

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2019/0533

BETWEEN:

MICHAEL ZOSER CHRISTOPHER

**CLEOPATRA FLORENCE HALL
Executrix of the Will of BERNARD CHRISTOPHER**

Claimants

And

**BERANDINE DELORES CHRISTOPHER
Executrix of the Will of BERNARD CHRISTOPHER**

**ETTIENNE CHRISTOPHER
Executor of the Will of BERNARD CHRISTOPHER**

Defendants

Appearances:

Ms. Diana Thomas of Counsel for the Claimants

Mr. David Moyston of Counsel for the Defendants

2022: November 28;
2024: May 22.

JUDGMENT

[1] **INNOCENT, J.:** This is an administration claim commenced pursuant to CPR 67 and article 853 of the Civil Code¹ in which the claimants seek the following relief, namely: (1) and order that the defendants be removed as Executors of the estate of the late Bernard Christopher (the 'Deceased'); (2) an order that the defendants render an account of the assets and liabilities of the estate of the Deceased; (3) an order that an inquiry be conducted into the legitimate and reasonable expenses of

¹Cap. 4.01

the Deceased's estate, if any, and that such expenses be deducted from dividends accumulated from the shares held by the Deceased's estate in the corporate entity Amurbroise Ltd. (the 'Company'); (4) an order that the immoveable property registered as Block 1254B Parcel 176 (the 'Redit Property') be immediately vested in the first named claimant and that leave be granted to the second named claimant to executing the vesting deed for this property exclusively; (5) an order that the immoveable properties registered as 1455B Parcel 711, 1054, 1250 and 1251 (the 'Bonne Terre Property') be forthwith vested in the first named claimant and that the second named claimant be at liberty to execute the said vesting deed to the exclusion of the other named Executors.

- [2] The Deceased died on 19th June 2008 leaving a last will and testament in notarial form (the 'Will') which was executed on 19th January 1989. The Will was admitted to probate on 18th February 2010.
- [3] By Clause of 1 the Will, the Deceased nominated, constituted and appointed the second named claimant and the defendants joint executors and trustees of his Will.
- [4] The claimants seek to have the defendants removed from their office as Executors of the Deceased on the citing what they described as hostility shown by them to the first named claimant; their failure to act with alacrity in administering the Deceased's estate by not executing the necessary documents to convey title to both moveable and immoveable property forming part of the Deceased's estate to which they are beneficially entitled despite numerous request to do so; failing to provide information concerning their administration of the estate and to render an account of their dealings and intromissions in the administration of the estate; and in all the circumstances of the case, the defendants have permitted wasting of the assets belonging to the estate.
- [5] In addition, the claimants alleged that apart from failing to distribute the assets of the Deceased's estate in accordance with the dictates of the Will, the first defendant who is the daughter of the Deceased has converted the assets to her own use and benefit.

- [6] The defendants denied that they had acted otherwise than in accordance with the terms of the Will or had behaved in a manner likely to delay the completion of their administration of the estate or that they had failed to act in as prudent administrators in their capacities as Executors and Trustees appointed under the Will. In fact, they attributed the cause of the delay to the claimants themselves and asserted that they had never failed to inform the claimants of their dealings with the estate and had in fact provided the claimants with an accounting of the assets and liabilities of the estate.
- [7] Although both defendants has filed defences to the claim, neither filed written evidence pursuant to the court's case management directives contained in order dated 28th July 2022. Therefore, the defendants did not call any evidence at the trial and the matter proceeded as if undefended. However, the defendants were permitted to cross-examine the claimant's witnesses.
- [8] In any event, notwithstanding the manner in which the trial proceeded, the court is still required to make an assessment of the evidence before it can arrive at any conclusion regarding whether the claimants are entitled to the relief claimed and if they are so entitled the nature of the orders that the court out to make in order to do justice to the case so that the dispute between the parties can be resolved in a manner that is best in keeping with the interest of the estate.
- [9] At the time of his death the Deceased held shares in the Company which engaged in the business of operating a bakery and the rental of portions of the building in which was owned by the Company in which it conducted its business operations.
- [10] The claimants alleged that at the death of the Deceased, the first named defendant appointed herself as General Manager and either appointed or confirmed the appointment of a manager.
- [11] According to the claimants, the first named defendant and the manger whom she appointed took exclusive possession of and managed the all of the assets of the Company and have continued to do so up to the time of filing the present claim. In

addition, the claimants maintained that the defendants have either failed or refused to vest or transfer the Deceased's shareholdings in the Company in the manner prescribed by the Will.

