

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV 0034/2009

BETWEEN:

PETER M ADAMS
(as Co-Administrator of the Estate of Precious Millicent Adams)
Claimant/Applicant

And

ERMINE ADAMS-PLOTKIN
(as Co-Administrator of the Estate of Precious Millicent Adams)

Defendants/Respondents

Appearances:

Ms. Merline Barrett and Ms. Jean Dyer for the Claimant/Applicant

Mr. Courtney Abel and Ms. Eustella Fontaine for the Defendant/Respondent

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2010: December 13
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JUDGMENT

[1] **BLENMAN, J:** This is another claim in what appears to be an ongoing family feud in relation to the unadministered estate of Precious Millicent Adams deceased.

Background

[2] The application is one for the approval in respect to the sale of a Family Home. It has its genesis in the dispute that surrounds the unadministered Estate of Precious Millicent Adams in which the persons who are entitled to benefit are involved in acrimonious and contentious litigation.

- [3] The present application is brought by one of the Co-Administrators Peter Adams against the other Co-Administrator of Precious' estate, Ermine Adams-Plotkin.
- [4] By way of history, it may be appropriate to say that Precious Adams and Peter Emmanuel Adams had seven children. He died before her, leaving Precious and their seven children. Regretfully, Precious died intestate and there commenced ongoing disputes between the siblings in relation to the estate. Most of the estate has been distributed. At the heart of this claim is the Family Home which is situated in what is referred to as Flowers Avenue, Registration Section South East Block 78913B Parcel 223.
- [5] This dispute also attends Parcel 223 which has received judicial comment by the learned Trial Judge Justice Janice George Creque as she then was in Claim No 37 of 2001. In that judgment Justice George Creque said that Ena Angela had no beneficial or equitable interest in the Family Home save and except to her entitlement to a 1/7 share in the Family Home like all of her other siblings. The court also said that by virtue of the provisions of the Intestate Act RSA once the estate is Precious properly vested the Administrators of her estate it was incumbent on the administrators to act fairly and justly in vesting it in the seven beneficiaries.

Law

- [6] Section 3 (1) (b) of the Intestate Act of Anguilla stipulates as follows:

"The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section namely: if the intestate leaves issue but no husband or wife, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate."

- [7] Section 4 of the Intestate Act states that the residuary estate is held upon statutory trust and is to be divided equally between the beneficiaries.
- [8] Section 5 of the Intestate Act stipulates that where the residuary part of an estate held on statutory trust, it shall be held upon trust to sell same and to stand possessed of the net proceeds of sale upon such trusts and subject to such powers and provisions as may be requisite for the giving effect to the rights of persons in the land.
- [9] Peter Emmanuel Adams, by his will, left the Family Home to his wife Precious. As stated earlier, Precious died intestate thereby leaving her estate to be administered in accordance with the Intestate Estates Act of Anguilla. The consequence of this is that on Precious' death all of her seven children became entitled to an equal share in the Family Home. This was clearly stated by the learned Trial Judge Creque J as she then was.
- [10] It is clear that the administrators of Precious' estate hold the residuary estate upon a trust for sale. The administrators of Precious' estate are entitled to sell the Family Home and to hold the net proceeds, on trust to be divided equally between the seven children, who are the beneficiaries.
- [11] As alluded to earlier, Peter Adams and Ermine Adams Plotkin are the Co-administrators of Precious' estate. The two of them seem to have been at logger heads over the years. This has apparently not abated.
- [12] From the uncontroverted evidence, it is clear that Peter Adams seems mindful to sell the Family Home to Ena Angela while Ermine and some of her siblings do not want their sibling Ena Angela to have it. They say it should not be sold to Ena Angela. The siblings are divided on this issue. What is critical is the fact that the other faction of the siblings are totally against the property being sold to Ena

Angela. In fact, Ermine and three of her siblings say that they are prepared to purchase it.

- [13] It is against that background that Peter Adams seeks approval from the court to permit the Family Home to be sold to Ena Angela upon terms and conditions stated in the application. The application is strenuously opposed by Ermine Adams-Plotkin.

Issue

- [14] The sole issue for the court to resolve is whether it should approve of the sale of the Family Home (Parcel 223) to Angela Ena.

