

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2008/0678

In the Matter of Section 7 (2) of the Eastern Caribbean Supreme Court Act Cap 143
And
In the Matter of Section 116,117 and 120 of the Lunacy Act 1890 of the United Kingdom
And
In the Matter of Section 112 of the registration Land Acct Cap 374
And
In the Matter of the Inherent Jurisdiction of the High Court
And
In the Matter of an Application by Leroy Silston for an order that he be appointed RECEIVER
to manage and administer the affairs and Estate of EDRIS SILSTON

BETWEEN

LEROY SILSTON

Claimant

And

EDRIS SILSTON

Respondent

Appearances:

Ms. E. Ann Henry, Ms. C. Debra Burnette and Ms. Shahida Ali-Schneider for the Applicant
Mr. Kendrickson Kentish for the Respondent
Mrs. Eleanor Clarke-Solomon for RBTT

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2009: April 29
June 12
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DECISION

[1] **Blenman J:** This is an application by Mr. Leroy Silston to be appointed as the Receiver to manage and administer the affairs of the Estate of Mrs. Edris Silston, who is his wife.

[2] I gave an oral decision in this matter. It has now become necessary to provide the reasons for my decision. I do so now.

[3] **Background**

Mr. Leroy Silston and Mrs. Edris Silston were married in 1971 and their union produced no offspring. Mrs. Silston is significantly older than Mr. Silston; she is 85 years old, while he is 67 years old. She is a very successful businesswoman, who has accumulated a vast amount of wealth and land in Antigua. In addition, she owned and ran several businesses including a well established and lucrative boutique. As she was advancing in age, she requested her niece Mrs. Chambers, who at that time had resided in England for several years, to return to Antigua and Barbuda to assist her in the business. Mrs. Chambers complied and returned to Antigua and Barbuda with her husband and has been assisting Mrs. Silston in managing her business. It is apparent that for several years Mr. Silston was not involved in running or managing Mrs. Silston's business. He mainly did errands at her request. In fact, as late as she 2007, she had travelled to the USA to purchase items for her store. Meanwhile, on 9th October, 2007 Mrs. Silston gave a Power of Attorney to her niece to manage the business, due to the fact that she was no longer able to do so. Subsequently, her health deteriorated and Mr. Silston applied to the Court in order to be appointed the receiver of her Estate, in order to manage and administer the estate. The application is opposed by Mrs. Chambers.

[4] Mr. Silston says that he and Mrs. Silston have been a couple since 1962. In 1983, they moved into the matrimonial home. He says that she is the owner of fifteen properties, some in quite upscale areas in Antigua and Barbuda, while several others are rented for commercial purposes. Mr. Silston says that Mrs. Silston owns two other parcels of land together with a third person. In fact, he says that one of her properties is rented to a hotel at a monthly rental of US\$15,000.00. In addition, she has substantial sums of monies at various banks. He says that Dr. Cecil Phillips has examined her and found that she is suffering from Alzheimer's disease. He says that on account of the deterioration of the

health and mental condition of Mrs. Silston, funds are required to meet the cost of caring for her, meeting her physical needs and administering her affairs.

[5] In support of his application, Mr. Silston provided a medical report by Dr. Cecil Phillips. In his report, Dr. Phillips stated that Mrs. Silston has Alzheimer's disease, which in his opinion, would have started to affect her more than eighteen months ago. This disease causes progressive deterioration in the mental state of the affected person. She is presently incapable of making any rational decisions about her business, domestic or health related affairs.

[6] Mr. Silston admitted that his wife had been an independent and successful businesswoman all of her adult life and that when she could no longer have gone to work she appointed Mrs. Chambers her Attorney. Nevertheless, he stated that he was of the view that Mrs. Chambers should no longer be in charge of Mrs. Silston's funds since there is an unexplained shortage of funds. This he says has placed in jeopardy Mrs. Silston's continued care and maintenance.

[7] Mrs. Chambers filed an affidavit in answer in opposition to the application. She has denied that there is a shortage of funds to care for Mrs. Silston. She asks the Court not to appoint Mr. Silston to manage Mrs. Silston's affairs. She disputed that Mrs. Silston is incapable of managing her affairs.