- [12] The claimants allege that by acting in the manner aforesaid, the first named defendant has contrary to and in breach of the provisions Clause 3(c) (iv) of the Will which specifically made the following bequest, namely:

“To pay or transfer the residue of my estate as follows:

(iv) I direct my Trustees to appoint an independent broker, company or corporation to appraise and evaluate my Stock Portfolio and to divide said stock equally between by son, Michael Zoser Christopher, and my daughter Bernadine Delores Christopher for their own use absolutely;”

- [13] In the premises, the claimants further allege that the defendants have acted otherwise than in accordance with their rights duties and obligations as Executors and Trustees of the estate and as such have abdicated their office and have committed what may be properly regarded as a flagrant breach of trust.

- [14] The claimants assert that the defendants have failed to adhere to or comply with their numerous request that they be provided with an accounting of their dealings with the estate and the assets and liabilities of the estate.

- [15] The defendants denied their failure to render an account of their administration and dealings with the estate. In their pleaded case they alleged that an account of the debts and liabilities of the estate had been submitted to the claimants' then solicitor; and that the claimants' solicitor had registered certain queries regarding what was submitted by way of accounts.

- [16] As it stands the court has before it no accounts pertaining to the estate. Therefore, it is safe to conclude that there are none in existence. This is an untenable state of affairs as it only serves to delay the administration of the estate. Additionally, the absence of proper accounting of the assets and liabilities of the estate creates the obvious challenge of the Executors being unable to effectively discharge their duties as prudent administrators. Given the nature of the discretionary powers conferred

on the Executors and Trustees under the Will, a proper accounting is necessary if they are to effectively and lawfully exercise that discretion.

[17] Of even greater importance is the fact that the defendants, unreasonably so in the court's view, have insisted that the conveyance of the first named claimant's interest in the Reduit Property and the Bonne Terre Property ought to be contingent on the settlement of the debts and liabilities of the estate.

[18] Therefore, it seems to the court that for this very reason the Executors ought to have undertaken a proper accounting and inventory of the assets and liabilities of the estate with all due expedition. There appeared to have been an attempt at a rudimentary accounting exercise which was never finalised.

[19] The court also found it unreasonable for the defendants to insist on the settlement of the debts and liabilities of the estate prior to distribution when the accounting for such assets, debts and liabilities of the estate have not been finalised with any degree of certainty.

[20] Therefore, the Executors are in no position to say whether the assets of the belonging to the estate are sufficient or insufficient to cover such debts and liabilities or whether there are sufficient assets to cover such debts and liabilities that would enable the distribution of the first claimant's bequest without him having to contribute to the debts and liabilities from the proceeds of sale of the Bonne Terre Property.

[21] The claimants maintained that the defendants, and in particular, the first named defendant having conducted themselves in the manner in which they did relative to the affairs of the Company; and in failing or refusing to vests the assets of the estate in those beneficially entitled thereto; claiming that the expenses of the estate was the responsibility of the first named claimant which ought to be deducted from his share of the estate only and in particular, the proceeds of sale from certain immoveable property forming part of the estate; wrongfully or improperly allocating the debts and liabilities of the Company as personal debts and liabilities of the Deceased, acted in breach of their duties as Trustees of the estate.

- [22] Before dealing with the vexing issue of whether the defendants ought to be removed as Executors and Trustees of the Will, the court will examine the powers of disposition conferred on the Executors and Trustees under the Will.
- [23] In addition to the matters mentioned above, the claimants also alleged that having failed to vest the Bonne Terre Property in the first named claimant, the defendants took the decision that the Company purchase the Bonne Terre Property without the approval of any directors appointed by the Company and without consultation with the first named defendant or his involvement in the making of that decision.
- [24] With respect to the Bonne Terre Property, the defendants claimed that following the probate of the Will, the Executors attempted to sell the Bonne Terre Properties according to the dictates of Clause 3(c) (iii) of the Will. However, they claimed that such a sale was subject to the payment of the just debts, funeral expenses and testamentary expenses of the Deceased accruing before and after his death.
- [25] In answer to the claim, the defendants denied that they had conflated the debts and liabilities of the Company with that of the estate. They claimed that it was agreed at a meeting of the Executors and Trustees that the proceeds of sale of the Bonne Terre Property would be applied towards the setting off of the debts and liabilities accumulated by the Deceased's estate emanating from his borrowing from the Company, his testamentary expenses and other expenses accruing to the estate; and that the remainder of the proceeds of such sale would be paid to the first named claimant.
- [26] The defendants also claimed to have made attempts to sell the Bonne Terre Property through the medium of real estate agents. They claimed that the highest offer received was in the sum of \$275,000.00 which fell well below the estimated market value of \$880,321.00.
- [27] It was alleged that a meeting of all the Executors and Trustees was convened where all parties were represented by legal counsel. It was alleged that at this meeting, the first defendant made an offer for the purchase of the Bonne Terre Property by the

