THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
CIVIL

VIRGIN ISLANDS

CLAIM NO. BVIHCV 2004/0151

BETWEEN:

IVA FREEMAN

Claimant

and

INA FREEMAN
ELLEMAN FREEMAN
(As personal representatives of the estate of Evelyn Freeman, deceased)

Defendants

Appearances:
Mrs. Tana'ania Small-Davis of Farara Kerins for the Claimant
Ms. Thalicia Blair of Mc W. Todman& Co. for the Defendants

2006: November 28th,
December 4th, 19th

JUDGMENT

(Trustees and administrators of estate of deceased – duties of administrators - whether transfers of part of property forming a part of deceased's estate to one administrator (also a beneficiary) and her children without the consent of all beneficiaries in breach of trust – if breach found whether administrators should be excused as having acted honestly and reasonably - if not should the transfer be set aside - the Intestates Estates Act Cap. 34 – the Trustee Act Cap. 303)

[1] An aged parent, Mr. Evelyn Freeman, died intestate more than thirty-six years ago leaving among other property a valuable piece of real estate in the heart of Road Town (the little city with a big heart) Tortola, British Virgin Islands. The Defendants, who are the administrators of his estate and also his children have dealt with this property as if it

belonged to them solely, a phenomenon, alas, not uncommon in the English speaking Caribbean where all too often some executors and administrators regard trust property as theirs regardless of the law. Now, one of the acknowledged heirs, the sister of the Defendants, has come to the court to seek redress.

Relief Sought

[2] The claimant seeks the following relief: -

(1) an order that the defendants give an account of their administration of the estate of Evelyn Freeman;

(2) a declaration that the defendants have wrongfully intermeddled in the estate of the deceased;

(3) a declaration that that the transfer of Parcels 164 Block 2838F Road Town Registration Section to Ellenor Freeman Archibald, Myrna Todman-Herbert and Margarita Freeman is null and void;

(4) a declaration that the transfer of Parcels 165 Block 2838F Road Town Registration Section to Ina Freeman is null and void;

(5) an order that the Land Register for Parcels 164 and 165 Block 2838F Road Town Registration Section be rectified by the deletion of all subsequent entries after the registration of the Defendants as proprietors in transmission in the said Land Register be deleted;

(6) an order substituting Clarence Freeman as personal representative of the estate of Evelyn Freeman;

(7) Costs;

(8) Further and other relief.

Mediation

[3] Prior to trial the parties attended mediation on 30th March 2006 pursuant to an order of the court. Agreement of some sort was reached in relation to one issue to the effect that the claimant agreed to lift the restriction on Parcel 27 in exchange for the Defendants agreement, "to work in good faith and in consultation with the Claimant towards a subdivision of Parcel 27 Block 2939B East Central Registration Section."[1] Not surprisingly, having regard to the deplorable dealings with Parcel 66 disclosed in this case, they were unable to achieve any accord in relation to Parcel 66. The court is now only concerned, in the main, with issues relating to Parcel 66 and that relating to damage to the Claimant's personal property.

The Trial

[4] The matter was heard on 28th November. The claimant testified and called one witness, her son, Mr. Clarence Freeman. Mrs. Ina Freeman alone testified on behalf of the Defendants. The court reserved its decision pending written submissions which were duly filed on 4th December. Both counsel undertook to rely on their written submissions.

Issues to be determined

[5] (1) Did the First Defendant, in breach of trust, make wrongful transfers of Parcel 66 to herself and her children? If so, should the transfers be set aside or the Defendants excused for any breaches?

(2) Did the Defendants wrongfully cause damage to the Claimant's property when the family home situate on Parcel 66 was demolished? If so, what compensation, if any, is the Claimant entitled to?

(3) Should the Defendants be removed as administrators if found to be in breach of trust and Mr. Clarence Freeman, the claimant's son appointed in their stead?

(4) Are the Defendants obliged to give an account of their administration of the estate to the claimant?

