

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No: CV2018-01804

Between

**IN THE MATTER OF THE WILLS AND PROBATE ACT CHAPTER 9:03 OF THE LAWS  
OF TRINIDAD AND TOBAGO**

**IN THE MATTER OF THE ESTATE OF SYLVIA CELESTINE OTHERWISE CALLED**

**SYLVIA CALLENDER**

**AND**

**MONICA CALLENDER**

**MARCUS JOSEPH**

Claimants

And

**ANTHONY CALLENDER**

First Defendant

**ESTHER CHARLES**

Second Defendant

**CALEB PHILLIPS**

Third Defendant

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: December 9, 2019

Appearances:

Claimants: Ms. S. Lawson and Ms. S. John

First and Second Defendants: Mr. M. George and Ms. S. Walker

Third Defendant: Absent and Unrepresented

## JUDGMENT

1. This claim concerns the validity of the purported Last Will and Testament executed on February 17, 2017 by Sylvia Celestine otherwise called Sylvia Callender (“the deceased”) who died on August 1, 2017, which the defendants wish to prove. The claim also concerns a promise allegedly made by the deceased to the first claimant Monica Callender (“Monica”) in relation to the property vested in the deceased purportedly bequeathed in the said will (a claim for an equitable interest).
  
2. The second claimant, Marcus Joseph (“Marcus”) is the common-law husband of Monica and now her lawful Attorney by virtue of Power of Attorney dated December 12, 2017. Monica and the first defendant, Anthony Callender (“Anthony”) are siblings and children of the deceased. The second defendant, Esther Charles (“Esther”) is the niece of the deceased and a police officer. The third defendant, Caleb Phillips, (“Phillips”) is a bailiff.
  
3. According to the claimants, by Deed of conveyance dated January 1993 and registered as No 3122 of 1996 the deceased became the fee simple owner of the following;

*“ALL AND SINGULAR that certain piece or parcel of land situate at Lambeau in the Parish of St. Andrews in the Island of Tobago in the Republic of Trinidad and Tobago comprising TWENTY THOUSAND SUPERFICIAL FEET more or less bounded on the North partly by another portion of the said larger parcel owned by Marie Petronilla Stewart-Warner and partly by Carnbee Appendage Trace on the South partly by another portion of the said larger parcel and partly by Milford Road on the East partly by the said Carnbee Appendage Trace and partly by another portion of the said larger*

*parcel and on the West partly by Milford Road and Partly by another portion of the said larger parcel which said freehold hereditaments are delineated and described and coloured pink on the plan annexed and marked "A" to the Deed Registered as No. 3155 of 1993, together with the buildings thereon by virtue of Deed of Conveyance dated the 21st January, 1993 and registered as No. 3155 of 1996 ("the Lambeau property")."*

4. The Lambeau property comprises three buildings; two two-bedroom rental apartments situate at the back of the property and one four-bedroom bungalow which encompasses a living room, dining room, a kitchen and a veranda ("the subject property"). The claimants were in occupation of the subject property since 2014.
5. At the date of her death, the deceased was also seized and possessed of a property situate at St. Patrick, Tobago described in Certificate of Title in Volume 2753 Folio 23 as comprising approximately fourteen thousand three hundred and thirty-six square feet with buildings thereon, said to be divided into two parts separated by a canal together with building standing thereon ("the Bethany property").
6. Further, at the date of her death, the deceased was seized and possessed of a Nissan Sentra, registration number PBT-7811 ("the Nissan vehicle").
7. The claimants aver that the deceased often spoke to Monica amongst other people about the Lambeau property and what would happen to same after her death. According to the claimants, the deceased on several occasions told Monica to *"go ahead and fix up and do what needs to be done because I cannot do it. The place belongs to you"*. The deceased also constantly told Monica that the subject property belonged to her. The

claimants aver that based on those oral assurances they expended monies and time doing substantial repairs to the Lambeau property and the Bethany property. Monica also left her job in the United States of America ("USA") and relocated to Tobago based on the deceased's oral assurances.

8. On November 4, 2017 the defendants forcefully entered the subject property without the permission of the claimants and removed the claimants' goods from the subject property causing damage to several of the items. The defendants were accompanied by three officers and some loaders. One of the officers assaulted Marcus during the debacle and he (Marcus) had to seek medical attention.
9. As such, by Fixed Date Claim Form filed on May 21, 2018 the claimants seek the following relief against the defendants;
  - i. A declaration that the purported will of the deceased is invalid;
  - ii. An order that the court pronounce against the force and validity of the purported will;
  - iii. A declaration that the deceased died intestate;
  - iv. A declaration that the claimant has an equitable and beneficial interest in the Lambeau property;
  - v. A declaration that the claimant is entitled to recover possession of the subject property;
  - vi. A declaration that the defendants entry into the subject property was wrongful and constitutes trespass;
  - vii. An injunction restraining the first and second defendants, their servants and/or agents from entering or remaining in the subject property or otherwise from interfering with the claimants' use and enjoyment thereof;

- viii. An injunction restraining the first and second defendants from selling, mortgaging or renting the subject property and/or the sale of the Lambeau property;
- ix. Damages for trespass to the claimants' goods;
- x. Interest;
- xi. Costs; and
- xii. Any other relief the court deems fit.

#### **THE DEFENCE AND COUNTERCLAIM OF THE FIRST AND SECOND DEFENDANTS**

10. Anthony and Esther accept that the deceased died in possession of the Lambeau property, the Bethany property and the Nissan vehicle. They aver that in or about 2014, the claimants began occupying two bedrooms of the subject property. That the claimants however occupied the subject property intermittently as they both spent significant time in the USA. According to Anthony and Esther, the claimants asked the deceased to occupy the subject property temporarily until they got employment.

11. Anthony and Esther aver that the deceased never promised Monica that the Lambeau property and/or the subject property belonged to her. They further aver that the deceased never advised the claimants to carry out construction works to the said property. Moreover, Anthony and Esther aver that the claimants did not expend any monies towards the maintenance, repair and/or renovation of the Lambeau property and the Bethany property. According to Anthony and Esther, the deceased expended her own monies to conduct repairs and any necessary construction works to the Lambeau property and the Bethany property.

12. Anthony and Esther claim that at the date of execution of the purported will, the deceased was mentally competent and of sound mind, memory and understanding to execute a will and that she knew and approved of the contents thereof. As such, they aver that the purported will was duly executed. Anthony and Esther were appointed as executors and trustees by the purported will.

13. Anthony and Esther admit that on November 4, 2017 they along with Phillips, three officers and some loaders went to the subject property. They entered the subject property to remove the deceased's belongings from therein (which were neither used and/or owned by the claimants) in an effort to execute their duties as the deceased's legal representatives by managing and protecting all of the assets of the deceased until same were distributed to the named beneficiaries.

14. Consequently, by Counterclaim filed on October 29, 2018 Anthony and Esther seek the following relief;

- i. An order that the court pronounce for the force and validity of the purported will;
- ii. An order that a grant of probate for the estate of the deceased be granted to the first and second defendants;
- iii. Costs; and
- iv. Any such further relief the court may deem just.

