THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2006

CLAIM NO. AXAHCV/2004/0041

BETWEEN:

MILT MERCER

MELROY MERCER

MAGDERLENE SPENCER

Claimants

AND

VEDA HARRIGAN

Defendant

APPEARANCES:

Mr. Clyde Williams and Mrs. Navine Fleming Kisob instructed by Messrs. Lake & Kentish for the Claimants
Mr. Valencia Hodge instructed by Hodge's Law Office for the Defendant

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Date: 12th, 17th January, 2006
10th February, 2006
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JUDGMENT

[1] GEORGE-CREQUE, J.: This action involves the authenticity and validity of a Will purportedly made by one William Leon Harrigan ("the Deceased") dated 5th April, 2000 ("the Will"). The action is brought by the Claimants who say they are the grandchildren and beneficiaries under the Will against the Defendant who is named as executrix and is also a beneficiary under the Will. She has applied for probate of the Will and the original

of the Will has been produced for this purpose. They have challenged the Will on two grounds:

(a) That the Will is a forgery in that the signature on the Will purporting to be that of the deceased is not that of the Deceased; and

(b) That the Deceased did not know and or approve of the contents of the Will in that same is at variance with the Deceased's general sense of propriety, known affections and previous declarations.

[2] I think it useful to summarize the background of matters not in dispute giving rise to this matter.

(a) The Deceased resided partly in Anguilla and partly in California, USA. He died in California on 6th November, 2003, possessed of property real and personal in California and in Anguilla

(b) He never married but it was acknowledged that he had one daughter, namely: Rosemary Quintana, borne out of a relationship with one Caroline O. Smith. The Claimants are the children of Rosemary Quintana who predeceased the Deceased having died on 23rd January, 1989 in Tortola, Virgin Islands and claim to be the only surviving next of kin of the Deceased on an intestacy. The Defendant is a niece of the Deceased.

(c) The Will made no mention of the Deceased's property in California or a debt to one Maurice Vanterpool in respect of works done by him on Deceased's house in California. The Will, however, contains a general direction for the payment of all the just debts, obligations and funeral expenses of the Deceased prior to giving effect to the various specific bequests made thereunder.

(d) The Will is attested by two witnesses who have sworn affidavits filed in support of the application for probate and which also appear in the Trial Core Bundle of documents, namely: one Dan Anderle and one Cesar Reyes of California, who say that the Deceased executed the Will in their presence, whereupon they each then signed as subscribing witnesses in each other's presence and in the presence of the Deceased Testator. Cesar Reyes also gave evidence at the trial.

(e) It is not being asserted that the Deceased at the relevant time was in any way mentally impaired or was less than of sound mind. In many respects, he appears to have kept his personal life very private. There is also no assertion that the Defendant was at any time in California or that she had any communications with the Deceased around the relevant time of execution of the Will.

(f) It is also not disputed that in 1996 he gave to the Defendant a general Power of Attorney in Form RL 17 of the Registered Land Act over a parcel of land to deal in any manner with the same. This Power of Attorney is dated 14th February, and was executed before a Notary Public. On 20th February, 1996, he gave to the Defendant another general Power of Attorney to deal with all his property of whatever kind situate in Anguilla. This was also witnessed by a Notary in California. These powers, it appears, only ceased being effective upon the death of the Deceased. To all intent and purposes therefore, the Deceased had placed the Defendant in charge of all his affairs in Anguilla.

(g) The 1st Claimant began residing in Anguilla at the Deceased's house in Little Dix sometime in 1991 and would live with the Deceased. He got to know the Defendant and other relatives but was not aware of the Powers of Attorney granted by the Deceased to the Defendant until, it appears, after the death of the Deceased.

(h) The 1st Claimant searched for a will at the Deceased's home in Anguilla but none was found. On 9th November, 2003, he was informed by the Defendant that she was in possession of the Will found in a black bag in which the Deceased kept various documents and papers in California and which was handed over to her brother by the Deceased's house companions in California. A copy of the Will had been faxed to her.

(i) The 1st Claimant contested the Will upon sight of the copy as not bearing the true signature of the Deceased and thereafter launched these proceedings challenging the validity of the Will.

