the Joint Receivers powers and the performance of their duties thereunder.
10. To exercise all the other powers, duties and responsibilities conferred on a Receiver by any applicable law including those rights and powers under section 33 Mental Health Act, 2014.
11. The Receivers must obtain the express approval of the court by way of application to sell or transfer any of Mrs. Lucia Francis's interest in the real property at Parcel 21 Block 5372A Anegada Registration Section or any other real property without the approval of the court obtained by an application setting out the reasons for same and any such other evidence as the Court may deem necessary.

[65] The formal order having not been sealed immediately after delivery, I considered it appropriate to vary the order of my own initiative to revise the original timelines, correct minor errors and also to give proper effect to the judgment order. The order therefore stands varied as of 29th September, 2024 as follows:

1. Paragraph 4 of the order of September 5, 2005 shall read as follows: -

The Joint Receivers are to act jointly and not independently of each other where practicable.

2. Paragraph 6 of the order of September 5, 2025 shall read as follows: -

The Receivers must undergo family counseling for a period of no less than one (1) year with an agreed, reputable counseling service within the British Virgin Islands. If no agreement can be reached on a service provider within 21 days, then such counselling shall be carried out by Dr. Jardine Torno or Ms. Sasha Stoutt, whomever is available first in time.

3. The timelines referred to paragraphs 6, 7, 9 and 10 of the order of September 5, 2025 shall run from September 30, 2025.
4. The Second Claimant shall also serve a copy of all claim documents and any other documents requested by the Attorney General for the purpose of paragraph 11 of the order of September 5, 2025.
5. This order shall be read and used together with the order of September 5, 2025.

[66] I express my thanks to Counsel for their conduct in this matter and for their helpful written submissions.

Akilah Anderson
High Court Judge (Ag.)

By the Court –

Registrar