

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2008/0357

BETWEEN:

**AKINDELE LOOBY
AKIL LOOBY
AZIZI HARRIS
SARAN LOOBY
THELMA LOOBY**

CLAIMANTS

And

**DOROTHY GITTENS
(Administratrix of the estate of George Looby, deceased)
DEFENDANT/ ANCILLARY CLAIMANT**

And

**AKINDALE LOOBY
AKIL LOOBY
AZIZI HARRIS
SARAN LOOBY
THEMA LOOBY
RIA ASHLEE THOMAS**

ANCILLARY DEFENDANTS

Appearances:

Ms. C. Kamilah Roberts & Andrea Roberts for Claimant/Ancillary Defendant

Mrs. Eleanor Clarke- Solomon for the Defendant/Ancillary Claimant

2010: 17, March

2010: 12, October

JUDGMENT

1. **Harris, J.:** The Claimants/First to Fifth Ancillary Defendants are five of the children of George Looby, deceased and along with the Defendant/Ancillary Claimant, Dorothy Gittens and Ria Ashlee Thomas, the sixth Ancillary Defendant are the beneficiaries of the estate of George Looby, deceased who died in December of 2004, intestate. The Defendant/Ancillary Claimant is the widow of George Looby, deceased

and the sole Administratrix of the estate of George Looby, deceased. The Claimants initiated a claim against the Defendant as sole Administratrix of the estate of George Looby, deceased raising various concerns in relation to the Defendant's administration of the estate of George Looby, deceased and seeking the Court's intervention in addressing the various concerns. The Claimants are seeking several related orders including an order for the distribution of the shares in Geotech Company Limited ('Geotech') to the beneficiaries of the estate of George Looby, deceased according to the rules of intestacy and an order requiring the Defendant to exhibit the financial statements of Geotech Company Limited for years ending March 2005, 2006 and 2007¹.

2. The Claimants are further seeking an order requiring the Defendants to exhibit an account of all administrative expenses and legal fees incurred to date by the estate of George Looby, deceased and an order requiring the Defendants to exhibit a full inventory of the estate of George Looby, deceased and a true account of her administration of the estate of George Looby, deceased. The Claimants were also originally seeking an order requiring the Defendant to distribute to the Third Claimant, Azizi Harris his share of disbursements previously made to the other beneficiaries. However, this issue has since been settled and as such the Claimants did not pursue any relief in that regard.
3. The Defendant/Ancillary Claimant denies that she has acted improperly in the carrying out of her duties as Administratrix and further denies that she has willfully delayed in the administration of the estate. The Defendant/Ancillary Claimant initiated a counterclaim seeking a declaration and directions in relation to the sale of the balance of the estate assets and the distribution of the net proceeds in accordance with the Intestates Estates Act. Cap. 225.
4. The Defendant did file an interim status report on the administration of the estate of George Looby, Deceased, dated March 31, 2009². However, the Claimant's position is that the report is inadequate and fails to provide sufficient detail on certain areas of the administration of the estate of George Looby, deceased.
5. Upon some judicial distillation of the issues identified by the parties to be determined at the trial; the questions to be answered by the Court are as follows:

¹ The text of this and the following four paragraphs are substantially a wholesale reproduction of parts of the statement of case and written submissions of the claimants.

² Contained in Trial Bundle 'B'

- (i) Should an order be granted requiring the Defendant to distribute the shares in Geotech Company Limited ('Geotech') to the beneficiaries of the estate of George Looby, deceased according to the intestacy?
 - (ii) Is the fact there is ongoing litigation involving Geotech Company Limited and First Claimant, Akindele Looby a valid reason for the delay in the distribution of shares in Geotech Company Ltd.?
 - (iii) Should an order be granted requiring the Defendant to exhibit an account of all administrative expenses and legal fees incurred to date by the estate of George Looby, deceased?
 - (iv) Should an order be granted requiring the Defendant to exhibit a full inventory of the estate of George Looby, deceased and a true account of her administration of the estate of George Looby, deceased?
 - (v) Should directions be given for sale of the balance of the estate assets and the distribution of the net proceeds in accordance with the intestates Estates Act. Cap 225.
6. Akindele Looby, Akil Looby, Azizi Looby, Saran Looby gave evidence for the Claimants and Dorothy Gittens gave evidence for the Defendant. At trial, there was extensive examination and cross examination of the witnesses on the documents in the trial Bundle³.