[1] Trial Bundle Tab 6 Memorandum of Understanding

The Law

[6] It is well established that the fundamental duty of personal representatives is to administer the estate and to distribute it in accordance with the will or under the rules of intestacy. Under the Intestates Estates Act, Cap. 34 section 6(1), the personal representatives are to collect in the estate, hold the residuary estate upon statutory trust for sale and distribute the net proceeds of sale after administering the estate. Wrongful distribution will result in the personal representatives being personally liable unless they have been ordered by the court to do otherwise. (See Halsbury's 4th Edition, Vol. 17 para 1314.)

[7] Section 4 provides for the succession to real and personal estate on intestacy. It states at s.4(1)(a)(i) and (ii) that if the intestate leaves a surviving spouse and issue the residuary estate shall be held upon statutory trust for the issue of the intestate subject to the surviving spouse's life interest in one half. (See also Halsbury's 4th Edition, Vol. 17 para 1388.)

[8] Section 5(1)(a) provides that where the residuary estate of an intestate is directed to be held on the statutory trust for the issue of the intestate the same shall be held on trust in equal shares for all or any of the children of the intestate living at the death of the intestate or issue of the child of the intestate who predeceases the intestate. (See also Halsbury's 4th Edition, Vol. 17 para 1389)

[9] The children of Evelyn Freeman are all entitled to an equal share in their father's estate and therefore no one beneficiary can take a greater share than the other. Hence, the Defendants, as personal representatives, cannot distribute the estate as they see fit, they are to administer the estate in accordance with the governing law unless all the beneficiaries agree otherwise and come to some sort of family arrangement evidenced in writing as we are dealing with real property which cannot be transferred by parol.

[10] I am guided by the Privy Council in Commissioner of Stamp Duties v Livingston [1964] 3 All ER 692 at page 696 C-E where Lord Radcliffe stated that:

> "a trustee held the unadministered property for the purpose of carrying out the functions and duties of administration, not for his own benefit and these duties would be enforced on him by the Court of Chancery...he is in a fiduciary position with regard to the assets that came to him in the right of

> his office. He also stated that those trusts are trusts to preserve the assets, to deal properly with them and to apply them in a due course of administration".

This is the position under the Intestates Act.

[11] Further, Mitchell, J in the case of Clifton St. Hill v Augustin St. Hill, (unreported), St. Vincent, Civil Suit 402 of 1996, 24 May 2001, set out the law governing the duties of an administrator at para. 13 as follows:

> "An Administrator of an intestate's estate is a trustee. It is always the duty of an Administrator to satisfy the beneficiaries that he is properly administering the estate. He is required to act at a higher level even than he would in protecting his own interests. He must report and account. More than that, he is well advised to seek consensus and approval. If he tries and fails to secure the approval and consent of a particular beneficiary, he is opening himself up to a lawsuit. He is not well advised if he then relies on the statutory powers given to him by the Act and acts unilaterally. He is expected in such a case to apply to the court for directions on the administration of the estate. He is not safe in acting unilaterally. Only the shield of directions of the court will protect him absolutely from a lawsuit being brought by a discontented beneficiary. Further, where the court is satisfied that an Administrator acted fraudulently in administering the estate, the duty of sale given by the Act will not protect him. The Administrator will, in such a case, be liable to be held personally responsible to make good the loss. For these reasons, among others, an Administrator should never proceed to act unilaterally in administering the estate. He should always consult with the beneficiaries and attempt to secure their consent to what he is proposing."

The Facts

[12] Mr. Evelyn Freeman died intestate on April 27, 1970 leaving as his heirs, his wife, Mrs. Mary Ann Freeman and six children – Iva, Ina, Elleman, Eric, Ernest and Philmore. His

wife and three of his children (Eric, Ernest and Philmore) have since died with only Eric and Ernest leaving heirs. The parties to this action are his three surviving children.

[13] The Defendants, with the consent of the other beneficiaries[2], obtained Letters of Administration of the estate of their deceased father on 18th June, 1974 - 32 years ago[3]. As it turned out that trust and that confidence reposed in the defendants was wantonly betrayed.