Company at the price of \$880,312.00 and the Executors and Trustees acting in their capacity as shareholders in the Company acquiesced to the sale. It was also alleged that the first named claimant also agreed to the sale of the Bonne Terre Property to the Company.

[28] It appears from the evidence at the trial that the second named claimant admitted that the meeting in question had in fact taken place. She gave evidence that the first named claimant was also present at that meeting. She also appeared to have accepted that there was agreement on the proposal regarding the conveyance of the Bonne Terre Property at the meeting.

[29] The second named defendant also admitted to having signed a deed conveying the Bonne Terre Property to the Company. However, she claimed not to recall signing a deed relative to the Reduit Property. She stated however, that subsequent to the meeting of the Executors she categorically insisted that the Bonne Terre Properties were not to be sold and would have to be conveyed or transferred to the first named claimant. She admitted that the wishes of the Deceased as contained in his Will had to be complied with. In the court's view, that statement appeared to be an admission by the second named claimant that her desire to have the Bonne Terre Property conveyed to the first named claimant was otherwise than in accordance with the dictates of the Will.

[30] It is clear that the conveyance of the Bonne Terre Property to the Company has not been registered. However, the defendants contended that the Bonne Terre Property has already been sold. The second named claimant admitted having signed a deed for the Bonne Terre Property. This fact is evident from what has been exhibited by the claimants in the form of a Deed of Sale by Estate of Bernard Christopher to Amurboise Company Limited executed on 12th July 2014.² The deed of sale was signed by all of the Executors acting on behalf of the estate.

² Exhibit MZC12

- [31] However, what the court found disturbing was that it was also signed by one of the Executors purporting to act on behalf of the Company and that there is no recital in the deed of sale as to the capacity in which the signatories were purporting to act with the authorization of the Company. In addition, the court observed that the first named claimant who held the beneficial interest in the property being conveyed did not intervene in the making of the deed giving his consent or acknowledgement of his having relinquished this interest in the Bonne Terre Property.
- [32] The court makes the further observation that the evidence does not reveal explicitly the provenance of the funds used to purchase the Bonne Terre Property and the plight and destination of the proceeds of that sale. There appeared to be the suggestion that these funds were in dispute owing entirely to the question of whether these funds were to be used to settle the debts and liabilities of the estate.
- [33] The first named claimant also admitted that the Bonne Terre Property was put on the market and that for about a year there was no satisfactory offer that the Executors were willing to accept.
- [34] It was alleged that sometime in the year 2016, the second named claimant recanted her decision to have the Bonne Terre Properties conveyed to the Company and instead insisted that the said properties be conveyed to the first named claimant, which in the defendants' view ran contrary to the dictates of the Will.
- [35] The first named claimant admitted to having attending more than one meeting with the Executors. He said that he knew Mr. Monplaisir QC who assisted him with his father's will. He agreed that he attended a meeting with Mr. Monplaisir QC and the Executors.
- [36] Now the testimony of the first named claimant at the trial is interesting and sheds significant light on the issues surrounding the Bonne Terre Property. Essentially, he testified that the proposal for the conveyance of the Bonne Terre Property was made at the meeting with the Executors. He said that it was a verbal proposal.

