

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

SLUHCV2017/0616

BETWEEN

VERONICA HOLLY
(Representative of the estate of Elphege Edward Laurence Joseph aka
Edward Joseph aka Chef Harry)

Claimant

and

GREGORY NEIL aka GREGORY NIEL
(Representative of the estate of Elphege Edward Laurence Joseph aka
Edward Joseph aka Chef Harry)

Defendant

Appearances:

Kimberly Roheman for the Claimant
The Defendant unrepresented

2018: February 28th
March 9th

JUDGMENT

[1] **Smith J:** The Claimant and the Defendant are co-executors of the last will and testament (“the will”) of Elphege Edward Laurence Joseph (“Mr. Joseph”). The Claimant seeks, under Parts 67.1 and 67.4 of the **Civil Procedure Rules**, which provides for non-adversarial claims, the determination of the Court as to the validity and interpretation of certain bequests in the will and whether the will is void for uncertainty. Why the other executor, Mr. Gregory Neil, has been made a

defendant is unclear. It appears that he never responded to counsel for the Claimant's invitation for him to join in the application before the court and was therefore made a Defendant. In any event, the Defendant does not oppose the claim and appears equally interested in getting the Court's determination.

[2] Mr. Joseph died on 24th September 2014 at Victoria Hospital, Castries, St. Lucia, leaving a will dated 24th May 2010. It was a notarial will which was admitted to probate on 4th March 2015 (Probate SLUHPB2015/0082).

[3] By Fixed Date Claim Form filed 17th October, 2017, the Claimant seeks a determination as to the interpretation and validity of the following clauses in the will:-

- "11. My Trustees shall hold my estate on trust for sale with power to postpone sale to pay executors expenses and debts which becomes payable because of my death. All income received after my death shall be treated as income of my estate regardless of the period to which it relates and the statutory rules concerning apportionment.
12. My Trustees shall hold the residue ('my residuary estate') on the trusts of the following clauses.
13. I give devise and bequeath 10 percent of my Residuary estate to each of the following: my niece VERONICA HOLLY of 9 Cato Road, Clapham SW4, my niece SARAH JERADOF 7 College Cross, Islington London N1, my employee Gregory Niel of Babonneau, Gros Islet, my employee VINCENT LA FORCE of La Clery, Castries, my friend Randy Chango of the USA, my employee HAMLETT ALEXANDER of the Green Parrot restaurant and hotel who survive me but if any of them dies before me his or her issue shall upon attaining twenty-one years take equally per stirpes the share which such deceased child would otherwise have inherited but none of my issue shall be entitled to benefit while his or her parent is eligible.
14. My Trustees shall hold in trust the remaining 40 percent of my residuary estate and my business the Green Parrot restaurant bar and hotel free of all debts (the trust fund) on the following discretionary trust.

15. Trust Fund

1. In this clause:

- a. The Trust Fund' means my residuary estate.
- b. My Beneficiaries' are the following:
Those young people wishing to follow education or training in the hospitality industry."

- [4] The Claimant's concern is that clause 11 of the will speaks to 'my estate' being held "on trust for sale", which implies that the entire estate is to be held on trust for sale. There is however no named beneficiary.
- [5] In relation to Clause 12 of the will, the Claimant's concern is that it speaks to the trustees holding a residuary estate, but the residuary estate is not clearly identified.
- [6] In relation to Clause 13, the Claimant's concern is that it speaks to a behest of 10 percent of the residuary estate to each of 5 heirs (Veronica Holly, Sarah Jeradof, Gregory Niel, Vincent La Force and Hamlett Alexander) but the Claimant is uncertain whether the intention is that 10 percent of the residuary estate be distributed among the five heirs or whether each of the five heirs should receive 10 percent of the residuary estate.
- [7] Clause 14 of the will then speaks to the trustees holding "the remaining 40%" of the residuary estate. The Claimant's concern is that this creates uncertainty since, if each of the five heirs is bequeath 10 percent of the estate, then Mr. Joseph must have meant "the remaining 50 percent" and not "40 percent" of his residuary estate. Alternatively, if he meant for only 10 percent of his residuary estate to be distributed among his five heirs, then the residuary estate would be 90 percent.
- [8] In relation to Clause 15, the Claimant's concern is that the intended beneficiaries of the trust fund (the residuary estate) are "*Those young people wishing to follow education or training in the hospitality industry*" which is too vague in that it is not possible to identify persons who wish to pursue said course of education. It is not an ascertainable class of persons.

