ANGUILLA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. AXAHCV2008/0097

In the matter of the Estate of John Samuel Richardson (deceased)

And

In the matter of CPR 2000 Part 67.4 and the Registered Land Act, R.S.A. R. 30, section 131

BETWEEN:

MERLE BAILEY
(As Co-Administrator in the Estate of John Samuel Richardson, deceased)

Claimant

AND

BERNADINE HULIGAR
(As Representative for the Estate of Albert Bryan, deceased and Cautioner against the Estate of John Samuel Richardson)

First Defendant

DENNIS PANTOPHLET
(As Co-Administrator in the Estate of John Samuel Richardson, deceased)

Second Defendant

THEODORA BRYAN
(As Co-Administrator in the Estate of John Samuel Richardson, deceased)

Third Defendant

Appearances:
Mrs. Tara Ruan instructed by Caribbean Juris Chambers for the Claimant
Ms. Nicola Byer instructed by Joyce Kentish & Associates for the First Defendant
Ms. Michelle Smith instructed by Keithley Lake & Associates for the Second and Third Defendants

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2009: July 13, 23

JUDGMENT

[1] **SMALL DAVIS J (Ag):** This is a claim instituted by Fixed Date Claim Form under CPR 67.4 by the Claimant against the First Defendant seeking the following relief:

(a) removal of a Caution lodged and recorded as Instrument 2066/2006 against lands forming part of the estate of John Samuel Richardson;

(b) a declaration that the First Defendant has no legal interest in the estate of John Samuel Richardson;

(c) a declaration that the negotiations, meetings and settlement discussions culminating in February 1988 were without prejudice and subject to privilege or in the alternative that there is no valid and binding agreement between the Administrators and the First Defendant;

(d) a declaration that the First Defendant is barred from asserting an interest in land forming part of the Estate of John Samuel Richardson;

(e) damages including loss of use of property and loss of investment.

The Claimant also makes the usual prayer for costs and such further and other relief as the court deems just.

[2] John Samuel Richardson died leaving a will. The beneficiaries of his will were his daughter Louisa Ann Harrison and his grandchildren John Samuel Bailey, Glanceanna Bailey Bryan, James Adolphus Bailey and Viola Bailey Pantophlet. Louisa Ann Harrison and John Samuel Bailey subsequently died intestate and without issue. The surviving beneficiaries of the Estate are therefore Heirs of James Adolphus Bailey, Heirs of Viola Bailey Pantophlet and Heirs of Glanceanna Bryan.

The Parties

[3] The Claimant is one of the Administrators of the estate of John Samuel Richardson and one of the Heirs of James Adolphus Bailey.

[4] The First Defendant (hereafter referred to as "the Defendant") is the Executor of the estate of Albert Bryan, deceased. The Third Defendant is her mother. Albert Bryan was married to Glanceanna Bryan.

[5] The Second and Third Defendants are the other two co-administrators of the Estate of John Samuel Richardson. On 3rd April 2009 an acknowledgment of service was filed on their behalf in which they admit the whole of the claim and indicate that they do not intend to defend the claim. They have not taken any further part in the proceedings. I shall refer to them by name in this judgment.

The Origins of the Dispute

[6] The Estate of John Samuel Richardson comprises of several parcels of land in the island of Anguilla ("the Estate"). This dispute immediately concerns one of those parcels - 155 acres of valuable real estate on Anguilla's southwestern coast with excellent views of St. Martin in a village known as Lockrum and registered as South Central Block 38510 B Parcel 6 ("Lockrum Estate").

[7] The dispute between the parties arose as a consequence of the assertion of a beneficial interest in the Estate made by and on behalf of the Estate of Albert Bryan, who was described as an unregistered part owner of Lockrum Estate. A caution was lodged against Parcel 6 on 26th October 1987 by the Defendant on the basis of this alleged interest. The Defendant asserted that Albert Bryan had acquired a 1/5th interest in Lockrum Estate by way of purchase of Louisa Ann Harrison's share. Albert Bryan bequeathed that interest to the Defendant.

