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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION

CLAIM NO. CL P 1063/2002

BETWEEN	EVELYN THERESA GREGORY	1 ST CLAIMANT
AND	EMILY MONTAQUE	2 ND CLAIMANT
AND	VERNON SOLLAS	DEFENDANT

Mr. Dennis Morrison, Q.C. and Ms. Stacy Smith instructed by DunnCox for Claimants
Ms. Carol Davis for Defendant

Heard: November 23, 24, 28 and December 2, 2005

Straw J (Ag.)

Background

The claimants, Evelyn Theresa Gregory and Emily Montaque are the executrices appointed under the alleged last Will and Testament of Hilda Margaret Sollas dated November 26, 1985. Mrs. Sollas died on July 7, 1994.

The first claimant, Evelyn Gregory, is the adopted daughter of the deceased and her husband, Vernon Sollas Snr., who predeceased his wife in 1979.

Mrs. Gregory and her daughter, Paulette Adams are the beneficiaries named in the said Will.

The second claimant is the niece of Vernon Sollas Snr. She received no benefit under the Will.

The defendant, Vernon Sollas Jnr. is the son and only surviving biological child of Mr. and Mrs. Sollas. He would be one of the persons entitled to share in the estate of the said deceased in the event of an intestacy.

Claim and Counterclaim

The claimants are asking the court to make a decree that the said last Will and Testament (Exhibit 6a) be admitted to probate in solemn form.

The defendant had previously been granted Letters of Administration in relation to the estate of Mrs. Sollas on January 24, 1996 but that grant was revoked in order for the court to rule on the validity of the Will. He had filed a counterclaim requesting, inter alia, that the Letters of Administration be restored and for mesne profits in relation to premises 29 Kelly Road, Kingston 2 which is the only real estate mentioned in the Will.

However, during the course of the trial, the defendant withdrew the counterclaim in relation to the restoration of Letters of Administration as being inappropriate at the present time.

Mr. Morrison, Q. C. has submitted that the court could only consider the issue of mesne profits if the estate was a party to the action and that the defendant would only be entitled to profits if he was appointed as representative of the estate.

The court agrees with the submission of Mr. Morrison, Q. C. on this point and will therefore confine itself to a ruling on the validity of the Will.

Issues pertaining to the validity of the Will

The claimants allege that they both accompanied Mrs. Hilda Sollas on November 26, 1985 to the then law offices of DunnCox & Orrett at 46 Duke Street for the purpose of effecting her last Will and Testament. Mrs. Sollas would have then been about 83

years old. All the parties agree that she suffered from vision impairment at the time. In fact, Mrs. Gregory, who had migrated to the United States of America (USA) in 1978, had arranged for Mrs. Sollas to visit the USA in order to have surgery done in relation to her eyes. The defendant, however, has alleged that from 1983, she was blind. Both claimants testified that she could still see to a limited extent.

Mrs. Gregory contends that her mother could sign her name on documents and that Mrs. Sollas had actually signed a Memorandum of Sale in respect of property at 29 Kelly Road. This property had been purchased in 1970 by Mr. and Mrs. Sollas Snr. and herself (Mrs. Gregory) as tenants in common.

This Memorandum of Sale is Exhibit 6c.

Mrs. Janice Causewell, an attorney-at-law and partner in the firm of DunnCox, 48 Duke Street, Kingston, was called as a witness in relation to the execution and signing of the said Will.

She stated that she had been with the said firm, formerly known as DunnCox & Orrett for approximately 29 years. She stated that in November 1985, she received instructions from Hilda Margaret Sollas in relation to the preparation of her last Will and Testament, that she drafted the last Will and Testament of the deceased in accordance with her instructions, that on November 26, 1985, the said testatrix attended her office, she showed her the Will, read the contents of the Will to her and explained its provisions as the vision of the said testatrix was impaired at the time.

She further stated that Mrs. Sollas indicated that she understood and approved of its terms and signed it in the presence of herself and Mrs. Lurline Whyte, her secretary at

the time, that herself and Mrs. Lurline Whyte were the attesting witnesses and both signed her Will in her presence.

Mrs. Causewell identified the signature of Mrs. Sollas and her own signature on Exhibit 6a.

This Will was kept in the Will's vault at DunnCox until after the death of Mrs. Sollas.

She stated that there were two other copies of the Will. The second copy was for the client's own records and was not meant to be the Will. The name of Mrs. Sollas, names, addresses and occupations of the two witnesses were written on this agreed copy by Mrs. Lurline Whyte.

She (Mrs. Causewell) also wrote at the bottom of the second page of the agreed copy, the following words, "Original Will with DunnCox and Orrett, 46 Duke Street, Kingston." This copy is Exhibit 6b.

The court accepts her explanation for the agreed copy and found no sinister motive for the name of the testator, witnesses and other information being written by Mrs. Whyte on this document.

It is quite clear that Mrs. Causewell does not recall from memory the events of that day in 1985. She has stated this to be so. Her recollection would have been aided by the written document.