Claimant's Submissions

- [15] Learned Counsel Ms Merline Barrett urged the court to grant the application sought since it is fair and in the best interest of the estate.
- [16] Ms. Barrett Learned Counsel said that the court is clothed with jurisdiction to grant the order sought. See Part 67.2 – 67.4 CPR 2000. In support of her arguments, Ms. Barrett referred the court to *Clifton St. Hill v Austin St. Hill*, Civil Suit No. 402 of 1996 St. Vincent and the Grenadines in which Mitchell J stated:

“that it is always the duty of the administrator of an estate to satisfy the beneficiary that he is properly administering the estate. He is required to act at a higher level than he would in protecting his own interest. He must report and account more than that, he is well advised to seek and obtain approval from the beneficiaries. If he tries and fails to secure the approval of a particular beneficiary, he is opening himself up to a law suit. He is expected in such a case to apply to the court for directions on the administrator of the estate”.

- [17] Ms. Barrett said the factors in support of the sale to Ena Angela must be weighed against the fact that all of the other siblings have homes of their own and therefore do not need to live in the Family Home. All of the other siblings except Angela and Lena reside permanently outside of Anguilla and this has been so for in excess of 30 years; Angela has maintained and improved the Family Home.
- [18] Ermine's opposition to the sale of the Family Home to Ena Angela has nothing to do with what is in the best interest of the estate but is based on personal grudges and braises against Angela. Ms. Barrett urged the court not to accede to Ermine's request to order that the Family Home be sold by an open sale since this is likely to cause the Family Home to be artificially infected thereby limiting Angela's ability to purchase it.
- [19] Ms. Barrett said that Ermine has not sought an order from the court to permit her to purchase the Family Home; so she is precluded from purchasing it.
- [20] The evidence discloses that the sale of the Family Home to Ena Angela is objected to on the basis that Ermine and three of her sisters are also interested in purchasing the Family Home therefore a sale to Ena Angela is tantamount to placing Ena Angela in a preferred position in relation to the other siblings.
- [21] Learned Counsel Ms. Barrett urged the court to accept that the most reasonable and equitable course is to permit Ena Angela to purchase the Family Home. The factors the court should take into consideration in its determination are:
- (a) Angela has lived in the Family Home for about 20 years is 73 years old and unmarried with no children; has made substantial improvements to it which have made it comfortable for her to live in; has never lived elsewhere in Anguilla; has no other house in Anguilla

or elsewhere and considers the Family Home to be her only home; is willing to pay fair market value.

[22] Learned Counsel Ms. Barrett advocated that in the case at bar, a trust was created. Therefore, Peter could properly seek the court's direction in accordance with the statutory provisions of the Trust Act of Anguilla.

[23] Section 57 of the Trust Act allows a trustee to apply for directions in relation to the administration of trust:

"A trustee may apply for directions as to how he should or might act in any of the affairs of the trust and the court may make such order as it thinks fit"

[24] The relevant legal principles that are applicable to the circumstances in which a trustee seeks the directions of the court can be found in ***Marley and others v Mutual Society Merchant Bank and Trust*** [1991] 3 All ER 198 at 201. Where a trustee is in doubt as to the right course of action, he is entitled to seek guidance from the court and a trustee who seeks the approval of the court for the exercise of his discretion surrenders his discretion to the court and accordingly must put the court in possession of all information necessary to enable that discretion to be exercised; and

*"in exercising its jurisdiction to give a direction on a trustee's application, the court is essentially engaged in determining what ought to be done in the best interest of the trust estate and not in determining the rights of adversarial parties." Lord Oliver in ***Marley and Others v Mutual Society Merchant Bank and Trust*** *ibid* where the beneficiaries oppose a proposal of a trustee with a number of objections of more or less weight, the court is of course inevitably concerned to see whether these objections are or are not well founded, but that must not be permitted to obscure the real questions at issue which are what directions ought to be given in the*

interest of the beneficiary and whether the court has before it all the material appropriate to enable it to give those directions.”

[25] Learned Counsel Ms. Barrett posited that, in view of all of the relevant information that has been placed before the court, it is in the best interest of the estate for the court to grant the approval that is sought.

[26] In support of the application for the declaration that the Family Home should be sold to Ena Angela. This is the most reasonable and equitable course to adopt based on the fact that she has lived in the Family Home for about 20 years, has no other home in Anguilla or elsewhere and considers the Family Home to be her only home, has already made substantial improvements to the home during the time she rented there and is willing to pay fair market value for the home. In those circumstances, Ms. Barrett stated that it is fair and just to grant the approval sought.

Costs

[27] Learned Counsel Ms. Barrett indicated that based on the Valuation Report that has been filed with the court the value of the Family Home is US\$208,000.00 Peter seeks to recover prescribed costs of EC\$74,457.28. These costs, if Peter is successful should be awarded against Ermine personally. However, if Peter were to be unsuccessful the costs should be borne by the estate of Precious.

