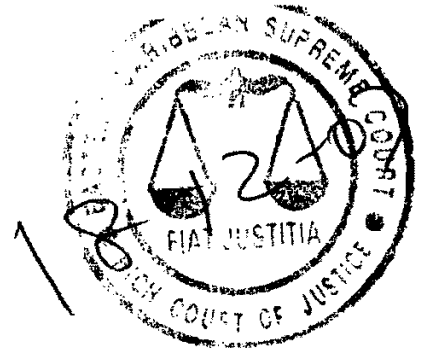


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 318 OF 2004



IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT CHAPTER 377 OF THE LAWS
OF SAINT VINCENT AND THE GRENADINES REVISED EDITION 1990

AND

IN THE MATTER OF THE ESTATE OF JAMES CREESE, DECEASED

BETWEEN:

DOUGLAS O'NEAL CREESE

Claimant

v

VIBERT CREESE
(Administrator of the Estate of James Creese, Dec'd)

Claimant

Appearances: Mr. Perry Joseph for the Claimant
Mrs. Kay Bacchus-Browne for the Defendant

2007: May 15
December 18

JUDGMENT

[1] **THOM, J:** On June 29, 2004 the Claimant by way of Fixed Date Claim sought the following reliefs:

- (a) Revocation of the Grant of Letters of Administration of the Estate of James Creese, deceased which was granted to the Defendant on 9th October 2002.

- (b) That the Defendant do render an account of his administration of the Estate of James Creese, deceased.

- (c) Payment of the sum of \$93,985.67 by the Defendant personally and interest thereon as this Honourable Court thinks fit.
- (d) Such further or other relief as the Court deems fit.
- (e) Costs.

BACKGROUND

- [2] The Claimant and the Defendant are sons of the late James Creese. They along with their other siblings are entitled to a share of the estate of the said James Creese.
- [3] By Claim No. 269 of 2000 the Claimant as "next friend" of James Creese instituted proceedings against Mr. Theodore Browne for damages for undue influence in the purchase and sale of a parcel of land belonging to the said James Creese.
- [4] By consent the parties agreed that the Court would determine the 1992 market value of the land, that being the date of the sale and purchase.
- [5] Prior to the Court assessing the value of the land, Mr. Browne gave an undertaking in the following terms:

"Dear Sir,

Re: HCA 269/2000 – Creese v Browne

I hereby reduce to writing the undertaking I have given orally as to conclusion of the above matter.

We undertake to pay the assessed value as at 1992 (as hereunder defined) in the event that His Lordship's Judgment yields a sum which the Claimant and his family reasonably consider unfair and undervalue.

The assessed value will be determined either as the agreed value or the arithmetic value arrived at by three independent valuers from the list of Sebastian Alexander, Frankly Browne, Brian Huggins, Leroy Charles and Albert King subject to the Defendant receiving credit for \$25,500."

- [6] The Court gave its decision in the matter on December 12, 2001.
- [7] James Creese died on 10th April 2002.
- [8] The Defendant was appointed Administrator and granted Letters of Administration in the Estate of James Creese on the 9th October 2002. The Defendant was substituted as Claimant in Suit No. 269 of 2002 and on December 12, 2003 collected the sum of \$50,000 which was paid into Court by Mr. Browne pursuant to the decision of the Court.
- [9] No action was taken to enforce the undertaking. No appeal was made against the Judgment of the Court dated December 12, 2001.
- [10] On May 15, 2007 it was agreed by consent that:
- (1) The Defendant will render an account of the estate of James Creese, deceased.
 - (2) The Defendant to render the account on or before the 16th day of July 2007.
 - (3) The only issue outstanding is whether the Claimant is entitled to payment by the Defendant personally of the sum of EC\$93,985.67 and interest pursuant to the undertaking dated 11th of December 2001.

EVIDENCE:

- [11] The parties agreed that the witness statements serve as the evidence in the case. The Claimant filed a witness statement and Beatrice King his sister and sister of the Defendant filed a witness statement on behalf of the Claimant. The Defendant filed a witness statement and Vernice Creese, the wife of the Defendant and Leon Creese, the brother of the Claimant and the Defendant filed a witness statement on behalf of the Defendant.

SUBMISSIONS:

[12] The Claimant contended that it was the duty of the Defendant to carry out his duties in good faith and he has failed in his duty to the estate to recover the sum by instituting proceedings to enforce the undertaking. It was submitted on behalf of the Defendant that the Claimant is not authorized by the other beneficiaries to claim the sum of \$93,000.

LAW:

[13] The relevant provisions of the Administration of Estates Act Chapter 377 are sections 34 and 39. These sections read as follows:

- "34. Every person to whom administration of the real and personal estate of a deceased person is granted shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.
39. The personal representative of a deceased person shall be under a duty to –
- (a) Collect and get in the real and personal estate of the deceased and administer it according to law.
 - (b) When required to do so by the Court, exhibit on oath in the Court a full inventory of the estate and render an account of the administration of the estate to the court; and
 - (c) When required to do so by the Court, deliver up the grant of probate or administration to the Court."

[14] The \$93,000 that is claimed by the Claimant represents the arithmetic mean of the valuation of three valuers pursuant to the undertaking dated 11th December 2001.

[15] Assuming, but not deciding that the undertaking was enforceable, the operative part of the undertaking is paragraph 2. This paragraph provides for the undertaking to be enforced if the Claimant and his family reasonably consider the Court's valuation to be unfair and undervalue. There is no evidence from the Claimant to show that the Claimant and his family considered the sum awarded by the Court to be unfair and undervalue. I consider family in the context of the undertaking to mean the wife if surviving and the children of James Creese. Even after the death of James Creese there is no evidence to show that

the family of James Creese considered the award of the Court to be unfair and undervalue. The only evidence of the Court's award being unfair and undervalue comes from the Claimant. His sister Beatrice King who filed a witness statement in this matter makes no mention of the award of the Court.

[16] In view of the above I do not find that the Defendant failed to discharge his duty as Administrator in accordance with the Administration of Estates Act.

[17] I find that the Claimant is not entitled to the payment of \$93,000.

[18] Cost agreed by the parties in the sum of \$2,500.00 to be paid by the Claimant to the Defendant.


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Gertel Thom
HIGH COURT JUDGE