[8] Another niece Ms. Ethelyn Parker also filed an affidavit in support of Mr. Silston's application. Ms. Parker stated as follows

[9] **Issues**

The issues that arise for the Court to resolve are:

- (a) Whether, as a matter of fact, and by reason of mental infirmity, Mrs. Silston is incapable of handling her own affairs.
- (b) Assuming that the answer to (i) above is yes, who would be a suitable person to be appointed as Receiver of Mrs. Silston's affairs?

[10] **Evidence**

Dr. Cecil Phillips, having provided a medical report on Mrs. Silston's health and mental condition was cross-examined. Based on the agreement of both parties Dr. Gloria Mason-Thomas has also provided a medical report in the matter. She too was cross-examined. Due to the contentious nature of the application, both Mrs. Chambers and Mr. Silston were also cross-examined in relation to their affidavit evidence.

[11] **Ms. E. Ann Henry's submissions**

Learned Counsel Ms. Henry said that Mr. Silston, in these proceedings, is invoking a long-established jurisdiction of the Court. In the case of **Ex Parte Whitfield 2 Atk.315**, this jurisdiction was accepted as having been established in earlier cases where orders for the appointment of a Receiver for children and persons suffering from infirmity of the mind were granted.

[12] The jurisdiction was tentatively addressed in the Lunacy Act, 1890, pursuant to which "protection was afforded to the property not only of persons found to be of unsound mind by inquisition but also of other persons who were in fact incapable by reason of mental infirmity of managing their property and various powers of management and administration were expressly conferred". Halsbury's Laws of England (3rd Edition) Volume 29, paragraph 1039. It is this jurisdiction which is preserved by section 7(2) of the Eastern Caribbean Supreme Court, Cap 1343.

[13] Ms. Henry stated that the Court may find it helpful to consider the case of **Folks v Faizey [2006] EWCA Civ 381**. While **Folks'** case may not be on all fours with the case at bar, it demonstrates the approach taken by Courts in considering applications of this kind.

[14] **Mental Capacity**

In relation to the first issue, the Court received evidence from Dr. Mason-Thomas and from Dr. Phillips. Both have submitted reports on the state of mental health of Mrs. Silston.

[15] Learned Counsel Ms. Henry stated that in considering whether Mrs. Silston is incapable by reason of mental infirmity to handle her affairs and taking into account the opinions given by the medical practitioners, the Court should take the following matters of evidence into account:

- (i) That neither of them had any prior knowledge of Mrs. Silston's medical history;
- (ii) That they both made their diagnoses on the basis of one visit. In the case of Dr. Mason-Thomas, the visit was 35 minutes and in the case of Dr. Phillips, the visit was just over 1 hour;
- (iii) That Mrs. Silston is 85 years old, is hard of hearing and has difficulty in moving around which appears to be caused by her poor circulation, a condition from which she has suffered for many years.
- (iv) That Dr. Phillips acknowledged that prior to his attending Mrs. Silston, Mr. Silston had told him that she was "seeing and hearing things which were not in keeping with reality". Also, that Dr. Phillips acknowledged that, in testing Mrs. Silston's memory, he had to rely on Mr. Silston and two helpers to confirm the information given by Mrs. Silston.
- (v) The reasons given by the doctors for making their diagnoses. In this regard, Dr. Mason-Thomas pointed to the fact that Mrs. Silston could not remember the year and also that, when asked, Mrs. Silston said that the Ebenezer Methodist Church is located on Nevis Street, whereas it is located on St. Mary's Street and Redcliffe Street. The determining issue for Dr. Phillips was that Mrs. Silston seems to think that there were two men outside when she had to assist.

[16] Having regard to these matters of fact, learned Counsel Ms. Henry submitted that it would not be prudent for the Court to make a finding of fact that Mrs. Silston is incapable, by reason of mental infirmity to handle her affairs. The evidence of both doctors pointed to forgetfulness. Ms. Henry said that this is quite consistent with Mrs. Silston's age and that the Court should not draw inferences as to her mental capacity from her forgetfulness.