### **THE THIRD DEFENDANT**

15. The third defendant was absent and unrepresented at the date of the trial of this matter. By Notice of application filed on June 12, 2019, after the trial was completed and after the claimant had in fact applied for default

judgment against the third defendant by way of Notice of May 13, 2019, this court having adjourned that application pending its decision on the substantive claim, the third defendant applied for an extension of time to file his defence. That application was dismissed by this court.

## **ISSUES**

16. The issues for determination in this case are as follows;

- i. Whether the purported will of the deceased was validly executed in accordance with the Wills and Probate Act, Chapter 9:03;
- ii. Whether the deceased knew and approved of the contents of the purported will;
- iii. Whether the deceased possessed the testamentary capacity to execute the purported will;
- iv. Whether the execution of the purported will was a product of undue influence and fraud,
- v. Whether Monica has acquired an equitable interest in the Lambeau property; and
- vi. Whether the claimants are entitled to damages for trespass to their goods.

## **THE CASE FOR THE CLAIMANTS**

17. The claimants gave evidence and called one witness; Brenda Byfield.

### **The evidence of Monica**

18. Monica is a retired Master Sargent from the United States Air Force ("USAF"). She retired from the USAF in December, 2012.

19. By deed of conveyance dated January 21, 1993 and registered as No. 3155 of 1996, the deceased became the owner in fee simple in possession of the Lambeau property. The deceased died in possession of the Lambeau property which is comprised of a parcel of land comprising twenty thousand superficial feet and three buildings standing thereon. The buildings are two two-bedroom rental apartments situate to the back of the property and one four-bedroom bungalow located at the front of the property (“the subject property”).
20. The apartments were rented for approximately \$3,200.00 per month and the deceased had Felix Cordner (“Cordner”) collect the rents for her. Monica executed a lease agreement in February, 2016 on the deceased’s behalf but did not collect the rents.<sup>1</sup>
21. The deceased often spoke to Monica, her siblings, a Mr. Gift (a close friend of the deceased) and other persons about her plans for the Lambeau property after her death. Monica testified that on several occasions, the deceased told her to *“go ahead and fix up and do what needs to be done because I cannot do it. The place belongs to you.”* Monica further testified that the deceased constantly told her that the subject property belonged to her while the remainder of the Lambeau property was to be enjoyed by the other children. Monica’s sister, Brenda Byfield (“Brenda”) also attests to those promises.
22. According to Monica, Anthony and Esther cannot speak of what the deceased discussed with Brenda as they were not present. When the deceased travelled to visit Brenda in Las Vegas, the defendants were not

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<sup>1</sup> A copy of the lease agreement Monica’s executed was annexed to her witness statement at “A”.

present. Further, when Brenda travelled to New York and Tobago to visit the deceased, the defendants were not present.

23. In or about September, 2013 the deceased repeated the aforementioned promise to Monica by telling her the subject property would be hers if she left her job as a Cytotechnologist in the USA, travelled to Tobago to take care of her and maintain her properties in Tobago.

24. The deceased underwent open heart surgery in or about 2003. Her medical conditions and corresponding treatment included congestive heart failure, coronary artery bypass graft, diabetes mellitus, end stage renal failure, hypertension, diabetic neuropathy and diabetic retinopathy. Monica testified that with all the aforementioned comorbidities, the deceased was not in optimal health and therefore needed and requested her (Monica's) assistance.

25. Sometime in or about 2013, acting in reliance on the promise and assurances of the deceased, Monica took a family medical leave of absence from her job in the USA and travelled with the deceased to Tobago. Monica subsequently requested that her leave of absence be extended from November, 2013 to March, 2014. Eventually, in or about November, 2014 acting in reliance on the promise made by the deceased, Monica quit her job in the USA and relocated to Tobago to take care of the deceased and to assist in the maintenance of the Lambeau and Bethany properties. By letter dated September 24, 2014 Monica eventually resigned from her job at Quest Diagnostics.<sup>2</sup>

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<sup>22</sup> A copy of this letter was annexed to Monica's witness statement at "B".

26. Marcus her common law husband also relocated to Tobago with her and they both commenced living fully with the deceased at the subject property in or around late 2013. From 2013 to the demise of the deceased in 2017, Monica and Marcus assisted the deceased with her daily routine which included the preparation of her meals, payment of bills and taking her to her doctor's appointment. On a few occasions when the deceased was ill, Monica arranged and paid for the doctor to conduct home visits. Monica testified that it was never her intention or the intention of Marcus to relocate to Tobago or more so to seek employment. She further testified that the primary reason for being in Tobago was to be of assistance to the deceased as she had entered her golden age.

27. On one occasion, the deceased gave Monica a signed blank cheque for the purchase of a stove at Standards, Tobago. Esther had made prior arrangements with a store clerk (who she explained was family), for the payment of the stove. Esther during the aforementioned conversation informed Monica that Standards accepted the cheque in the absence of the deceased as she (Esther) had done that on several occasions with other businesses. Based on the aforementioned information, Monica visited Standards, identified herself to the store clerk and presented the cheque without a dollar amount written on it to conduct the business on behalf of the deceased. That was the only occasion the deceased gave Monica a signed cheque without a dollar amount written on it to conduct business on her behalf.

28. According to Monica, Esther worked two jobs and does not own a vehicle and as such, was not in any position to take the deceased to her doctor appointments. When Monica was unable to transport the deceased to her

appointments, the deceased on occasion called the hospital and transportation was provided for her.

29. When Monica's family medical leave expired in March, 2014 she left Tobago to return to the USA. Subsequently, the deceased became ill and was hospitalized at the Scarborough hospital ("the hospital"). Esther went to the hospital with the deceased and gave her (Esther's) name to the hospital as the deceased's next of kin because all of the deceased's children were at that time in the USA. Whenever Monica took the deceased for her routine appointments however, the information about the next of kin was never requested as that information was only used when one was admitted to hospital.<sup>3</sup> Hence Monica is not listed as next of kin in the medical records although she would have accompanied her mother on several occasions.

30. In or about July, 2017 the deceased fell ill and Esther called Dr. Maxwell, who made a house visit and directed the admission of the deceased to the hospital. Anthony was present in Trinidad at that time. As such, his name was also added as a next of kin.

31. On occasion, Monica would make trips between Tobago and the USA. The travels were necessary to attend to her affairs in the USA which included her property in the USA, cars which to be registered annually, the filing of annual tax returns, annual doctor's visits, payment of bills etcetera. Monica always discussed her travels with the deceased.

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<sup>3</sup> A copy of the referral form and attachment received from the Tobago Regional Health Authority when the deceased was admitted in May, 2014 was annexed to Monica's witness statement at "C".

