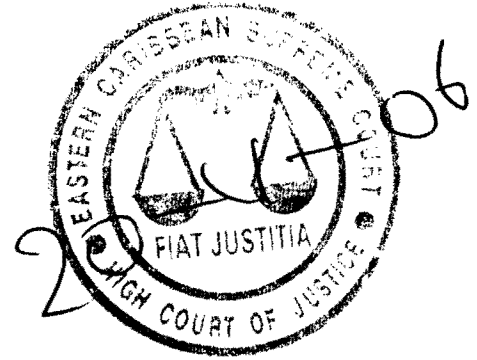


THE EASTERN CARIBBEAN SUPREME COURT

THE HIGH COURT OF JUSTICE

HIGH COURT CIVIL CLAIM NO. 368 OF 2004



BETWEEN:

CARLITA CORDICE

Claimant

v

PARTIES INTERESTED IN THE WILL OF WALLACE JACK

Respondents

Appearances:

Mr. P. R. Campbell qc for Claimant

Sir. Henry Forde QC for Respondents

2006: April 20

DECISION

The application concerns the interpretation of a provision in a will.

Wallace Jack died. He left a will in which the following provision appears.

Clause 6 of the Testator's Will is in the following terms: "**I give, devise, and bequeath to my daughter, Vivian Doris Jack, my piece of land situate at Grenville Street, Kingstown, and bounded as in the Title Deed, and the property situated thereon, known as Lot 70, and all the furniture thereof,-on condition that she remain unmarried. In the event of her marrying, or in the event of her deceased, the land, property and furniture shall go to my two daughters, Ina Elaine Jack and Gwendolyn Dear. In the event of their decease the land, property and furniture shall go in turn to my grand-daughter, Wallace McMaster, Carlita Jack, Oswald Jack, Wallace Dear, Brenda Dear, Glenroy Dear, and Olga Dear, in the event of the decease of each preceding party. On no condition are the land and Property to be sold.**"

The Issues

- [1] Does this provision in the will fail for uncertainty or alternatively because it offends against the principle which prohibits permanent restraints upon alienation of real property?
- [2] The cardinal principle which governs the interpretation of wills is that the aim is to give effect to the intention of the testator. The whole will is to be considered along with any other relevant evidence in ascertaining that intention.
- [3] The primary beneficiary of the real property and furniture contained in Lot 70 at Grenville Street Kingstown is Vivian Jack the daughter of the deceased. In the event of her marrying, or in the event of her death the property goes to the other beneficiaries. I pause here to note that these phrases cannot be synonymous. 'In the event' of her marrying must mean 'should she marry'. 'In the event' of her death could mean either 'should she die (before the testator) or when she dies- as obviously die she must. Fortunately, as events have gone, nothing turns in this ambiguity as Vivian Jack is now deceased. So too are Ina Jack, Gwendolyn Dear and Wallace Mc Master.
- [4] I am content to view Clause 6 as having created a succession of life interests as follows:
1. Vivian Jack (Deceased)
 2. Ina Elaine Jack and Gwendolyn Dear (Deceased)
 3. Wallace Mc Master (Deceased)
 4. Carlita Jack
 5. Oswald Jack (Deceased)
 6. Wallace Dear
 7. Brenda Dear
 8. Newlin Dear
 9. Glenroy Dear
 10. Olga Dear

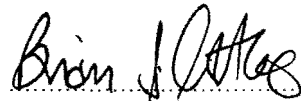
10. Olga Dear

Had this been the end of the provision little difficulty would have been posed but Clause 6 ends with the sentence⁴“On no condition are the land and property to be sold.” Clearly this is a provision which is void. It purports to prohibit the alienation of the property forever. I have been greatly assisted by the submissions of both counsel and the authorities to which I have been referred. The question which now must be determined is whether this offending provision can be removed from the will or whether the entire clause must fail. If the latter is the case then the gift fails and is to be dealt with according to the rules of intestate succession. If former is the correct interpretation then the gift can be saved.

- [5] I consider that when the will is read in its entirety that this sentence-hanging as it does on its own can be severed from the will.
- [6] What then is the effect of Clause 6? I conclude that the Claimant is now the life tenant of the property. After her death it will pass in turn to each of the beneficiaries who survive her.
- [7] Sir Henry for the defendants suggests that upon the death of the ultimate life tenant the property falls into residue. I do not agree.
- [8] Having removed the offending sentence from Clause 6 of the will I have regard to section 31 of the wills Act Cap 384.

Where any real estate is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention appears by the will.

[9] I consider that the effect of this provision is to pass to the ultimate surviving beneficiary. the fee simple in Lot 70.


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Brian Cottle
MASTER