

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHCV 0750/2006

BETWEEN

**COLIN GEORGE
IVA MAY GEORGE**

Claimants

AND

MORRIEL JENNETH GEORGE-CARR

Defendant

Appearances:

Mr. Steadroy Benjamin for the Claimants
Ms Sherrie Ann Bradshaw Defendant

2012: February 20
June 6

JUDGMENT

INTRODUCTION

- [1] **REMY J.:** This case serves as a salutary reminder of the fact that, because it is impossible to legislate or testify from the grave, one should, during his lifetime, take all appropriate legal measures to ensure that, after his death, his wishes are clearly made known, so that his property, no matter how large or small, is clearly ascertained, and his beneficiaries clearly identified. This will obviate against, or else assist in the resolution of the disputes which unfortunately arise in many instances, not excluding those involving family members.

[2] The Claimants Colin George and his sister Iva May George, by Fixed Date Claim filed on the 20th March 2006, brought an action against the Defendant Morriel Jenneth George-Carr in her capacity as Personal Representative of the Estate of Samuel George, deceased.

[3] The Claimants' claim is that they are the children of the deceased Samuel George, and are the brother and sister respectively of the Defendant. In his Affidavit in support of the Fixed Date Claim filed on the 25th July 2006, which the Claimant Colin George states is being filed on behalf of himself and his sister, the Second named Claimant, Colin George deposes as follows:-

- i). On the death of his father Samuel George, the Defendant applied for and was granted Letters of Administration of the deceased Samuel George.
- ii). Having obtained Letters of Administration on the 5th January 1996, the Defendant purported to distribute the assets of the estate among those entitled to share, but to the exclusion of himself and the Second Claimant.
- iii). The Defendant swore to and filed an Affidavit in verification of the account of the Estate of the deceased (the Estate) in which it is shown that the gross value of the Estate amounted to \$250,000.00, but which value he believes "to be less than the true amount and value thereof."

[4] The Claimants' claim is for:-

1. An Order that the defendant Morriel Jenneth George-Carr as Personal Representative of the Estate of Samuel George, deceased be ordered to furnish proper particulars and accounts of all monies received in respect of the estate of the said Samuel George.
2. An Order directing that the Defendant administer the estate of the Deceased in accordance with the law governing Intestate Estates.

3. An Order directing that the residual property (real and personal) of the deceased's estate be identified and transferred to the proper persons entitled on the intestacy.
4. Costs against the defendant personally.

EVIDENCE

- [5] The first named Claimant Mr. Colin George testified on behalf of the Claimants and called one witness, namely his uncle Mr. Leslie George. The Defendant Mrs. Morriel Jenneth George-Carr testified on her own behalf and called no witnesses. The Court had the opportunity to listen to and to observe the demeanour of the witnesses at the trial and to assess their credibility and reliability.
- [6] A Witness Summary was filed on behalf of Mr. Colin George. This Witness Summary was tendered at the trial as his evidence-in-chief. The evidence as contained in the Witness Summary is essentially a repetition of what was deposed to in his Affidavit in Support of the Fixed Date Claim. The contention of Mr. Colin George is that he is a child of the deceased Samuel George and is therefore entitled to a share in his estate. Further, that the Defendant wished to deprive himself and his sister of "their just entitlements under their father's estate," and that the Defendant's conduct and her "alleged administration" of the estate of Samuel George "can properly and decently be termed as unconventional, irregular and filled with mala fides" towards himself and his sister Iva Mae George.
- [7] Under cross-examination, Mr. Colin George testified that Samuel George's name was not always noted on his birth certificate as his father, and that the name entered on his birth certificate as his father was that of David Bachelor, who was married to his mother. He testified that prior to bringing these proceedings, an application was made on behalf of himself and his sister Iva May George for Samuel George to be declared their father, but that he "could not recall" when that application was made. He testified that he could not recall the date, but he "thinks" that he saw a publication in the newspaper regarding the estate of Samuel George. He testified that he did not go to an Attorney, because he

"did not see the need to" because Samuel George "is his father" and he "knows he is entitled to whatever he leave behind, because he (Samuel George) always mention his name."