[3] The more vigorous challenge has been mounted in respect of the authenticity of the signature of the Deceased on the Will. Two handwriting experts were called - one for

each side. Each examined a copy of the Will against standard copy documents acknowledged as being signed by the Deceased at different times. Unfortunately, the experts each examined and used for comparison, different standard documents all of which were copies. The experts differ in their conclusions. The expert for the Claimant, Mr. Langlais, concluded, based on the documents he examined with the copy of the Will, that the signature on the Will was not written by the same person who wrote the signatures on the standard documents. The expert for the Defendant, Ms. Squires, concluded, based upon her examination and the standard documents she examined, that it was highly probable that the Will was signed by the same person who signed the standard documents.

[4] Counsel for the Claimants who urged the court to accept the evidence of Mr. Langlais over the Defendant's expert very deftly took the Defendant's expert to task in cross-examination by having her examine the standard documents which were examined by the Claimants' expert where she agreed with the variations in lettering pointed out by counsel in comparison with the handwriting on the Will, as well as the consistencies found between the standard documents examined by her and those used by their expert.

[5] Both experts agree that the identification of handwriting is not an exact science and that factors such as illness (such as a stroke), old age, and artistic ability can affect handwriting. Neither of the experts examined the original Will. Ms. Squires said in her evidence that there are variations in signatures depending on the time, health, the pen used, and other factors. She said with photocopies there are many things which cannot be discerned such as the pressure with which one writes, and that occasionally small light strokes of the pen would not be recorded by the copier. This leaves me to come to my own conclusions based on the evidence as a whole. I have also examined the original Will on the court's probate file. I now turn to consider the evidence given by the witnesses in so far as I consider relevant.

[6] The 1st Claimant in his evidence, said he saw the Deceased affix his signature on several

documents including cheques as well as a land transfer to one Carty. Even though the Deceased had sent him letters and cards, he had not kept any of them. He said he had never supervised or took charge of the Deceased's business when he was away and that they had a close relationship. He knew that the Deceased's land in the Quarter was rented out to Apex Car Rentals and said that when his grandfather was not on island the tenant would hold cheques until his return. He never collected the rents. He did not know if the Defendant had an obligation to pay Maurice Vanterpool on behalf of the Deceased. He knew that the Deceased's house at Little Dix is in fact on the Deceased brother's land. He didn't know of the two powers of Attorney given by the Deceased to the Defendant. When asked about the statement pleaded in his statement of Claim to the effect that at the time of execution of the Will the Deceased was in Anguilla, he responded that to his recollection the Deceased never traveled to California at that time of year. He didn't know that the Deceased had obliged the Defendant to have his remains returned to Anguilla.

[7] Cesar Reyes, in his evidence said he knew the Deceased for some four or five years prior to his death and that they met occasionally. He attested the execution of the Will one evening on 5th June, 2000, when they met for dinner along with Daniel Anderle, whom he said he knew for about 6-7 years; that the deceased asked them to witness his signature on a Will which he took out of his bag- a black men's leather bag; he saw him sign; he signed and so did Daniel Anderle; he didn't read the contents but it dealt with property in Anguilla; that he remembered seeing the words "Will" or "Last Testament' on the document. He then lived in Orange County, the Deceased lived in the LA area; the restaurant was in LA and he had never visited the Deceased at home or knew his live-in companions. He said he would recognize the document if he saw it again because of his signature thereon. Counsel, however, did not invite the witness to identify the original document and verify his signature thereon. This was an unfortunate omission but, in my view, not fatal.

[8] Keithley Harrigan, the Defendant's brother, said he was called by Andrew Curtis, one of

the Deceased's live-in companions, and advised of his death. He was the relative who identified the body and went to his house in California on November 8th, 2003, to collect his personal documents and was given a black men's leather bag. The will, he said, was included among the documents in the bag and it related to the Deceased's property in Anguilla. He faxed a copy to his sister, the Defendant, the next day. He maintained in Cross examination that he found the original Will in the black bag. He said it was folded and it was signed.

