IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2008/0251

BETWEEN:

IN THE MATTER OF THE TRUSTEE ACT CHAPTER 329 OF THE 1994 REVISED LAWS OF GRENADA

GRACE STEELE

Claimant

AND

MICHAEL MC INTYRE
(Personal Representative of the Estate of Charles Arthur Mc Intyre, deceased)
MICHAEL MC INTYRE
ANN MC INTYRE

Defendants

Appearances:

Mrs. Celia Edwards, Q.C. with Ms. S. Khan for the Claimant
Ms. A. Trotman-Joseph for the Defendants

2010: December 20

DECISION

[1] **HENRY, J.**: Charles Arthur Mc Intyre died on the 20th day of April 2005 leaving a will. In that will, by paragraph 2 he made the following bequest to his two children:

> "2. My Shares in Mc Intyre Bros. Limited I give devise and Bequeath in the proportions of Two Thirds (2/3) thereof to my son Michael McIntyre and one third (1/3) thereof to my daughter Ann McIntyre-Campbell for their absolute uses and benefits."

[2] By paragraphs 5, 6 and 7 he made the following bequest to the claimant:

"5. My shares in Caribbean Tobacco Company Limited I give devise and bequeath to Grace Steele of Café, Woodlands in St. George for her own use and benefit absolutely

6. My shares in Grenada Breweries Limited I give devise and bequeath to the said Grace Steele for her own use and benefit absolutely

7. I hereby Direct the Directors of Mc Intyre Bros. Limited to pay to the said Grace Steele the sum of Two Thousand Five Hundred Dollars ($2500.00EC) on a monthly basis for the rest of her natural life – free of any deductions."

[3] The shares left to Ms. Steele in paragraphs 5 and 6 have since been vested in her and the proceeds therefrom paid to her. However, she has not been in receipt of the sum of two thousand five hundred dollars on a monthly basis as directed in paragraph 7 of the will.

[4] Accordingly, Grace Steele, by Fixed Date Claim filed 28th April, 2008 claims as follows:

1. An order that the defendant Michael Mc Intrye do administer in accordance with the law and the grant of probate dated 20th day of April, 2006, the Estate of Charles Arthur McIntyre, deceased;
2. A declaration that the shares in Mc Intyre Bros. Limited bequeathed to the defendants are subject to the bequest to the Claimant;
3. All necessary order in order to vest in the claimant her entitlement under the will;
4. Such further or other relief;
5. Costs.

[5] The parties have agreed to submit the matter for determination on the following agreed statement of facts.

"The late Charles Arthur McIntyre, more affectionately known as Laddie McIntyre, died on the 20th day of April 2005.

[6] He was for a number of years the Managing Director of McIntyre Bros. Limited and to the date of his death he was a Director thereof. Under his managing hands and his son Michael McIntyre the First-named Defendant and other defendants built that company up to the point where it is one of, if not the leading car sales companies in Grenada.

[7] Charles Arthur Mc Intyre was a person also dedicated to public service. He was a founding member of the Rotary Club of Grenada and one of the founding Directors of Newlo. He was the father of the Defendants.

[8] Charles Mc Intyre was the common law husband of the Claimant for over 25 years. He in fact lived with the Claimant and her two sons at her property at Café, St. George's. The two shared a very comfortable relationship.

[9] The two shared a committed relationship and by his will he devised to her his shares in the Caribbean Tobacco Company Ltd. and Grenada Breweries Limited, which had been conveyed to her. He also bequeathed to her the sum of $2,500.00 per month which he directed by his will that the Directors of Mc Intyre Brothers Limited pay to her.

[10] Charles Arthur Mc Intyre had ceased to be an active participant in Mc Intyre Brothers Limited since 1987 due to considerations of age and health. When he died he was over 80 but at the date of his death he was still a Director of Mc Intyre Brothers, drove a company car and would come to the office to talk and look around although he did not actively partake in the running of the business.

[11] He held shares in the company and would take a monthly draw-down against his shares which would be set-off at the end of the financial year against his dividends.

[12] He left a last will dated 7th of March 2003. A grant of probate was obtained on 20th April 2006".

Issues to be Determined

1. Whether the gift in clause 2 is subject to the gift in clause 7
2. Whether the gift contained in clause 7 of the Will is ultra vires, and should further fail in absence of an agreement/resolution of the Board of Directors of Mc Intyre Bros. Ltd.

[13] The claimant submits that the testator and the claimant had a committed and loving relationship; that he must have intended to make provision to take care of her for the rest of her life by using the same procedure he had used during his lifetime; that is, that the company would pay her on a monthly basis and that those payments would be set off against the dividends of his shares. The claimant concludes that it was therefore the intention of the testator that the gift of the shares must be subject to the monthly payment to the claimant for her maintenance. It is submitted that there could be no other reasonable interpretation of the gift as stated by the testator in his will and that there is no illegality in such a devise.