[8] Mr. Colin George testified that he knew the chattel house is valued at \$24,000.00 because he "got a carpenter to go and check it for him." He stated that there was not "much furniture" in the house. With respect to bank accounts, the witness testified that he knew the deceased had "some money" in the bank, but he never discovered how much was there, so he did not "follow it up." He knew that the property at Paradise View was sold in 1996. He agreed that at that date, David Bachelor was recorded on his birth certificate as his father, and not the deceased Samuel George. He stated that neither himself nor his sister Iva May George "talked to Morriel", the Defendant, about it. He was not aware that himself and Iva May were not entitled to the estate of Samuel George because Samuel George's name was not on their birth certificates.

[9] Mr. Colin George further testified that he sought the services of an Attorney in 2005. Between 1996 – when the property was sold- and 2005, he did not seek the services of an Attorney, but was "just waiting and hoping that he would get his share." He stated that himself and his sister Iva May received some monies in 2005, and that the name of David Bachelor was still on their birth certificates at that time. He stated that David Bachelor is "really not his father." The Court proceedings in 2009 were to get David Bachelor's name removed from his birth certificate and to insert the name Samuel George, but he was "not aware" that that needed to be done in order to get a share of Samuel George's estate. Mr. Colin George further stated that the reason why he began the proceedings in 2009, was not because he needed to prove his entitlement to Samuel George's estate. The proceedings in 2009 was "in the process to be done a long time ago" and that "it just happened to be done at that time."

[10] When asked whether the breakdown of the accounts referred to in paragraphs 11 and 12 of the Core Bundle, is an account of the breakdown of the proceeds of the sale of the Paradise View property, Mr. Colin George stated that "this is an account but I don't agree

with it fully.” He stated that this was because everyone should get an equal share and that himself and his sister did not get an equal share. He stated that his “other difficulty” with the account concerned the chattel house which he alleges the deceased had stated should be given to him.

[11] Under re-examination, Mr. Colin George testified that he lived with the deceased before his death. He stated that, prior to the paternity suit, the Defendant never questioned who his father was, and that she “accepted him all the way.” He stated that his father Samuel George took both himself and his sister Iva May George to visit her (the Defendant) at her home at Clare Hall when he (Colin George) was four (4) years old.

[12] The Court is of the view that Mr. Colin George was not a credible or straight forward witness. The Court does not accept his evidence that he did not apply for the declaration of paternity in order to ensure his entitlement to the estate of Samuel George. In the view of the Court, his evidence that “this was something he had intended to do all along”, but “just happened to do it” in 2009 is simply not believable. Although the question of Mr. Colin George’s paternity is not in issue before the Court, there being an Order of Paternity, the evidence is relevant in assessing his credibility as far as the rest of his evidence is concerned.

[13] The next witness to give evidence on behalf of the Claimants was Leslie George. A Witness Summary was filed on behalf of this witness. This Witness Summary was tendered as his evidence in chief. The contents of this Witness Summary were almost identical to that of Colin George.

[14] Under cross-examination by Ms. Bradshaw, Mr. Leslie George testified that he has not always lived in Antigua. He resided in England for roughly 40 years and returned to Antigua approximately 13 years ago. He was not present in Antigua when his brother Samuel George died. He was not aware that someone other than Samuel George was named as the father on the birth certificates of the Claimants. He did not know David Bachelor and that, although he knew the Claimants’ mother, he “did not actually

remember her name." When asked whether paragraph 26 of his Witness Summary namely, "that the Defendant has done nothing more than do everything in her power to frustrate the Claimants' efforts to inherit what is rightfully theirs" was correct, the witness replied that it "was not true." He further testified that most of the matters contained in his Witness Summary were told to him by his nephew Colin George, and that he was not "personally familiar" with the information.

[15] During re-examination, Mr. Leslie George testified that his brother Samuel George told him the house in which he lived belonged to Colin George. He also testified that he knew for a fact that Colin lived with the deceased Samuel George up to the date of his death.

[16] In answer to a question from the Court, Mr. Leslie George stated that he "could not remember" when Mr. Samuel George told him that the house belonged to Colin, but that Samuel George "was ill at the time." He did not know whether David Bachelor and the Claimants' mother were married.

[17] The Court gives very little weight to the evidence of Mr. Lester George as it is evident that he simply regurgitated what was told to him by his nephew Colin George. In particular, the Court gives very little weight to his evidence that his brother Samuel George told him that the chattel house was to go to Colin on his death. The Court is of the view that he was just repeating what his nephew told him in that regard.