[17] The tone of Dr. Phillip's report, learned Counsel Ms. Henry said, suggests that, apart from his reference to the two men, there was nothing which would indicate incapacity of the

mind. His report clearly indicates that Mrs. Silston was able to discuss her various ailments and was coherent and, in his words “upbeat”. This runs completely contrary to the conclusion that Mrs. Silston is in an advanced state of Alzheimer’s disease. It is noteworthy that Dr. Mason-Thomas expressed no opinion as to the extent of deterioration or as to whether Mrs. Silston’s condition, as she diagnosed it, was permanent.

[18] The cross-examination of Mrs. Chambers will fall for consideration by the Court, particularly her reply to the question posed by learned Counsel, namely, whether Mrs. Silston is able to handle her own affairs. The Court will recall that Mrs. Chambers said that she did not think that Mrs. Silston could handle her own affairs.

[19] **Suitable Person**

In relation to the second issue, Ms. Henry stated that the background information concerning Mrs. Silston and her relationships both with Mr. Silston and Mrs. Chambers would greatly assist the Court in making its determination on this issue. It was suggested to Mr. Silston that, in fact, he does not live at Mrs. Silston’s home in Bellevue but rather he lived in his own house at Buckleys. While this suggestion was denied by Mr. Silston, the Court heard and saw Mr. Silston giving testimony and Ms. Henry said that the Court should form the view that he was not being truthful.

[20] Mrs. Silston, in September, 2007, while under the care of Dr. Ramsey, gave a Power of Attorney to Mrs. Chambers. Ms. Henry submitted that this act demonstrates the confidence reposed by Mrs. Silston in Mrs. Chambers to handle her affairs. The Court is invited to find significant that Mrs. Silston chose to constitute Mrs. Chambers her Attorney and not Mr. Silston. There is no evidence before the Court which would suggest that Mrs. Chambers is unsuitable for an appointment as Mrs. Silston’s Receiver.

[21] Indeed, the uncontroverted evidence is that when Mrs. Chambers realised that Mrs. Silston was unwell following her September 2007 shopping trip to Miami, Mrs. Chambers employed persons to take care of Mrs. Silston’s needs at home while she continued to manage Mrs. Silston’s business.

- [22] Ms. Henry said that Dr. Phillips' report and the Affidavit of Mrs. Chambers provide evidence that Mrs. Silston is properly cared for and attended by the helpers who have been employed by and are supervised by Mrs. Chambers.
- [23] In the absence of any authority to the contrary, Ms. Henry submitted that, if the Court determines that an appointment should be made, it is open to the Court to appoint more than one person as Receiver. If the Court is inclined to consider more than one person, the Court may wish to consider Mrs. Silston's long-standing friend Mrs. Janet Arrindell as a suitable person to be jointly appointed with Mrs. Ruthlyn Chambers.
- [24] Ms. Henry stated that Mr. Silston has not discharged his burden of proving that Mrs. Silston is incapable, by reason of mental infirmity, of managing her affairs. Further, even if the Court is satisfied that Mrs. Silston is so incapacitated, Mr. Silston has not shown that he would be a suitable person to handle her affairs.
- [25] Ms. Henry drew the Court's attention to the evidence of Mrs. Ruthlyn Chambers and her apparent competence in discharging her responsibilities to Mrs. Silston under the Power of Attorney and is asked to find that if the Court considered that Mrs. Silston is mentally incapacitated from managing her own affairs, that Mrs. Chambers would be a suitable person to be appointed as a Receiver.
- [26] Ms. Henry asked the Court to note Mrs. Chambers' expressed willingness to provide full accounts to the Court of her management of Mrs. Silston's affairs from October, 2007 to date.
- [27] **Mr. Kendrickson Kentish's submissions**
Learned Counsel Mr. Kentish said that the basis of the claim is that Mrs. Silston is mentally and physically ill and therefore incapable of managing her affairs. Mr. Silston seeks an order appointing him as the Receiver. By reason of his marriage to Mrs. Silston and his familiarity with her affairs, he is a fit and proper person to be appointed as the Receiver.