Defendant's Submissions

[28] Learned Counsel Mr. Abel said that it seems to be agreed that the Family Home should be sold but it is hotly in dispute that it should be sold to Ena Angela also referred to as Angela. There is also a dispute as to the extent of Angela's personal funds expended in the Family Home.

- [29] Beyond dispute is that all of the seven children of Precious Adams are equally entitled to the benefit of the Family Home (Justice Janice George Creque has also determined that Ena Angela is entitled to no more than a 1/7 share in the estate of Precious Millicent Adams) and as such the claimant and defendant are holding the Family Home on trust for all of the children equally.
- [30] Mr. Abel submitted that notwithstanding this power of sale, Peter and Ermine in conducting any sale of the Family Home must act prudently and properly and must hold an even hand between all the beneficiaries.
- [31] Insofar as the alleged expenses carried out by Ena Angela to the Family Home are concerned, Mr. Abel submitted that this issue has already been determined by this court in Claim No. 37 of 2001 as contained in the judgment of Justice George-Creque's at paragraphs 9 and 10 wherein at paragraph 9 the learned trial judge found that Ena Angela was not granted permission to incur such expenses by the Executors of the estate of Peter Emmanuel Adams, in whose name the family remained registered until December 15, 2008 and that Angela took such expenditure upon herself primarily with the ultimate objective of providing for her own use and comfort which Angela has admittedly enjoyed for the past 14 years now in excess of 20 years rent free and for a large period to the exclusion of other beneficiaries namely Ermine, Pamela, Jasmine and Lena.
- [32] Mr. Abel Learned Counsel further submitted therefore that Ena Angela alleged expenses cannot be taken into account as providing a basis on which court ought to order a specific sale of the Family Home to Ena Angela over and above any other beneficiary equally entitled to the Family Home.
- [33] Mr. Abel stated that the only evidence of Ena Angela willingness to purchase the Family Home at a particular price is contained first at paragraph 10 of the claimant's affidavit filed on 23rd March, 2009 exhibiting "PM5" the proposal of the sale of the Family Home to Ena Angela which states:-

"Our client's proposal is that the appraisal of the Flowers Avenue property in the sum of US\$187,000.00 is allowed to stand without counter appraisal from your clients and that Angela Adams be allowed to purchase the Flowers Avenue property for the sum of US\$70,000.00. Angela Adams will waive any and claims she may have regarding her expenditures and improvements to the property which are in the sum of US\$200,000.00 and in return your clients will waive all claims against Angela regarding rent, income, damage, or dealing with the property. In the circumstances it seems justified and appropriate that Angela should be allowed to purchase the Flowers Avenue property."

- [34] Mr. Abel stated from that correspondence there is no intention of Ena Angela Adams to purchase the Family Home at a fair market value.
- [35] Ena Angela has never paid rent for her entire occupation of the Family Home. The beneficiaries of the estate of Precious Adams have been denied valuable rental income from the Family Home. Mr. Abel argued that the period of Ena Angela's occupation has been to the detriment of the beneficiaries entitled to share in the Family Home and ought not to be taken into account as giving her any edge (which it is denied can in law be given) over the four beneficiaries equally entitled to a share in the Family Home.
- [36] Mr. Abel said that if, which is denied, any edge can be given, then it should be given to Ermine along with Pamela, Jasmine and Lena who together represent 4/7 of the beneficiaries of the estate of Precious Adams and as such, represent the majority of the beneficiaries who expressed and continues to express a desire to purchase the Family Home at full market value.
- [37] Mr. Abel reminded the court that the parties to this action are the Co-Administrators of the Estate of Precious Adams. He submitted that Part 67.4 (3)(a)

of CPR 2000, does not apply to the present case where two Co-Administrators disagree about the sale of property which is subject to a trust for sale under the Intestate Act. In this situation, Mr. Abel posited that Part 67.4 (3)(a) of CPR 2000, does not empower a judge to grant the relief of approving a sale by one of two disputing Co-Administrators, to a specific person (or beneficiary) as this provision does not confer substantive power to the court to mediate between disputing Administrators. The court may approve a sale in the case of a single Administrator who has substantive power under the trust for sale and who seeks the protection of the court to approve any sale where there is no dispute about such sale.

[38] In the event that this Court were to be against the procedural nature of Part 67 of CPR 2000, Mr. Abel said that the overriding objective suggests that this court ought not, in the circumstances of the present case, to approve the sale of the Family Home to Ena Angela as in all the circumstances, such a sale would entail not putting the parties on an equal footing, would be disproportionate given the importance of the Family Home to all of the family members and also because of the complexity of the emotional ties involved in this family heirloom.