[18] The Defendant Morriel Jenneth George-Carr gave evidence on her own behalf and called no witnesses. In her Witness Statement filed on the 13th May 2011, Mrs. Carr stated that to the best of her knowledge, the deceased had only four (4) children namely Bernadette George, Cicely Charles, Iclima Patricia Skepple (now deceased) and herself. She stated that in administering the estate, she did so "with no ill will and/or willful deceit" and that she has administered the estate "in accordance with the Law."

[19] Under cross examination, the Defendant testified that the Claimants were not her siblings. She stated that she did not mismanage the estate of the deceased Samuel

George and that her Attorney at Law did most of the transactions and furnished the information and the guidance for dealing with the estate of the deceased. When questioned about the moneys given to Karl Gardner and Josephine Richards, she indicated that those moneys were given with the consent of the other beneficiaries. The Defendant admitted that her son was living in the chattel house belonging to the deceased; she stated that the house was in a substandard condition. The Defendant testified that she has provided a detailed account of the estate.

[20] It is very apparent from the evidence and demeanour of the Defendant at the trial, that in spite of the Order of the Court declaring otherwise, she remains unconvinced that the Claimants are her siblings. The Court is however of the view that there is no evidence that the Defendant was untruthful in her testimony.

ISSUES

[21] The Issues to be determined by the Court are as follows:-

1. Whether or not the Defendant furnished proper particulars and accounts of all monies received in respect of the estate of the deceased Samuel George.
2. Whether the Claimant, Colin George is entitled to the chattel house solely.
3. Whether the Defendant administered the estate of the deceased in accordance with the law.
4. Whether the Defendant discharged her duties and functions as the Administratrix of the Estate of Samuel George adequately, fairly and justly, without spite, malice and ill-will towards the Claimants and each of them.
5. Whether the Defendant should pay costs personally.

THE LAW

[22] When a person dies, whether testate or intestate, the property vested in him which is available to meet his debts and other liabilities is called his "assets". The task of the

"administration of assets" is the duty of his personal representatives, i.e. his executors, if he has appointed any by way of a will, and otherwise his administrators (page 909, paragraph 31-001 – Snell's Equity). The first duty of a personal representative is to take possession of the deceased's assets, or to assume control over them, as soon as he properly can (page 914, parag. 31-013 – Snell's Equity). The second duty of the personal representative is to pay the debts of the deceased. (page 925 – Snell's). When the personal representative has paid the debts and provided for the liabilities of the deceased, he will proceed to hand over the assets to the persons beneficially entitled. In this case, it is common ground that Samuel George died intestate.

[23] The question as to who are the persons beneficially entitled in the case of an intestate succession is governed by the law. In the case of persons dying intestate in Antigua and Barbuda, the applicable law is the Intestate Estates Act, Cap. 225 of the 1992 Revised Laws of Antigua and Barbuda. (the Act). Section 4 of the Act provides as follows:-

- "4. (1) Subject to subsection (2) the residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section namely –
- a)
 - b)
 - c)
 - d)
 - e) If an intestate dies leaving issue and no husband or wife, his residuary estate shall be distributed among the issue in accordance with paragraph (f).
 - f) If all the issue are in equal degree of relationship to the deceased person, the distribution shall be in equal shares among them; if they are not, it shall be per stirpes."

[24] The Act defines "child" or "issue" in relation to a deceased person to include a child born out of wedlock in respect of whom

- a) That person has been adjudged by the High Court or Magistrate's Court to be the father or putative father, or
- b) That person has acknowledged himself to be the father under section 26 of the Births and Deaths (Registration) Act.

[25] According to the Act, "father" includes a person who has

- a) Been adjudged by the High Court or the Magistrate's Court to be the father or putative father, or
- b) Acknowledged himself to be the father under section 26 of the Births and Deaths (Registration) Act.

FINDINGS

[26] The following facts emerge from the evidence before the Court and are undisputed:-

- a. At the date of death of the deceased, the name Samuel George was not recorded on the birth certificates of either the First Claimant or the Second Claimant. The name appearing on their birth certificates was that of David Bachelor.
- b. David Bachelor was the husband of the mother of both the First Claimant and the Second Claimant.
- c. Letters of Administration of the deceased Samuel George were granted to the Defendant on the 5th day of January 1996.
- d. Although this was not specifically pleaded, it would appear that Samuel George was unmarried.
- e. By Order of the Court dated 2nd October 2009, the deceased Samuel George was declared to be the father of the Claimants.
- f. Prior to that date, the Claimants caused to be registered a Change of Name by Deed Poll, in order to change their surname from Bachelor to George.
- g. The real property of the deceased situated at Paradise View in the Parish of Saint John was sold in 1996. At that date, the name appearing as father on the birth certificates of the Claimants was not Samuel George but David Bachelor.
- h. The proceeds of sale of the above-mentioned real property were disbursed to Bernadette George, Cicely Charles, Icilda Patricia Skepple in the year 1996,

approximately nine (9) months after the Defendant obtained Letters of Administration. Each of these persons received the sum of \$52,960.24. The Defendant was paid her share in December 2001.