[14] The defendants, on the other hand, submit that upon application of the relevant legal principles, the bequest to the claimant of a monthly gift of $2,500.00 should fail; that although the testator had the testamentary power to dispose of his shares, he had no testamentary power with regard to distribution of the income of Mc Intyre Bros, a limited liability company. Further, that the direction contained in clause 7 is ultra vires the role and functions of the Directors and shareholders, and contrary to established legal principles and the Articles and By-Laws of the company. With regard to the interpretation of the two clauses in the will, the defendants submit that clause 2, which devised the testator's shares in Mc Intyre Bros Ltd., and clause 7, which involved a monetary gift, subject to a direction to the Directors of the company, are quite different. That they do not concern the same subject matter and should be treated separately for the purpose of interpretation of the will. Therefore, they submit, that the defendants' shares are

not subject to abatement to meet the testamentary gift of an annuity to the claimant in clause 7, which is void and/or ultra vires based upon established legal principles.

[15] The construction of the will is to be made upon the entire instrument and not merely upon disjointed parts of it; consequently all its parts are to be construed with reference to each other. Williams on Executors and Administrators Vol. 2 p. 515.

[16] The will must be construed as to give effect, as far as possible, to the general intention of the testator. See **Re Taylor's Estate**, 22 Ch. D. 495. This intention however is to be sought in his words. Where the words of the will are unambiguous, they cannot be departed from merely because they lead to consequences capricious or even harsh and unreasonable; but where they are capable of two interpretations, that construction of them is to be adopted which is in accordance with an intelligible and reasonable, and not a capricious or anomalous, result. Williams on Wills page 575 – 576.

[17] It is clear from the will that the intention of the testator was to provide a monthly income to the claimant of $,2500.00 per month during her life. What is not clear is what capital ought to be resorted to in payment of the said sum.

[18] The question of what moneys are to be resorted to for the payment of annuity is one of construction and depends entirely on the words of the particular will construed according to their ordinary grammatical meaning. See Williams on Wills, 9th Ed. p. 341 citing **Re Coller's Deed Trusts** [1973] 3 All ER 292. As to what capital may be resorted to there are 2 cases: (1) The annuity may be charged upon the whole estate of the testator; or (2) it may be charged only upon a particular fund or property.

[19] Clause 7 provides: "I hereby direct the Directors of Mc Intyre Brothers Limited to pay to the said Grace Steele the sum of two thousand five hundred dollars ($2,500.00) on a monthly basis for the rest of her natural life – free of any deductions."

[20] Since the direction to pay the sum was to the Directors of Mc Intyre Bros. Ltd. and not to his Executor, the Court can conclude that he did not intend the payments be charged upon the residue of his estate. The other alternative is that it be charged upon a particular fund or property. The direction to the Directors indicates either of two alternatives: the payment of the monthly sum from the general income of the company or from the dividends of his shares in the company.

[21] If the testator who had been a Managing Director of McIntyre Bros. Ltd. did not, after his retirement, receive free income from the company, it is not likely that he intended the directors to make a gift to the claimant from the income of McIntyre Bros. The deceased was a businessman. He himself received a monthly income from Mc Intyre Bros. Ltd. after his retirement. But that income was not a gift to him, but was charged to his dividends at the end of the financial year. There is no basis to conclude that he intended the monthly payments to claimant to be a gift from the income of the company. But rather that he intended that the same arrangement that he had employed for himself should continue in regard to the claimant during her life.

[22] The fact that he, in clause 2, devised the shares to his two children is not fatal. There have been cases where the same property has been the subject of two different devises and the Courts have held either the last bequest effective or depending on the nature of the property, that both legatees take a moiety. See **Re Alexander's Will Trust** [1948] 2 Ch. D. 111 in which the Court cites the dictum of Lord Brougham and Vaux, L.C. in **Sherratt v Bentley** (1834), 2 My. & K 149.

[23] I therefore find that the bequest in paragraph 2 of the will is subject to that in clause 7. Having so found, there is no need to consider the further issues raised.

[24] Accordingly, judgment is granted to the claimant as follows:

1. A declaration that the shares in McIntyre Bros. Limited bequeathed to the defendants in paragraph 2 of the will be subject to the payment to the claimant of the annuity bequeathed to her in paragraph 7 of the said will;
2. That all necessary actions be taken to vest in the claimant her entitlement under the will in accordance with the above.

[25] Cost to the claimant in the sum of $1,500.00.

Clare Henry
High Court Judge