

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV 2017-00052**

IN THE MATTER OF THE ESTATE OF YVONNE FERREIRA, DECEASED

AND

IN THE MATTER OF THE WILLS AND PROBATE ACT CHAPTER 9:03

AND

IN THE MATTER OF THE REVOCATION OF A GRANT OF PROBATE OF THE WILL OF YVONNE

FERREIRA UNDER THE SUCCESSION ACT CHAPTER 9:02

AND

IN THE MATTER OF AN APPLICATION UNDER PART 72 OF THE CIVIL PROCEEDINGS RULES 1998 BY LINDA HOWARD (EXECUTRIX) NAMED IN THE LAST WILL DATED THE 2<sup>ND</sup> JULY 2009 OF YVONNE FERREIRA LATE OF 20 NATHANIEL CRICHLow DRIVE, REAL SPRING, VALSAYN SOUTH WHO DIED ON THE 13<sup>TH</sup> JULY 2009 AND TO HAVE THE PROBATE OF A PRETENDED WILL OF THE DECEASED DATED THE 29<sup>TH</sup> JUNE 2009 REVOKED AND THE SAID WILL PRONOUNCED AGAINST

BETWEEN

**LINDA HOWARD**

Claimant

AND

**ALANA ARTHUR**

Defendant

Before the Hon. Madam Justice C. Gobin

Date of Delivery: November 23, 2018

Appearances: -

Mr. Roy. V. Holford, Attorney at law for the Claimant

Mr. Joseph Sookoo, Attorney at law for the Defendant

## REASONS – EVIDENTIAL OBJECTIONS

### Background

1. This probate matter was filed on 4<sup>th</sup> January 2017. The deceased/testatrix, Yvonne Ferreira died on 13<sup>th</sup> of July 2009 after a brief period of hospitalization which began on 1<sup>st</sup> July 2009. On 11<sup>th</sup> November 2011 the Defendant obtained a grant of probate of a will (the first will dated 29<sup>th</sup> June 2009). The Claimant claimed to be one of the executrices of a will dated 2<sup>nd</sup> July 2009 (the later will). In this action the Claimant seeks inter alia, revocation of the grant of probate of the first will and pronouncement in solemn form of the later will.
2. On the pleadings it appeared to me that the issues raised by the Claimant were that the first was procured by fraud, want of knowledge and approval and undue influence. On the Defence, the Defendant denied that the deceased gave instructions for the later will, raised an issue of want of knowledge and approval and mental incapacity by reason of her medical condition, (paragraph 6 of the Defence). A medical report of Dr. Colin Lalla dated 26<sup>th</sup> October 2009 was attached to the defence. The last line contained the following statement: -

“It is important to note that during her last admission from 1<sup>st</sup> July 2009 to 13<sup>th</sup> July 2009, Mrs. Ferreira was mentally incapable of performing or sanctioning any legal transaction of any kind.”
3. The later will was executed by the deceased the day after she was admitted to hospital. The Claimant’s case is that instructions for the preparation of that Will were given by the testatrix to attorney at law, Mr. Bert Legere sometime towards the end of 2008 and before her final period of illness. Her state of health at that period is not in issue. The first will was executed at the home of the deceased on 29<sup>th</sup> June 2009. She went to the hospital two days after and she died less than two weeks later.

### **Management of the case/procedural direction**

4. Trial dates were fixed for 18<sup>th</sup> and 19<sup>th</sup> of September 2018, and leading up to it, directions were given over time including one for the filing of a statement of issues on or before 14<sup>th</sup> December 2017 and for Witness Statements on or before 27<sup>th</sup> February 2018. The Claimant filed a Statement of Facts and issues on 6<sup>th</sup> December 2017. The Defendant filed none.
5. Witness Statements were eventually filed by 9<sup>th</sup> April 2016. When I looked at them before the next hearing, I observed that Mr. Brent Ali, the attorney who allegedly prepared the first will gave no Witness Statement, neither did Dr. Colin Lalla upon whose medical opinion, the issue of the mental incapacity of the testatrix seemed to have been founded.
6. Instead of providing direct evidence of these witnesses, the Defendant filed a hearsay notice, essentially to adduce the doctor's opinion evidence. It was done on the ground that the doctor issued the statement in the course of his regular employment and could not be expected to recall events leading to the issuance of the bald statement his opinion as to the testatrix's mental condition. It also indicated the intention to rely on the reported statements of Mr. Brent Ali, an attorney who remains in practice, but who has indicated that he cannot nor does he have the means to recall the circumstances of the making of a will at the home of a testatrix.
7. I found that the hearsay notice was of no assistance and did not comply with the rules. A doctor especially one who was part of a team might not be able to recall any particular patient's history but if the assessment and opinion were to carry any weight at all, one would expect some statements as to which notes of observation or records the doctor was relying upon when he came to his medical opinion. What was contained in the medical report and what was most relevant could not be admitted via a hearsay notice. It follows that it could not be admitted as a document attached to the statements of other witnesses.

8. This is why I struck out paragraph 25 of the Witness Statement of Juliet Arthur Raymond and paragraph 19 (lines 2-3) of the Witness Statement of Alana Arthur. Both clearly sought to introduce the opinion evidence contained in Dr. Lalla's report. This was inadmissible.

9. I struck out statements made by Mrs. Arthur Raymond (paragraph 17) as well as Mr. Irwin Raymond (paragraph 10 as to what both said happened at the Royal Bank in St. Augustine and through which both sought to establish evidence of the declarations of the testatrix of her intention to make the Defendant the beneficiary of her estate. Both recalled being at the bank:

“where Yvonne tried to tell the bank girl that she wanted the Defendant to do all her transaction and give everything to her.”

What was being asserted by these witnesses was not what the deceased allegedly said, but what both witnesses say she tried to tell someone else. I considered this evidence to be of no probative value and in any case self-serving. If the testatrix did not (as their own evidence suggested) succeed in telling the bank girl what she wanted, then these witnesses could only be guessing what was in her mind.

10. Returning to Ms. Arthur Raymond's Witness Statement paragraph 18 lines 5-6 were struck out. The witness claimed she heard while she was standing outside the testatrix's bedroom while other persons and Mr. Ali, the attorney were inside she heard the testatrix say “Everything Lana.” I considered this utterance in the absence of any context to be of no probative value.

11. The striking out of paragraph 21 followed from my striking out of paragraph 17. The witnesses both said the testatrix was trying to tell the bank girl something. As for the remaining portions of paragraphs of the Defendant's statement which I struck out on closer consideration I concede that paragraph 9 line 4-5 ought not to have been struck out.

12. Paragraph 18 was struck out because I considered its contents to attempt to shift from the defence which admitted Mr. Pope, attorney at law and his Clerk did visit the deceased at hospital on 2<sup>nd</sup> July 2009. The Defendant's only issue with this on the Defence was the

medical/mental incapacity. I was not prepared to permit the shift from this position by a not so subtle suggestion of fraud.

13. On 18<sup>th</sup> July 2018, the day that I delivered the Ruling I asked Counsel to identify what issues remained on the Defence if the medical evidence from the doctor to support a plea of incapacity was not available. Mr. Sookoo indicated there was the issue of delay in the application for the grant of probate by the Claimants as well as the effect on the Defendant's ability to provide the expert evidence.

**Carol Gobin**  
**Judge**