32. Monica testified that since 2013, Anthony's visits to the deceased were for the only purpose of getting money from the deceased. Anthony was married in 2016 and became a father for the sixth time in June, 2017. Anthony only contacted and visited the deceased when he wanted money.
33. In 2013, the deceased's attendance at the St. Philemon Spiritual Baptist Church began to decline. The church is located on a hill with numerous steps to climb and same was beginning to be a little too much for the deceased. Consequently, the church added the deceased to its list for at home communion. Mother Clorita, Mother Callender, Sheppard Leith and Monica would have very short prayer services once a month at the subject property and communion was given to the deceased.
34. Since 2014, the deceased could no longer handle the opening and closing of the gate at the subject property. The deceased was also unable to drive her vehicle. As a result, Monica was responsible for driving the deceased around. The deceased asked that Esther and Monica look into an automatic gate opener which was eventually financed by the claimants.
35. Based on the oral assurances of the deceased, the claimants expended their time, money and resources over the years on the following;
- i. Bethany property - \$9,400.00
    - a) Redesigned the kitchen by rebuilding the kitchen cupboards and replacing the kitchen sink;
    - b) Replaced bathroom sink and repaired toilet;
    - c) Transported tiles for the entire property from Trinidad;
    - d) Replaced toilets for two apartments
  - ii. Lambeau older property - \$7,000.00
    - a) Tiled entire floor of the older apartment;

- b) Installed cupboards and counter tops;
  - c) Repaired and replaced the front door;
  - d) Redid tiles on foyer;
  - e) Tiled in front of the door;
  - f) Tiled the front step
- iii. Lambeau other apartment - \$500.00
- a) Fixed windows;
  - b) Blocked up holes in the walls;
  - c) Adjusted doors;
  - d) Fixed toilet tank;
  - e) Tiled outside the front door
- iv. Other repairs and improvement works to Lambeau property
- a) Cleaned the storeroom and removed debris from storeroom at Lambeau property - \$700.00;
  - b) Spearheaded the rebuilding of the back wall;
  - c) Labour and material for the repair to septic tank - \$12,000.00;
  - d) Labour and material for replacing the water tank - \$1,200.00;
  - e) Labour and material for rebuilding the outside shed - \$6,000.00;
  - f) Reinforcement of front wall and labour and material for painting the back front wall- \$4,700.00;
  - g) Labour and material for installing the remote operated front gate - \$14,000.00;
  - h) Rewiring and reinstallation of electric meter - \$5,000.00;
  - i) Camera surveillance hardware and installation - \$7,000.00;
  - j) Installation of two air condition units - \$7,000.00;

- k) Paid for installation of Digicel Play Plans (equipment still in possession of Anthony and Esther);
- l) Paid all utility bills including WASA, T&TEC, Digicel Play
- v. Household appliances & equipment (shipped from the USA)
  - a) Clothes dryer;
  - b) Vacuum cleaner;
  - c) Pressure washer;
  - d) Televisions sets;
  - e) Dishes;
  - f) Blender;
  - g) Linen items.

36. Monica testified that since she never anticipated Anthony and Esther to present the purported will, she did not keep copies and records of all the things she did including the shipments from the USA.

37. Further, when the tenant moved out of apartment #2, the claimants repaired and cleaned it in preparation for the next tenant. Also, when the back wall of the Lambeau property collapsed, the deceased encouraged Monica to come to Tobago to help her have the wall fixed. In 2013, Monica took family medical leave allowance and journeyed to Tobago to have the wall taken care of. She made contact with and engaged the services of the relevant persons to have the situation addressed. Those persons included; Mr. Moore of the Unemployment Relief Program (URP), Ms. Winchester of the Division of Infrastructure and Public Utilities, Administrator Mc Wellington, TEMA as well as Richards Hardware.

38. Monica organized the entire process to secure the materials for the rebuilding of the wall. She was also responsible for the opening of the gate

to the property every morning to allow the workmen/women to have access to the property, making sure the necessary material including water were available so the work could be completed in addition to staying in constant communication with the foreman, Mr. Bruce.

39. Some of the receipts to reflect those purchases were retained by the claimants but were unfortunately misplaced or destroyed when the defendants entered the subject property on November 4, 2017 without permission and/or consent.

40. The claimants also spent money for the upkeep of the Nissan vehicle which belonged to the deceased. That included replacing the battery at Strong Man Repair shop, tyre replacement, oil change and oil stick replacement (item purchased in the USA) and the payment of the annual insurance with Gulf Insurance Limited. In February, 2017 Monica paid for the inspection of the Nissan vehicle. Anthony had the stick uplifted in July, 2017.

41. Whilst the Nissan vehicle was in Monica's care, it was maintained and kept in good condition. In or about November, 2017 the defendants took possession of the Nissan vehicle. Anthony bought car parts for the 1987 Ford Mercury while it was in the deceased's possession but not for the Nissan vehicle. The Ford Mercury was eventually given to Esther.

42. In or about October, 2015 the deceased told Monica that she did "the paper work" which appointed Monica and Anthony as executors and trustees ("the 2015 will"). Monica testified that the deceased told her that her paperwork was in order and that she (Monica) did not have anything to worry about. The deceased further explained to Monica that after her passing if she (Monica) did not receive a call from the attorney-at-law, she

should contact Lenell Grant (“Lenell”), the cousin of the deceased or the lawyer she used whom she called cousin Ewat. Ewat was in possession of the original 2015 will.

43. The deceased explained to Monica that she stayed with Lenell on the occasion she went to Trinidad to deal with the preparation and execution of the 2015 will. The deceased further told Monica that she prepared the paperwork because of the promise she made to her. That she (the deceased) knew that Monica has a good relationship with her other siblings and they would continue to have somewhere to stay whenever they visited Tobago and a car to drive.

44. The deceased thereafter directed Monica to have a Spiritual Baptist funeral for her and to dress her with a white dress with an apron and white head tie. The deceased also told Monica the songs she would like them to sing for her at the funeral. Monica carried out all of the funeral wishes of the deceased.

45. In or about 2017, after the deceased passed away, Monica contacted the attorney-at-law concerning the 2015 will. The attorney-at-law confirmed that he executed the will but stated that he could not locate the original or a copy of the 2015 will. After correspondence was exchanged between Monica’s lawyer and the attorney-at-law who prepared the 2015 will, a draft copy of same was sent to Monica’s lawyer via email.<sup>4</sup>

46. On August 10, 2017 Anthony informed Monica along with the other members of her family that he was in possession of the purported will of the deceased. Those in attendance included Marcus, Monica, Esther,

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<sup>4</sup> A copy of the email and the 2015 will were annexed to Monica’s witness statement at “D”.

Sharon Callender-Stewart, Brenda, Mary Sandy, Garth Clinton, Carmen Bacchus and Barbara June West. Anthony read the purported will aloud. Monica saw Anthony open a yellow coloured envelope and state that he was breaking the seal. However, when he opened the envelope he had copies of the will to distribute to those present. When Brenda asked Anthony to see the original will, he responded by stating *“you don’t need to see that, that belongs to me”*.

47. On August 18, 2017 without the lawful authority and/or permission of the claimants, Anthony and Esther went to the Lambeau property and removed several items from the subject property. Marcus was present at that time and told Monica that based on the aggressive behaviour of Anthony and Esther, he felt it would be best if he contacted the police and make a report that the items were being removed without any proper procedure. The claimants strongly believed that the defendants had no entitlement to take possession of the property without proving the purported will. The claimants lived in the subject property and did not occupy same intermittently.

48. By letter dated October 4, 2017 Anthony and Esther demanded that the claimants surrender vacant possession of the subject property. By letter dated October 16, 2017 the claimants instructed their lawyer to respond, repeating their demand for a copy of the purported will.

49. Monica strongly contests the validity of the purported will. She testified that Anthony and Esther took advantage of the extreme old age of the deceased and of her weak and unstable state. In or around the time of the execution of the purported will, the deceased was not very weak and feeble. However, at the time of the execution of the purported will, the

deceased was eight-six years of age and was often forgetful of basic events.