She cannot recall and did not say that Mrs. Sollas was known to her before November 26, 1985. She cannot say whether she would have received her instructions on that day or a previous date. She also stated that she could not recall if Mrs. Sollas came alone or with others.

Identification of Testatrix

In relation to the identification of the person who came to her office, Mrs. Causewell gave the following testimony:

“It is my practice to seek identification unless I know the person or the person was referred by someone else in the firm.
I cannot say if I demanded identification from her but I can say I would not have taken instructions from her unless I was satisfied she was Hilda Sollas.
I would have looked at an ‘ID’ unless she was referred to me or known to me. Mrs. Sollas is an unusual name
I am sure I would have satisfied myself as to her identity.
I cannot recall what I did to so satisfy myself.”

The court also notes that in the Attestation Clause on the Will the following words are used:

“Signed by the said Hilda Margaret Sollas after the same had first been read over and explained to her by JANICE ANDREA CAUSEWELL she being unable to read due to impaired vision when she expressed herself fully to understand same in the presence of us present....”

The Will executed nine years before the death of the testatrix speaks to her visual impairment. Was this a tremendous hoax perpetrated by the claimants in preparation for the death of Mrs. Sollas?

Defence Allegation of Fraud

The defendant, the only surviving biological child of Mrs. Sollas, is contending that the signature on the Will is not that of his mother. He further states that she could neither read nor write, that she used a writer to communicate with him abroad.

The court notes that the defendant left Jamaica in 1947, that between 1947 and 1979, he visited about six to eight times, then between 1979 and his mother’s death, a few more times.

The court is of the opinion that his evidence does not reflect an accurate appreciation of Mrs. Sollas' capabilities developed over the years. This is even more so when the court considers the evidence of the agreed expert on handwriting, Carl Major.

In order to examine the authenticity of the signature on the Will, he compared it with Mrs. Sollas' known signature on the Memorandum of Sale. He also compared two other known signatures of Mrs. Sollas on a birth registration form and another document.

Opinion of Agreed Expert

This, however, does not simplify the matter for the court's consideration, as Mr. Major has stated that, in his opinion, the signature of Hilda Sollas on the Will, (Exhibit 6a) is a simulation of the signature Hilda Margaret Sollas on the Memorandum of Sale (Exhibit 6c). He further opined that the three known signatures were written by one and the same person; that that person, however, was not the author of the questioned signature.

Mr. Major gave several reasons for his opinion which are all set out in his report, Exhibit 6.

The court has considered his report and the reasons stated. Mr. Major also stated that factors such as age, infirmity, general state of health and eye sight are relevant in handwriting, that over one's life time, handwriting can tend to change, that there is a possibility in relation to the above factors, that one's signature could be different and that 'this happens all the while.' He was very emphatic in saying that this case was not one of those occasions.

He also agreed under cross examination that the attempt at simulation was a very poor one and that his opinion as to simulation is in relation to the surname 'Sollas.' He

gave a qualified opinion in relation to 'HILDA' and stated that there was an attempt to simulate the 'l', 'd' and 'a' in HILDA.

The court, however, has been impressed with the evidence of Mrs. Causewell in relation to the signature of Mrs. Sollas, that she would have satisfied herself as to identity. The court is also of the view that the Will provides cogent and compelling evidence, to an extent, in relation to the identification of Mrs. Sollas. It speaks to her visual impairment. All the witnesses agree on this issue.

The defendant in fact stated that his mother's health had deteriorated after his father's death in 1979. The court bears in mind also that the signature on the Will was made 15 years subsequent to the signature on the Memorandum of Sale.

It is for these reasons, as also Mr. Major's testimony concerning factors that could affect handwriting, that the court finds that on a balance of probabilities, this signature on the Will (Exhibit 6 a) is the signature of Mrs. Hilda Sollas.

Was the Will properly attested by the two witnesses?

There is one final matter the court has to consider before determining the validity of the Will.

Section 6 of the Wills Act sets out the procedure to be followed in order for a Will to be valid. It provides inter alia, that the testator is to sign at the foot of the Will in the presence of two or more witnesses present and that these witnesses are to attest and subscribe the Will in the presence of the testator.

Mrs. Causewell stated that both herself and Mrs. Whyte signed as witnesses in the presence of the testatrix.

The expert, Mr. Major, however, in his report stated that in his opinion the names, addresses and occupation of the two witnesses at the foot of Exhibit 6 (a), the Will, were written by one person. This is in contradiction to the evidence of Mrs. Causewell.

It is clear, however, that Mr. Major had no specimen handwriting or known writings from Mrs. Causewell and Mrs. Whyte to compare to the writings on the Will.

The court prefers the evidence of Mrs. Causewell on this point as to her signature on the Will. It is for this reason also that the court prefers her evidence as to the author of the writings at the bottom of the agreed copy Will (Exhibit 6b) beginning with the words "Original Will"

The court finds that the Will has been properly attested and subscribed to by the witnesses.

Judgment on the claim and counterclaim for the claimants.