GRENADA

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

CLAIM NO. GDAHCV2002/521

BETWEEN:

ASHTON COOMANSINGH

Claimant

AND

JEAN THOMPSON

Defendant

Appearances:

Mrs. Celia Edwards, Q.C. with Ms. Sabrita Khan for the Claimant
Mr. Ruggles Ferguson for the Defendant

2011: April 8th

JUDGMENT

[1] **HENRY, J.**: The claimant is the brother of Conrad Coomansingh (Conrad), deceased. The defendant is the niece of the claimant and of Conrad. Conrad died on 5th July, 2000. Before his death, Conrad executed a will dated 9th October, 1974 in which he named the claimant one of his executors. By this will he devised all the remainder of his estate, after the payment of his debts and funeral expenses, to the claimant. By a subsequent purported will dated 4th February 1992, Conrad revoked all previous wills and the defendant was named the executor and sole beneficiary of his estate. A grant of probate of the said will dated 4th February, 1992 was made to the defendant by the Supreme Court on 10th August 2000. Conrad's estate comprises 2 acres of land in Grenada and a medallion 7G40 to operate a Taxi Cab in New York City.

[2] The claimant claims in this action (1) revocation of the grant of probate made to the defendant on 10th August, 2000; (2) that the Court pronounce against the validity of the pretend will of Conrad deceased dated 4th February, 1992 and against the purported marriage on 16th September 1985

and (3) to declare that the will of the deceased dated 9th October, 1974 do stand and be admitted to probate.

[3] The claimant asserts that the purported will of Conrad dated 4th February, 1992 and probated by the defendant on 10th August, 2000 is a false will in that Conrad did not sign and/or execute the same. The claimant's contention is that the signature of "Conrad Coomansingh" on the will was made by Jonah Fleming, one of the witnesses.

[4] In her defence, the defendant asserts the due execution of the will dated 4th February, 1992 that by this will the deceased revoked all previous wills and testamentary dispositions, and that the will dated 9th October, 1974 was accordingly revoked. The defendant admits the marriage to the deceased in 1985 but pleads that it was annulled by the New York State Supreme Court in August 1987. She therefore prays that the claimant's claim be rejected. The defendant also counterclaims that the court do pronounce against the alleged will of the deceased dated 9th October, 1974.

Issue

[5] The sole issue is whether the will dated 4th February 1992 was duly executed by Conrad.

Burden of Proof

[6] Probate and letters of administration with a will annexed, while unrevoked, are conclusive evidence of the due execution and validity of the will, Halsbury Laws of England, 4th Ed., para. 765. The burden of proof is therefore on claimant to prove, on a balance of probabilities, the invalidity of the will as alleged.

The Law

[7] Section 6 of the Wills Act Cap. 340 provides in part:

> "No will hereafter made shall be valid unless it is in writing, and signed in the manner hereinafter required by the testator or by some other person in his presence and by his direction; and unless the signature is made or acknowledged by him in the presence of two or more witnesses present at the same time, who shall attest and subscribe the will in his presence; but no form of attestation shall be necessary."

[8] If a will, on the face of it appears to be duly executed, the presumption is in favour of due execution **Re Musgrove's Estate, Davis v Mayhew** [1927] P 264; **Re Dennning, Harnett v Elliott** [1968] 2 All ER 1. Where the testator's and witnesses' signatures appear in the right places and there is an attestation clause, very strong evidence indeed is needed before it is possible for the court to find that the will was not duly executed. See also **Briscoe v Green** [2006] All ER 182. Evidence sufficient to rebut the presumption must be positive and reliable **Glover v Smith** (1886) 57LT 100

The Evidence

Claimant's Case

[9] In asserting that the will was not signed by Conrad Coomansingh the claimant relies on the evidence of Jean Peetz a document examiner. Between 1988 and 2001, Ms. Peetz completed 268 hours of professional training with the World Association of Document Examiners (WADE). She has during her career, made some 27 court appearances, mostly in the State of New York where she is based.

[10] Her evidence is that in 2002 she was provided with certain documents for examination and opinion as to whether Conrad Coomansingh, deceased, or someone else signed the name "Conrad Coomansingh" on the will dated 4th February, 1992. She was provided with 5 documents: 4 of the 5 were represented as known signatures of the testator, Conrad Coomansingh 1 was represented as the questioned signature of Conrad Coomansingh.

[11] In 2006, she was provided with copies of further documents for examination and opinion as to whether the person who signed as the first witness on the will of 4th February, 1992 was the same person who also made the alleged signature "Conrad Coomansingh" on the said will. She was provided with 3 additional documents: 2 represented as known signatures of Conrad Coomansingh and 1 was the signature page of the will of 4th February, 1992 bearing the signature of Conrad Fleming.