50. According to Monica, Anthony and Esther are seeking to rely on the report of psychiatrist, Dr. Helen Marceau-Crooks (“Marceau-Crooks”) to vouch for the deceased’s mental capacity. However, that assessment was done on February 22, 2017 whereas the purported will was executed on February 17, 2017. Further by letter dated December 19, 2018, Dr. Marceau-Crooks indicated that she was unaware that a will was done, that she only saw the deceased once and that the deceased was not her patient.<sup>5</sup>

51. Marcus informed Monica that on November 4, 2017 the defendants accompanied by three police officers and some loaders forcefully entered into the subject property without the permission and/or consent of the claimants and threw the goods belonging to the claimants onto the public road at the mercy of the rain.

52. According to Monica, the defendants’ actions on November 4, 2017 caused damage to several of her items. Monica testified that to date the defendants have not presented an order to reflect their entitlement to take possession of the subject property. That she and Marcus lawfully occupied the subject property not as tenants but based on the encouragement, representation and promise made by the deceased.

53. On January 26, 2018 Anthony and Esther applied for probate of the purported will. The claimants filed a caveat on March 7, 2018.

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<sup>5</sup> A copy of the correspondence between Monica’s lawyer and Dr. Marceau-Crooks was annexed to Monica’s witness statement at “E”.

### The cross-examination of Monica

54. Monica knew that the deceased wanted to make a will. She is not unhappy with the purported will but surprised by its contents as she is not a beneficiary under the purported will.
55. Monica testified that on occasions, she would collect the rent for one of the apartments at Lambeau. This was a clear inconsistency within her testimony.
56. According to Monica, the promise made to her by the deceased was also made to Marcus. She testified that the deceased also promised Marcus the Lambeau property. She further testified that the deceased did not ask Marcus to give up his job in the USA. That Marcus gave up his job in the USA voluntarily because his mom who lived in Trinidad was also ill. Monica then testified that Marcus gave up his job in the USA because of the promise the deceased made. Monica then stated that she would like to change her evidence. That the promise was made to her alone and that it was untrue that Marcus gave up his job based on the promise. Subsequently, Monica testified that Marcus expended monies on the Lambeau property based on the oral assurances of the deceased that they would get the Lambeau property. That Marcus was also promised the entire Lambeau property. These are several material inconsistencies which the court shall return to later on.
57. Monica testified that the obligations pursuant to the promise made by the deceased kept expanding until the death of the deceased. That the installation of the camera surveillance at the subject property formed one of the obligations under the promise as when they arrived in Tobago, the deceased was concerned about the crime situation. The installation of

Digicel Play and the payment of all the utility bill were also obligations pursuant to the promise of the deceased.

58. Prior to resigning from Quest Diagnostics, Monica was earning approximately \$82,000.00USD per year. She testified that she willingly gave up that salary. That the loss of that salary was not significant to her as money does not mean anything to her.

59. The sums of money that were stated as being spent on the properties in renovations and repairs were approximate sums. Monica agreed that she did not annex any receipts for those sums.

#### The evidence of Marcus

60. Marcus is retired. Some of his evidence was the same as the evidence given by Monica and as such, that evidence need not be repeated.

61. Sometime in the late 2013, Marcus commenced living with the deceased. Prior to that date he visited the deceased from time to time.

62. Sometime in June, 2014 Marcus was employed at Trinidad and Tobago Hospitality and Tourism Institute as a lead lecturer. The deceased was ailing at the time and she encouraged Monica and Marcus to come live in Tobago and take care of her. The deceased and Monica enjoyed a very close relationship.

63. Marcus was present when the deceased promised the subject property to Monica. The promise was made on several occasions and the

deceased also asked Monica to quit her job in the USA and to relocate to Tobago to take care of her during the time she was ailing.

64. The deceased on several occasions told Monica and Marcus to *“go ahead and fix and do what needs to be done. Because I cannot do it. The place belongs to you”*.

65. Marcus also assisted the deceased with her daily routines which included bathing, dressing and feeding the deceased. Further, on a few occasions when the deceased was ill, Marcus paid for a doctor to visit the home to examine her.

66. On July 23, 2017 Marcus was home with the deceased. At around 5:00 am on that date, Marcus observed that Esther was in the subject property with her son. Marcus asked her what she was doing and Esther told him she was cleaning. As Marcus observed that the deceased was not looking so well, he called Dr. Maxwell and the deceased was taken to the hospital and on August 1, 2017 the deceased died.

67. On August 18, 2017 Anthony and Esther went to the Lambeau property and removed several items from the subject property without lawful authority and without the permission of the claimants who were in control of the subject property. Marcus was tyrannized by Anthony and Esther. He contacted the police and reported that items were being removed without any proper procedure. The items removed included but were not limited to the following;

- i. The Nissan vehicle,
- ii. Living room set,

- iii. Dining room set,
- iv. Microwave,
- v. Freezer,
- vi. Stove,
- vii. China plates, dishes and pictures.

68. On November 4, 2017 Marcus observed Anthony remove the receiver for the camera surveillance system and retained same without the permission and/or consent of the claimants. Monica was not present. Esther took away the bed sheets and other items from the subject property without the permission and/or consent of the claimants.

69. On November 4, 2017 at around 11:45am whilst Marcus was at the subject property, the defendants broke down the door and entered into the subject property. The defendants were in the company of fully armed police officers and some loaders. The officers were PC Guy, PC Baler and PC Edwards.

70. The defendants with the assistance of the officers and the loaders proceeded to remove items from the subject property. Esther took Marcus' car keys from near the television and started to put items in his car. The car was parked in front of the subject property in the driveway. Close to the driveway, Marcus had a vending trailer which he kept locked and secure at all times. The defendants removed the trailer door by breaking it down and placed items from the subject property into it.

71. Marcus's bottles of black and white whiskey, Hennessy, Absolute vodka and one-thousand grand liquor were missing. He asked the

defendants for his alcohol and Phillips told him that same was in a bag somewhere outside. Marcus has no receipts for those items as they were gifts.

72. The defendants went into the bedroom of the claimants and removed all personal items including clothing and shoes. During that time, Marcus was using his cell phone and sitting on the bed when PC Baker told him, *"give me that phone!"* PC Baker then started to twist Marcus' right arm and forcefully took the phone away causing Marcus to experience pain in his right shoulder and arm.

73. About one minute thereafter, PC Baker went back into the bedroom with a teacup and told Marcus that there was a joint inside of it and asked if Marcus smoked weed. Marcus told him no. PC Baker then asked Marcus if he allows people to come into the subject property and smoke weed. Again Marcus told him no. Marcus testified that he never had any cup with weed inside the subject property.

74. PC Baker then told Marcus that *"this is not the USA and one thing or the other, either you go quietly, or we take you down for marijuana!"* Marcus understood that if he did not comply and vacate the subject property, he would be arrested for the possession of marijuana. PC Baker took his handcuff and placed it on the bed next to Marcus. During that time Marcus felt overwhelmed.

75. He got off the bed and returned to the living room where he saw Esther directing the loaders who were busy packing stuff and removing stuff from the subject property. The goods were being badly handled and in some instances were tossed from the subject property. Esther

removed the receiver for the camera from the house and cut the gas hose for the stove. She also took away the bed sheets and other items she wanted to take away. She told Marcus that it all belongs to *"tantie"*.