The Undisputed Factual History

[8] In 1988 there were negotiations between the parties with their lawyers present. It is fair to say that the parties embarked upon those negotiations as a result of the existence of the caution. On 6th February 1988 following a meeting at the home of Theodora Bryan at which all four parties to this suit and their legal representatives were present, Mr. C. Fitzroy Bryant who was the lawyer for the Claimant and Dennis Pantophlet wrote a letter to Ms. Joyce Kentish, the Defendant's lawyer, in the following terms:

> *"I write to seek formal confirmation of the matters agreed between Mr. Dennis Pantophlet, Ms. Merle Bailey and Mrs. Theodora Bryan, the Administrators of the Estate of John Samuel Richardson deceased, of the one part, and Mrs. Bernadine Huligar, representing the Heirs of Albert Bryan deceased, of the other part, at a meeting attended by the four (4) above named persons, you and me on*

Wednesday 3 February 1988 at the home of Mrs. Theodora Bryan, West End, Anguilla.

Please confirm that it was agreed between the parties as follows:-

1. *That in full settlement of all claims and/or entitlement by the Heirs of Albert Bryan deceased against and to the Estate of John Samuel Richardson deceased the lands heriditaments and premises included in the said Estate would be divided and distributed pro rata in the following way:-*

Heirs of Albert Bryan deceased	*- 18 acres*
Heirs of Glanceanna Agatha Bailey deceased	*- 44 acres*
Heirs of James Adolphus Bailey deceased	*- 44 acres*
Viola Mac Pherson Bailey	*- 44 acres*

2. *That the Administrators would forthwith take the necessary action to effect such division and distribution.*

3. *That the said Mrs. Bernadine Huligar would remove the Caution she had placed on the Registered Land Certificate related to the said land heriditaments and premises to enable such division and distribution to take place without delay.*

I look forward to an urgent reply. Best Wishes.

Yours faithfully,

C. Fitzroy Bryant
Solicitor for Dennis Pantophlet and Merle Bailey

[9] The response to that letter was sent by Ms. Kentish on 8th February 1998 marked "Without Prejudice":

We refer to your letter dated 6th February, 1988, and confirm that the contents thereof reflect the agreement arrived at between the respective parties.

Kindly furnish us with a copy of the instructions given by the Administrators of the above-mentioned Estate to the Registrar of Lands to draw up a proposed subdivision plan in accordance with the said agreement.

Yours faithfully,

Lake & Kentish
Solicitors

[10] The Caution was removed on 9th April 1990. There is no evidence of how it came to be removed.

[11] In April 1990 Dennis Pantophlet wrote to the persons entitled to a share of the Estate. Among the addressees was "Heirs of Albert Bryan". In that letter he informed the beneficiaries of the expressions of interest by investors and expressed the view that efforts be made to sell Lockrum Estate as a whole, which would yield a higher selling price for the land. As a result, no efforts were made to subdivide the property.

[12] A second Caution was lodged against Parcel 6 on 27th October 1994 on the application of the Defendant. In the statutory declaration made in support of the application for the caution, the Defendant's solicitor stated the basis of the application to be: (a) the Administrators had entered into negotiations for the sale of 27 acres of the land and (b) was embarking upon a subdivision of Parcel 6 in a manner and with a view to distributing the lots to exclude the Defendant from the beachfront area.

[13] It appears nothing happened for some time until September 2000 when the Administrators applied to have the caution to be removed. The caution was lifted on 13th December 2000.

[14] In 2003 Parcel 6 was subdivided to create Parcels 175, 176 and 177. The subdivision was pursuant to the Government's acquisition of 1.52 acre of the land for the purpose of building a major thoroughfare – the Jeremiah Gumbs Highway.