- i. The Claimants were each paid the sum of \$26,484.62 in 2005. At that date, the other four children of the Samuel George had already received their share of the proceeds of sale.
- j. The estate of the deceased also comprised a chattel house situate at Gray's Farm. Although Colin George deposes that all his siblings agreed that the chattel house should be inherited by him, there is no documentary evidence to support this claim.

[27] In the instant case, as in every other civil case, the Claimants have the burden of proof. The gravamen of their claim is that there has been willful default on the part of the Defendant in administering the estate of the deceased adequately or at all and that the Defendant has intentionally deprived them of their inheritance. They have to prove their case, and they have to do so on a balance of probabilities.

[28] I will now deal with the issues stated in paragraph 21 above in light of the evidence before the Court as well as the submissions of Counsel. Before doing so, however, I wish to state that, after Counsel had filed their closing submissions, I invited them to submit further submissions on the issue of the limitation period, specifically to address the question of its applicability in this matter. After reading the further submissions of Counsel, I am of the view that the limitation period was never a live issue either in the pleadings or at the trial. Accordingly, that the issue is not relevant to this case.

ISSUE No.1 - WHETHER OR NOT THE DEFENDANT FURNISHED PROPER PARTICULARS AND ACCOUNTS OF ALL MONIES RECEIVED IN RESPECT OF THE ESTATE OF THE SAID SAMUEL GEORGE?

[29] According to Halsbury's Laws of England, 5th edition, Vol.103, page 432, paragraph 1256:- "It is the duty of personal representatives to keep clear and accurate accounts, and always to be ready to render such accounts when called upon to do so."

[30] The Claimants in the Fixed Date Claim and Affidavit in Support claimed inter alia:-

"An Order that the Defendant Morriel Jenneth George-Carr as Personal Representative of the Estate of Samuel George, deceased be ordered to furnish proper particulars and accounts of all monies received in respect of the estate of the said Samuel George."(my emphasis).

[31] Further, in the Statement of Claim filed on the 20th March 2006, which the Court notes contains no Prayer, the Claimants plead, in paragraph 17 thereof that: - "the Defendant has failed to render an account of her administration of the said estate and in particular the payments made by her to those entitled on the intestacy of the deceased."

[32] It is undisputed that the only monies received in respect of the estate of Samuel George are those obtained from the proceeds of sale of the property at Paradise View in 1996.

[33] In her Affidavit in Reply to the Affidavit filed in Support of the Fixed Date Claim, the Defendant deposed, in paragraph 11 thereof, as follows:-

"I received an account of the sale from my Attorney, E. Patricia Simon-Forde and the same is as follows:

Sale of Land	\$320,000.00
Less	
7 1/2 % Government stamp duty	\$ 24,000.00
Valuation fee	\$ 1,000.00
Professional services-Grant of Letters of administration	\$ 8,500.00
Property tax up to 3 rd October 1996	\$ 1,653.79
Miscellaneous High Court Suit No.137 of 1995 (Samuel& Forde)	\$ 8,000.00
Consultations in 1996	\$ 2,000.00
Total deductions:	\$ 45,153.79
Balance	\$274,846.21"

[34] The Defendant, in paragraph 12 of her Affidavit in Reply, deposes as follows:-

"The proceeds were distributed as follows:

Icilda Patricia Skepple	\$52,969.24
Bernadette George	\$52,969.24
Cicley Charles	\$52,969.24
Morriel Carr	\$52,969.24
Josephine Richards	\$ 5,000.00
Karl Gardner	\$ 5,000.00
Colin George	\$26,484.62
Iva Mae George	\$26,484.62

Total: \$274,846.20"

[35] There is no evidence before the Court to the effect that, prior to the filing of the Fixed Date Claim by the Claimants that any of the beneficiaries had requested that the Defendant furnish them with an account with respect to the estate of the deceased.