- [9] In approaching the interpretation of the will, I think that all attempts should be made to give effect to the intention of the testator to the extent that this is possible and to reconcile conflicting provisions of the will if indeed this can be done without contrivance.
- [10] Clause 1 of the will provides that:
“I devise that all my just debts, funeral and testamentary expenses be paid by my Executor hereinafter named as soon as possible after my death.”
- [11] Later, at the second clause 11 (there are two clause 11s), it states that “my trustees shall hold my estate on trust for sale with power to postpone sale to pay executorship expenses and debts which become payable because of my death.” I interpret this to mean that all executorship expenses and funeral expenses shall be paid by the executors and what remains – the residuary estate - shall be held on trust for sale. The will is silent as to who are to be the beneficiaries of the trust for sale. I do not think that is an uncertainty that is fatal to giving effect to the will.
- [12] In the English case of **Sherratt v Bentley**¹, Lord Brougham LC said:
“...the great weight of authority, both of Lord Coke and the modern decisions, is in favour of regarding a subsequent gift in a will as revoking a prior gift to which it is repugnant and not rendering the will void for uncertainty.”
- [13] At clause 13 of his will, Mr. Joseph clearly intends outright gifts to be made to six beneficiaries (not five as interpreted by the Claimant). These six named beneficiaries are: Veronica Holly, Sarah Jeradof, Gregory Niel, Vincent La Force, Randy Chango and Hamlett Alexander. To the extent that this conflicts with the instruction at clause 11 of the will that the residuary estate be held on trust for sale, this gift at clause 13, being a subsequent gift, revokes the prior uncertain gift.
- [14] Clause 13 of the will states: “I give and bequeath 10 percent of my residuary estate to each of the following...” (underlining supplied). Without putting any strained interpretation on those words, I think that the natural and ordinary

¹ [1824-34] All ER Rep 613

meaning of those words is that 10 percent of the residuary estate goes to each beneficiary. It is not that 10 percent of the residuary estate shall be distributed among each of the beneficiaries.

[15] Any doubt about this is plainly resolved at clause 14 of the will, which speaks to the trustees holding the remaining 40 percent of the residuary estate for the trust fund. If each of six named and identifiable beneficiaries receive 10 percent of the residuary estate, then what remains of the estate must be 40 percent.

[16] The bequest to “Those young people wishing to follow education or training in the hospitality industry” presents obvious difficulty. I agree with the claimant that no means are provided to ascertain who such persons might be, who is a “young” person and, further what pursuits might qualify as being part of the hospitality industry.

[17] **Williams on Wills** 2nd Edition provides as follows:

“Kinds of gifts which are void for uncertainty:- The following are examples of gifts which are void for uncertainty.

- (1) Gifts which are wanting in particularity of expression, as to the subject or object of the gift, where no person is nominated by the testator or other means provided for giving particularity or such means fail, and no rule of construction assists the court.
- (2) Gifts which depend upon an infinite number of things;
- (3) Gifts which may have two or more alternative meanings, where there is nothing in the context or the admissible evidence or any rule of construction to assist the court in resolving the ambiguity.”

[18] The intended bequest at clause 15 of the will is therefore void for uncertainty.

[19] I therefore make the following Orders:

- (1) The Claimant and the Defendant as Co-Executors shall pay all funeral, testamentary and executorship expenses from the Estate of Mr. Joseph.

- (2) The Claimant and Defendant, as Co-Executors, shall take the necessary actions in order to give to each of six named beneficiaries named at clause 13 of the will, 10 percent of the residuary estate of Mr. Joseph that remains after payment of the funeral, testamentary and executorship expenses.
- (3) The remainder of the estate devolves on intestacy.

Godfrey P. Smith SC
High Court Judge

By the Court

Registrar