76. Marcus observed that the remote that serves as a dual purpose to open his car and the gate was not on his bunch of keys and as he looked around he saw it on Esther's bunch of keys. Marcus asked Esther for the remote for the automated gate and she did not respond.

77. Marcus proceeded to the gallery and saw most of his belongings outside of the subject property. At that time, the rain began to drizzle. As such, Marcus asked the defendants if they could wait for him to contact someone to collect his stuff from the yard but his request was refused. The defendants then moved the goods of the claimants and placed them out on the side of the public road in front of the subject property. Those items included the stove, fridge, microwave, washer and dryer, household appliances and other goods belonging to the claimants.

78. A short while thereafter, a wrecker came onto the property and removed Marcus' trailer and placed same on the side of the public road in front of the subject property. The defendants closed the gate at around 4:00pm and left, debarring re-entry onto the subject property.

79. Marcus remained on the side of the public road. He stayed there until he was able to secure transportation and whilst there he observed that his washer, dryer and fridge were dented. He also observed that his

brand new television screen was cracked as it was placed at the bottom of the trailer with a large number of items stacked on top of it.

80. Sometime later, with the assistance of UU Transport, Karl Clinton and his common-law wife, Marcus found accommodation at a rental apartment at Bethany, Tobago. The rental apartment cost \$5,000.00 per month.<sup>6</sup>

81. Marcus employed some loaders to assist him with his items that were all left on the side of the road. He securely stored same at a different location. Marcus expended the sum of \$1,000.00 in transportation cost and also \$1,200.00 were paid to the loaders. He was not provided with a receipt.

82. On November 5, 2017 Marcus examined some of the items that were placed in both in his vehicle and trailer and also those items on the side of the road. He observed that some of Monica and his items were loss and/or damaged as follows;

- i. The touchscreen Samsung cash register, estimated value of \$400.00 USD was missing;
- ii. The receiver for the camera system and five cameras which remained at the subject property estimated at \$7,000.000 were missing;
- iii. Samsung 32-inch smart television valued at \$3,000.00 TTD was cracked and required a screen replacement;
- iv. One of the belts to the retractable seats of the seven-seater motor vehicle was damaged, estimated cost \$700.00;

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<sup>6</sup> A copy of one of the rent receipts was annexed to Marcus' witness statement at "M.J.1".

- v. The hook which allows the seat of the said motor vehicle to remain retractable was broken and as a result the seat cannot be retracted, estimated cost \$900.00;
- vi. The whirlpool double-door fridge was dented at the side and at the front;
- vii. Motor vehicles diagnosis testers valued at \$700.00 was missing;
- viii. Motor vehicle rear view camera system valued at \$550.00 was missing;
- ix. The following bottles of alcohol were also removed;
  - a) One black and white whiskey estimated at \$250.00;
  - b) Hennessy (pure white) estimated at \$400.00;
  - c) Absolut vodka estimated at \$300.00;
  - d) One thousand-grand estimated at \$315.00.

83. Marcus testified that he was unable to locate most of the receipts showing the expenditure on the property as same either got misplaced or destroyed when the defendants entered the subject property. However, some receipts were located.<sup>7</sup>

84. According to Marcus, Phillips acted contrary to the Bailiff Act of Trinidad and Tobago. Phillips acted unlawfully since the claimants were not tenants. Further, Phillips did not present any court order showing entitlement to take possession of the subject property and/or to forcefully remove the claimants from their occupation of the subject property. Also Phillips did not present a grant of probate on the name of Anthony and Esther.

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<sup>7</sup> Copies of those receipts were annexed to Marcus' witness statement at "M.J.2".

85. On November 6, 2017 as a result of PC Baker's aggressive and violent actions towards Marcus, he (Marcus) had to seek medical attention at the hospital as he continued to have pain and discomfort in his right shoulder and arm.<sup>8</sup>

86. Since March, 2018 Anthony and Esther have been conducting substantial repairs and renovations to the Lambeau property.

#### The cross-examination of Marcus

87. Marcus testified that the deceased promised him the Lambeau property on a few occasions. That the promise was initially made to Monica and then the deceased made it to him and Monica jointly when they were together.

#### The evidence of Brenda

88. Brenda is one of the deceased's five children. In or around April, 2008 Brenda and her husband, Tony Byfield ("Tony") visited the deceased. During a conversation, the deceased stated that she would give Monica the subject property as she was always there to help her. The deceased also stated that even though she was giving the subject property to Monica it should be used as a place for all of her children so that when they visited Tobago, they would have a place to stay and that the Nissan vehicle should stay in the garage so they will have means of transportation.

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<sup>8</sup> A copy of the medical report was annexed to Marcus' witness statement at "M.J.3".

89. Brenda had the aforementioned discussion with the deceased several times and the deceased's decision was the same.

90. According to Brenda, Monica took a leave of absence from her job for three years to live with and care for the deceased in her final years. Brenda testified that Monica did the aforementioned in reliance on the promise the deceased made to her that she would get the subject property and also out of love she (Monica) had for the deceased.

91. In or about 2014, Brenda and Tony visited the deceased in Tobago. The deceased informed Brenda that she was giving the Lambeau property to Monica. Over the years from 2014 to in or about 2017, the deceased said on numerous occasions that she was giving the Lambeau property to Monica. On Brenda's visits to Tobago, she observed that the claimants had done extensive repairs to the Lambeau property.

#### **THE CASE FOR THE FIRST AND SECOND DEFENDANTS**

92. Anthony and Esther gave evidence and called two witnesses; Felix Cordner and Dr. Helene Marceau-Crooks.

#### **The evidence of Anthony**

93. Anthony is a cashier who lives in New York. Although he resides in the USA, he and the deceased always had a very close relationship and he always made it his duty to assist the deceased financially or otherwise.

94. The Nissan vehicle was purchased by the deceased using monies which Anthony and the deceased obtained after mortgaging a property in New York which was vested in the deceased and him.

95. According to Anthony, the claimants have never made any contributions financially or otherwise towards the aforementioned properties. Monica has also never paid any monies towards the maintenance and/or insurance for the Nissan vehicle at any point in time. Throughout the years, the deceased always maintained the Nissan vehicle herself. On some occasions, Anthony expended his money to purchase automotive parts for the Nissan vehicle while in New York, which was then shipped to Tobago for the deceased.
96. Based on conversations Anthony had with the deceased prior to her death, he was aware that on some occasions the deceased gave Monica money from her savings and Monica was then responsible for paying the insurance for the Nissan vehicle and/or ensuring that any necessary repairs were conducted on the Nissan vehicle.
97. In or around 2014, the deceased informed Anthony that the claimants, who resided in the USA had asked her to occupy the subject property temporarily until they secured employment. Anthony was aware that in that said year, the deceased agreed to allow the claimants to occupy two bedrooms of the subject property rent-free. However, the deceased refused to allow the claimants to store their belongings at the Lambeau property and informed them that if they wished to store their belongings at the Lambeau property, they would be required to pay rent to her for the occupation of the subject property.
98. Based on Anthony's conversations with the deceased, he was also aware that it was further agreed between the deceased and the claimants that after they secured employment, they would then be required to vacate the subject property.