[36] The Court is of the view that the Defendant has provided particulars and accounts of all monies received in respect of the estate of Samuel George. She has also provided particulars of how these monies were disbursed. Under cross examination, Mr. Colin George did not dispute that an account was provided. His "difficulty" as he stated in his evidence, is that he did not agree with it "fully" as everyone should get an equal share and that himself and his sister Iva Mae did not get an equal share.

[37] In his Submissions, Learned Counsel for the Claimants takes issue with "the sum of \$4,000.00 unaccounted for in the High Court Suit No.137 of 1995." He also raises the issue of the "lack of justification and undocumented accounts for the payment of consultations of \$2,000.00 in 1996." He also takes issues with the item in the account namely: "Professional services – grant of Letters of Administration - \$8,500.00." The Court notes that none of the above was ever pleaded by the Claimants; neither was there any mention of these "issues" in the Witness Summary of Colin George. Accordingly, the Court does not find it necessary to adjudicate on these issues.

[38] As stated in paragraph 4 above, what the Claimants have claimed in their Statement of Case is for the Defendant to "furnish proper particulars and accounts of all monies received in respect of the estate of the said Samuel George." They are therefore bound by their pleadings. This prayer in the Claimant's claim is therefore not granted.

Issue No. 2 - Is the Claimant , Colin George, entitled to the chattel house situate at Gray's Farm in the Parish of Saint John in Antigua and Barbuda solely?

[39] It is undisputed that the estate of the deceased Samuel George comprised a chattel house situate at Gray's Farm. It is also undisputed that the deceased left no Will or other document with respect to the chattel house. The First Claimant Colin George contends that he is entitled to the chattel house. In his Statement of Claim filed on the 20th March 2006, the Claimants pleaded in paragraph 6 thereof, that:- "It has been and was agreed among all those entitled that the first Claimant would have received a chattel house situate in Gray's Farm in the Parish and State aforesaid."

[40] Mr. Colin George deposed in his Affidavit in Support of his Fixed Date Claim, as follows:

- a. "Paragraph 13:- "That for several years prior to his (Samuel George's) death I had been the main person caring for my father.
- b. Paragraph 14:- "That as a result thereof all of my siblings agreed that the said chattel house in which my father lived at Gray's Farm should be inherited by me. The Defendant knew this fact also. If I am forced so to do, most of my siblings and family members are prepared to give evidence on oath verifying this fact.
- c. Paragraph 15:- "That despite numerous demands and requests the Defendant has neglected and/or refused, up to this date, to transfer the said chattel house to the First Defendant."

[41] In his Affidavit in Response filed on the 22nd October 2010, Mr. Colin George further contends that Samuel George had promised that he would be entitled to the chattel house after his death. He deposed that:-

- a. Paragraph 10: "Everyone knew that I was the person who cared for our father Samuel George during the period of his very serious and long illness; it was during those times that he told all and sundry to include Uncle Leslie and Karl Gardner that after his death that that small house in which we lived together would be mine when he died."
- b. Paragraph 30: "Our Uncle Leslie George and Karl Gardner have heard the statements to which I adverted herein at paragraph 10 hereof made time and again by our deceased father whilst I cared for him over all the years of his sickness as we lived together at Federation Road, Gray's Farm; evidence will be given to that effect at the trial hereof in this regard."

[42] Mr. Leslie George's Witness Summary, which was identical to that of Mr. Colin George, also stated, at paragraph 18 thereof that "...As a result thereof all of the First Claimant's siblings to include the Defendant herself agreed that the said chattel house in which their father lived in Gray's Farm should be inherited by the said First Claimant. The Defendant knew this fact also." At the trial, Mr. Leslie George testified that the deceased had told him of his intention to give the house to Colin George. He, however "could not recall" when the deceased said so; all he could say was that the deceased was "ill at the time".

[43] Neither Karl Gardner nor any of the Claimants' siblings gave any evidence to substantiate the claim or evidence of Colin George as to the intention of the deceased with respect to the chattel house. In any event, even if, which the Court does not accept, the deceased had indicated such an intention, that fact alone would not entitle Colin George to the chattel house. The law is settled that "in general a gift which has been promised but is not secured by an instrument under seal or, in the case of a chattel, completed by delivery is unenforceable either against the promisor or against his personal representatives.....the principle remains that there is no equity to perfect an imperfect gift." - Halsbury's Laws of England, 5th edition, Vol.103, page 417, paragraph 1222.