[15] In March 2006 the Defendant obtained the third Caution which remains lodged against Parcels 176 and 177. The Administrators applied to have the Caution removed however, the application was dismissed by the Registrar of Lands in May 2007 after a hearing. The reason given by the Registrar of Lands was the existence of an agreement between the parties as set out in the 6th and 8th February 1988 letters and the non performance of that agreement. There was no appeal against the Registrar's decision.

[16] In or about April 2006 the Administrators obtained approval of a subdivision plan from the Land Control Development Committee. That plan was subsequently amended and approved in July 2007. By that plan the beneficiaries under the Will each received a lot with an equal share of the beachfront land and a lot immediately adjacent to the beachfront lots and the Defendant was assigned a lot of 18 acres beyond the landlocked lots and furthest from the beach. This subdivision plan was sent to the Defendant's solicitors in September 2007 along with a request that the Defendant take the necessary steps to lift the caution in order that the subdivision of Lockrum Estate could be pursued. The Defendant's solicitors rejected the subdivision plan, protesting that it represented an inequitable distribution of the land and demanded that the Lockrum Estate be distributed in accordance with the "agreement" reached in 1988, i.e. pro rata, with all the parties receiving a proportionate share of the prime areas.

[17] The Claimant filed suit in December 2008 to resolve the dispute. The Claimant and the Defendant each swore an affidavit setting out their case and exhibiting supporting documentation.

[18] At the commencement of the trial, the parties informed the court that they had agreed to dispense with cross examination on the affidavit evidence. The Defendant gave oral evidence limited to the tender of a handwritten document which she said was made by her mother, Theodora Bryan, the third named defendant, and which she relied upon as proving Albert Bryan's interest in Lockrum Estate.

The Issues for determination

[19] Of the issues the parties are of the view ought to be determined by the court, the parties agree on only one: Did Albert Bryan, deceased acquire a legal interest in the estate of John Samuel Richardson (Issue 1). The Claimant asks the court to determine the following additional issues:

1. (b) If the answer to Issue 1 is in the affirmative, does the Defendant have a legitimate share of the estate of John Samuel Richardson by virtue of acquiring the interest of Albert Bryan;
2. Were the cautions lodged by the Defendant wrongfully lodged;

3. Was there an Agreement between the parties to distribute 18 acres of land in the estate to the Defendant or were the meetings and negotiations merely without prejudice settlement discussions;
4. Was the Defendant required by the Limitation of Actions Act to bring a claim in the court to compel the Administrators to transfer her interest or was it sufficient for her to lodge cautions against the Estate;
5. Did the Cautions lodged by the Defendant cause damage to the estate including loss of use and loss of investment.

[20] The Defendant posed the following two issues:

1. Was there an Agreement between the parties as to the distribution of the Estate of John Samuel Richardson.
2. If there was such an agreement what was the nature of the Agreement with regard to the relative distributions as between the parties.

[21] It appears to me that the relevant issues for determination are:

(a) Was there an Agreement between the parties as to the distribution of the Estate of John Samuel Richardson;
(b) If there was such an agreement what was the nature of the Agreement with regard to the relative distribution as between the parties;
(c) Does the Limitation Act operate to bar the Defendant from making a claim;
(d) Were the cautions lodged by the Defendant wrongfully lodged;
(e) Did the Cautions lodged by the Defendant cause damage to the estate including loss of use and loss of investment

Was there an Agreement between the parties

[22] Most of the argument was devoted to the issue of whether the two letters dated 6th and 8th February 1988 evidenced an agreement between the parties or were merely part of continued negotiations towards a settlement that were not successful. The Claimant's approach was to both urge the court to look at the letters and the correspondence that followed to find that there

was no agreement and to submit that the correspondence was privileged and therefore inadmissible in evidence.