[39] All of the seven siblings are equally entitled to a share in the Family Home and as such, Mr. Abel said that in dealing with this claim the court ought to apply the principles contained in the overriding objectives to ensure that the Administrators of the Estate of Precious Adams deal properly and prudently and hold and even hand between the beneficiaries of the Estate of Precious Adams. Any sale of the Family Home ought to be carried out in a fair and just manner by conducting a sale wherein all of the beneficiaries are allowed to bid on the Family Home along with any interested third party.

[40] On the issue of costs, Mr. Abel said that since the exchange of correspondence between the solicitors on the 5th and 27th September, 2006 there has been no communication, prior to the commencement of this action in relation to a sale of the Family Home.

[41] However, Mr. Abel submitted, Peter both in his capacity as executor of Peter Adams and Co-Administrator of the estate of Precious Adams, as found by Justice George-Creque, has conducted himself in a manner contrary to the benefit of the estate as a whole and the duties imposed on him: including by bringing this action and seeking a specific sale of the Family Home to Ena Angela on the basis, as he does, including her occupation of the Family Home in excess of 20 years during which time the Family Home remained vested in the names of the executors of Peter Emmanuel Adams and contrary to the continued expressed wishes of the defendant and three other beneficiaries and notwithstanding the Order of Justice George-Creque to transfer forthwith the Family Home in the names of the Administrators of Precious Adams. In addition, since the correspondence between solicitors on the 5th September 2006, Peter made no attempt to enter discussions with the defendant regarding a sale of the Family Home to anyone including to Ena Angela.

[42] Mr. Abel argued that the costs of this claim be borne personally by Peter. See Halsburys Laws of England 4th Ed. Vol 17. Para 1494; See also Claim No. AXAHCV 2008/0097-*Merle Bailey v Bernadine Huligar et al.*

Court's Analysis and Conclusions

[43] The court has reviewed the pleadings in this matter and has given deliberate consideration to the very helpful submissions of both Learned Counsel.

[44] The court notes the obvious acrimony that has engulfed the two factions of the siblings. This is very unfortunate to say the least. Be that as it may. The court has to assess the totality of the circumstances and determine what is in the best interests of the Estate of Precious Adams.

- [45] In so doing it is prudent to briefly chronicle part of the surroundings factual circumstances: Peter Emmanuel Adams willed Parcel 223 to his wife Precious. On a portion of Parcel 223, the Family Home stood. Precious died without leaving a will; she was survived by her seven children. It appears that sometime around 1989 that Ena Angela moved into the Family Home and continues to occupy it rent free, without the permission or consent of the other beneficiaries. She carried out improvements to the Family Home while it was still vested in the estate of Peter Emmanuel Adams. On Peter Emmanuel Adams death his sons Peter and Vincent as the executors of the estate. They sub-divided Parcel 223 to create 9 lots of land (with each lot assigned to the seven children and two lots to Precious Adams). The Family Home stands on Parcel 223.
- [46] In previous litigation in which Ena Angela and Peter Adams (in his capacity as Personal Representative of the estate of Precious Adams and executor of the estate of Peter Emmanuel Adams, the court, differently constituted, had made certain pronouncements. It is not proposed to re-open those issues. The court has paid cognizance to those conclusions.
- [47] It seems as though Ena Angela desires to purchase the Family Home at a price based on a valuation which was obtained. She is of the opinion that the valuation provides the best price that the Family Home would attract. Ena Angela is of the view that she should be given the first right to purchase the Family Home. Some of her siblings are adamant that she should not.
- [48] The Personal Representatives of the estate of Precious, Peter and Ermine are unable to agree as to whom the Family Home should be sold and this has occasioned Peter applying to the court for directions to be given with respect to the sale of the Family Home. Ermine together with three other beneficiaries are opposed to the sale of the Family Home to Ena Angela. In fact, they state that instead they should be permitted to purchase it and are willing to do so.

[49] This brings into sharp focus the relevant law:

Part 67 of CPR 2000 enables a trustee executor or administrator to seek directions from the court. See Civil Appeal No. 4 of 2005 *John Paul De Joria et al v Gigi Osco Bingeman* the judgment of Barrow JA.

[50] Part 67.4 (2) of CPR 2000 stipulates that an executor administrator or trustee may issue a claim for the determination of any question includes any question arising in the administration of the estate of a deceased person.

[51] Part 67.4 (2) (b) of CPR 2000 provides that an executor or administrator may issue a claim for the determination of any question arising in the execution of, or under a trust.