Mrs. Chambers holds a Power of Attorney granted by Mrs. Silston in 2007 and has purported to act in that capacity managing the affairs of Mrs. Silston. The validity of the Power of Attorney is challenged.

[28] Learned Counsel Mr. Kentish stated that the Court has always had an inherent jurisdiction over minors and infirm persons. This jurisdiction is augmented by statutory provisions which have been received into Antigua and Barbuda by virtue of the Supreme Court Act; The Lunacy Act 1890 of the United Kingdom. In *The Law and Practice as to Receivers*, 11th Edition, the Editor summarises the extent of the Court's powers under the Lunacy Act. In particular, the Court has the power to appoint Receivers over the property of persons who are incapable, through mental infirmity or disease, of managing their own affairs. Mr. Kentish stated that Mrs. Silston is incapable of managing her affairs.

[29] **Mental Capacity**

Learned Counsel Mr. Kentish said that Mrs. Silston was examined by two medical doctors at different times. Both doctors have given written and oral evidence as to their findings. Both doctors have conducted that Mrs. Silston is incapable of managing her affairs. Significantly, Mrs. Chambers prevaricated on this issue during cross-examination, but eventually conceded that Mrs. Silston was incapable of managing her affairs. This evidence is commended to the Court.

[30] Under the Lunacy Act, the Court has the power to appoint Receivers over the property of persons who are incapable, through mental infirmity or disease, of managing their own affairs. In determining the appropriate person to be appointed as a Receiver, the primary requirement at Common Law was that the person to act should be an individual of full age. It has also been said that the person to be appointed must possess integrity of character, business experience, knowledge of affairs and a capacity for dealing with accounts.

[31] **Suitable Person**

Mr. Silston, apart from being the husband, has in his written and oral evidence, shown great familiarity with the business affairs of Mrs. Silston. He was not shaken or discredited

in cross-examination and the Court is invited to draw the appropriate inferences with respect to his character. He has given the Court full details of her assets and has expressed a willingness to act as Receiver. In contrast, Mrs. Chambers who held a Power of Attorney executed in dubious circumstances, has prevaricated with respect to Mrs. Silston's true medical condition. Why did she not apply to the Court to have a Receiver appointed? Why did she hesitate before conceding under cross-examination that Mrs. Silston was incapable of managing her affairs? Mr. Kentish therefore submitted that she is not a fit and proper person to be appointed as a Receiver.

[32] The Court has invited Counsel to make submissions on the terms of an interim order appointing Mrs. Chambers and Mr. Silston as Receivers. It is doubtful whether such an order would be useful given the clear lack of communication and co-operation between these parties. In any event, any Interim Receiver should be ordered to (i) take possession of the estate (chattels and real property) (ii) retain Independent Legal Counsel and (iii) file a written report in Court upon termination of their appointment.

[33] **Court's analysis and conclusions**

I have given deliberate consideration to the evidence in this matter and to the submissions of learned Counsel. The following represents my findings of fact. There is evidence before the Court on which it is satisfied that Mrs. Silston does not have either the mental or the physical ability to manage her affairs. I accept the evidence of Dr. Mason-Thomas who struck me as a straightforward person with no interest to serve. There is no doubt that by virtue of her vast experience as a Medical Practitioner and having attended to several persons who were similarly circumstanced, that Dr. Mason-Thomas was competent to give the evidence she did. I am fortified in the above finding based on the medical evidence provided by Dr. Phillips, who also is a general practitioner who has treated several persons who have the same illness as Mrs. Silston. She was very honest and candid.

[34] The Court is satisfied that Mrs. Silston is suffering from Alzheimer's disease, but is far from satisfied that Dr. Phillips was as independent as he could have been when he said that the condition must have started 18 months before the date of his report. I am afraid that while

the good doctor testifying, judging from his general manner and the way in which he answered the questions, the Court was not all together satisfied that he did not conveniently seek to place the timing of the illness with reference to the Power of Attorney. It bears noting that Dr. Phillips, unlike Dr. Mason-Thomas, sought to give a time from which Mrs. Silston's illness commenced. I am unable to accept this aspect of the evidence as credible.