[23] The letters were put in evidence as exhibits to the Claimant's affidavit. It is therefore difficult to see how the Claimant could successfully argue that they are inadmissible and that the court ought not to have regard to them. The reason stated by the Claimant for exhibiting the letters to her affidavit is that the correspondence may assist the court in determining the questions before it. By well established authority, correspondence that is made without prejudice during the course of genuine efforts to settle a dispute is admissible for the purpose of determining whether in fact the parties reached agreement: **Walker v Wilsher**[1] and **Tomlin v Standard Telephones and Cables Ltd.**[2]

[24] On the face of the two letters the parties appear to have concluded an agreement the terms of which are that the Claimant is to get 18 acres of land of the Estate, the Administrators would take steps to subdivide the land and distribute it accordingly and the Defendant would remove the caution to enable the subdivision and distribution.

[25] I do not accept the Claimant's argument that later correspondence from the Defendant shows that the negotiations were continuing and that the Defendant had made a counterproposal. In the letter relied upon by the Claimant to support that argument, the Defendant wrote "*In all fairness, if the undivided 18 acres proposed set aside are representative of the estate of Albert Bryan per the 1988 agreement; I must resist the subdivision. The agreement must be performed in totality. Therefore, all parties must await the outcome of any challenge to the validity of that agreement. Your proposed distribution to all parties concerned, with the exception of Albert Bryan's interest is grossly unfair.*" I do not accept that the tenure of the letter and those words in particular demonstrate any reprobation or repudiation of the agreement or that the Defendant made a counterproposal. The letter was in response to a letter from Dennis Pantophlet which is not in evidence. It appears to me that the reasonable interpretation of the letter is that the Defendant was protesting a proposed subdivision,

[1] (1889) 23 QBD 335

[2] [1969] 1 WLR 1378

apparently one which would exclude her interest. She ends the letter by maintaining that the subdivision should be equitably distributed among the parties.

[26] I am fortified in my view that an agreement was reached by the parties in 1988 by the subsequent correspondence by and on behalf of the Administrators referring to the agreement, in particular,

a. the letter of Dennis Pantophlet, which he addressed to all the participants in Lockrum Estate, including the Defendant, and specifically referred to "the agreement reached in February 1988" and the "agreed entitlement vested in Ms. Bernadine Huligar on behalf of the estate of Albert Bryan deceased";
b. The letter from the lawyer for the Claimant and Pantophlet dated 13th February 1991 attaching a breakdown of distribution of an offer made on Lockrum Estate and assigning a share of 18 acres to "Bernie";
c. The letter of 17th August 2007 from Dennis Pantophlet's solicitors referring to "the eighteen (18) acres for your client, Ms. Bernadine Huligar pursuant to the 1988 Agreement."

[27] The Claimant also sought to challenge the validity of the agreement on the basis that there was no consideration, that the land was not identified, and that there was an important outstanding matter upon which no agreement had been reached, namely, subdivision of the land. The first two can be answered quite easily. At the time of the meeting at which the agreement was reached, the Defendant had lodged a Caution against Parcel 6. Her claim, as can be seen from the declaration filed in support of the application for the caution, was that she was entitled to a 1/5th share of Lockrum Estate. By agreeing to compromise the claim so that she would accept 18 acres instead of the 31 acres which would represent 1/5 of Lockrum Estate and she would lift the caution valuable consideration was given. Consideration flowed on both sides in the agreement to compromise the dispute. It is also clear that the land in question is the land which the Defendant had cautioned and laid claim to: see paragraph

numbered 3 in the letter of 6th February 1988. Furthermore, the total acreage to be distributed accords with the size of Parcel 6.

[28] As to the question of whether the absence of agreement on the subdivision would vitiate the agreement as being incomplete, a binding and valid agreement may be reached on one point, while leaving other points for further negotiation: see **Tomlin v Standard Telephones and Cables Ltd**. This is an everyday occurrence in the case of personal injury litigation for example, where liability is agreed and the further issue of quantum remains to be negotiated and or adjudicated upon. I find that there was an agreement on the fundamental issue that the Defendant was to receive a share of Lockrum Estate, that that share was agreed at 18 acres and the distribution of that 18 acres remained to be negotiated after subdivision plans had been obtained.