[44] In the view of the Court, Mr. Colin George's claim that the chattel house is "his inheritance" and that the Defendant has deprived him of what is "rightfully" his, is without merit. Neither the law nor the facts support his contention. Accordingly, the Court finds

that the chattel house forms part of the estate of Samuel George and Mr. Colin George is not entitled to it solely.

ISSUE NO.3 – WHETHER THE DEFENDANT ADMINISTERED THE ESTATE OF THE DECEASED IN ACCORDANCE WITH THE LAW GOVERNING INTESTATES ESTATES.

- [45] It is trite law that the personal representatives of a deceased person are under a duty to administer the estate of the deceased according to law.
- [46] The ultimate object of the administration of an estate is to place the beneficiaries in possession of their interest and accordingly, subject to the terms of the will, if any, the personal representative owes the beneficiaries a duty to pay the debts and to ascertain the residuary estate with due diligence. (Halsbury- 5th edition, vol. 103, page 322, paragraph 1052.)
- [47] The undisputed evidence before the Court is as follows:- the Deceased died on the 2nd day of June 1995. On the 5th day of January 1996, Letters of Administration of the Deceased's estate was granted to the Defendant. The property at Paradise View was sold in 1996 and the proceeds of sale distributed among four of the Deceased's children as follows:-
- a) On the 3rd October 1996, the sum of \$52,969.24 was disbursed to Bernadette George
 - b) On the 3rd October 1996, the sum of \$52,969.24 was disbursed to Cicely Charles;
 - c) On the 8th October 1996, the sum of \$52,969.24 was disbursed to Icilda Patricia Skepple;
 - d) On the 28th December, 2001 the sum of \$52,969.24 was paid to the Defendant herself.

[48] It is undisputed that it was only on the 2nd day of October 2009, that the High Court declared the Claimants to be the children of Samuel George pursuant to an application made by them under the Status of Children Act, Cap. 414 of the Laws of Antigua and Barbuda. Prior to that date, David Bachelor, the husband of the Claimants' mother, had been recorded as their father on their Birth Certificates. Accordingly, that at the date of the distribution of the proceeds of sale as stated in paragraph 47 above, as acknowledged by the First Claimant during cross-examination, "to the world", David Bachelor was the father of both himself and the Second Claimant.

[49] Counsel for the Defendant in her Submissions has referred the Court to the fact that the paternity order in relation to the Claimants in Claim Number ANUHCv2009/277 was made on the 2nd day of October 2009. She submits that pursuant to the Civil Procedure Rules (CPR) 2000, Part 40, an order takes effect from the date it is made and that such an order is not retroactive and that "in light of the aforesaid, the Claimants cannot now claim that they were beneficially entitled to proceeds of sale from the deceased estate, which sale took place in 1996."

[50] While Counsel is correct in her submission that an order takes effect from the date it is made, I must, with respect, disagree with her latter submission.

[51] As stated by Gordon J.A. in **Olive Clarke v Alicia Bella Mary Gellizeau**¹:-

"It is only logical that if an illegitimate child obtains a declaration of paternity, such paternity must, by definition, have existed from the time of the birth of the child."

[52] I hasten to state and to re-iterate that the Court at this point is not concerned with the question of the paternity of the Claimants. That issue has been decided by the Court in 2009, and there has been no appeal from this decision; neither has the paternity order been set aside.

¹ Civil Appeal No. 13 of 2003 (Saint Vincent and the Grenadines)

[53] The question to be decided is whether the Defendant was in breach of her fiduciary duty in the manner in which she distributed the proceeds of sale of the house at Paradise View in 1996?

[54] Mr. Colin George testified during cross-examination that he knew when the property in Paradise View was being sold. He testified that he might have seen a notice in relation to the deceased's estate but did not go to an Attorney as he was of the view that he was entitled to share in the deceased's estate despite the fact that another man's name was on his birth certificate as well as that of his sister the Second Claimant. He testified that he took no action until 2005, when he retained an Attorney to look after his interests. He stated that, between 1995 and 2005, he was just "waiting and hoping that he would get his share." Based on the evidence of Colin George, therefore, it is clear that no notice of a claim on behalf of the Claimant was brought to the Defendant's attention in 1996 when she distributed the proceeds of sale.