99. However, although the claimants asked the deceased to occupy the subject property, the claimants often travelled to the USA and spent several months at a time there. The claimants therefore lived at the subject property intermittently and never truly treated and/or considered same as their “home.”

100. Throughout the years, the deceased expended her own monies conducting repairs and any necessary constructions works to both the Lambeau and Bethany properties. Based on his conversations with the deceased, Anthony was aware that on some occasions, if any materials needed to be purchased in order to conduct constructions works to any of the aforementioned properties, the deceased would either give the claimants a blank cheque or substantial sums of cash would be given to Monica in order to make the purchases. The claimants, however never expended their own monies in order to have repairs conducted at the said properties, neither did they make any contributions financial or otherwise toward the maintenance of the said properties.

101. Given that Anthony and the deceased maintained a very close relationship, Anthony was also aware that while the deceased was alive, she was quite independent and she did not require a caretaker. The deceased, prior to her death prepared meals and visited the doctor on her own and on some occasions she even drove the Nissan vehicle in order to run errands. As such, Anthony testified that at no point in time did the deceased ever ask the claimants to leave the USA to take care of her and at no time did the deceased require the help of the claimants. In fact, Monica often left Tobago and travelled to the USA for several months at a time, leaving the deceased in the subject property alone as she knew that the deceased was more than capable of caring for herself.

102. Marcus suffered from back injuries and experienced difficulty caring for himself. As such, Anthony testified that it was almost impossible for him to care for both himself and the deceased. It must be noted that Marcus did in fact admit that he suffered from those issues and was assisted by a cane.

103. On July 22, 2017, Esther who also maintained a close relationship with the deceased contacted Anthony and informed him that the deceased had been hospitalized. Upon learning of same, Anthony immediately booked a flight to visit Tobago in order to attend to and care for the deceased. He arrived in Tobago on the following day, July 23, 2017 and remained with the deceased until she passed away on August 1, 2017.

104. During that time, Monica was in the USA and she only returned to Tobago on August 6, 2017 after the death of the deceased. Monica remained in Tobago for one week and she returned to the USA thereafter.

105. Prior to her death, the deceased prepared the purported will dated February 17, 2017.<sup>9</sup> The purported will was witnessed and executed in the presence of Lenell and Dale Wallace with both witnesses being present at the same time, in the presence of the deceased and in the presence of each other.<sup>10</sup>

106. Anthony testified that the purported will was willfully executed by the deceased without any influence from Esther and him. Given that Anthony communicated with the deceased frequently, he was aware that the

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<sup>9</sup> A copy of the will dated February 17, 2017 was annexed to Anthony's witness statement at "A.C.1."

<sup>10</sup> Copies of the affidavits of the witnesses confirming due execution of the purported will were annexed to Anthony's witness statement at "A.C.2."

deceased was not in a weak and/or unstable state at the date of execution of the purported will. Her memory was also not impaired during that period.

107. In fact, on February 22, 2017 the deceased was examined by Dr. Marceau-Crooks MD FRCPC, Consultant Psychiatrist at Westshore Medical, Trinidad in order to assess the deceased's mental competence to execute a will. According to Dr. Marceau-Crooks, based on the results of various tests performed on the deceased, the deceased was found to be mentally competent to execute a will. Anthony testified that in light of the fact that the deceased was found to be mentally competent to make a will, he was aware that the deceased knew and approved of the contents of the purported will and that she was of sound mind and she understood the nature of the purported will which she executed on the day of February 17, 2017.<sup>11</sup>

108. After the death of the deceased, Anthony obtained a copy of the purported will in her bedroom at the subject property.

109. On August 10, 2017, the purported will was read out by Anthony in the presence of Monica, Esther, Brenda, Mary Andy, Sharon Callender-Stewart, Garth Clinton, Carmen Bacchus and Barbara June West. Anthony and Esther were named as the executors of the estate of the deceased in the purported will. Monica was provided with a copy of the purported will. Anthony testified that he never attempted to hide the purported will from the claimants.

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<sup>11</sup> A copy of the medical report dated February 22, 2017 was annexed to Anthony's witness statement at "A.C.3".

110. After the deceased's death, Anthony continued to reside at the Lambeau property and the claimants occupied the subject property intermittently. In or around September, 2017 Anthony noticed that Marcus installed a deadbolt on the back door of the Lambeau property and the claimants also changed the locks to the access doors of the subject property without any permission and/or authorization from either Anthony or Esther in relation to same.

111. Consequently, Anthony attended the Offices of Martin George and Company and instructed his lawyers to issue a Notice to Quit to claimants in light of the fact that the claimants were attempting to commit malicious acts in relation to the deceased's property without any permission and/or authorization from Esther and Anthony as the legal title holders of the said property.

112. By letter dated October 4, 2017, Antony's lawyers, Messrs. Martin Anthony George and Company, informed the claimants that they intermittently occupied the Lambeau property and that in or around September, 2017 it was brought to the attention of Esther and Anthony that Marcus installed a deadbolt on the back door and that the locks for the front and back doors had been changed. The said letter further informed that those acts were done without any permission and/or authorization from the defendants as the legal title holders of the said property. The letter also demanded the claimants to remove their belongings and personal effects from the said property and to immediately vacate the subject property within four days of the receipt of the letter. That failure to comply would cause the defendants to take steps to forcibly remove and eject Marcus and Monica from the

premises and that they (the defendants) would not be responsible for the loss or destruction of items and possession during such process.<sup>12</sup>

113. The claimants, however failed to comply with the terms of the said Notice to Quit. As such, Anthony testified that having realized that malicious acts were being committed by the claimants to exclude Esther and he and from the Lambeau property and given that Esther and he are the executors of the deceased's estate and were charged with the responsibility of managing and protecting the deceased's assets until same were distributed to the named beneficiaries, they (Esther and Anthony) were forced to enter the Lambeau property on November 4, 2017.

114. On November 4, 2017 Esther and Anthony were accompanied by Phillips, along with three police officers and some loaders. Anthony and Esther ensured that police officers were present to ensure the safety of all parties involved and that the defendants peacefully entered the property. Anthony and Esther proceeded to remove the items belonging to the deceased from the Lambeau property to move same to a safer location, in an effort to manage, protect and secure the assets belonging to the deceased until same were to be distributed to the named beneficiaries. The said items were neither used nor owned by the claimants. The property was thereafter secured by the Esther and Anthony.

115. Anthony returned to the USA shortly thereafter and returned to Tobago in 2018. When he returned to Tobago, he paid for the Insurance for the Nissan vehicle on November 26, 2018 in the sum of \$547.75 which was paid to Gulf Insurance Limited. He then took possession of the said vehicle

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<sup>12</sup> A copy of the letter dated October 4, 2017 was annexed to Anthony's witness statement "A.C.4.

in an effort to again manage, protect and secure the assets belonging to the deceased.

116. On January 26, 2018, Anthony and Esther applied for a grant of probate in the estate of the deceased at the Tobago Probate Registry. However, on March 8, 2018 the claimants lodged a caveat with respect to the said application. To date, no grant has been issued in the estate of the deceased.

117. Anthony testified that the purported will is in fact valid as the deceased was mentally competent to execute same. He further testified that the claimants have never conducted any substantial repairs and/or renovations to the Lambeau property and that the claimants are not entitled to any equitable and/or beneficial interests in either of the said properties.