[29] The Claimant submitted that there is no evidence in proof of Albert Bryan's claim against the Estate. The Defendant answered this to a degree by pointing to Theodora Bryan's handwritten document. Having determined that there is an agreement between the parties allotting 18 acres of Lockrum Estate to the Heirs of Albert Bryan, it is not necessary for me to deal with the submissions made by the Claimant as to whether Albert Bryan acquired a legal interest in the Estate save to say, that that question is moot, having been decided by the parties' agreement.

Distribution of Lockrum Estate

[30] Both Counsel for the Claimant and the Defendant suggested that the court should give directions on how the land is to be distributed. The Claimant has argued that the usual method of distributing an estate proportionally among beneficiaries is not applicable because the Defendant is not a beneficiary of the Estate but rather is a claimant against the Estate and the distribution is pursuant to a contract, which since it did not specify where the land is to come from means the distribution of the land is a matter solely within the discretion of the Administrators.

[31] I have paid regard to the terms of the agreement reached by the parties. It was to be "*divided and distributed pro rata*". The most significant feature of Lockrum Estate which makes it

unique and more valuable is that it has beach frontage. I consider that the addition of the words "pro rata" is significant and that meaning must be attached to their inclusion in order to discern the intention of the parties as to how the division and distribution is to take place. If the intention and agreement was simply that the Defendant was to get 18 acres at the sole discretion of the Administrators, the words "pro rata" would have been unnecessary. I take "pro rata" to mean that given the nature of the land, each person was to receive a proportionate share of the beach frontage.

[32] Moreover, the argument that because the Defendant is a claimant against the estate and not a beneficiary under John Samuel Richardson's will, the Administrators owed her no duty of equitable distribution fails anyway, since the claim that the Defendant made was based on the purchase of the interest of a beneficiary so that had Louisa Ann Harrison not died, she would have been in a position to transfer her share of Lockrum Estate to Albert Bryan or his estate upon its distribution to her, which undeniably would have been on a proportionate basis. The February 1991 letter from Mr. Bryant, who represented the Claimant and Dennis Pantophlet, attaching the breakdown of the offer of $7 million is also instructive and consistent with the position that the proportionate distribution of Lockrum Estate was to be extended to the Defendant. In that document, not only was there recognition that the Defendant was to be allotted 18 acres, but that share was also quantified as a proportionate share of the value of the offer. This leaves no doubt that the Defendant was to receive an allotment that was pro rated as to value, which clearly translates to a proportionate share of the more valuable part of the land.

The Limitation Issue

[33] The Claimant submitted that the Defendant is barred from seeking to recover the interest in Lockrum Estate and says that the Defendant has sat on her rights and is not entitled to any relief. The limitation period for an action for recovery of land is twelve years as prescribed by the *Limitation Act* section 5(3). Bearing in mind that a limitation plea is a shield not a sword, I turn now to look at the Defendant's claim to see whether it is statute barred.

[34] In actual fact, the Defendant has not brought an action for the recovery of land, though that may be the outcome of her claim. The Defendant has counterclaimed for a declaration as to the validity and enforceability of the agreement and an order directing the Administrators to subdivide the estate in such a manner that the 18 acres allotted to the estate of Albert Bryan is proportionate in value to the share and interest of the other beneficiaries and that the subdivision plan be submitted to the Defendant for approval.

[35] In light of the finding that there is an agreement between the parties and the Defendant's counterclaim is brought on the basis of the agreement, I need not deal with the Claimant's primary submission that the Claimant cannot bring a claim to enforce the interest acquired by Albert Bryan, deceased because time started to run either from October 1987 when she obtained the first caution or from the end of the executor's year after the Administrators obtained probate of John Samuel Richardson's will in September 1986.