[12] All of the documents provided to Jean Peetz were copies. The copies of signatures provided to her covered an 18 year period between 1974 and 1992.

[13] Ms. Peetz's opinion can be summed up as follows:

(a) Due to the many differences observed the witness can say, with a reasonable degree of certainty, that someone other than Conrad Coomansingh signed the document propounded as the last will and testament of the said Conrad Coomansingh dated 4th February, 1992.

(b) Due to the approximately equal number of differences and similarities noted in the comparison of the purported signature of Conrad Coomansingh on the will dated 4th February, 1992 and the signature of Jonah Fleming on the same document, it is probable that the person who signed as the first witness on the said document also signed the name of Conrad Coomansingh.

[14] Her evidence is that she has expressed her opinion in terms of probability because as a document expert, she cannot give an opinion in absolute terms when the data upon which she based her opinion is contained in copies as opposed to originals, which is the situation in the instant case. She concludes by confirming her opinion that it is reasonably certain that Conrad Coomansingh deceased did not sign the document propounded by the defendant as his Last Will dated 4th February, 1992, and that it is probable that the person who signed as witness "Jonah Fleming" also signed the name "Conrad Coomansingh" on the said document.

[15] On cross-examination it was suggested to Ms. Peetz that in the examination of specimen signatures the recommended number of signatures that one should have for examination is 10. Her response was "no"; that there was no stated number. However she admitted that examiners are encouraged to get as many signatures as they can, so that they can have more to work with, especially when dealing with a person with changing signatures. It was further put to her that the more contemporaneous the known signatures are to the questioned signature the more reliable would be the examiner's findings. She agreed that generally that was so. She admitted that in the principles of forensic document examination, 18 years was not considered contemporaneous but stated that she was limited to what the client could get.

[16] With regard to her findings, she stated that reasonable degree of certainty means reasonable degree of probability. She was asked whether "highly probable" is the same as "reasonable degree of probability". Her response was that they are not. "Highly probable" is the highest degree

one can have when dealing with documents that are not originals, as in this case. She further explained that if the examiner is dealing with original documents, he or she can say the person did or did not do whatever. But if the examiner does not have originals, he or she is not allowed to use that expression because a lot of changes can come about when a person reproduces a document. Examiners, therefore, can only use terms of certainty if they are dealing with originals. The scale from lowest to highest is: possible/probable > moderately possible > reasonable probability > high degree of probability.

[17] With regard to her opinion to the second request made in 2006, her evidence is that she used the term "probable" because she had only one copy of the writing and when she made the comparison there was not enough evidence to give anything more than a possibility.

[18] The Claimant also gave evidence. His evidence centered on his relationship with his brother and why he felt his brother would not have made a will in the terms of the 1992 will. According to him, he and Conrad lived together in New York and both owned Medallions. In 1974, he and Conrad formed a corporation, Pall Taxi Corporation in Brooklyn. The corporation consisted of a mini fleet of two medallions. According to claimant, he put up the money for the down payment of the medallions and Conrad stated that if anything should happen to him, they (the medallions) would all go to claimant. In the 1974 will all of Conrad's estate was devised to claimant. However in the 1992 will one of the medallions was devised to defendant. The other medallion was not mentioned in the will and is in the possession of the claimant.

The bequest of the medallion to the defendant is therefore the 'bone of contention' between the parties. The claimant alleges that Conrad was never the same after his visit to Grenada in 1990; that he never 'regained his senses'; that he could not have made a will in 1992 and that more particularly he could not have left the medallion to defendant.

Defendant's Case

[19] Both attesting witnesses to the will, Dr. Keith Johnson and Mr. Jonah Fleming, gave evidence. Dr. Johnson's evidence is that he is a medical doctor engaged in private practice at Ben Jones Street, Grenville. He states that he knows both the defendant, Jean Thompson and her uncle the late Conrad Coomansingh; that in April 1991, Conrad had visited him at the office at Ben Jones Street

for medical attention. In regard to his witnessing the signing of he will, Dr. Johnson's evidence is that on 4th February, 1992, sometime in the afternoon he was at his office when he received a telephone call from the law office of Mr. I.I Duncan. He spoke to Conrad on the telephone, and agreed to act as a witness to his will. Dr. Johnson's evidence is that at about 2:00 p.m. the same day he went across to Mr. Duncan's office. There Mr. Duncan explained to him the purpose for which Conrad had called him; that Mr. Duncan then read Conrad's will in his presence and also in the presence of Conrad and Mr. Jonah Fleming, whom he had met sitting on the veranda, and who had been called into the office. According to him, after Mr. Duncan read the will, Conrad signed it, then Jonah Fleming signed as a witness and then he, Dr. Johnson, signed also as a witness. He is adamant that the will was signed by Conrad and that both he and Jonah Fleming saw him sign and that they both signed in Conrad's presence. With regard to the order of the signing he says that he saw Conrad sign then Jonah Fleming then he signed.