- [37] In addition, he testified to the effect that the conveyance to the Company was executed many years afterwards, that is, after the transfer of the shareholding in the Company to himself and the first named defendant. He testified that the Deceased was the sole shareholder in the Company and that this shareholding was transferred to him and the first named defendant in equal shares thereby they each held one-half of the Deceased's shareholdings. He agreed that he did not object to the conveyance of the Bonne Terre Property to the Company. According to him the shares may have been transferred sometime in 2017. The court did not have the benefit of the share transfer or the corporate documents of the Company before it. Also, no evidence was given relative to the directorate of the Company at the time that various transactions in particular the conveyance to the Company were undertaken.
- [38] There appeared to be divergent views concerning whether the Bonne Terre Properties ought to be sold or otherwise vested in the first named claimant.
- [39] With respect to the Reduit Property, the defendants had alleged in their pleaded case that a vesting deed relative to the Reduit Property was executed on 16th October 2012, but had not been registered pending the determination of the expenses of the estate; a matter which they claimed the claimants were well aware of.
- [40] Indeed a vesting deed was executed as indicated.³ However, this deed has not been registered and therefore title to the Reduit Property has not passed to the first named claimant.
- [41] Ms. Diana Thomas ('Ms. Thomas') Counsel appearing for the claimants submitted that the only reason why the first named claimant has sought to have the Bonne Terre Property vested to him is because of the delay in administering the estate which he claimed was attributable solely to the Executors.

³ Exhibit MZC6

- [42] In addition, he cited the Executors' failure or refusal to authorise the disbursement of the proceeds of sale to him. Ms. Thomas argued that the first named claimant withdrew his initial consent to the sale on the grounds that he did not accept the Executors' insistence that the debts and liabilities of the estate be deducted from the purchase price payable to him.
- [43] According to Ms. Thomas the deed of sale remains inchoate. In addition, she cited the fact that although the deed of sale recites that the consideration had been paid at the execution of the deed that this was indeed not the case.
- [44] Furthermore, Ms. Thomas submitted that there is no evidence that the signatories who executed the deed of sale on behalf of the Company were authorised to act on behalf of the Company on the sale. Ultimately, she submitted that if the deed cannot be considered a nullity, then the first named claimant is entitled to the proceeds of sale from which no deductions for the debts and liabilities of the estate are to be made.
- [45] Ms. Thomas' fallback position was that the Executors hold the Bonne Terre Property on trust for the first named claimant as an adult beneficiary to whom a specific or particular bequest was made. Therefore, the first named defendant is entitled pursuant to the rule in **Saunders v Vautier**⁴ to terminate the trust in his favour and request the immediate vesting of the Bonne Terre Property; the first named claimant being the sole beneficiary sui juris.⁵ The court is not sure that the above-cited authority can avail the claimants.
- [46] It is important to examine the precise bequest made in the Will. The following appears at Clause 3 of the Will:

"I give, devise and bequeath all my property of every nature and kind wheresoever situate, including any property over which I may have a general power of appointment to my said Trustees upon the following trusts, namely:

⁴ (1841) 41ER 482

⁵ Article 619A Civil Code

(c) To pay or transfer the residue of my estate as follows:

(iii) I direct my Trustees to forthwith upon my death, sell and convert into liquid cash undeveloped land known as Bone Terre, located in St. Lucia and all net proceeds of such sale, I bequeath to my son, Michael Zoser Christopher for his own use absolutely.”

[47] The court has also examined the provisions of Clause 10 of the Will in considering the question whether the Trustees are authorised by the Will to convey the Bonne Terre Property as opposed to selling the same. Clause 10 of the Will provides:

“My Trustee in making any division of my estate or any part thereof or in setting aside or paying any share or interest therein may either wholly or in part divide, set aside or pay over in specie the assets forming my estate at the time of such division, setting aside or payment, or such of the assets as he/she may deem advisable, and I expressly will and declare that my Trustee may in his/her absolute discretion fix the value of my estate and of the assets thereof and any part or parts thereof for the purpose of making any such division, setting aside or payment or for any other purpose in the administration of my estate and the decision of my Trustee shall be final and binding on all persons concerned.

[48] In the court’s view, the provisions of Clause 10 of the Will confers a very broad discretion on the Trustees and in particular authorises them to distribute the assets of the estate in specie, that is, it permits the transfer of the assets of the estate in their current form rather than in cash. Such a situation would generally arise where cash is not readily available or it is not practicable to liquidate the asset.

[49] In the present case, the court is not quite sure that it can endorse the transfer of the Bonne Terre Property to the Company. There is in the court’s view a certain absurdity that arises from such a course of action. Clearly, it cannot be said that such a transfer would not redound to the benefit of the first named claimant though not in keeping with the dictates of the Will. The fact that the first claimant and the first defendant each hold half of the shareholdings in the Company means that they each have ½ share in the assets of the Company.