[36] The counterclaim is grounded on the agreement. The limitation period of any action runs from the date of accrual of the cause of action. In a claim based on contract the right of action accrues from the date on which the agreement is breached: **James Ruan v Pagett Carter[3].**

[37] The Claimant's alternative submission on when time began to run against the Defendant is October 1994 when she instructed her solicitors to apply for the second Caution since in the evidence filed in support thereof, she complained of the inequitable distribution of Lockrum Estate as proposed by the Administrators. In the further alternative, the Claimant says the time began to run from the date of the Defendant's letter of 28th July 1995 in which she expressed her dissatisfaction with a subdivision proposal saying it was "grossly unfair".

[38] In response, the Defendant submitted that the cause of action accrued in September 2007 when by the letter from Dennis Pantophlet' solicitors, the Administrators sought to reject the agreement by asserting that they were free to distribute any 18 acres to the Defendant. At that time the Administrators had obtained subdivision approval of Lockrum Estate in a manner which excluded the Defendant from any part of the beach front land.

[3] Anguilla, AXAHCV2006/0068, 8th April 2009

[39] Having looked at the matter, I am of the view that the Defendant's counterclaim has not been pitched as breach of contract claim. Indeed, it may be said that the agreement has not yet been breached and would not be until such time as the Administrators actually distributed the land to the beneficiaries in a manner inconsistent with the terms of the agreement, that is to say disproportionate in distribution as to value. Rather, the counterclaim is effectively one for specific performance of the agreement by the division and distribution *pro rata* in the allotment as agreed.

[40] Bearing in mind that a breach does not necessarily terminate the parties' obligations under the contract, I find that if there has been a breach, the earliest that it could have taken place is when the Administrators brought the subdivision plan on which they had obtained approval to the attention of the Defendant in September 2007 and communicated their intention to distribute Lockrum Estate in a manner that denied the Defendant's claim to a pro rata division of the land among all the beneficiaries.

[41] Section 3 of the *Limitation Act* deals with "Limitation of actions of contract, tort and certain other actions". Subsection (7) provides:

> *"This section does not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except insofar as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed by this Act has heretofore been applied."*

[42] In **Mahabir v Phillips**[4] the Court of Appeal of Trinidad and Tobago considered the argument that where a court of equity is exercising a concurrent jurisdiction with a court of law, the statute of limitations applies by analogy. The court followed precedent authority on the principle that the jurisdiction of compelling specific performance in a court of equity is not a concurrent jurisdiction as the right to sue for specific performance and was not to be equated with a cause

[4] 67 WIR 256

of action at law: **Hasham v Zenab**[5]. There is no limitation of action on a claim for specific performance of a contract.

[43] The Claimant's limitation of action argument therefore fails.

[44] Subsidiary to her arguments on the limitation point, the Claimant also argued that the Defendant is guilty of laches and is not entitled to any relief. In determining whether there has been such delay on the part of the Defendant such as to amount to laches, the points to be considered are (a) acquiescence on the part of the claimant and (b) any change of position that has occurred on the defendant's part: **Halsbury's Laws of England, 4th ed., Vol. 16, para. 1477.**

[45] In relation to this defence, the modern approach to determining whether the defence has been made out is to consider whether it would be unconscionable for the Defendant to be permitted to assert her beneficial right to 18 acres of Lockrum Estate: see **In re Loftus, deceased**[6]. Central to this consideration is whether there is any evidence that the Claimant or the Administrators have been prejudiced by the delay in bringing the claim forward. There is no such evidence in this case. The evidence does not disclose that the failure to administer the Estate had anything to do with the Defendant's conduct and management of her claim against the Estate. Indeed, the evidence discloses that the Administrators did not proceed with a subdivision and distribution of the Estate on account of the parties' agreement that Lockrum Estate should be marketed as a whole[7]. The Defendant took no steps to force a subdivision of Lockrum Estate between 1990 and 2005 because of the agreed marketing strategy. There was a change in approach, likely due to the fact that that approach bore no fruit, and in or about 2005, the Administrators decided to subdivide it after all[8].