[14] At the time of his death Mr. Freeman owned two parcels of lands – Parcel 66 Block 2838F Road Town Registration Section ("Parcel 66") and Parcel 27 Block 2939B East Central Registration Section ("Parcel 27"). Parcel 66 is situate in Road Town, obliquely opposite to this Court House which also houses the Legislative Council and is by far the more valuable of the two parcels although Parcel 27 comprises 24 acres. Parcel 66 had two wooden houses on it, which comprised the family home.

[15] The Defendants took no steps to distribute the estate to the beneficiaries according to law after they obtained Letters of Administration. However, in December, 1987 there was a great flurry of activity. First, on 14th December, the Defendants had themselves registered as joint proprietors of both Parcels[4] by transmission in place of their deceased father. On the same day, the First Defendant alone applied for partition of Parcel 66[5]. On 23rd December 1987 the Registrar gave effect to the partition[6]. Parcel 66 was accordingly divided into two parcels – Parcel 164 containing 223.483 square feet and Parcel 165 (area undetermined)[7]. The First Defendant then, again on the same day applied to combine Parcel 164 with Parcel 68 Block 2838F Road Town Registration Section[8], a parcel owned by her and given to her by her father weeks before his death. This was duly done. On 18th December, 1987 the Defendants transferred Parcel 164 to the First Defendant[9].

[2] Tab 6 affidavit renouncing right to grant in favour of the Defendants Tab 7 an affidavit of mother renouncing right to grant in favour of the Defendants
[3] See Tab 14 page 2 Trial Bundle
[4] See Tab 14 page 1 – Trial Bundle
[5] See Tab 16 page 2 – Trial Bundle
[6] See Tab 16 page 1- Trial Bundle
[7] See Tab 16 page 1 – Trial Bundle
[8] See Tab 17 page 2– Trial Bundle
[9] See Tab 15 page 1 – Trial Bundle

[16] Almost nine years later, on 31st October 1996 the Defendants transferred the remainder of Parcel 66, now Parcel 165 to the First Defendant's three daughters, Ellenor Freeman Archibald, Myrna Todman Herbert and Margarita Freeman[10] as joint proprietors. The transfer recited that the transfer was done at the request of the beneficiary (the first defendant) in consideration of "love and affection" for her.

[17] It was elicited from the First Defendant in cross examination that this transfer was prepared and witnessed by her daughter, Mrs. Myrna Todman-Herbert and so too were the applications for combination and for partition. This daughter was at the time engaged in real estate business.

[18] The Defendants did not seek any legal advice before embarking on these transactions.

[19] The Claimant who lives in St. Thomas, USVI lodged a restriction in the Register of Lands against Parcel 165 and Parcel 27 on 13th April 1999[11].

[20] The First Defendant sought to explain these transfers as in the face of the documentary evidence the defendants would have been hard put to deny them. In her witness statement filed on 3rd August 2006[12] she said that in 1987 she re-wrote her mortgage to Chase Manhattan Bank and was required to carry out an 'as built survey' which showed that the verandah of her home built on her Parcel 68 had encroached on Parcel 66. That encroachment had to be made good for her to obtain the mortgage. She said that with the knowledge and consent of her mother, who she admitted in cross examination was then 94 years old, she and the Second Defendant caused Parcel 66 to be surveyed and subdivided and part transferred to her. She said she and the Second Defendant did this with the knowledge and consent of her mother.

[21] She also stated at para. 8: -

> "In view of the fact that I was already the owner of Parcel 164 (semble 68), it was agreed by the surviving children of Evelyn Freeman that I was the obvious person to be given Parcel 164 as part of the share of the estate especially in light of the fact that the said parcel was too small to be distributed to more than one beneficiary of the estate. There was no

[10] See Tab 19 – Trial Bundle
[11] See Tab 26 – Trial Bundle

> objection from the claimant or any other beneficiary as the time that this decision was taken and accordingly Parcel 164 was to be transferred to me as part of my share of the estate ..." See para 11.