[20] Dr. Johnson's evidence is that he would have seen Jonah Fleming driving Mr. Duncan for a lot of years, but that he only got to now his name when he, Dr. Johnson, went to witness the will. So that before that day, he would not have been familiar with Jonah Flemings signature. It was suggested to him on cross-examination, that a document was presented to him and he simply signed it. His response was, 'a document was presented to me in the presence of Conrad, Jonah Fleming and Mr. Duncan and I signed as the second of two witnesses.' It was put to Dr. Johnson directly that it was Jonah Fleming who signed the name Conrad Coomansingh on the will. His response was, 'I don't accept that, it's not true.' He stated emphatically that he did see Conrad sign his will on 4th February, 1992.

[21] The other witness Jonah Fleming also gave evidence. His evidence is that he is a chauffeur and worked with the lawyer I.I Duncan as his driver for 18 years. He states that on 4th February 1992, he was on the veranda of Mr. Duncan's office. At the time, Mr. Duncan and Conrad Coomansingh were in the office. According to him at about 2:00 p.m. Dr. Keith Johnson came and went into Mr. Duncan's office. While he was sitting there, he was called into Mr. Duncan's office, there Mr. Conrad Coomansingh asked him if he could witness his will for him as the other person who he had asked to be witness did not come. He agreed to do so.

[22] In regard to the execution of the will, his evidence is that Mr. Duncan read the will in the presence of Conrad, Dr. Johnson and himself; that Conrad then signed the will; he signed and then Dr. Johnson signed. His evidence is that when Conrad signed, both he and Dr. Johnson were present and saw him sign and that he and Dr. Johnson signed as witnesses in the presence of each other and in the presence of Conrad.

[23] On cross-examination, it was put to him that Conrad did not sign the will. He replied, 'I saw Mr. Coomansingh sign the will.' It was further put to him that he, Jonah Fleming, had signed the name Conrad Coomansingh on the will. He replied "never."

Findings and Conclusions

[24] Ms. Peetz's findings were not stated in the highest degree of certainty possible, even for copies of documents. She could only state with a reasonable degree of certainty/probability, as opposed to the highest degree of probability, that Conrad did not sign the February 1992 will. And she could only say that it is 'probable' that Jonah Fleming is the person who signed the name Conrad Coomansingh on the will.

[25] The evidence of the claimant was not of much assistance. Understandable he could give no evidence in regard to the due execution of the will, since he was not in Grenada at the time.

[26] On the other hand, both attesting witnesses gave credible evidence and stood up well to cross-examination. I found Dr. Johnson to be a credible witness. No reason was suggested why Dr. Johnson would concoct a story about seeing Conrad sign his will on the date in question. What would he have to gain? Nor is there any evidence on the record of any ill will between the Doctor and the claimant.

[27] Similarly, no reason was suggested why Jonah Fleming would sign the name Conrad Coomansingh on the will. The un-contradicted evidence is that Conrad was present on the day at the office of his Attorney, I.I. Duncan. Under those circumstances, why would Jonah Fleming sign Conrad's name? Despite rigorous cross-examination on the process of execution of the will, including the position of the will on the desk and whether all parties used the same pen, I found Jonah Fleming to be a credible witness.

[28] While I understand that the apparent change of heart on Conrad's part in devising the medallion to defendant may be upsetting to claimant, I accept the evidence of the two attesting witnesses Dr. Johnson and Jonah Fleming that they were present and saw Conrad Coomansign sign the will and that they both signed as witnesses in Conrad's presence.

[29] On the face of the will there is apparent due execution. Conrad's as well as the witnesses' signatures are in their correct places. Not only is there an attestation clause, but in addition, the court has the credible evidence of the two witnesses. In light of this, I find that the evidence presented by the claimant is insufficient to meet his heavy burden.

I therefore find that the claimant has failed to discharge his burden of proof. I find that the will dated 4th February 1992 was duly executed in accordance with section 6 of the Wills Act.

[30] Accordingly, judgment is granted as follows:

1. In favour of the defendant dismissing the claim;
2. Claimant do pay to the defendant cost in the sum of $7,000.00

Clare Henry
HIGH COURT JUDGE