#### The cross examination of Anthony

118. The deceased and her children migrated to the USA in 1973. She worked as a nurse's aid. She retired in 1993. She owned the property in New York in which Anthony lives. Anthony lives in the basement of the property in New York and has lived there since the deceased acquired same. He never paid rent since he maintained and upkeep the New York property. He also paid the mortgage for the New York property. The New York property is now owned by Monica, Sharon and Brenda as in 2007, Anthony removed his name from the New York property. By this the court infers he means that he transferred his share.

119. Anthony makes approximately \$40,000.00 USD as a cashier per year. The deceased and he held a joint bank account. He agreed that the deceased was financially well off and as such, did not require financial assistance from any of her children. He denied that he asked the deceased to assist him financially. Anthony visited the deceased one or twice during the time she was in Tobago. The deceased was in Tobago for six or seven months during a year as she stayed in New York for five or six months a year.

120. Anthony agreed that the deceased had several health complications. That she underwent open heart surgery in 2003 and that she suffered from hypertension, type two diabetes, high cholesterol and chronic kidney disease. The deceased was as a consequence on several medications. She also had cataract surgery and as a result took injections in her eyes after the cataract surgery.

121. Anthony denied that Monica was living with the deceased at the subject property from 2014 to 2017. He testified that Monica and the deceased's relationship broke down in May, 2016. That Monica did visit thereafter but for short periods of time. There was also a breakdown in the deceased's relationship with Brenda, Wendy and Sharon.

122. Anthony testified that it is incorrect that he obtained a copy of the purported will in the bedroom of the deceased. That he in fact obtained the purported will from Lenell on August 9, 2017. He gave an explanation for the inconsistency in his evidence as being that he identified the aforementioned as an error in his witness statement after he signed same but it was never rectified.

123. When the deceased fell ill in July, 2017 Lenell went to Tobago. He arrived after Anthony arrived and stayed until after the funeral. Lenell and Anthony then went to Trinidad to obtain the purported will. Lenell is alive and Anthony has a close relationship with him. When Anthony received the purported will from Lenell, it was in a sealed envelope. The sealed envelope also contained the medical report of Dr. Marceau-Crooks.

124. Monica was present at the deceased's funeral. Anthony made all preparations for the deceased's funeral.

125. Anthony was unaware of whether Lenell was in Tobago on February 17, 2017 as he (Anthony) was in New York. Dale Wallace ("Wallace") signed as a witness to the purported will. Anthony does not know who Wallace is. Although Anthony saw Wallace's number on the purported will, he did not try to contact Wallace.

126. On August 18, 2017 Anthony had persons help him remove items from the subject property which belonged to the deceased.

127. Anthony denied that he entered the subject property on November 4, 2017 by breaking down the back door of the property. He further denied that he caused items belonging to the claimants to be thrown on the public road and to be placed in Marcus' car. According to Anthony, Marcus was asked what he wanted to do with his belongings and he (Marcus) gave instructions as to where to place his belonging. Although Anthony agreed that the sole purpose of going to the subject property on November 4, 2017 was to put the claimant out of the property, he denied forcing Marcus out of the subject property.

128. Anthony was unaware that one of the police officers threatened Marcus with a possession charge and that he (Marcus) received injuries as a result of the officer trying to take a phone out of his hand.

#### The evidence of Esther

129. Esther is a police officer. Most of her evidence was the same as the evidence given by Anthony and as such, there was no need to repeat that evidence.

130. Esther testified that throughout the years, the deceased and she developed a very close relationship as her children have always lived in the USA. The deceased always treated Esther like her daughter and Esther always treated the deceased as if she was a second mother to her.

131. Further, Anthony, the deceased and Esther always maintained a close-knitted relationship. As such, Esther was aware based on her conversations with the deceased prior to her death, that the claimants have never made any contributions financially and/or otherwise towards the Lambeau property, the Bethany property and the Nissan vehicle. Monica has also never paid any monies towards the maintenance of the Nissan vehicle at any point in time.

132. In or around 2014, the deceased informed Esther that the claimants, who resided in the USA, asked her to occupy the subject property temporarily until the claimants obtained employment. Esther was aware that in that said year, the deceased agreed to allow the claimants to occupy two bedrooms of the subject property house rent-free. However, the deceased refused to allow the claimants to store their

belongings at the Lambeau property and the deceased informed the claimants that if they wished to store their belongings at the Lambeau property, they would be required to pay rent to the deceased for the occupation of the subject property.

133. Based on her conversations with the deceased, Esther was also aware that it was further agreed between the deceased and the claimants that they would be required to vacate the subject property upon securing employment.

134. Esther testified that throughout the years, the deceased has always been very independent. However, given that the deceased treated Esther like her daughter, Esther always made it her duty to care for the deceased despite the fact that she did not require a caretaker. Esther would therefore visit the deceased regularly and prepare meals for her at her home at the Lambeau property. Esther also often took the deceased shopping, did her laundry and helped her to clean her home. On some occasions, Esther even took the deceased to her doctor visits or to the hospital whenever the need arose.

135. The deceased also trusted Esther with the keys to the Lambeau property so that she could have access to same while she was in Tobago or in the USA with her children. Whenever the deceased visited the USA, Esther was responsible for visiting the Lambeau property periodically to ensure that everything was fine. During that time, Esther would also clean the house and purchase groceries for the deceased's return to the property. Each year, they even spent Christmas together and Esther would help the deceased prepare her home for Christmas and make the deceased's favourite Christmas foods.

136. Given that Esther had a very close relationship with the deceased, she was aware that at no point in time the deceased ever ask the claimants to leave the USA to take care of her; and at no time did the deceased require the help of the claimants. In fact, Monica travelled frequently between Tobago and the USA leaving the deceased in the subject property for several months at a time, as she knew that the deceased was more than capable of caring for herself and she was also aware that Esther frequently visited the deceased and ensured that she was well taken care of.

137. On July 22, 2017, Esther contacted all of the deceased's children who resided in the USA and informed them that the deceased had been hospitalized as her health seemed to be failing.

#### The cross-examination of Esther

138. Esther has been a special reserve police officer for the past thirteen years. She also works as a safety officer at Mason Hall Secondary.

139. Esther agreed that it is incorrect that the deceased's children always lived in the USA since they migrated to the USA in 1973.

140. Monica came to Tobago in November, 2014. In December, 2014 the deceased informed Esther that the claimants had asked her to occupy the subject property temporarily. The deceased informed the claimants that if they were to store their belongings at the Lambeau property they would have to pay a rent because their belongings would have had to been stored in one of the apartments she (the deceased) was renting and earning a living from.

141. Monica and Marcus attended the funeral of the deceased. Monica did not have a good relationship with the deceased up until the deceased's death.

Brenda and Sharon also did not have a good relationship with the deceased up until the time of her death. Esther is not too familiar with Wendy. Anthony however had a good relationship with the deceased up until the time of her death.

142. Esther was aware that the deceased had open heart surgery in 2003. Esther was also aware that the deceased suffered from type two diabetes, high cholesterol and hypertension. Further, the deceased had a cataract surgery done in 2016 and as a result she had to go for injections in her eyes once per month.