[22] Let me say at this juncture that of course Parcel 164 was too small to distribute to more than one beneficiary but that, as we have seen, was entirely of the First Defendant's making, as this is how she caused Parcel 66 to be sub-divided. That there was no objection from the other heirs is not surprising as the Claimant said that she was never informed or consulted about this and the First Defendant admitted in cross–examination that the only ones who knew of the transaction relating to parcel 66 were her mother and the Second Defendant.

[23] The First Defendant also stated in para. 10: -

> "it was generally accepted among the children of Evelyn Freeman, deceased that Parcel 165 was intended for the family member who cared for my mother MaryAnn Freeman, deceased and my father ... in their old age at the family house situate on Parcel 165. It was therefore accepted among the children of Evelyn Freeman, that since I was the child that cared for my father... and my mother... until their death, then I was the person who should be entitled to Parcel 165."

[24] It was in light of this that she said she caused Parcel 165 to be directly transferred to her children. She said, displaying a sound knowledge of the costs of property transfers:-

> "the direct transfer was in my view advantageous because it obviated the need to transfer the same to me and then later to my children. If I were to conduct a double transfer, there would be additional costs occasioned with that."

[25] The Defendant's Defence was effectively and conclusively demolished in cross-examination. It transpired that she discussed the ownership of Parcel 66 with her father some years prior to his death, that he did not specify which child was to inherit it but just said it was to go to the one that took care of him and his wife in their old age. However, she cannily kept that priceless gem of knowledge to herself and never divulged it to her

[12] See Tab 11

siblings, not even after their father's death. How then can she truthfully assert, first, that her siblings agreed that she was to get Parcel 164 and then that it was generally accepted by her siblings that she was to have Parcel 66 based on their father's intention? How can one be said to have accepted or agreed to a situation of which one is ignorant? She also admitted that her father gave her Parcel 68 as a gift weeks before his death. Again this seems to me to throw significant doubt on her story that her father meant the child caring for him to have Parcel 66 and that she was that child.

[26] To my mind the gift of Parcel 68 to her so close to his death points to some recognition from her father of any care-giving services that she might have rendered to him and his wife. In any event it is not disputed that their father had also given Parcel 65 which is likewise adjacent to Parcel 66 to the Claimant.

[27] I find that the First Defendant is a stranger to the truth having seen and heard her and examined the documentary evidence before the court. I have no doubt that the First Defendant needed part of parcel 66 to remedy the encroachment in order to obtain her loan. Instead of seeking assistance from the other beneficiaries of the estate, she simply helped herself, and her brother administrator for reasons which are not here apparent, simply went along with her without the benefit of legal advice. It is also telling that the documents for subdivision and combination were prepared and witnessed by her daughter, the said fortunate daughter, among others, to whom the other part of Parcel 66 (Parcel 165) was later transferred and the same daughter who the First Defendant reluctantly admitted, through a company, owns a parcel of land contiguous to Parcel 165. Is this a coincidence? That daughter's line of work would no doubt have made her sufficiently aware of the fact that her mother was only an administrator and at the very least if she were interested in protecting her mother, instead of assisting her in the manner in which she did, she not being a lawyer, she ought to have indicated to her the wisdom of obtaining legal advice before she dealt with Parcel 66.

[28] Again, if the First Defendant honestly believed that her father meant her to have Parcel 66 then the fact that she did not tell her other siblings about this immediately after his death is against her. So too the fact that she waited some 17 years after his death and 9 years after the subdivision to transfer the remaining portion of Parcel 66 to her daughters. This does not strike me as the actions of an honest person. In any event even if that were her

father's intention, which I do not accept as it is simply based on her word and her credit has been seriously impeached, the property would still fall to be distributed on an intestacy as his verbal instructions do not amount to a testamentary document which can be given effect to. I also do not accept that her mother consented to any transfer and even if it were so that would not have been sufficient to render the transfers legal as her mother was only one of the beneficiaries.

