THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2011/1048

ANISTA BROWN

Claimant

and

ESTATE OF WAYNE BROWN

Defendant

Appearances:
Kimberley Roheman for the Claimant
Dexter Theodore for the Defendant

2012 : September 24;
2014 : November 20.

DECISION

[1] **BELLE, J.:** This matter falls to be decided by the Court pursuant to an application filed by the Claimant on 7th October, 2011. The Application and Claim which was filed on 30th November 2011 touch and concern the interpretation of the Will of Wayne Brown deceased.

[2] I must say from the outset that I agree with counsel for the Applicant/ Claimant that the Will can only dispose of property or an interest in property belonging to the testator at the time of his death.

[3] Counsel for the Applicant / Claimant quoted from Williams on Wills Second Edition page 30 Exhibit A where it is stated:

> *"The will can only dispose of property or an interest in property belonging to the testator at the time of his death, except in so far as he has testamentary power of appointment over property. Any disposition in which the testator has never had an interest or of property in which he had an interest at the date of his will but has since disposed of in his lifetime must fail."*

[4] I have taken note of the submissions of counsel on the issue of "misdescription" of properties and I have to say that the authorities he cited do not assist the Respondent Aly Brown. I disagree with Counsel that Article IV of the will speaks to the testator's "half share of Stonefield Limited."

Counsel for the Claimant properly quotes the Will which refers to "real estate jointly owned with my wife" and a devise of "my 50% of ownership interest in said property to my son Aly Brown and the other 50% to my loving wife."

[5] Counsel Mr. Theodore referred to the case of **Re Lewis's Will Trusts**, Lewis v Williams 1906 2 Ch. 314. The facts of this case were that "the testator owned three quarters of the issued shares of a family company, which owned a farm and other assets which had no connection with the farm. The testator had signed the contract to purchase the farm, but it was in fact conveyed to the company, and he thereafter lived in it. By cl 5 of his will the testator made a specific bequest of his 'freehold farm' to his son and by cl 6 he left the residue of his estate to his son and daughter in equal shares. After the testator's death the question arose whether the testator's share in the company passed to the son under clause 5 or whether they formed part of the residuary estate. The court held;

"If a testator at the time he made his will was under a misapprehension as to what he owned, the court could not alter the language of the will so as to make a gift in the will apply to a different asset altogether, notwithstanding that the court might be satisfied what the testator would have done if he had directed his mind to the actual asset he owned. Accordingly, the court would not rewrite the testator's will to make the specific bequest of the 'freehold farm' effective to dispose of the testator's shares in the company to his son."

[6] Scott J described the position in **Re Lewis Will Trusts** as follows:

"This is not a case , as it seems to me, of misdescription. The evidence of what in fact was owned by the testator at the date of his will, and such part of the affidavit evidence put before me as is admissible , makes it quite plain to my mind that the testator intended to dipose of , and thought he was disposing of , the farm. The evidence also makes it quite clear that he did not when he made this will have in mind his shares in GR Lewis (Talygarn) Ltd. and did not have in mind that the farm in fact was owned by that company, He intended to describe and did describe the farm. He did not intend to describe and did not describe his shares. In such a case, therefore authority relating to the circumstances in which , as a matter of construction, is appropriate to correct an inaccurate description of the subject matter of a gift does not seem to me to assist."

[7] I do not agree that **Re Lewis Will Trusts** is distinguishable from the case before the court. Although the testator Mr Brown referred to Stonefield Ltd, Estate located in Soufriere a description which contains the name of the company it is clear that he was referring to 50% interest in "real estate"

which he did not own at the time of his death. The will cannot be rewritten to make it possible for the reference to be construed as a 50% share in the company which indeed according to the available evidence as stated by the Claimant the testator did not own.

[8] I must also say that I do not think it proper that the court be asked in an application which is to be considered based on submissions to determine something based on fact and law which it cannot determine without further evidence being taken. When counsel asks in paragraph 4.3.17 of his skeleton submissions "did he really own 50% of the shares of Stonefield Ltd?" That question is clearly not one which can be determined in an application such as this and counsel should not agree to have a matter determined on submissions and then attempt to open a door for the court to determine argumentative issues of mixed fact and law which could only be determined at a full trial.