[52] Part 67.3 of CPR 2000 indicates the variety of reliefs the court could provide while approving any sale, purchase, compromise or other transaction by a person in the capacity of executor, administrators or trustee.

[53] By virtue of the statutory provisions above mentioned, the court is of the considered opinion that it has jurisdiction to give directions, in an appropriate case, in order to assist with the proper and efficient administration of an estate by the administrators.

[54] The court is fortified in this view by the decision of Barrow JA in Civil Appeal Anguilla No. 4 of 2005 *John Paul De Joria et al v Gigi Osco-Bingeman*.

[55] In giving directions, it is incumbent that the court seeks to do what is in the best interest of the estate. What is in the best interests of the estate may not necessarily be what is in the best interest of one of the beneficiaries of the estate.

- [56] It is no part of the court's concern to take into consideration the very high emotional issues that the parties have against each other. This however is rather unfortunate, since it may well impact how they continue to treat with each other.
- [57] It is hoped that with the passage of time this will subside and the siblings will allow wisdom to prevail.
- [58] The court does not propose to allow the parties to seek to re-litigate the issues which were, with respect, properly ventilated and decided in Claim No.37 of 2001.
- [59] It is passing strange that the parties would seek to reopen the issues in relation to the improvements of the Family Home and its occupation. A matter in which there have been findings pronouncements by a trial judge, in Claim No.37 of 2001.
- [60] It is clear from the several affidavits that have been filed in this claim that there are two serious factions created among the seven children. The lines are drawn in that same vein.
- [61] The court in seeking to resolve the issue that is raised in the case at Bar must have regard to the principles enunciated in the *Marley and others v Mutual Society Merchant Bank and Trust* [1991] 3 All ER 198.
- [62] The principles to be distilled from the above authority is that the court must be seized of all of the information and should thereafter seek to determine what is in the best interest of the beneficiaries/estate.
- [63] In the present circumstances, the court accepts that it is in possession of all of the relevant information.
- [64] The court has reviewed all of the arguments that have been proffered on behalf of Ena Angela and is not of the view that the sale of the Family Home is in the best

interests of the estate. Most of the factors that are presented by Ena Angela are clearly in her best interests.

- [65] However, it must be ascertained what is in the best interests of the estate. In doing this the court is guided by the very helpful enunciations in *Marley's Case*.
- [66] Applying the principles in Marley's case to the claim at Bar, the court is clear that it is in the best interests of the beneficiaries that the Personal Representatives seek to obtain the best market price for the sale.
- [67] It is pretty obvious that in this matter there is an equal amount of acrimony as there is emotion on both sides of the fence. This may well be a factor that may militate against persons who are not family members bidding on the sale of the property. This however is in the realm of conjecture.
- [68] Having reviewed the totality of circumstances, the court is of the view that the sale of the Family Home should be placed on the open market by the Administrators with a reserve price being fixed by the auctioneer. The beneficiaries and other persons should be allowed to bid on the property and the highest bid should be accepted.
- [69] The auctioneer may well wish to be guided in the fixing of the reserve price by the valuation that was obtained. This is a matter within his exclusive purview. The court is of the considered opinion that the above directions are in the best interests of the estate.
- [70] This leaves the court to determine what if any order should be granted.

[71] In doing so it is important to recognize that the defendant Ermine has not sought any relief, even though she has provided the court with a detailed Draft Order. The Personal Representative may well wish to consider some of the terms of the Draft Order as they set about to sell the Family Home. This is a matter that is entirely open to them.

[72] Insofar as what Peter has sought is an approval of sale, the court finds helpful the statement of Lord Woolf and Jeremy Woolf in their book, the Declaratory Judgment 3rd edition, 2000-2002 at page 1 that:

“A declaratory judgment is a formal statement by a court pronouncing upon the existence or non-existence of a legal state of affairs. A declaratory judgment pronounces upon a legal relationship but does not contain an order which can be enforced against the defendant.”

[73] In view of the totality of circumstances the court is of the respectful opinion that it is not appropriate to accede to Peter’s request and approve the sale of Registration Section South East 78913B Parcel 223 to Ena Angela.

Conclusion

[74] The claim by Peter M Adams (as Co-Adminsitrator of the estate of Precious Millicent Adams) against Ermine Plotkin (as Co-Administrator of the estate of Precious Millicent Adams) is dismissed.

[75] Prescribed costs are to be paid to Ermine Adams Plotkin from the estate of Precious Millicent Adams.

[76] The court gratefully acknowledges the tremendous assistance of both Learned Counsel.

Louise Esther Blenman
Resident High Court Judge
Anguilla