[29] What is striking in all this is that the Defendants, in their capacity as personal representatives only took steps to deal with Parcel 66 in 1987 (some 13 years later) and then only for the benefit of the First Defendant. They acted again in 1996 but once more it was only to benefit the First Defendant indirectly through her daughters. I have no doubt that the Defendants regarded the lands as theirs and felt under no obligation, legal or moral, to account to any other beneficiary.

[30] In summary then, I reject the explanation put forward on behalf of the Defendants as to the transfers. The transfers are clearly wrong and were done in flagrant breach of the Defendants' duties as trustees of the estate.

Should the Defendants be excused for any breaches

[31] Ms Blair has sought to rely on s.63 of the Trustee Act Cap. 303 in the event that the court finds as I do that the defendants acted in breach of trust.

[32] Section 63 provides as follows: -

> "If it appears to the court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in a matter in which he committed such breach, then the court may relieve him wholly or partly from personal liability for the same."

[33] Counsel submitted in a nutshell that the court should not find the Defendants personally liable as they have acted reasonably and honestly. This argument deserves short shrift in light of the evidence. The court has not found a scintilla of evidence that could point to the

transfers and the demolition of the family home having been done honestly and reasonably. There is categorically no factual substratum to make out such a case that the Defendants and in particular the First Defendant acted reasonably and honestly.

[34] Having regard to my findings of facts, the actions by the First Defendant in causing Parcel 66 to be transferred to herself and her daughters were wholly selfish and dishonest, motivated by avarice and with a complete and callous disregard for the rights of the other beneficiaries who were not strangers but full blood relations. The old saying we are so fond of in the Caribbean, "blood is thicker than water" seems to be of no moment to the Defendants. The First Defendant's actions amounted to a blatant abuse of her duties as trustee of the estate and are inexcusable. The Second Defendant went along with her and he too is personally liable for the breaches although he did not take any personal benefit from the transfers. It follows then that the Defendants cannot pray in aid s.63 of the Trustee Act.

Relief Granted

[35] The court is asked to set aside both transfers but being mindful of the fact that the First Defendant's house has encroached on the land and that her bank would have acquired some interest in Parcel 164 as lender the court will only set aside the transfer of Parcel 165. However, the Defendants will be treated as having sold Parcel 164 to the First Defendant and she is ordered to pay to the new administrator, hereby appointed for the benefit of the estate, a price equivalent to the market value of Parcel 164 as at the date of the transfer. Such value is to be agreed failing which it shall be determined by the court within one month hereof on application by either party or the administrator. In addition, the First Defendant had the use of that land since the date of the transfer, thus depriving the estate of its benefit. Accordingly, guided by the principle that a trespasser who has unlawfully deprived the true owner of land must pay for its authorised use as enunciated by the Privy Council[13], the First Defendant shall pay interest on the price at the rate of 7.5% per annum from the date of the transfer until payment of the price.

[36] With respect to Parcel 165 the transfer is set aside and the Registrar of Lands ordered to make the necessary amendments to the register. In addition, the First Defendant is to pay

[13] **Joseph W. Horsford v Lester B. Bird and others**, Privy Council Appeal No. 43 of 2004

interest on the market value of the land together with the family home such value to be agreed or if not assessed by the court upon application from the date of the transfer to the date of this judgment at the rate of 7.5% per annum as she and her children had the use of the land for about 10 years and thus deprived the estate its use. I have no doubt that her daughters who took the transfer would assist their mother as she did what she did in their interests.

[37] In the light of their unconscionable dealings with the estate, it is only just and proper to remove the Defendants from office and they are both hereby removed as administrators and the grant to them is hereby revoked. They are however to give account to the Claimant of their dealings with the estate from the date of grant to the date hereof within 1 month.

[38] The Claimant is one of the persons entitled to a grant and I direct, as she has indicated that she would like her son Clarence Freeman to take the grant, that the Registrar issue letters of administration to Clarence Freeman as attorney for his mother for her use and benefit upon him taking the necessary oath.

Claim for Damage to Personal Property

[39] The Claimant is asking for damages for her furniture and other personal property which were lost or destroyed when the Defendants demolished the old family home on Parcel 66.

