COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PROBATE DIVISION

2016/PRO/cpr/00036

In the Estate of **LESTER EUGENE ADDERLEY JR.** late of #455 Hawaii Avenue, the city of Freeport on the Island of Grand Bahama, one of the Islands of the Commonwealth of The Bahamas

BETWEEN

LYLE ETHRIN ADDERLEY AND LYRIC ETHAN ADDERLEY
(Minors)

AND

LAKISHA HIELD
(Mother and Next Friend)

Plaintiff

AND

(1) MICHAEL DURAN ADDERLEY
(Intended Executor of the Estate of Lester Eugene Adderley Jr.)

First Defendant

AND

(2) LESTER ADDERLEY SR.
(Intended Beneficiary of the Estate of Lester Eugene Adderley Jr.)

Second Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Ms. Robyn D. Lynes of KLA Chambers for the Plaintiff

Ms. Sophia Rolle-Kapousouzoglou along with Mr. Valdere J. Murphy of Lennox Paton for the First Defendant.

Hearing Dates: 18 October, 2018, 19 February 2019, 19 September, 2019, 24 September, 2019, 27 January 2020

Probate – Wills – Whether will is a forgery – Whether the plaintiff could prove forgery – Handwriting expert – Attesting witnesses – Section 5 Wills Act, 2002 – Section 31 of the Probate and Administration of Estates Rules, 2011

The Plaintiff, in her capacity as mother and next friend of two minor sons of the Deceased, instituted these proceedings against the Defendants alleging that the signature on the Last Will and Testament of the Deceased is a forgery.

The Defendants (the brother and father (now deceased) of the Deceased) denied the allegation and maintained that the Will was duly executed in accordance with the statutory requirements of Section 5 of the Wills Act, 2002

HELD: Preferring the evidence of the Plaintiff and her expert witness to that of the Defendants and their witnesses and, finding that the signature on the Will purporting to be that of the Deceased, is a forgery.

1. If a will, on the face of it, appears to be duly executed, the presumption is in favour of due execution, applying the principle *omnia praesumuntur rite esse acta*: **Re Denning, Harnett v Elliott** [1958] 2 All ER 1.

2. When a will contains the signatures of the deceased and the witnesses and an attestation clause, the presumption of due execution will prevail unless there is the strongest evidence to rebut the presumption: **Sherrington and others v Sherrington** [2005] EWCA Civ 326.

3. The burden of proof lies with the Plaintiff who alleges that the Will of the Deceased is a forgery: **Tyrrell v. Painton and another** [1894] P. 151 at page 156 applied.

4. The evidence of the Plaintiff and her expert witness was more plausible than that of the Defendants and their witnesses. The fact that the expert based her analysis on photocopies and not originals does not render her evidence unauthentic. The copies were very good, clear and sufficient for her to make a proper analysis: **Lockheed-Arabia v Owen** [1993] Q.B. 806 applied.

JUDGMENT

Charles J:

Introduction

[1] The key issue which arises for determination in this action is whether the purported Last Will and Testament of the late Lester Eugene Adderley Jr. ("the Deceased") dated 11 April 2014 ("the Will") is a forged document or not.

Background facts

[2] Most of the facts which I now state is uncontroverted and agreed. To the extent that there is any departure from the agreed facts, then what is expressed must be taken as positive findings of facts made by me.

[3] On 23 August 2015, the Deceased, then about 34 years old, was murdered in the Island of Grand Bahama. At the date of his untimely demise, he left behind two minor children, Lyle Ethrin Adderley and Lyric Ethan Adderley, both 9 years old at the time. The boys are twin. Lakisha Hield ("the Plaintiff") is the mother of the two boys.

[4] Michael Duran Adderley ("the First Defendant") is the brother of the Deceased and Lester Adderley Sr. ("the Second Defendant") was the father of the Deceased (collectively "the Defendants"). The Second Defendant was also tragically murdered on 13 January 2019 when this matter was part-heard. In actuality, on resumption, it was going to be the Defendants' turn to tell their story as their two witnesses had already testified. Alas, the Second Defendant had departed his earthly life. His demise caused some practical impediments to the continuation of this trial. Before his death, the Second Defendant had sworn a witness statement on 30 May 2018. An application to enter his witness statement into evidence was met with challenges by the Plaintiff. Nonetheless, the Court admitted it and will give it such weight as it deserves considering that the witness was not cross-examined. The witness statement of the First Defendant was entered into evidence, unopposed by the Plaintiff and, without any cross-examination.