[55] Section 5 of the Status of Children Act states:-

"For the purposes of the administration of distribution of the estate of any deceased person or any property held upon trust –

- a. A person born out of wedlock shall be presumed not to have been survived by his father or any other paternal relative unless the contrary is shown;
- b. A person born in wedlock shall be presumed not to have been survived by a child of his father, father's mother, grandfather or mother born out of wedlock unless the contrary is shown, and no trustee or personal representative shall be liable to any such person of whose claim he has not had notice of the time of the conveyance or distribution, but nothing in this section shall prejudice the right of any person to follow the property or any property representing it, into the hands of any person other than a bona fide purchaser without notice who may have received it."

[56] In 2005, and it would appear, following correspondence between the Solicitors for the parties, the Defendant instructed her Solicitors to pay to each of the Claimants the sum of \$26,484.62. Counsel for the Claimants submits that this action on the part of the Defendant is proof that the Defendant knew that the Claimants were her siblings. He

submits that "it is clear that the Defendant intended to give each of the Claimants only \$26,484.62."

[57] It is the submission of Counsel for the Claimants that "up to the year 2005 there was money still remaining from the proceeds of the sale." Counsel, however, does not state the amount still remaining from the proceeds of sale at that time. In her Affidavit in Reply, the Defendant deposed, in paragraph 14 thereof that: - "In relation to the Claimant the sum of \$26,484.62 each was given to them as the other siblings agreed to that amount to be given to them." She re-iterates the same in her Witness Statement. There is no evidence before the Court, however, to substantiate this evidence. There is also no evidence before the Court that there were sufficient funds remaining from the proceeds of sale in 2005 to have paid the Claimants the sum of \$52,969.24 each. There is also no evidence before the Court to substantiate the evidence of Colin George that the Claimants' sisters "Bernadette George, Cicely George Charles and in particular Icilda Patricia George Skepple prior to her death all prevailed upon the Claimants to make sure that the Defendant gave each of the Claimants the same and correct sum of money that they themselves had each received." There is no documentary evidence to that effect from any of the said siblings; further none of them gave evidence to that effect.

[58] It is the further submission of Counsel for the Claimants that "after the declaration as made in the High Court on 2nd October 2009 the Defendant had the duty to take appropriate action to recover back the sums of money paid in error by her and on her instructions to the other siblings."

[59] With the greatest of respect to Counsel for the Claimants, the Court does not find merit in this submission. In the first place, Counsel is contending that, in 2009, almost thirteen years after the proceeds of sale had already been disbursed, the Defendant should have taken "appropriate action", to have Icilda Patricia Skepple, Bernadette George, Cicely Charles and the Defendant herself refund the "overpayment" of their share of the proceeds of sale, in order to have the same paid to the Claimants. In the view of the

Court, such a course of action would have been not only unrealistic but also inequitable. It is significant that Counsel does not suggest what the "appropriate action" should have entailed. In the second place, Counsel is assuming that the monies were paid to the four beneficiaries in error back in 1996. The Court is of the view that the Defendant bears no liability in respect of the distribution of the proceeds of sale in 1996. There is no evidence that the Claimants had given any notice of their claim to the estate to the Defendant. According to Colin George, he "thinks" he had notice of the claim, but he just waited and hoped that he would get his share.

[60] Based on the authorities, after the time specified in the advertisements for sending in claims, the personal representative is at liberty to distribute the assets, having regard to those claims of which he has notice, but he is under no liability in respect of those assets to any person of whose claim he has had no notice whatever. Accordingly, and based on what has been previously stated, in the view of the Court, the Defendant cannot be faulted or held liable for having paid the above mentioned children in 1996, as well as herself in 2001. Thirdly, in any event, the Claimants have made no claim for a refund of monies paid to the other beneficiaries, and have filed no claim against them for a refund of the said monies.

[61] The Claimants also take issue with the payment of \$5000.00 each to Karl Gardner and Josephine Richards, neither of whom is a child of the deceased Samuel George. In paragraph 13 of her Affidavit in Reply, the Defendant deposed that her siblings namely Bernadette George, Cicely Charles, Icilma Patricia Skepple (now deceased) and herself decided to give \$5000.00 to Josephine and Karl Gardner as their "appreciation for the love, care and affection "shown to their father in his lifetime. The Defendant has provided no evidence, documentary or otherwise other than her evidence which, if not contested, is adequate. The evidence, however, is that the monies were paid to Josephine Richards in 1996. Further, the Court notes that there is no evidence of an objection raised or claim filed by Bernadette, Cicely or Icilma with respect to the payments made. Additionally, there is no claim for a refund of the sums paid to Karl Gardner or Josephine Richards.