[40] In February, 1999 the Defendants caused the family home on Parcel 66, comprising two wooden houses to be demolished thereby causing damage or destroying the Claimant's personal property. The Defendants, in para. 7 of their Defence[14] deny any liability for damage to the Claimant's personal property. Their Defence is that the houses were in a dilapidated condition and unfit for human habitation and that they received a notice to that effect from the Public Health Department dated 24th November, 1998 and that prior to the demolition they had by letter notified the Claimant of the proposed demolition and asked that she remove any personal effects she had stored on the premises and that the Claimant did not do so.

[14] Tab3

[41] The First Defendant in her supplemental witness statement dated 16th October, 2006 stated that the houses were in a dilapidated condition and that prior to and at the time of the demolition, "the boards/woods were rotted and the yard and inside the houses were infested with rats and rodents." Yet, she had to admit that their brother Philmore lived in one of the house up to his death about six months prior to the demolition and I accept the Claimant's evidence that she stayed in one of the houses when she attended his funeral. This casts serious doubt on the condition of the premises as deposed to by the First Defendant.

[42] The First Defendant in her supplemental witness statement said further that after getting the notice which required her to abate the nuisance she met with a representative of the Public Health Department and discussed how the nuisance should be abated and that they both decided that they should be demolished. I note that she did not give the date of the meeting nor whom she met with and that she alone attended and not her co-administrator. She gave no explanation for that.

[43] In cross–examination the First Defendant was forced to admit that contrary to her pleadings the notice did not require that the houses be demolished but required that a nuisance be remedied. In fact the notice was "a notice requiring abatement of a nuisance." It referred to the accumulation of junk, discarded household belongings and receptacles which may serve as breeding ground for mosquitoes and rodents and gave notice that the premises be restored to a sanitary condition within sixty days. It is also significant that the letter sent to the Claimant advising her of the demolition was dated 31st October 1996 and the Notice 24th November, 1996. How then was it possible for the letter to contain the notice as she claimed? Further, the letter on its face makes no mention of the notice being attached thus ruling out an incorrectly dated notice or letter. I therefore have no difficulty in accepting the evidence of the Claimant that she received the letter but not the notice and so had no idea why the premises were to be demolished and she did nothing about it.

[44] I accept the Claimant's evidence that at the time of the demolition she had on the premises the articles itemized in para. 9 of her Statement of Claim and repeated in her witness statement namely – 3 beds, 4 chairs, 1 small sofa, I refrigerator, 1 portable radio, 2 rolls fence wire, 12 steel poles, linen and miscellaneous household items. I also accept her evidence that the articles of furniture were placed there and used by her when she came to

visit her parents and that Philmore used them in her absence. No issue was taken as to whether or not she had a right to store or put these articles on the premises it being accepted no doubt that she had that right first by her father's permission and then as a beneficiary of her father's estate after his death. She readily admitted in cross examination that the articles were old and that she did not have them valued (one could well ask how could she when they had been destroyed) but that she estimated their value as of the date she purchased the items, not their replacement value. The value she is claiming is $2,000.00.

[45] I find that the articles though old were still being used by Philmore up to his death about six months before the demolition and that the Claimant stayed in the house when she came to Tortola to attend his funeral and the items were there at that time and in working condition. It cannot therefore be argued that those items were worthless which is the tenor of the First Defendant's evidence on value.

[46] The other aspect of the defence on this issue seems to be that in any event the Claimant was notified that the premises would be demolished and she took no steps to remove her property therefore the Defendants are not to be held responsible for her losses. Further, that her son Clarence visited the premises immediately prior to the demolition and that he too had an opportunity to protect his mother's property yet instead of doing so he attempted to hamper the demolition by blocking the entrance to the property.

[47] Clarence gave evidence only on this issue and does not dispute that he passed by the premises on the morning of the demolition as this is where he used to park his backhoe. Both Defendants were in attendance with the Claimant's son but he did not enter the premises to secure his mother's property but instead blocked the entrance of the property no doubt in an attempt which proved unsuccessful to hamper the demolition. Let me hasten to say that Clarence had no legal duty to assist in securing his mother's property and the Defendants cannot rely on his failure to do so.