[50] Therefore, it seems, assuming that the first named claimant was paid the assessed value of the Bonne Terre Property, it means that he would obtain a windfall by virtue of his shareholding in the Company; essentially having his cake and eating it too.

Assuming that the purchase price of the property was paid out of the liquid assets of the Company, this would mean that the amount of the liquid assets of the Company would be reduced with the concomitant effect that the value of the shareholding in the Company may be affected and the amount of accumulated dividends thereby reduced. This is not a farfetched assumption. The court does not subscribe to the practicality of such a transaction.

[51] In the court's view, the more practical arrangement would have been the exercise of the by the Trustees of the discretion which they possessed by virtue of Clause 10 of the Will. In the premises, the court endorses the vesting of the Bonne Terre Property in the first named claimant to be practical alternative.

[52] Nevertheless, although the Reduit Property has not been conveyed to the first named claimant in keeping with the provisions of the Will, it appears from the first named claimant's own admission, that he is in actual possession and occupation of that property.

[53] Relative to the claimants' assertions concerning the defendants' committing waste of the assets by permitting the Reduit Property to fall into a state of disrepair, the court has formed the view that this may not necessarily be altogether a fair assessment of the defendants' conduct in the administration of the estate. It appeared from the evidence that the second named claimant had access to the Reduit Property from on or about the year 2010. The first named claimant admitted to living at the Reduit Property. He said that the second claimant gave him the keys to the property a few years before and that prior to the handing over of the keys to him his mother was in possession of that property.

[54] The defendants have pleaded that the shares held by the Deceased in the Company have been transferred to the beneficiaries in accordance with the Will; and therefore, the payment out of the dividends accruing to these shares to cover the debts and liabilities of the estate is now impossible.

- [55] In the premises, the claimants contended that the defendants, in particular the first named defendant, with the acquiescence or participation of the second named defendant, failed to properly or adequately carry out their duties as Trustees appointed by the Will and have for all intents and purposes acted outside the remit of their powers under the Will and have acted otherwise than in the best interest of the estate.
- [56] In the court's view, it does not appear that the preceding lamentation made by the claimants aptly describes the conduct defendants' conduct in the discharge of their office. It seems to the court that the Executors merely lack the level of skill and knowledge necessary for the proper discharge of the duties of their office. This is not uncommon state of affairs. In the circumstances, and having considered the evidence of both claimants, the court does not find that this allegation levelled at the defendants has not been properly made out or made out at all.
- [57] Moreover, the claimants contended that the defendants have failed to involve the second named claimant in the administration of the estate and have made decisions concerning the estate severally or jointly as among themselves to the exclusion of the second named claimant.
- [58] Having heard the evidence coming from both claimants, the court does not think that the preceding assertion is correct. It appears from the evidence that there has been consultations and exchanges between the claimants and the defendants concerning the dispositions to be made under the Will and by extension the administration of the estate by the Executors.
- [59] The claimants also held the position that the second named defendant has by his conduct and failure to participate in the administration of the estate by permitting the first named defendant to act almost unilaterally has by his conduct displayed a general apathy towards his role as Executor and Trustee. Given the manner in which the trial progressed, it becomes a challenge for the court to properly assess these allegations and consequently the court makes no findings of fact in relation thereto.

In any event, the court is of the view that this issue may not exactly be dispositive of the dispute between the parties.

[60] Having considered the various allegations contained in the pleadings and the evidence presented to the court at the hearing, it appeared that the following issues arise for the court's consideration, namely: (1) whether the defendants should be removed as Executors of the estate; (2) whether the court should make an order directing the second named claimant to perform certain acts as Executor to the exclusion of the other Executors; (3) whether the debts and liabilities of the estate ought to be paid out of the proceeds of sale of the Bonne Terre Property; (4) whether the vesting of the Reduit Property should be executed only after the debts and liabilities of the estate have been settled and (5) whether the court should make an order directing any act to be done in the administration of the estate which the court could order to be done if the estate were being administered or executed under the direction of the court.

[61] The Executors and Trustees can only exercise those powers within the confines of the Will insofar as those directives are not contrary to law or impossible to carry out or falls outside the ambit of the discretion which they are mandated to exercise in conformity with the Will. It is not appropriate, otherwise than in the manner in which the court has alluded to for Executors and Trustees to unilaterally decide to change the directives given by the testator. The duty of the Executors and Administrators is to give effect to the Will. Therefore, much is dependent on the interpretation of the Will itself.