ISSUE NO. 4 - WHETHER THE DEFENDANT DISCHARGED HER DUTIES AND FUNCTIONS AS THE ADMINISTRATRIX OF THE ESTATE OF SAMUEL GEORGE ADEQUATELY, FAIRLY AND JUSTLY, WITHOUT SPITE, MALICE AND ILL-WILL TOWARDS THE CLAIMANTS AND EACH OF THEM.

[62] Paragraph 33 of the Witness Summary of Colin George states: - "There has been willful default on the part of the Defendant in administering the estate of the deceased adequately or at all."

[63] It is the contention of Colin George that "the Defendant has done nothing more than to do everything in her power to frustrate the Claimants' efforts to inherit what is rightfully theirs." He further contends that:-

"Further, as a show of total disregard for the Claimants' rights to their entitlement on the intestacy of their deceased father by the Defendant, despite the constant pleadings for several years by the Claimant, three other siblings, various family members and friends of the family upon the Defendant to pay over to each of the Claimants the money to which they were each entitled on the intestacy of the deceased, the Defendant refused stubbornly so to do; all efforts in this regards proved to be of no avail."

[64] The finding of the Court is that Colin George has failed to provide any cogent evidence to substantiate the above. He has provided no proof from the three other siblings, or from any of the "various family members and friends of the family" whom he alleges tried to prevail upon the Defendant. His allegation that the Defendant was bent on depriving him of his inheritance is simply not substantiated. In fact, Mr. Leslie George, during cross examination, testified that what was stated in Witness Summary, namely that "the Defendant has done nothing more than to do everything in her power to frustrate the Claimants' efforts to inherit what is rightfully theirs", was "not true."

[65] As stated earlier, the Court is of the view that the Defendant has adequately dealt with the property at Paradise View. With respect to the chattel house, the Court is of the view that the Defendant has not dealt with this property with due diligence and in keeping with her obligations and fiduciary duties. The Defendant has allowed the chattel house to be used as a place of abode for her son whom she testified has a mental problem. To

the extent, therefore, that the chattel house remains in the estate of the deceased, notwithstanding its occupation by her son, then the same can now be sold and the proceeds distributed.

[66] The Court finds no cogent evidence that the Defendant was motivated by spite, malice and/or ill will towards the Claimants as alleged by Colin George. The Court therefore declines to make an Order for costs against the Defendant personally.

CONCLUSION

[67] The law is settled that he who alleges must prove. The Claimants must prove their case on a balance of probabilities. The Court is of the view that, on the evidence before it, the Claimants have proved that the Defendant has not completed the administration of the succession of the deceased in so far as it pertains and relates to the chattel house situate at Gray's Farm. They have failed to prove the rest of their claim. The Court is also of the view that the outstanding issue of the division of the chattel house ought to be resolved as speedily as possible. In order to do so, a valuation of the property is to be obtained by the Defendant, in her capacity as Personal Representative of the estate of Samuel George. The cost of that valuation is to be borne by the estate. That chattel house is to be sold and the net value of the chattel house (after deduction for the valuation and any taxes that may be payable or expenses incurred) is to be divided among the six children of the deceased Samuel George. I wish, in passing, to urge Counsel that, since this case involves family members, they should try to assist the parties in resolving this remaining issue expeditiously and with as little acrimony as possible in the circumstances.

My **ORDER** is as follows:-

- 1) The Claimants' claim for an Order that the defendant Morriel Jenneth George-Carr as Personal Representative of the Estate of Samuel George, deceased be ordered to furnish proper particulars and accounts of all monies received in

respect of the estate of the said Samuel George, is dismissed, the Defendant having already furnished the said accounts to the satisfaction of the Court.

- 2) The Defendant is to provide a valuation for the chattel house situate at Gray's Farm on or before the 31st July 2012.
- 3) Upon the valuation of the chattel house being obtained, the chattel house is to be sold and the net proceeds divided among the 6 children of the Deceased Samuel George. The chattel house can be sold to any of the beneficiaries, upon payment of the purchase price – (less the share of that beneficiary) - being made to the other beneficiaries.
- 4) The cost of the valuation and any expenses incurred in connection with the chattel house is to be borne by the estate of the deceased.
- 5) In the exercise of my discretion, I make no Order as to costs.


JENNIFER REMY
High Court Judge