[5] Under the Will, the Deceased appointed the First Defendant to be his Executor and the Second Defendant, the sole beneficiary. The Deceased left all of his monies, shares and property, real and personal, of every kind and description to the Second Defendant for his use and benefit and for the benefit of his two sons.

[6] Sometime after the death of the Deceased in 2015, the Plaintiff, on behalf of the minor children, applied to the Probate Division of the Supreme Court for a Grant of Letters of Administration in the Estate of the Deceased.

[7] Between 8 December 2015 and 2 June 2016, the Second Defendant lodged two Caveats against the Estate of the Deceased. He subsequently made an application for

the Grant of Probate in the Estate of the Deceased based on the Will purportedly signed by the Deceased and witnessed by Mr. Ricardo Rahming ("Ricardo") and Ms. Joan Rahming ("Joan"). Ricardo and Joan are not related.

[8] On 16 September, 2016, the Plaintiff instituted the present action against the Defendants alleging that the Will is a forgery and seeking, among other things, a Decree and/or an Order pronouncing against the validity of the Will pursuant to section 31(1)(c) of the Probate and Administration of Estate Rules, 2011 and an Order dismissing the First Defendant's application for Probate in the Estate of the Deceased.

[9] On 29 September, 2016, the Defendants filed a Defence and Counterclaim which, when stripped to its bare essentials, denied the allegation of forgery and asserted that the Will was the Last Will and Testament of the Deceased since it was properly executed in accordance with section 5 of the Wills Act, 2002. The Defendants also sought a Declaration that the Will is valid.

[10] On 7 December 2016, the Plaintiff filed a Reply to Defence and Counterclaim in which she sought to join issue with the Defendants in their Defence. She restated her allegations in her Statement of Claim.

The Law

[11] The Wills Act, 2002, Chapter 115 ("the Act") is an Act to make fresh provisions relating to the law of wills in The Bahamas. Section 5 deals with the formalities for the execution of a will. It provides as follows:

> **(1) "Subject to section 6, no will is valid unless it is in writing and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction in accordance with subsection (2).**
>
> **(2) The signature of the testator or other person mentioned in subsection (1) is effective if –**
>
> **(a) so far as its position is concerned it satisfies subsection (3);**
>
> **(b) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and**
>
> **(c) each witness either –**

(i) attests and signs the will; or

(ii) acknowledges his signature,

in the presence of the testator (but not necessary in the presence of any other witness),[Emphasis added]

but no form of attestation is necessary nor is publication of the will necessary.

(3) So far as regards the position of the signature of the testator, or of the person signing for him –

(a) a will is valid if the signature is so placed at, after, following, under, beside or opposite the end of the will that it is apparent on the face of the will that the testator intended to give effect, by the signature, to the writing signed as his will;

(b) no will is affected by the circumstances that –

(i) the signature does not follow, or is not immediately after, the foot or end of the will;

(ii) a blank space intervenes between the concluding word of the will and the signature;

(iii) the signature is placed among the words of the testimonium clause or of the clause of attestation or follows or is after or under the clause of attestation, either with or without a blank space intervening, or follows or is after, under or beside the names or one of the names of the subscribing witnesses;

(iv) the signature is on a side page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature; or

(v) there appears to be sufficient space to contain the signature on or at the bottom of the preceding side, page or other portion of the same paper on which the will is written,

and the enumeration of the circumstances in paragraph (b) does not restrict the generality of this subsection, but no signature under this section operates to give effect to any disposition or direction which is underneath or follows it, nor does it give effect to any disposition or direction inserted after the signature is made.

(4) No person is a competent witness to the execution of a will if he attests the will in any manner other than by signing his name in his own handwriting. ”

[12] Simply put, the statutory requirements for the execution of wills in The Bahamas are:

(i) The will must be in writing;

(ii) It must be signed by the testator or by some other person in his presence and under his direction;

(iii) It must appear that the testator by his signature intended to give effect to the will;

(iv) **The signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time**; and

(v) Each witness must either attest and sign the will, or acknowledge his signature in the presence of the testator, but not necessarily in the presence of any other witness.