[9] I therefore disregard all of the submissions that counsel for the Respondent Aly Brown makes with regard to the possibility that this matter could be determined with reference to the testator's domicile in Saint Lucia and the extent of his community property. In order to make that determination there would have to be evidence of the source of the funds for the purchase of shares in Stonefield Ltd before the court. There is no such evidence and this is a matter which counsel would have to raise in another forum. This invitation to speculate is therefore rejected.

[10] The result of this is that the Clause IV of the Will does not contain a mere misdescription but purports to bequeath property which the testator did not own at the date of his death. That clause must therefore be declared null and void and the shares in the company fall to the residuary estate pursuant to Article XIV.

[11] It is important that it be understood that there is no disposition of the Stonefield Estate Ltd's shares and the powers of the company to dispose of its property as it deems fit. The Company owns the land and cannot be compelled by another person's Will to give away its property.

[12] Article V of the Will states:

> "I declare that I own 75% of real estate located at rainforest known as the Smetca Estate and also known as CA Bourne and I give and devise my 75% interest to my son Aly"

[13] The Claimant states in her affidavit filed on 7th October, 2011 that the property referred to in this Article of the Will is described as Map Sheet 0629D Parcel 66 Exhibit C21 owned by La Batterie Estate Ltd. Once again the assertion of ownership is false and must be declared null and void. The shares in the company La Batterie would therefore pursuant to Article XIV of the Will fall under the residue to the deceased's wife.

[14] I agree with the Claimant that reference in Article VI to land "adjoining Stonefield and Malgretoute Road St. Lucia results in a bequeath of 50% interest in the property to Anista Brown and 50% to Aly Brown.

[15] In relation to Article VII the testator states:

> *"I declare that I own a Carpenter Shop located at Fond Bernier in St Lucia and I give said shop to my wife"*

[16] I accept the Claimant's submission that there is no bequeath of the land upon which the carpenter shop is situated and therefore the land and shop fall to devolve to the deceased's wife.

[17] I agree with the Claimant's submission that the words: "I declare that I own land located at Mornelastic St Lucia and I give and devise all of my interest in said property to my wife.." carries the result that the land devolves to the deceased's wife, pursuant to Article VIII of the Will.

[18] I do not see the basis of any dispute over land situate at Case en Bas which indeed may be a misdescription since the land is in fact located at Massade but the result in any event would be a bequeath of the said property to the deceased's wife since the intention is clear. This disposes of Article IX.

[19] Based on the principle that the deceased cannot dispose of property that he does not own at the time of his death Article X would be null and void and the property would fall into the residual estate pursuant to clause XIV to the deceased's wife.

[20] The Rodney Bay property mentioned in Article X is registered in the land registry of St Lucia as Map Sheet 1255B parcel 131 Exhibit C20. The property is owned by the Company Silver Grizzly

Ltd. The shareholders in the company are Wayne Brown 3,752 shares and Anista Brown 1,250 shares. Since the testator can only give what he owns this gift fails and will devolve on intestacy.

[21] Finally there should be no argument over the property owned solely by the deceased described as Map Sheet 0630B Parcels 22 and 23 Exhibits C22 and C23 respectively being bequeathed to the deceased's wife who is the Applicant/Claimant. This disposes of Article XI.

[22] I conclude then that there is no dispute as to the effect of Articles XI, XII, XIII and XIV of the Will.

[23] I must say that the court did not consider the details about the things said and done before the final Will of the deceased was executed of any importance since any intention expressed by the deceased before he died could not reverse the fact that he did not own the property which he purported to bequeath in Articles IV, V and X of the Will. I also agree with counsel for the Claimant that since the testator was free to change his mind there is no need to refer to the previous Will which would have been revoked on the making of the Will which is now being considered by the court.

[24] The Court makes no order as to costs.

Francis Belle
High Court Judge