[35] I must state, what was particularly curious is that he was able to say that Mrs. Silston has been suffering with Alzheimer's disease for some 18 months. The Court has cause to view this bit of evidence with suspicion. It is entirely open to the Court to determine what weight is given to this aspect of the evidence. There is no doubt in the Court's view, having observed Dr. Phillips, as he testified in relation to this aspect of the case that the date which he has provided to the Court is entirely fortuitous. I do not accept Dr. Phillips' evidence when he said that Mrs. Silston was in that state since 18 months before the date of the report. In my respectful view, this bit of evidence was given 'very conveniently'. The expression "incapable of managing her own affairs and property must be construed in a common sense way as a whole. Based on the evidence presented, the Court is satisfied and finds as a fact that Mrs. Silston is mentally and physically incapable of managing and administering her affairs.

[36] Further, I am fortified in my view based on the other credible and reliable evidence that was presented to the Court in relation to the state in which Mrs. Silston is and the fact that she cannot physically move and is confined to her bed.

[37] I digress to state that equally, there is no evidence before the Court on which it can conclude that at the date of the execution of the Power of Attorney in favour of Mrs. Chambers, Mrs. Silston did not have the mental capacity to manage and administer her affairs.

[38] **Suitable Person**

I come now to determine who is a suitable person to be appointed as the Receiver of Mrs. Silston's estate. I accept that Mrs. Chambers lived in England from the age of 8 years and returned to Antigua accompanied by her husband in 1987, based on the request of her aunt. She assisted her aunt in managing her two stores. This she did for several years and continues to do. Mrs. Chambers, due to her aunt not being well, has arranged for two nurses to care for her. In addition, her aunt still has home help to take care of her domestic needs; this continues to be so. All of this is financed by monies that belong to Mrs. Silston.

[39] As alluded to earlier, while Mr. Silston may have been involved in assisting his wife with what appears to be errands in relation to her business, it is clear that he was never a "partner" in her business and that she never delegated any of her responsibilities to him.

[40] Mrs. Silston appeared to have been a very shrewd businesswoman, who for the most part, kept matters of the heart and her business very separate. This is evident from the fact that all of her property is registered in her sole name. In fact, none of the properties that she own is registered in the joint names of herself and Mr. Silston, even though they have been together for nearly 40 years. It is also instructive that she chose to give her niece Mrs. Chambers, the Power of Attorney to manage her store when she was no longer able to do so.

[41] **Appointment of Receivers**

This brings the Court to determine who the Court should appoint as receiver to manage the estate of Mrs. Silston. The Court has the jurisdiction to manage the affairs of a person who is mentally incapable of doing so. It is usual for the Court to appoint relatives as the Receiver.

[42] Initially, Mrs. Chambers quite unwisely denied that her aunt was unwell and not in a position to manage her affairs. Initially, Mrs. Chambers took issue with the contention that Ms. Silston was suffering from Alzheimer's. She said that as recent as 17th May 2008, Mrs. Silston had a birthday party which was attended by her nieces, relatives and friends. Mrs.

Silston had a good time. Mrs. Chambers only relented under intense cross-examination and said that she believed that Mrs. Silston was incapable of managing her affairs. This did not paint a good picture of her in relation to the true condition of her aunt's health. The Court is mindful of the fact that she is not qualified to give that sort of evidence.

[43] Be that as it may, the primary concern of the Court is to determine what is in the best interest of the person who is mentally ill. There is no denying that a judge has the power to make various orders relating to the property and affairs of the mentally incapable person. Relatives are usually appointed as Receiver, but in complex cases, or where there may be a conflict of interest, professional people may be more appropriate. The Court has the authority to appoint a Receiver to take charge of the property and affairs of the mentally ill person. The Receiver's power is limited to doing only those things which the Court directs. See *Management of Dementia* by S Curran and J Wattis p 196.