Presumption of due execution/ burden of proof

[13] If a will, on the face of it, appears to be duly executed, the presumption is in favour of due execution, applying the principle *omnia praesumuntur rite esse acta*: **Re Denning, Harnett v Elliott** [1958] 2 All ER 1.

[14] The English Court of Appeal case of **Sherrington and others v Sherrington** [2005] EWCA Civ 326 is authority for the principle that when a will contains the signatures of the deceased and the witnesses and an attestation clause, the presumption of due execution will prevail unless there is the strongest evidence to rebut the presumption.

[15] It is well-established that the *onus probandi* lies with the party seeking to propound the will. Lindley LJ in **Tyrrell v. Painton and another** [1894] P. 151 at page 156 stated:

> **"In *Barry v. Butlin* 2 Moo. P.C. 480, Parke, B. delivering the opinion of the Judicial Committee, said: "The rules of law according to which cases of this nature are to be decided do not admit of any dispute so far as they are necessary to the determination of the present appeal, and they have been acquiesced in on both sides. These rules are two: The first, that the onus probandi lies in every case upon the party propounding a will, and he must satisfy the conscience of the Court that the instrument so propounded in the last will of a free and a capable testator. The second is, that if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support**

> **of the instrument, in favor of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased."**

[16] Lindley LJ at page 157 continued:

> **"The rule in *Barry v. Butlin (3), Fulton v. Andrew (1), and Brown v. Fisher* (2) is not, in my opinion, confined to the single case in which a will is prepared by or on the instructions of the person taking large benefits under it, but extends to all cases in which circumstances exist which excite the suspicion of the Court; and wherever such circumstances exist, and whatever their nature may be, it is for those who propound the will to remove such suspicion, and to approve affirmatively that the testator knew and approved of the contents of the document, and it is only where this is done that the onus is thrown on those who oppose the will to prove fraud or undue influence, or whatever else they rely on to displace the case made for proving the will."**

The Evidence

[17] The Plaintiff gave evidence and called her expert witness, Dr. Laurie A. Hoeltzel to testify on her behalf. The Defendants called two witnesses, Ricardo Rahming and Joan Rahming to testify on their behalf. The witness statement of the Second Defendant, although untested, formed part of the evidence. The witness statement of the First Defendant also formed part of the evidence. The Plaintiff chose not to cross-examine him.

[18] The Plaintiff filed her witness statement on 19 July 2018. In it, she stated that her minor sons are the lawful beneficiaries to the estate of their father and are entitled to his intestate estate. According to her, the Deceased died intestate and was survived by the two minor sons. She alleged that the Will is a forgery.

[19] Under cross-examination, she insisted that the Deceased did not have a Will. She said that she hired an expert and gave her copies of some cheques which the Deceased authored during his lifetime. During re-examination, she stated that she was present when the Deceased signed some of those cheques which are copies of the originals.

[20] Dr. Hoeltzel is a Court Qualified Document Examiner and Handwriting Expert in the field of questioned documents in the United States. She was trained in the examination, comparison, analysis and identification of handwriting, discrimination and identification of writing, altered numbers and altered documents, handwriting analysis, trait analysis, including the discipline of examining signatures, with over twenty (20) years of experience in this field. She has given expert evidence in many courts in the US, Canada and also in the Supreme Court, Grand Bahama. Based on her qualifications and experience, she was deemed an expert in Forensic Document Examination.

[21] Dr. Hoeltzel was asked to review certain documents in question to determine if the signature of the Deceased is authentic. She examined and compared the purported signature of the Deceased on the comparison document. A copy of the report of her findings and conclusions is attached: see “Exhibit L.A.H.1”.

[22] She stated that a meticulous examination of the questioned signatures to the comparison signatures was conducted using a side-by-side comparison with the unaided eye, handheld magnifying loupes, microscope, photocopy enlargements, grids, a light table, and metric measuring devices. The scientific methodology used in the examination consists of the “ACE” method which means “Analyse, Compare and Evaluate”. The FBI, US Treasury Department and the US Postal Services reportedly use this method in their questioned document laboratories. ASTM recommends this method as the standard in this field.