ISSUES, FACTS AND FINDINGS

7. On the issue of whether the Defendant should be ordered to distribute the shares of Geotech; the defendant contends that certain contingent liabilities associated with Geotech prevent her from distributing those shares. She contends that distributing the shares puts her in peril as it were. Counsel for the defendant relies on the authority of Halsbury's laws 3rd edition at para 606. Counsel for the defendant and the defendant herself in her testimony, refer to the ongoing litigation between Geotech and Bryson Insurance and with Akindele Looby. She contends that complexities also arise with respect to Akindele being both a beneficiary and either a shareholder and/or Director of Geotech.

³ The following documents were all that were put to and/or cross examined upon at trial: Trial Bundle A pp 12, TBA pp 16, TBA pp 65 para 5&7, TBA pp 66 & 69, TBA pp 75, TBA pp 84, TBA pp 86, TBA PP 88 para 21, TBA pp 107, TBA pp 119, TBA pp 135, TBA pp 121, TBA pp 141- 144, TBA pp 146, TB4 pp 141, TBB pp 5, TBB pp 6, TBB pp TBB pp 6 para 5.1 & 5.2, TBB pp 13, TBB pp 16, TBB pp 17, TBB pp 27, TBB pp 34, TBB pp 52, TBB pp 55, TBB pp 58 & 61, TBB pp 72 para 5.0, TBB pp 59/60, TBB pp 61 para 5.1, TBB pp 72, TBB pp 75, TBB pp 82, TBB pp 87, TBB pp 88, TBB 88 2nd at last para, TBB pp 91, TBB pp 100, TBB pp 101, TBB pp 102, TBB pp 102 para 7, TBB pp 103, TBB pp 103, TBB pp 135.

8. The Court does not agree with this position. The contingent liabilities of Geotech are just that; liabilities of Geotech and not the estate of George Looby, deceased. The shareholders of Geotech are separate and distinct from the company. Any judgment against the company has to be met by the company's assets (if any) and not the personal estate of George Looby, deceased⁴. It would be a different matter if it were the estate that was being sued by Bryson Insurance for instance, or there was an issue of the shares not being fully paid up. No such issues have been pleaded and/or argued in this matter. The ongoing litigation is no impediment to the distribution of the Geotech shares in accordance with the Intestates Estates Act Cap 225 and the Court so Orders.
9. The claimants apply for an order requiring the defendant to exhibit the financial statements of Geotech Company Ltd for the years ending 2005, 2006 2007. This action was commenced in 2008 so presumably the claimants now require the financial statements up to the date to include 2008, 2009 and 2010(or part thereof) or in any event up to and including the most recent accounting period.
10. The defendant has not in principle resisted this application. The defendant asserts and the court accepts that she has provided a series of inventories and accounts during her tenure as Administratrix of the estate of George Looby, deceased. The claimant's contention however, is that the statements, accounts and inventories produced thus far are inadequate and do not satisfy the personal representative's duty to account to the beneficiaries.
11. Mr. Looby died since December 2004. There is obviously a lot of accounting of the administration of the estate to do. This is compounded by the fact that Mr. Looby died intestate leaving a varied estate and several beneficiaries. The court accepts the claimant's submission on the law; that the personal representative is under a clear duty to keep clear and accurate accounts and to render such accounts when called upon to do so. The court accepts that the personal representative has the right to retain at the expense of the estate, professional expertise to prepare and render such account of the administration of the estate. The quality of the account is required to be that which is produced by a professional, if required by the beneficiaries. The personal representative/claimant more recently delivered an *interim report*, prepared by a person with accounting expertise but who, by Mrs. Gittens own description, is not an accountant. The claimant's are not satisfied with the report and complain of its inadequacy and lack of detail and documentary support including for all the administrative expenses and legal fees incurred by the estate of George Looby, deceased.