[9] The Defendant, Veda Harrigan, spoke of the Deceased having a stroke and the fact that after he had suffered a stroke he had asked her to ensure he was decently interred in Anguilla. As to when he suffered the stroke has not been disclosed. She contacted her brother Keithley Harrigan in California to inquire about plans for the funeral on 9th November, and learned that he had been given a black bag from the home of the Deceased in California. She gave a copy of the Will to the 1st Claimant. In Cross examination, she said that the Deceased had discussed with her the grants of the Powers of Attorney and refuted the 1st Claimant's statement to the effect that she said no Will had been found.

The Law

[10] Counsel for the Claimants has correctly stated the applicable principle of law in relation to the presumption of due execution where a Will on its face appears to have been duly executed. Paragraph 893 of Halsbury's Laws 4th Ed. is instructive and states thus: "*The principle omnia praesumuntur rite esse acta applies where the will is regular on the face of it with an attestation clause and the signatures of the testator and the witnesses in their proper places. This presumption of due execution applies where there is a proper attestation clause event though the witnesses have no recollection of having witnessed the will. .... It may be rebutted by evidence of the attesting witnesses but the evidence as to some defect in execution must be clear positive and reliable since the court ought to have the strongest evidence before it believes that a will with a perfect attestation clause and signed by the testator was not duly executed. ..... Where both the attesting witnesses are dead and the will is in regular form the principle is applicable on proof of the handwriting"*

The evidence

[11] In the case at bar, there is a signature purporting to be that of the testator on the Will. There is a proper attestation clause with the signatures of the witnesses attesting the signing of the Will. There are two affidavits, one sworn by each of the attesting witnesses stating that the Deceased signed the Will in their presence and they signed as witnesses. Cesar Reyes, one of the attesting witnesses, also gave evidence on oath and was cross examined attesting to the fact that he did in fact witness the Deceased execute the Will in the presence of the other attesting witness Daniel Anderle, whom he also knew. His evidence has not been shaken. In my view, the presumption of due execution of the Will applies. It is not the case here that the attesting witness is saying he has no recollection of having witnessed the Will. To the contrary, he appears from his testimony, which I have no cogent reason to reject, to have a vivid recollection of the occasion when the Will was executed by the Deceased and attested by him and Mr. Anderle. His evidence supports rather than rebut the presumption.

[12] To conclude that the Deceased did not sign the Will requires that I reject in its totality, the evidence of Mr. Reyes, and Keithley Harrigan and find that The Defendant, her brother Keithley, and the two attesting witnesses all together concocted some grand scheme to forge and did so forge the signature of the Deceased. No sufficiently compelling evidence has been adduced however, which leads to me to such a conclusion. On the contrary, I find that the 1st Claimant, even though he lived with the Deceased and claimed to be close to him, knew very little about his business affairs. He didn't know about the collection of rents for the Deceased's property in the Quarter, Anguilla; he didn't know of the Powers of Attorney granted to the Defendant to manage all his affairs in Anguilla which remained valid up to Deceased's death. He didn't know of the various promises made by the Defendant to the Deceased for dealing with his various debt obligations. It strikes me as strange that the Deceased chose not to appoint the 1st Claimant to supervise all his affairs in Anguilla during his lifetime even though he was living with and was close to him. Instead, he chose the Defendant. I do not consider that it is at all inconsistent that the

Deceased would choose the same person who supervised his affairs during his life time to, in essence 'supervise' by administering his estate upon death. To my mind, the Will is more consistent with the manner in which the Defendant ordered his affairs during his life in naming the Defendant as his executrix.

[13] Not a shred of evidence has been adduced showing that the Defendant in any way unduly influenced or brought pressure to bear upon the Deceased in ordering the administration of his estate in the way he did. The Defendant states she had no knowledge of the Will. Further, the Claimants and the Defendant are beneficiaries under the Will.

## Conclusion

[14] The evidence adduced does not, in my view, meet the bar of what may be considered as clear, positive and reliable evidence sufficient to rebut the presumption of due execution. Accordingly, I hold that the Will dated 5th April, 2000, is the Last Will and Testament of the Deceased, William Leon Harrigan. The Claimants' claim is therefore dismissed.

## Costs

[15] The parties have agreed that any award of costs be met out of the estate. The Defendant has also indicated that she is seeking no order as to costs as against the Claimants. The Defendant being the successful party, I accordingly make no order as to costs.

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Janice M. George-Creque
High Court Judge