[23] She stated that, in addition, she added the Peer Review Methodology which requests a second independent examination by a qualified handwriting expert. According to her, she selected Ms. Wendy Carlson, a State and Federal Court qualified expert, to peer review this case. Ms. Carlson confirmed her opinion.

[24] Dr. Hoeltzel stated that the questioned signature was examined and noted to have significant differences between the natural variation between the letters, angles, and letter formations when compared to the comparison signatures. Her examination

revealed significant differences and her conclusion was based on results of the above described reliable methodology, analysis, comparison and evaluation.

[25] Dr. Hoeltzel further stated that all tests were done with accepted scientific methodology, techniques and scientific instruments which she relied upon to determine the authenticity of the questioned signature.

[26] She opined that her "**scientific examination revealed that the questioned signature of Lester Eugene Adderley <u>is a forgery</u> due to multiple different letter formations, spelling, pressure, slant and overall appearance**".

[27] Dr. Hoeltzel emphasized that the basis of handwriting identification is that writing habits are not instinctive or hereditary but are complex processes that are developed gradually through habit and that handwriting is unique to each individual. Furthermore, the basic axiom is that no one person writes exactly the same way twice and no two people write exactly the same. Thus, writing habits or individual characteristic distinguish one person's handwriting from another.

[28] Dr. Hoeltzel opined that **it is highly probable that the LESTER EUGENE ADDERLEY JR. signature on the Will was performed by someone other than LESTER EUGENE ADDERLEY JR. According to her, he did not author the signature on the Will**.

[29] During extensive cross-examination by then Counsel, Mrs. Scott-Clare who represented the Defendants, Dr. Hoeltzel stated that she was not provided with the original will of the Deceased nor were the ten comparisons original but, according to her, they were "good quality" copies. Neither did she review an original signature of the Deceased.

[30] She said that she compared the signature on the Will (11 April 2014) with cheques written around that time. In fact, Exhibit - 4 (Cheque dated 18 August 2015), was written four days before his death. Exhibit - 3 - is a cheque dated 1 October 2013 and the other exhibits are all cheques written in 2015.

[31] During further cross-examination, Dr. Hoeltzel opined that, even if she were in possession of the original copies of the documents, "***the finding would still be the same so long as an original copy is a copy of what she received, it's still a forgery***".

[32] The Defendants called two witnesses. They alleged that they were present when the Deceased executed the Will.

[33] The first witness to testify for the Defendants was Ricardo. He testified that the contents of his witness statement filed on 30 May 2018 are true and correct.

[34] He alleged that he was one of the attesting witnesses to the Will of the Deceased. He stated that, on 11 April 2014, the Deceased invited him to his business place to witness some documents. When he got there, he saw the Deceased with a lady whom he introduced as Joan Rahming ("Joan"). The Deceased asked that they both witness a document he identified as his Will. According to Ricardo, the Deceased had already signed the Will and Joan asked him to sign again to verify his signature which he did. He said that the Deceased' signature was similar to what he had placed on the Will. Both of them witnessed the Deceased' signature and thereafter, they affixed their respective signature to the document, in the presence of each other.

[35] Ricardo testified that, on 9 June 2016, the Second Defendant approached him and advised him that Attorney Rawle Maynard, now deceased, needed to see him as one of the attesting witnesses to the Deceased's Will in order to prepare documents for the purpose of probate. He subsequently attended the office of Attorney Maynard to sign an affidavit confirming that he was present when the Will was executed.

[36] Ricardo stated that, shortly after, the Plaintiff accused him of falsifying a document purported to be the Will. *He told her that the document which he signed was not the Will but a statement confirming that he was present when the Deceased signed the Will and that his signing now was for a different purpose*: paragraph 9 of his witness statement.

[37] Joan also testified. She asserted that the contents of her witness statement which was filed on 30 May 2018 are true and correct. She alleged that she was one of the attesting witnesses to the Will of the Deceased. She became acquainted with the Adderleys when she was employed at the law firm of Ayse Rengin Dengizer Johnson & Co. ("ARDJ"). ARDJ was the registered office of Lux Investments Group, a company owned by the Adderley family. She stated that, she also worked closely with Attorney Rengin Johnson ("Attorney Johnson") and was often asked to work on matters relating to Lux Investments. She testified that sometime in 2011, the Defendants and the Deceased visited ARDJ. On that visit, they had a meeting with Attorney Johnson on instructions for mutual wills to be drafted. Joan said that she was part of that meeting and she took down notes to supplement those of Attorney Johnson. She said that she actually drafted the will but before it could have been finalized, she was terminated by the firm. She became close to the Deceased and she advised him to go elsewhere to have the will prepared.