⁴ See the Claimant's written submissions filed July 30, 2010 for a further basis for the distribution of the Geotech shares.

12. The Court does not know whether there is more documentary support or not, or what is adequate detail acceptable in the accounting/ financial profession. Clearly, a professional accountant would be better placed to determine and provide this finished product, albeit at a cost to the estate. It appears to the court that the beneficiaries/claimants that are asking for the greater level of accounting have considered this additional cost to the estate and accepted it.
13. The defendant contends that several attempts were made by her to convene a meeting with the beneficiaries, but that the 3rd and 4th claimants did not attend. She complained of the complexity of the estate and the several outstanding matters and litigation involving beneficiaries of the estate as delaying the administration of the estate. The Court is satisfied that both parties contributed to the delay in the administration of the estate. The absence of an agreement on the distribution of the estate along with other factors that surfaced in the trial reflects the antagonistic relationship, not only between the claimants and the defendant, but apparently, albeit to a far lesser extent, also between the defendants themselves (or some of them). In the end, the Administratrix is responsible for concluding the administration in a robust and timely manner. This administration has persisted long enough. Although saddled with its own peculiarities that needed to be worked through, it is not a particularly complex estate.
14. The defendant has counterclaimed that the defendant be at liberty to sell the balance of the estate and distribute the net proceeds in accordance with the Intestates Estates Act, Cap 225. Counsel for the claimants submits that the evidence reflects that the family house at Falmouth is dear to the claimants/children of the deceased and as a result asks that if the court is minded to grant the order for sale of the estate assets, that the said house not be sold, but that the beneficiaries (whosoever might be entitled as a beneficiary) be allocated their interest in the said property directly and presumably, in the proportions provided for under the Act. The court anticipates no difficulty in this process. Further, I note the prayer that the shares in Geotech Ltd, a going concern, also be distributed directly to the beneficiaries pursuant to the Intestates Estates Act. The court sees no difficulty in this prayer for the reasons already provided above. Save for the two instances above – the family house at Falmouth and the Geotech shares both - where the relevant beneficiaries are given a direct interest in the physical property, the Court Declares as per the counterclaim; that the defendant do sell the balance of the estate assets and distribute the net proceeds in accordance with the Intestates Act Cap. 225⁵.
15. For the reasons provided above, **IT IS HEREBY ORDERED** as follows:

⁵ The Administratrix must of necessity first carry out all acts necessary and preparatory to the disposal of the assets.

(i) That the defendant do distribute the shares in Geotech Company Ltd to the beneficiaries of the estate of George Looby, deceased, according to the rules of intestacy within 45 days of this Order.

(ii) That the Defendant do exhibit a full inventory of the estate of the deceased, George Looby, and a true and professional account of her administration of the estate of the deceased, George Looby within 60 days of this order or further order of this Court.

(iii) That the defendant do exhibit the financial statements of Geotech Company Ltd professionally prepared, for the years ending 2005, 2006, 2007, 2007, 2008, 2009 2010, and up to and including the most recent accounting period, within 60 days of this order or further order of this Court.

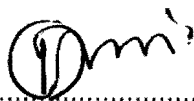
(iv) That the defendant do exhibit an account of all administrative expenses and legal fees incurred to date by the estate of George Looby, deceased, within 60 days of this order or further order of this Court.

(v) That it is hereby declared that the defendant carry out works preparatory to and do sell the balance of the estates assets, save for the Geotech shares and the property at Falmouth more particularly described as the 'family house' and thereafter distribute the net proceeds in accordance with the Intestates Estates Act Cap 225, forthwith.

(vi) That the direct interest and or shares respectively in the physical family house and the Geotech Company Ltd shares be distributed to the relevant beneficiaries in accordance with the Intestates Estates Act.

(vii) That leave granted to apply to any Judge of the High Court for directions relating to the sale of the estate assets.

(viii) That success in this matter being evenly distributed, each party to bear its own costs.



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DAVID C HARRIS
HIGH COURT JUDGE
ANTIGUA AND BARBUDA