[48] Is the Claimant entitled to be compensated having received notice and having deliberately failed to secure her property? One has to my mind consider first whether the Defendants had any right to demolish the buildings. On the evidence I think not. I agree with Mrs. Small-Davis' analysis that on a balance of probabilities the real reason for demolishing the

premises were not because Public Health demanded or recommended it but having transferred that part of Parcel 66 on which the houses were, to her children since October 1996 it could be reasonably inferred that the First Defendant wanted the land cleared for her and her children to make use of that valuable land. Therefore, she chose to demolish the buildings rather than restore them to a sanitary state as requested by the Public Health Department. On that basis, the Defendant's actions in demolishing the buildings and incidentally the Claimant's personal property were wrongful as they were not lawful acts done in furtherance of the administration of the estate.

[49] The Claimant's valuation of her property has not been seriously challenged and I am satisfied that on a balance of probabilities she has established a value of $2,000.00 as the value at time of purchase. Properly, she would have been entitled to claim replacement value but perhaps generously has not done so. Accordingly, the Claimant is entitled to compensation for her loss in the amount claimed of $2000.00

[50] Accordingly, the Defendants must pay to her the sum of $2,000.00 as damages with interest at 5% per annum from the date of demolition to the date of judgment.

[51] In the event that I am wrong the Defendants were in law gratuitous bailees of the Claimant's chattels. If they gave notice, as I find that they did, bringing the bailment to an end they were not in law entitled to cause the chattels to be destroyed on the Claimant's failure to remove them. The bailee at common law still had an obligation to secure the property or to apply to the court for leave to dispose of them[15].

Costs

[52] The Claimant being the successful party is to have her prescribed costs on a claim deemed to have a value of $50,000.00. There is no question of the estate meeting those costs having regard to my findings. The Defendants must bear the costs personally in equal shares as although the Second Defendant did not take any personal benefit from the transfer, he, as joint proprietor participated in the transfer in breach of his duties as administrator and thus he cannot be absolved from all liability.

[53] In summary, the court hereby orders as follows:

(1) the subdivision and transfers of Parcel 66 were unlawful;

(2) the First and Second Defendants have breached their duties as trustees of the estate of Evelyn Freeman and as such are personally liable for those breaches;

(3) the First and Second Defendants do give an account of their administration of the estate of Evelyn Freeman from the date of the grant to date of judgment within 1 month hereof;

(4) the First and Second Defendants are both hereby removed as Administrators and the grant to them is hereby revoked;

(5) the Registrar is hereby ordered to issue a grant to Clarence Freeman as attorney for his mother upon him taking the necessary oath;

(6) the First Defendant is to pay to Clarence Freeman, the new administrator hereby appointed, for the benefit of the estate, the price equivalent to the market value of Parcel 164 as at the date of transfer, such value to be agreed failing which it shall be determined by the Court within one month on application by either party or the administrator;

(7) the First Defendant shall pay interest on the market value of Parcel 164 at the rate of 7.5% per annum from the date of transfer until payment of the price;

(8) the transfer of Parcel 165 is hereby set aside and the Registrar of Lands shall make the necessary amendments in the Register;

(9) the First Defendant is to pay interest on the market value of Parcel 165 together with the buildings thereon from the date of transfer to the date of this judgment at the rate of 7.5% per annum;

(10) the First and Second Defendants to pay the Claimant the sum of $2,000.00 for damage to the Claimant's personal property with interest at the rate of 5% per annum form the date of the demolition of the buildings until judgment;

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[15] See Halsbury's 4th Edition, Vol. 2 paras 1515, 1522.

(11) the Claimant is to have her prescribed costs on a claim valued at $50,000.00;

(12) the First and Second Defendants must bear these costs personally in equal shares.

Rita Joseph-Olivetti
High Court Judge
British Virgin Islands