[38] Joan further averred that on 11 April 2012, she was invited by the Deceased to witness the Will which he (the Deceased) stated that Attorney Maynard had drafted for him. According to her, having worked at a law firm, she was familiar with how a will was to be executed. Ricardo, not a relative of hers, was also present. The Deceased *verified* his signature and they both affixed their names below his as witnesses present at the same time.

[39] Joan alleged that, after the death of the Deceased, she tried to reach out to the Second Defendant but had lost touch with him. Eventually, the Second Defendant made contact with her and she told him about the Will. The Second Defendant confirmed that Attorney Maynard had found a will and he was about to have it probated. She stated that, recently, Mr. Johnson of ARDJ contacted her offering money to withdraw her statement.

[40] The First Defendant did not testify before the Court but his witness statement was admitted into evidence without objection by the Plaintiff. He stated that he was very close to his brother, the Deceased and they were also business partners as part of Lux Investments. He further stated that the Deceased gave a power of attorney from as far

back as 2007 to the Second Defendant to handle the management and operations of the business. In 2011, he, the Second Defendant and the Deceased met with Attorney Johnson to execute "mutual" wills to secure their affairs in the event of death of either of the shareholders of the Company. He was unaware that the will was never done until after his brother died. He was also unaware of the circumstances surrounding the will except that, in June 2016, he was advised that the Deceased had a will and he was named the executor.

[41] He said that, in examining the Will, the signature appears to be that of the Deceased. He knew and was well aware of his brother's handwriting. He was also aware that the Deceased' signature was not very consistent. Sometimes, he would write Jr at the end and other times he would just sign as Lester Adderley.

[42] The First Defendant was not cross-examined. That said, his evidence surrounding the Will is mainly hearsay. It is bizarre that he was also present when they met with Attorney Johnson to execute "mutual" wills and he was unaware that it was never done. This is questionable because if you sign a will, you should be able to speak positively about that. With respect to the inconsistency of the Deceased' signature, he did not provide any documentary evidence to demonstrate that inconsistency. I therefore reject his evidence.

[43] As previously stated, the Second Defendant filed a witness statement on 30 May 2018 which I admitted into evidence. It is untested evidence. He alleged that he and his son were business partners and owners/shareholders of Lux Investments. His son owned 50% shares in the Company. He alleged that, sometime in 2013, they had visited Attorney Johnson to draft mutual wills for all the Directors of the Company.

[44] After his son was buried, he went to Attorney Johnson to find out if the wills were actually prepared and she advised that the will was never prepared. He said that Attorney Johnson denied receiving any instructions or fees. He said that he reminded her that Joan had taken notes along with her notes. She still did not recall. He tried to locate Joan but no one was able to confirm where she was working at the time. He stated that

when Attorney Johnson advised him that there was no will, he assumed that a will was never executed.

[45] The Second Defendant alleged that, in January 2016, he was approached by Attorney Maynard who advised him that the Deceased made a will and that he will search among his personal belongings to see if he had a copy.

[46] The Second Defendant averred that he searched among the personal belongings of the Deceased and did not find an original or copy of a will. He said that, on 14 June 2012, Attorney Maynard presented him with the original of the Will of the Deceased dated 11 April 2014. He said that Attorney Maynard mentioned that Joan and Ricardo had actually witnessed the Will at the time of execution and he would make contact with them to sign attesting affidavits.

[47] The Second Defendant alleged that, shortly after his conversation with Attorney Maynard, he visited the Registry General Department in Freeport to get a copy of his son's death certificate and someone gave him the contact information for Joan. He made contact with her and she said that she had recalled taking notes and preparing the will before she left ARDJ. She quickly added that she recalled witnessing a Will at the Deceased' office and Ricardo was also present.

[48] In paragraph 23 of his witness statement, he stated that he is aware that the Plaintiff is questioning the validity of the Will. However, based on the circumstances surrounding the Will, he opined that the Will is valid.

[49] In concluding, the Second Defendant alleged that at no time did he or the First Defendant create or forge any documents regarding the Deceased. He exhibited a letter dated 17 May 2017 from Attorney Maynard who also, has departed his earthly life. That letter, in part, states:

> **"…On instructions from Mr. Lester Adderley Jr., I prepared a Will for him; I gave the document to him unexecuted and he was instructed that it be signed by him in the presence of two witnesses and the witnesses also sign as such. I have no doubt that he followed my instructions…."**

Factual findings

[50] Having had the opportunity of seeing, hearing and observing the demeanour of the witnesses and considering the untested evidence of the Second Defendant, I found the evidence advanced by the Plaintiff and her expert witness, Dr. Hoeltzel to be more plausible and credible than that of the Defendants' witnesses. I found too many inconsistencies in the evidence of Ricardo and Joan with respect to the execution of the "Will".

[51] Under cross-examination, Ricardo said that he saw when the Deceased signed the Will. This is incompatible with paragraph 5 of his witness statement where he stated that the Deceased had already signed the Will but Joan asked him to sign again to verify his signature which he ("the Deceased") did. On further cross-examination, he insisted that the Deceased signed the Will in his presence. He did not recall that Joan asked the Deceased to sign again to verify which he did. Later on, he stated that the Deceased signed a paper. He signed it after but he (Ricardo) did not know what he was signing but it was most likely the Will.

[52] He then maintained that the Deceased was the first one to sign the Will. Joan signed after and he was the last to sign. He was shown the Will and he recognized his signature. He was questioned about the difference in his signature on the Will and on his witness statement, to which he answered that sometimes, he signs with an initial and cursive and sometimes he will print his name. Even so, he asserted that both signatures are his.

[53] During re-examination, Ricardo asserted that the Deceased told him that he wanted him to be a witness to his Will. He maintained that the Deceased signed the Will, then Joan signed it and he did so after Joan. I did not find Ricardo to be a frank and honest witness.

[54] With respect to Joan, I found her evidence to be a fabrication. During cross-examination, she stated that she was employed at ARDJ from June 2011 to November 2013. She left for another job. With respect to the Will of the Deceased, she recalled that he wanted his shares in Lux Investments to be held in trust for his children and he wanted his father

(the Second Defendant) to be the executor of his Will. In the Will, the First Defendant is named as the Executor.

[55] During further cross-examination, she stated that she was not terminated but she left for a better job although, in paragraph 6 of her witness statement, she averred that she was terminated. She said that she used the word “terminated” because the law firm said that she was terminated but, really, she left for a better job. It was suggested to her that she was terminated and her answer was “no.”

[56] If I understood Joan well, she stated that the Deceased and the Second Defendant had paid in full for their “mutual” will which was not done within the two year period that she was employed by ARDJ. At one time, she said that they had not provided all the information and, on another occasion, she seemed to be casting some culpability on Attorney Johnson who did not do the job that she was paid to do. On her own evidence, it appears odd that Attorney Johnson, who was fully paid for the drawing up of a will would take two years to do such routine task and not even complete it, so much so that Joan had to advise the Deceased to go elsewhere.

[57] Joan stated that she was present when the Deceased signed the Will and she did not ask him to sign anything again to verify his signature. This is in stark contrast to what Ricardo averred in paragraph 5 of his witness statement.

[58] After the death of the Deceased, she said that she tried to contact the Second Defendant. Eventually, she went to Hit Factor, a place that is owned by the Adderleys, and left a message for him to contact her. When he did, she expressed her condolences. Then later on, when her new law firm started to handle the Company’s work, she told him that the Deceased had signed a will and whether he ever got that sorted out. She initiated the conversation about the will but the Second Defendant already knew about it and that Attorney Maynard found it. I did not believe her. In fact, the Second Defendant, in his untested evidence, gave a different account as to how he got in contact with Joan. The Second Defendant alleged that he visited the Registry General Department and someone there gave her contact number to him.

[59] I also did not believe the evidence of the First Defendant as it was made up largely of hearsays and unsubstantiated evidence with respect to the inconsistency in the Deceased' handwriting.

[60] In my opinion, there are too many inconsistencies in the evidence of the witnesses for the Defendants. Credibility is at the heart of this case.

[61] All in all, as I previously stated, I preferred the evidence adduced by the Plaintiff and her expert to be more compelling.

[62] I found Dr. Hoeltzel to be very knowledgeable and qualified. Her expertise has been accepted by 36 judges in various states in the United States of America and also in Montreal and Quebec. She was also deemed an expert in the Supreme Court of Grand Bahama.

[63] In her oral testimony, Dr. Hoeltzel stated that she found about 12 to 14 significant differences. She went through the Exhibits and identified the significant differences which she found. What was obvious was the letter "Y" in the Will: Exhibit LH-13. There was never a long stem extending from the "Y" in any of the known signatures. Overall, she says, there are too many significant differences for her not to conclude that the Will was a forgery. According to her, you need only one difference. She concluded that the Deceased did not author the Will dated 11 April 2014. I accepted her evidence and expertise.

[64] Much was made of the fact that Dr. Hoeltzel did not use any original documents for her comparisons and analysis as only copies were provided. She stated that, in about 90% of cases, the originals are unavailable and handwriting experts used copies. In this case, she stated that the copies were very good, clear and sufficient for her to make a proper analysis. In **Lockheed-Arabia v Owen** [1993] Q.B. 806, a photocopy of a cheque had been taken. The cheque itself was subsequently stolen. An expert gave evidence on the authenticity of the signature without having seen the original. It was held that the photocopy was given the same status as the original and was therefore admissible.

Suspicious circumstances

[65] Given my findings, I do not believe that this issue warrants my consideration.

Conclusion

[66] It is well-established that the burden of proof rests with the party seeking to propound the will: **Tyrrell v. Painton and another** [1894] P. 151 at page 156. In this case, it is the Plaintiff who has to discharge this burden. She testified and brought a Court Qualified Document Examiner and Handwriting Expert to testify that the Will is a forgery. I accepted their evidence. I found that Ricardo and Joan fabricated their respective account and that the Deceased died intestate.

[67] In the premises, I find that the signature on the Will purported to be that of the Deceased is a forgery.

[68] Accordingly, I will declare that the Last Will and Testament of Lester Eugene Adderley Jr. dated 11 April 2014 is invalid in accordance with section 31(1) (c) of the Probate and Administration of Estate Rules 2011. I will also dismiss the First Defendant's application for probate in the Estate of the Deceased.

Costs

[69] In accordance with case management directions, both parties were to submit their respective Bill of Costs to the Court. The Defendants did. The Plaintiff did not. Before I handed down the Judgment, I enquired of learned Counsel for the Plaintiff, Ms. Lynes, that, if her client were successful, what amount of costs would she be seeking. Learned Counsel suggested a figure of approximately $63,000.

[70] The Plaintiff, being the successful party in these proceedings, is entitled to reasonable costs to the paid by the Defendants.

[71] At first blush, I found the amount of $63,000 to be excessive. That said, I granted an extension of time to Friday, 27 March 2020 for Counsel to email her Bill of Costs to Counsel for the Defendant and the Court. With the assistance of Counsel for the First Defendant, Mr. Murphy, the Court will then properly consider the amount bearing in mind

that, in civil proceedings, costs are always discretionary: see O.59 rr. 2(2) and 3(2) of the RSC and section 30(1) of the Supreme Court Act.

[72] In addition, the discretionary power to award costs must always be exercised judicially. The Judge is required to exercise his/her discretion in accordance with established principles and in relation to the facts of the case and on relevant grounds connected with the case, which included any matter relating to the litigation; the parties' conduct in it and the circumstances leading to the litigation, but nothing else: see Buckley L.J. in **Scherer v Counting Instruments Ltd** [1986] 2 All ER 529 at pages 536 -537.

[73] I reminded Counsel that the Court must take into account all the circumstances, including but not limited to:

a) any order that has already been made;

b) the care, speed and economy with which the case was prepared;

c) the conduct of the parties before as well as during the proceedings;

d) the degree of responsibility accepted by the legal practitioner;

e) the importance of the matter to the parties;

f) the novelty, weight and complexity of the case; and

g) the time reasonably spent on the case.

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[74] As it stands, the issue of costs remains outstanding and hopefully, can be agreed between the parties.

Dated this 24th day of March, A.D. 2020

Indra H. Charles

Justice