[62] Article 853 gives the court the power to remove a testamentary executor and sets out the circumstances in which the court may exercise such a power. Article 853 provides:

"If, having accepted, a testamentary executor refuse or neglect to act, or dissipate or waste the property, or otherwise exercise his functions in such a manner as would justify the dismissal of a tutor, or if he have become incapable of fulfilling the duties of his office, he may be removed by the Court."

- [63] The court has a broad discretion as to whether to exercise its power to remove a personal representative. The grounds for a removal of a personal representative are the same as those for the removal of a trustee and similar considerations apply. The grounds for removal are wide ranging and a removal application is usually based on some disagreement between the beneficiaries (or at least one of them) and the personal representative. The application, if it is a contested application, will usually involve some allegation of fault on the part of the personal representative. However, not every mistake made by a personal representative will result in his removal.
- [64] The overriding consideration was whether the estate was being properly administered. A useful guide being the welfare of the beneficiaries. It must be shown on the facts of the case that there was some basis for the removal of the executor. The matters relied on, when taken individually or together, should provide a real basis for supposing that, if the executor remained in office, the estate would not be administered satisfactorily, or that the welfare of the beneficiaries called for a change.⁶
- [65] Friction and hostility between the personal representatives on the one hand, and one or more beneficiaries on the other, is often cited as a ground for removal of a personal representative. However not all friction will be sufficient to result in the removal of the personal representative, particularly one who is unwilling to give up office and who has the support of some of the beneficiaries. Such friction will only be relevant if it will interfere with the proper administration of the estate. The court will also consider the expense involved in replacing the executors and if it will be very expensive may decline to exercise its discretion.
- [66] It is the duty of the court to see that estates are properly administered, and, therefore, even though no charge of misconduct is made out against an executor, the court will remove him if satisfied that his continuance in office would be detrimental to the proper administration of the estate. Friction or hostility between the executors and the beneficiaries of the estate is not of itself a reason for the

⁶ Kershaw v Michlethwaite [2010] EWHC 506 (Ch)

removal of the executor, but it will not be disregarded by the court when grounded on the mode in which the estate has been administered. The main guide for the court, when considering whether an executor should be removed, must be the welfare of the beneficiaries.⁷

[67] When considering the replacement of an executor (as opposed to an administrator), the views of the testator in appointing the particular executor will be taken into account. If the testator had taken great care in the identification of the executor, this will be a factor which will be given significant weight in the exercise by the court of its discretion.⁸

[68] Article 849 of the Civil Code provides that if probate has been granted to several joint executors, who have the same duties to perform, they have all equal powers and must act together, unless the testator has otherwise ordained.

[69] In the present case, none of the contingencies prescribed by clause 2 of the Will have arisen. Therefore, it was incumbent on the co-executors of the Will to act together. The court cannot stress any further the importance of the executors acting jointly. It did not appear to the court however, that the executors in this case have acted unilaterally in making decisions concerning the administration of the estate. This is consonant with the court's earlier finding that there had been copious consultation between the parties and exchanges between their respective legal representatives. Therefore, the court declines to find that the claimants have made out this aspect of their case.

[70] What the court finds inimical to the proper administration of the estate in the present case is the significant delay in completing the administration and winding up of the affairs of the estate; and even more perplexing, the failure to make a proper accounting and inventory of the assets and liabilities of the estate.

⁷ Letterstedt v Broers and another [1881-85] All ER Rep 882; Estelle Wheatley v Darwin Blyden and another [2017] ECSCJ No. 92 followed in Johnatan Barley v Cynthia Bailey Fontinelle [2021] ECSCJ No. 612

⁸ Per Ellis J. at para 65 in Wheatley v Blyden and another; Article 841 Civil Code