[46] In 2003, unbeknownst to the Defendant, the Administrators negotiated with the Government and had Lockrum Estate subdivided into three parcels, one of which was acquired by the Government. Between December 2000 and March 2006 when the property was not burdened

[5] [1960] AC 316
[6] [2007] 1 WLR 591
[7] See Letter of Dennis Pantophlet dated 18 April 1990
[8] See Claimant's Affidavit para. 27

by any caution, the Administrators did not take any steps to administer the Estate. They can hardly complain of the Defendant sitting on her rights to enforce a claim for a part of the estate. I hold that the defence of laches is not made out.

Were the Cautions wrongfully lodged

[47] The first caution lodged against Lockrum Estate was in October 1987, one year after the Administrators were appointed. The Defendant says that the purpose of that caution was to protect the unregistered interest being claimed on behalf of the estate of Albert Bryan. It appears that the caution was the stimulus to the discussions and negotiations that culminated in the agreement. That caution was lifted on 9th April 1990. I do not think it is a coincidence that Dennis Pantophlet wrote his letter on 18th April 1990 acknowledging the Defendant's interest and informing them of the interest in the property expressed by several investors and seeking their approval to market the property as a whole and to obtain a valuation of Lockrum Estate to facilitate negotiations, possibly along the lines of a joint venture with an investor.

[48] The second caution was lodged in 1994, in light of information she received that the Administrators planned to sell 27 acres of Lockrum Estate and had instructed a surveyor to prepare a subdivision plan that would have distributed the beachfront land to the three surviving beneficiaries under John Samuel Richardson's will.

[49] The third caution was lodged in April 2006, after it came to the Defendant's attention as a result on a search conducted at the Land Registry, which revealed that Lockrum Estate was now subdivided into three parcels and one had in fact been acquired by the Government. In a letter sent to the Administrators, she protested the fact that the subdivision as well as registration of an interest in favour of a Robert A. Connor had taken place without her knowledge or approval[9].

[50] I find that all three instances of the Defendant's application for a caution were perfectly reasonable, prudent and necessary to protect her interest. In light of the foregoing conclusion,

[9] The registration of a 3/80th interest in favour of Robert Connor dates back to 1975 by virtue of the Adjudication Record.

the cautions lodged against Lockrum Estate at the instance of the Defendant were properly grounded.

Did the Cautions lodged by the Defendant cause damage to the estate

[51] The Claimant relied on an expression of interest in the property made in a letter dated 12 July 1989 to say that the beneficiaries lost substantial opportunities for investment and resort development of the property. The Claimant also said that the cautions froze the Estate to the detriment and loss of the beneficiaries.

[52] A party is only entitled to compensation if a caution has been lodged against his property wrongfully and without reasonable cause. In light of the finding above, I need not deal with this issue. In the event that I am wrong, I would still remark that there was no evidence whatsoever of any damage sustained by the Claimant or beneficiaries of the Estate by reason of any of the cautions lodged against Lockrum Estate.

Costs

[53] The Claimant sought an order that her costs should be borne by the estate of John Samuel Richardson. The general rule is that the costs of an application to the court made by a personal representative are usually payable out of the estate: see **Halsbury's Laws of England, 4th ed., Vol. 17, para. 1454**. At paragraph 1492, the learned editors say this:

> *"The general rule is that costs of and incidental to all proceedings in the Supreme Court, including the administration of estates and trusts, are in the discretion of the court or judge, subject to the proviso that a personal representative or trustee is entitled to the costs of proceedings, insofar as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative, and the court may otherwise order only on the ground that he has acted unreasonably or has in substance acted for his own benefit rather than for the benefit of the fund. Thus a personal representative who has acted properly is allowed his full costs of the administration proceedings as a matter of course, and in priority to the costs of all other parties."*

[54] The Defendant argues that the costs incurred by both the Claimant and the Defendant ought to be borne by the Claimant personally on a full indemnity basis because the Claimant has acted unreasonably in bringing this action. Counsel for the Defendant forcefully argued that in making an application which called into question the existence and validity of the agreement reached by the parties in February 1988 the Claimant acted improperly and ought not to be indemnified in costs out of the Estate. Counsel argues that the Defendant would find no fault with the Claimant had she sought the court's determination of a question on how the division and distribution of Lockrum Estate is to be carried out.