[44] Mr. Silston was cross-examined at length by learned Counsel Ms. E. Ann Henry. The Court has had the benefit of observing Mr. Silston and listened to his answers to the questions that were put to him in cross-examination. It was very clear that Mr. Silston was not as candid with the Court as he ought to have been. For example, he tried to give the impression that he shared a good relationship with his wife and that he still lives in the matrimonial home; more importantly, he sought to convey that he still shared the matrimonial bedroom with his wife. It was only when he was pressed that he admitted that he had not shared the bedroom with Mrs. Silston for approximately 15 years. In addition, I do not believe him when he said that he still resides with her. I believe that he visits the matrimonial home periodically but does not reside there.

[45] It is very clear to me that Mr. Silston and Mrs. Silston of late, had very little, if any, relationship. I did not find him to be very credible and do not for one moment believe that he still lives in the home with her. While he may well have a few items remaining in the house, there is no doubt that he does not share the bedroom with her. In my view, he has moved on with his life even though he has maintained a semblance of appearance by

going to the house on occasion. It is evident that for several years he had very little, if any, relationship with Mrs. Silston; this may well be for in excess of 15 years.

[46] In exercising the Court's discretion in appointing a Receiver the Court must take into account, all of the circumstances of the case and the fitness of the parties proposed, and will choose the persons that the Court considers will best serve the interest of the estate. In so doing, the Court will seek to appoint a person who is competent to act on his own initiative. The Court will be reluctant to appoint someone as a Receiver if that person does not have in depth knowledge of the property or affairs that belong to the estate.

[47] This brings me to address the ancillary issue of whether Mr. Silston should be appointed the Receiver. It is clear to the Court that Mr. Silston is not a suitable person to be appointed as the Receiver of the Estate of Mrs. Silston, the Court will therefore refrain from appointing him. This brings the Court now to determine who the suitable person to appoint as Receiver to manage the affairs of the Estate of Mrs. Silston. Mrs. Chambers has been involved in the business of Mrs. Silston for upward of 20 years, in addition she has been managing the stores from at latest October, 2007 i.e. the date on which Mrs. Silston gave her the Power of Attorney. There is no reason to believe that she has not been doing a good job of it. In addition, she has indicated her willingness to provide accounts to the Court, if she were to be appointed as the Receiver of the Estate of Mrs. Silston. For what it is worth, she has been intimately involved in Mrs. Silston's business for several years unlike Mr. Silston who was clearly kept at bay by Mrs. Silston.

[48] In view of the totality of circumstances, the Court is of the considered view that Mrs. Ruthlyn Chambers is a suitable person to be appointed as the Receiver of the Estate of Mrs. Edris Silston. The Court so appoints her.

[49] The Court is of the view that there should be two receivers, one of which is Mrs. Chambers. There is no objection by Counsel for Mrs. Chamber to Attorney-at-Law, Mr. Kendrickson Kentish being appointed a Receiver. Mr. Kentish agrees to be so appointed and the Court hereby appoints him as a joint receiver.

[50] **Conclusion**

In view of the premises, the Court makes the following orders:

- (1) Mrs. Edris Silston does not have the mental capacity to manage her affairs and Estate, she is incapable both mentally and physically of managing her Estate.
- (2) Mr. Kendrickson Kentish and Mrs. Ruthlyn Chambers are hereby appointed joint receivers to manage the Estate of Mrs. Edris Silston.
- (3) Mrs. Ruthlyn Chambers is to present Mr. Kendrickson Kentish with copies of every transaction and supporting documentation she undertakes in relation to the Estate of Mrs. Edris Silston.
- (4) Mrs. Ruthlyn Chambers is to present the Court with monthly statements of income and expenditure in relation to the Estate of Mrs. Edris Silston and serve a copy of the same on the joint Receiver, Mr. Kendrickson Kentish.
- (5) Mrs. Ruthlyn Chambers is prohibited from selling any real estate that is owned by the Estate of Mrs. Edris Silston, without first obtaining an order of the Court.
- (6) First Caribbean International Bank is hereby ordered to provide to the joint receiver, a financial statement of the accounts held by Mrs. Edris Silston with effect from January, 2009.
- (7) The costs of these expenses are to be borne out of the Estate of Mrs. Edris Silston.
- (8) The parties have liberty to apply.

[51] The Court gratefully acknowledges the assistance of all learned Counsel.

Louise Esther Blenman
High Court Judge
Antigua and Barbuda.