- [71] In an earlier commentary the court would have stated that the absence of a proper accounting of the assets and liabilities of the estate has contributed tremendously to the delay in completing the administration of the estate; and that for all intents and purposes it made the defendants' insistence that the debts and liabilities of the estate be paid out of the first claimant's share prior to the vesting in him that to which he is entitled, even more unreasonable. Clearly, there has been no effort to have these unascertainable debts and liabilities become ascertainable with any degree of alacrity that would hinder this inordinate delay.
- [72] The defendants ought to be reminded of the provisions of article 599 of the Civil Code which states a personal representative shall administer the succession which by law devolved upon and vested in him or her and shall perform all his or her obligations with the least possible delay, and he or she shall thereafter, not later than one year from the date of the probate or letters of administration, distribute amongst the heirs or legatees, the property of the succession in accordance with the will of the deceased or the provisions of the Code relating to the devolution of successions. In the present case, the Executors have fallen woefully short of the prescription contained in article 599 of the Code.
- [73] It appears that the defendants have attributed the delay in vesting the Bonne Terre Property and the Reduit Property in the first named claimant to the outstanding liabilities of the estate which they insist ought to be paid out of the first named claimant's share of the estate.
- [74] Ms. Thomas has conceded that the expenses and liabilities of the estate must be settled out of the assets of the estate. However, she disagreed with the position adopted by the defendants that the beneficiary who comes into possession of the estate must bear all the expenses of the estate. The court agrees with this submission.
- [75] The court was referred to the provisions of article 677 of the Civil Code which provides:
- "An heir who comes alone to the succession is bound to discharge all the debts and liabilities.

The same rule applies to a universal legatee.

A general legatee is held to contribute in proportion to his share in the succession.

A particular legatee is bound only in case of the insufficiency of the other property and is also subject to hypothecary claims against the property bequeathed with recourse however against those who are personally responsible”

[76] In the court’s view the penultimate passage in article 677 of the Code is relevant to the present proceedings. Ms. Thomas has rightfully submitted that the bequest to the first named claimant is in the nature of a particular legacy and therefore would not first be charged with payment of the debts and liabilities of the estate. In order for the contrary to apply, the defendants would first have to show that the other assets of the estate were insufficient to pay the debts and liabilities of the estate. The defendants have failed to show demonstrably that this is indeed the case. This may very well be attributable to the fact that they have failed to conduct an account and inventory of the estate.

[77] In the premises, the court is of the view that the debts and liabilities of the estate are to be paid out of the assets of the estate and not from the bequest made to the first named defendant.

Conclusion

[78] For the reasons which the court has stated in this judgment the court does not think that it would be expedient at this stage to remove the present executors. In the court’s view, this would only prolong the already inordinate delay in the administration of the estate. In addition, the court has taken the position that what is required to complete the administration of the estate in this instance is the court’s supervision.

In the circumstances the court will make the following orders:

- (1) The claimant’s claim that the defendants be removed as Executors and Trustees of the estate of Bernard Christopher is dismissed.

- (2) That the Executors and Trustees appointed under the will of Bernard Christopher shall forthwith engage the services of a certified accountant to take and inventory and provide an accounting of the assets and liabilities of the estate of Bernard Christopher and an accounting of the Executors' and Trustees' dealings with the said estate. The accountant so appointed shall file the said accounts with the court within six (6) months of the date of this order.
- (3) Should the said Executors and Trustees fail to agree on the appointment of a certified accountant, then an application shall be made to the court for that purpose within 14 days of the date of this order.
- (4) The just debts and reasonable expenses of the estate, including all testamentary and funeral expenses, if any, shall be deducted from the dividends accumulated from the shares previously belonging to the estate and now vested in the first named defendant and the first named claimant.
- (5) The Executors and Trustees shall forthwith vest Reduit Property registered as Block 1254B Parcel 176 in the first named claimant. Should the Executors and Trustees fail to vest the Reduit Property within a reasonable time, then Ms. Diana Thomas shall be appointed conveyancing counsel and shall have the responsibility of preparing the relevant vesting deed and the same shall be executed by the Registrar of the High Court on behalf of the said Executors and Trustees.
- (6) The Executors and Trustees shall forthwith vest the Bonne Terre Property being Block 1455B Parcels 711, 1054, 1250 and 1251 in the first named claimant. Should the Executors and Trustees fail to vest the Reduit Property within a reasonable time, then Ms. Diana Thomas shall be appointed conveyancing counsel and shall have the responsibility of preparing the relevant vesting deed and the same shall be executed by the Registrar of the High Court on behalf of the said Executors and Trustees.
- (7) Given the manner in which the administration of the estate has progressed, the court is of the view that the first named claimant is entitled to the benefit

of an award of costs in the proceedings; such costs to be assessed if not otherwise agreed within 21 days of the date of this judgment.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar

