

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2021/CLE/gen/00219**

**IN THE ESTATE OF GRACIE SEYMOUR a.k.a GRACE SEYMOUR a.k.a GRACE
THURSTON (deceased)**

BETWEEN

**ELVA HENFIELD
AND
ANDREW SEYMOUR
AND
TRUDYMAE AMBROSE
AND
DENNIS SEYMOUR
AND
IRIS STRACHAN
AND
HENDERSON SEYMOUR
AND
FLORENCE McCOY
AND
LEATHICA KING
AND
FREDERICK SEYMOUR**

**(As Beneficiaries of the Estate of Gracie Seymour a.k.a Grace
Seymour a.k.a Grace Thurston)**

Plaintiffs

AND

CALVIN SEYMOUR

**(As Beneficiaries of the Estate of Gracie Seymour a.k.a Grace
Seymour a.k.a Grace Thurston)**

Defendant

Before: The Honourable Madam Justice J. Denise Lewis-Johnson

Appearances: Adrian Hunt with Christina Davis-Justin for the Plaintiffs

Gia C. Moxey-Lockhart for the Defendant

Hearing Dates: 17 August 2021

Estate – Administration – Application Removal of Co-Administrator – Jurisdiction of the Court to remove Personal Representative – Whether the Court should exercise its discretion to remove the Defendant as an administrator of the Estate – Judicial Trustees Act, 1983 – Probate and Administration of Estates Act, 2011

JUDGMENT

Introduction

- [1] This is an application by the Plaintiffs for the removal of the Defendant as one of the administrators of the Estate of Grace Seymour a.k.a Gracie Seymour a.k.a Grace Thurston ("the Estate").
- [2] The parties to the action are siblings. They are also beneficiaries under the Estate of their late mother, Grace Seymour, who died intestate on 24 December 2013. On 15 October 2019, a grant of Letters of Administration was issued to the following siblings: Elva Henfield ("Ms. Henfield"), Andrew Seymour ("Mr. Seymour") and Calvin Seymour ("the Defendant").

- [3] Since receiving the Letters of Administration, a dispute among the Co-Administrators and beneficiaries has arisen in which all of the beneficiaries and administrators with the exception of the Defendant wished the law firm of Graham Thompson ("GT") to represent the Estate on the sale of one of its assets namely, property located at Casia Close, Gleniston Gardens Estate, New Providence ("the property"). The Defendant wished the law firm of RA Farquharson & Co., to represent the Estate on the said sale and or alternatively to have the firm represent him as a beneficiary and Co-Administrator. It is worth noting that RA Farquharson & Co. represented all parties in obtaining Letters of Administration.
- [4] The Plaintiffs, evidence generally was that there were three offers to purchase property of the Estate, the Defendant reiterated his position not to sell, but stated that the highest offer is always the best offer. That the Defendant has caused the sale to not be completed by insisting on having personal legal representation different from the other two Co-Administrators. The majority of the beneficiaries, including the Co-Administrators, agreed to have GT represent the Estate in the sale of the Property. Further that the Defendant refused to hand over probate documents and was upset that RA Farquharson & Co. was not engaged to act for the Estate in the transaction. Finally, that the Defendant stated that he did not trust the Co-Administrators and communication broke down as between them.
- [5] The Defendant in response by his Affidavit stated in part that he expressed his disagreement in selling the asset of the Estate because it was the family homestead. He withdrew his objection to the sale several days later. That he was never informed by the beneficiaries about using GT in the sale, that he attended several meetings with his siblings, but "stopped attending said meetings long before the issues surrounding the sale arose simply because the contents of the meeting were repetitious, futile and resulted in disagreements being expressed among the beneficiaries." That he signed the Letter of Intent without challenge. Further he stated "I emphatically and categorically state that I have not objected to the sale of this property. My objection relates solely to the use of Graham Thompson & Co. (hereinafter called "GTC") as the Attorneys to represent me in my capacity as Personal Representative and Beneficiary of the Estate because of the exorbitant costs associated therewith. I offered to conduct

the sale of the property to avoid incurring additional legal fees in Estate, so as to preserve funds for disbursement to the beneficiaries." Finally, the Defendant states that "My siblings became belligerent, abusive and hostile towards me. Therefore, I communicated with them via email and directly to their Attorneys (GTC). I have not now and nor ever avoided communication with the Plaintiffs,".

[6] The Plaintiffs reasons for the Defendants removal are:

a) He wishes to have separate representation.

b) The Defendant's actions have jeopardized the administration of the Estate and will likely continue should he continue to act as an Administrator.

c) The Defendant's hostility toward his Co-Administrators and beneficiaries.

[7] The Defendant denies each assertion and states that he has and is prepared to cooperate fully with the administration of the Estate, that he has done nothing to prevent the sale and will represent himself as beneficiary and Co-Administrator of the Estate.

[8] This dispute has led to a breakdown in communication and has created an impasse between the Administrators. It is the opinion of the Court that unless resolved it will not only further jeopardize the sale of the property but will also prolong the timely completion of the administration of the Estate.

[9] For the reasons which will become evident later in this Ruling, I will make the Order that the Defendant be removed as one of the Administrators and that Mrs. Henfield and Mr. Seymour are to continue with the administration of the Estate as joint administrators.

Extant application

[10] The application was commenced by Originating Summons filed on 2 March 2021 ("the Summons"), the Plaintiffs seek the following reliefs pursuant to **Section 22 of the Judicial Trustees Rules, 1983:**

- “1. That the Defendant be removed as Administrator of the Estate of Grace Seymour a.k.a Gracie Seymour a.k.a Grace Thurston;
2. That Elva Henfield and Andrew Seymour who are fit and proper persons remain as Co-Administrator of the Estate;
3. That the Costs of this claim be provided for; and
4. Further or other relief as the Court sees fit.”

[11] The issues arising are:

- a) Whether the Defendant should be removed as an Administrator of the Estate of the deceased.
 - i) Having regard for the actions of the Defendant.
 - ii) Is there hostility between the Defendant and his Co-Administrators?

The Law

[1] The **Judicial Trustee Act, 1983** Statute Laws of The Bahamas, Chapter 58 gives the Court a discretionary power to remove, replace or appoint trustees and by extension personal representatives of an estate.

[2] Section 3(1) and 3(2) of the Judicial Trustees Act provides as follows;

- (1) “Where application is made to the court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court may, in its discretion, appoint a person (in this Act called a judicial trustee), to be a trustee of that trust, either jointly with any other person or as sole trustee, and if sufficient cause is shown, in place of all or any existing trustees
- (2) The administration of the property of the deceased person, whether a testator or intestate, shall be a trust and the executor or administrator a trustee, within the meaning of the Act.”

[3] Probate and Administration of Estates Act, 2011, Section 45 and 60(2) provides as follows:

“45. When representation has been granted in respect of any real or personal estate of a deceased person, no person other than the person to whom the grant has been made shall have power to bring an action or otherwise to act as an executor or administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.”

60(2) Whereas respect real estate there are two or more personal representatives, a conveyance of real estate devolving under this part shall not be made without the concurrence therein of all such representatives or an order of the court, but where probate is granted to one or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor for the time being, without an order of the court, and shall be as effectual as if all persons named as executors had concurred therein.”

- [4] It is accepted that the Court has an inherent jurisdiction to remove an administrator of an estate, this authority should not be exercised whimsically or capriciously but only after having regard for the best interest of the beneficiaries and the administration of the estate. The test to be applied for the removal of a personal representative was settled in **Letterstedt et al v. Broders et al (1884) 9 App. Case 371** a case cited by both Counsel for the Plaintiff and the Defendant. Lord Blackburn stated therein:

“In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries. Probably it is not possible to lay down any more definite rule in a matter so essentially dependent on details often great nicety. But they proceed to look carefully into the circumstances of the case.”

- [12] In **Kemp v Kemp (as Executor for the Estate of Audley Kemp) 2013/CLE/gen/1006** then Acting Justice Winder stated at paragraph 9:

"The learned Editors of *William Mortimer and Summvil on Execution, Administration and Probate (10th Ed.)* in referring to disputes in administration at paragraph 60-14 commented –

"If the administration has come to a standstill because relations between the personal representatives have broken down, or relations between the representative and the beneficiaries have broken down, the court will ordinarily remove the person representative and appoint new ones to enable the administration to be completed. It is not necessary to establish wrong doing or fault by the personal representative to obtain his removal. If, for whatever reason (such as clash of personalities, or the lack of confidence in the personal representative by the beneficiaries even if unjustified) it has become impossible or difficult for the administration to be completed by an existing personal representative, then an order for his removal will usually be made." (my emphasis)

Analysis and disposition

[13] The Defendant raised two preliminary objections, firstly, that the Judicial Trustees Act does not apply to this application before the court and secondly, that the 4th, 5th, 6th, 7th, 8th and 9th Plaintiffs have no jurisdiction or power to commence this action and ought to be struck off as Plaintiffs. In support thereof they referred to Section 3 of the **Judicial Trustees Act**.

[14] The Court finds that the **Judicial Trustees Act** is the appropriate Act having regard to Subsection (1) which states in part that an application can be made "**by or on behalf of a trustee or beneficiary**" and Subsection (2) which states:

"The administration of the property of the deceased person, whether a testator or intestate, shall be a trust and the executor or administrator a trustee, within the meaning of the Act "

[15] As to the second preliminary objection, the Defendant referred the Court to Section 45 of the **Probate and Administration of Estates Act, 2011** which states:

"When representation has been granted in respect of any real or personal estate of a deceased person, no person other than the person to whom the grant has been made shall have power to bring an action or otherwise to act as an executor or administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked."

Court accepts that the 4th, 5th, 6th, 7th, 8th and 9th Plaintiffs are not proper parties to this action and should be struck off as Plaintiffs in this action.

- [16] The Defendant referred the Court to the case of **Fountain Forestry Ltd v. Edward and Another (1972 F. No. 179)** (Fountain Case) to establish the principle that Personal Representatives can have separate counsel to sell assets of the estate and can act alone. Brightman J. states therein:

“It appears to me that there is no decisive authority which answers the question whether one administrator, acting without his co-administrator, has the same power of disposition as an executor acting without the concurrence of his co-executor. But having regard to the statement of Sir John Romilly M.R that the question was settled by 1859 in favour of the administrator who acts alone, I am content to assume for present purposes that the view which he expressed was a correct interpretation of the law with the result that an administrator has power, at the present day, to bind the intestate's estate by his own act without the concurrence of his co-administrator.”

- [5] Counsel for the Plaintiffs advanced the provision of the **Probate and Administration of Estates Act 2011** (“the Act”) which mandates the concurrence of all personal representatives to convey property belonging to an estate. Section 60(2) of the Act states:

“60(2) Whereas respects real estate there are two or more personal representative, a conveyance of real estate devolving under this Part shall not be made without the concurrence therein of all such representatives or an order of the court, but where probate is granted to one or more persons names as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor or executors for the time being, without an order of the court, and shall be as effectual as if all persons named as executors had concurred therein.”(my emphasis)

- [6] The Court accepts that the Act as the binding law in this matter. It has long been the position that executors have a different standard from personal administrators when it comes to conveying interest in real property. In the Fountain Case while

discussing the UK Administration of Estates Act 1925, Section 2(1) and (2) which replaced the Land Transfer Act 1897 Lord Brightman states:

“....all powers, duties rights, equities, obligations and liabilities of a personal representative in force at the commencement of this Act with respect to chattels real, shall apply and attach to the personal representative and shall have effect with respect to real estate vested in him...

Save that subsection (2) does not permit one of two or more personal representatives to convey real estate without the concurrence therein of all such representatives or an order of the court.”

It is to be noted that Lord Brightman's position as stated in paragraph 20 above was based on a 1859 ruling and does not apply the UK 1925 Administration of Estates Act which is virtually identical with the **Probate and Administration of Estates Act 2011**, the applicable law for this case. This Court concludes that the consent of all personal representatives is required to convey real property of the estate.

- [7] In considering the removal of the Defendant this Court had regard for the relationship between the administrators, and the administrators and the beneficiaries. The Plaintiffs contends that the relationships “have broken down irreconcilably to the point of animosity, contention and distrust, which has consequently brought the administration of the Estate to a standstill.” The reason given for this conclusion was that the Defendant did not attend family meetings, became less co-operative and hostile towards the other beneficiaries and has refused to communicate with them, did not provide copies of probate documents and did not agree to GT having carriage of the sale.
- [8] Based on the evidence, I categorize the interaction between the Defendant and his Co-Administrators as hostile, the stated lack of trust and communication only via attorneys exemplifies this. I do not find any of the parties conduct improper, the evidence clearly points to a breakdown in communication which resulted in the inability to timely administer the affairs of the estate. This breakdown in communication has resulted in an inability to complete a sale which the majority of beneficiaries wished to be completed. If allowed to continue the administration of the Estate will only be further delayed and beneficiaries denied a timely receipt of their inheritance. This is clearly a case where the welfare of the beneficiaries


is not being considered as paramount and thus applying the test established in by Lord Blackburn in the Letterstedt case an administrator should be removed.

- [9] Further the Court finds the administration of the Estate has come to a standstill and the relationship between the Co-Administrators have broken down. This case therefore meets the threshold for an Administrator to be removed (**Kemp v Kemp (as Executor for the Estate of Audley Kemp) 2013/CLE/gen/1006**).

Conclusion

- [10] I find that the 4th, 5th, 6th, 7th, 8th and 9th Plaintiffs are not proper parties to this action and are to be struck off as Plaintiffs in this action.
- [11] Having regard for all the circumstances herein I will order that the Defendant, Calvin Seymour be removed as Administrator of the estate of the deceased and that Elva Henfield and Andrew Seymour are to continue as Co-Administrators of the Estate.
- [12] I make no order as to costs.

DATED this 21st day of December, 2021


J. DENISE LEWIS-JOHNSON
JUSTICE