[55] It is also the general rule that costs follow the event, so that the successful litigant will usually be awarded her costs. I see no reason to depart from that general practice.

[56] It is my view that the Claimant has acted unreasonably in the conduct of these proceedings by which she seeks the determination of a question under CPR 67(4)(2) as to the rights or interest of a person claiming to be entitled under a will or on the intestacy of a deceased person which she says have cause substantial delays in the administration of the Estate[10]. The evidence is clear that there was an agreement on Albert Bryan's Estate's participation in the Estate since 1988. That agreement was acknowledged and acted upon by the parties as if it were valid over a period of almost twenty years. It was entirely improper for the Claimant to have approached the court on the basis that the agreement did not exist and or that it was not valid and enforceable. In the circumstances, the Claimant shall personally bear her own costs and the costs of the Defendant.

[57] The parties had been directed to agree the quantum of costs before trial[11]. They could not agree. In fact they were miles apart. The Claimant suggested costs of US$15,000 and the Defendant proposed US$100,000.

[58] There is no concept of costs on a full indemnity basis embodied in CPR. The costs fall to be dealt with under CPR 65.5 since 65.4 does not apply. The Defendant submitted that the costs should be quantified according to the value of the land that was the subject of the dispute.

[10] See page 2 of the Claimant's Legal Submissions.
[11] See Order dated 8th April 2009, Michel J (Ag)

There was no application to determine the value of the claim either under CPR 65.6 or otherwise. There is no evidence as to the value of the land. Neither the claim nor the counterclaim was for a monetary sum. Accordingly, the default value of the claim is EC$50,000. The counterclaim will also be valued at EC$50,000. Prescribed costs are quantified at EC$28,000.

[59] In light of the submission of the Claimant quantifying reasonable costs at US$15,000, I will order that the Claimant shall pay the Defendant's costs assessed at US$15,000.

[60] Given the position adopted by the Co-Administrators, in formally admitting the whole of the claim and indicating through their Counsel that they fully support the Claimant and had intended to either file their own claim or join with the Claimant, I wish to make it clear that none of their costs shall be charged to the Estate. I am inclined to the view that it would be entirely appropriate that the Administrators should together indemnify the Claimant against the costs order made against her.

Conclusion

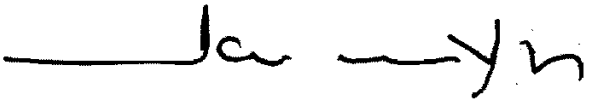
[61] The order of the court is therefore:

(1) It is hereby declared that the agreement made between the parties as set out in the letter of 6th February 1988 is valid, binding and enforceable as against the Estate of John Samuel Richardson, deceased.

(2) The Claimant and the Second and Third Defendants as Administrators of the Estate of John Samuel Richardson, deceased are directed to immediately take steps to subdivide and distribute Registration Section South Central Block 38510 B Parcels 176 and 177, such subdivision to be done in such a manner as to ensure that the 18 acres allotted to the Heirs of Albert Bryan, deceased is proportionate in value to the share and interest of the beneficiaries of the will of John Samuel Richardson, deceased.

(3) The Administrators are to submit the subdivision plan to the First Defendant prior to submission of the said plan to the Land Development Control Committee for its approval.

(4) Costs on the claim and counterclaim in the sum of US$15,000 to be borne by the Claimant personally. The Administrators shall bear their own costs personally.



Tana'ania Small Davis
High Court Judge (Ag)