143. Esther became aware of the purported will two days after the funeral. On February 17, 2017 Esther was not at the home of the deceased. She however, spoke to the deceased twice on that day and the deceased was quite normal. Esther does not know who Wallace is.

144. On November 4, 2017 Esther went with Anthony to the subject property to get Marcus to leave. She denied that they gained entry to the subject property by breaking down the back door. She further denied causing damage to the claimants' goods. She also denied that one of her servants caused physical damage to Marcus.

145. Esther moved into the subject property sometime in 2018.

#### The evidence of Felix Cordner

146. Felix Cordner ("Cordner") is a process server and a former police officer. He knew the deceased for approximately fifteen years prior to the date of her death. The deceased and Cordner first met more than a decade ago. Cordner is also very familiar with Anthony and Esther.

147. When Cordner met the deceased, she was aware that he had been a process server for many years. In or around 2004, the deceased retained Cordner as her agent to collect rent from her tenants on a monthly basis. However, over the years, the deceased and Cordner developed more than a business relationship as they grew closer as friends.

148. Throughout the years and up until the date of the deceased's death, the deceased and Cordner communicated frequently both in person and via the telephone and they even read the bible together. Cordner testified that the deceased recalled several events easily. He further testified that the deceased recalled the names of persons easily and she did not appear to have any signs of memory loss and/or dementia.

149. Cordner was aware that Esther often visited the deceased and cooked various meals for her, assisted the deceased with her cleaning and also ran errands for her. He testified that the deceased however, did not require any assistance as she was physically strong and able to move around without any assistance. He further testified that he was caught by surprise when he learned of the deceased's hospitalization in July, 2017 as the deceased was not sickly or ailing at any point in time.

150. Given that the deceased and Cordner interacted frequently, he was aware that the deceased maintained good judgment, good verbalization and perception up until the date of her death. He testified that as far as he is aware, the deceased at the time of her death would have been mentally capable to execute a will.

### The cross-examination of Cordner

151. Cordner is still acting as the property manager for the Lambeau and Bethany properties. He is now receiving payment from Anthony. As most of the tenants are gone, Cordner collects rent from about one or two tenants.

152. Cordner agreed that during 2014 and 2017, extensive repairs were done to the Lambeau and Bethany properties. During that time, he saw Monica but not regularly because she was not living at the subject property. Marcus also stayed at the subject property but Cordner never saw him there. Anthony visited the subject property during 2014 and 2017.

153. Cordner knows Lenell. When the deceased was not around, the rents collected by Cordner were given to Lenell. Lenell is alive.

154. According to Cordner, Esther's children took her to the subject property to cook for the deceased. Esther was at the subject property two or three times per week cleaning, cooking and/or taking food for the deceased.

155. The deceased informed Cordner that she was going to make a will because she wanted Anthony to bury her when she dies.

156. Cordner testified that the deceased was quite normal in 2017. However, he was unaware that the deceased had type two diabetes, kidney disease, hypertension and high cholesterol. He was also unaware that the deceased had cataract surgery, a heart attack in 2014 and that she was treated for pneumonia when she was hospitalized.

157. Cordner read the purported will. Lenell brought the purported will to Tobago. Cordner does not know who Wallace is. He testified that he never dealt with any document with Wallace's name on it.

The evidence of Dr. Marceau-Crooks

158. Dr. Marceau-Crooks prepared a medical report dated February 22, 2017 assessing the deceased's mental competence to make a will. The report provided as follows;

*"Mrs. Celestine was assessed on 22<sup>nd</sup> February 2017 for mental competence to make a will.*

*The assessment was done through psychiatric interview and administration of cognitive tests.*

*Mrs. Celestine was cooperative; her mood was even and her affect appropriate. There was no evidence of perception disorder or thought disorder. There was no delusion and her judgment was good. She was aware of her assets and expressed clearly the rationale for her decisions.*

*Cognition was assessed by*

*Mini Mental Status Examination: 26/30*

*Rowlands Universal Dementia Scale: 25/30*

*Clock Drawing Test: 4/6*

*The tests showed visual spatial disorganization, very mild decrease of memory, good verbalization and good judgment.*

*In my opinion Mrs Sylvia Celestine his (sic) mentally competent to write a will."*

159. By letter dated December 19, 2018 Dr. Marceau-Crooks stated as follows;

*"1- Mrs. Celestine was seen by me only one, she was never a patient*

- 2- *The assessment was done on 22<sup>nd</sup> February 2017*
- 3- *I was unaware that the will had previously been done.*
- 4- *In my opinion an assessment for capacity and mental competence to make a will must be done before the will is signed*
- 5- *the mental status of an elderly can fluctuate between competency and incompetency in a quick time; therefore I always advise that the will must be signed within twenty-four (24) hours of mental assessment.*
- 6- *I cannot comment on the mental status of Mrs Celestine on 17<sup>th</sup> February 2017 for the reason mentioned above."*

#### The cross-examination of Dr. Marceau-Crooks

160. Dr. Marceau-Crooks admitted that she did not see the deceased on a regular basis and that she only saw her for the first time on February 22, 2017. According to Dr. Marceau-Crooks, on the day of her assessment, the deceased was accompanied by her nephew and niece. Dr. Marceau-Crooks could not recall the names of the deceased's nephew and niece. The deceased informed Dr. Marceau-Crooks that she had been asked to visit her because of her (the deceased's) will. Dr. Marceau-Crooks however was not aware that on the day of the assessment, the deceased had already executed a will.

161. Dr. Marceau-Crooks asked the deceased about the extent of her assets to have a basic understanding of what the deceased claimed she owns and to determine whether what the deceased claimed she owned made sense. Consequently, as Dr. Marceau-Crooks was not provided with previous details of the assets owned by the deceased, she (Dr. Marceau-Crooks) could not verify if the information provided by the deceased was accurate.

162. Dr. Marceau-Crooks testified that she could not state whether the deceased was in an altered state or fluctuated state of mental capacity at any point in time prior to her examination as she only saw the deceased once.

163. The court finds that at this junction it is worth mentioning that Dr. Marceau-Crooks' medical report holds no probative value in determining whether at the time of executing the purported will, the deceased had the requisite capacity to so do. It is pellucid that Dr. Marceau-Crooks' assessment of the deceased was done subsequent to the purported will and that Dr. Marceau-Crooks cannot speak to the deceased's testamentary capacity on the day of the execution of the purported will. Further, her testimony makes it clear that the mental state of such persons may fluctuate from time to time therefore in the court's view, it would be inappropriate to draw an inference as to the mental capacity of the deceased some 5 days earlier.

**ISSUE 1** - *whether the purported will of the deceased was validly executed in accordance with the Wills and Probate Act, Chapter 9:03*

**Law**

164. In order for a Will to be validly executed, it must be made in accordance with Section 42 of the Wills and Probate Act Chap. 9:03 which provides as follows;

- i. The Will must be in writing and made by the deceased;
- ii. The Will must be signed at the foot or end of it by the deceased or by some other person in his presence and by his direction;

- iii. The signature must be made by the deceased or acknowledged by him in the presence of two or more witnesses;
- iv. The witnesses must be present at the time the deceased affixed his signature and they attested and signed the Will in the presence of the Deceased and of each other.

165. In **Marilyn Lucky v Maureen Elizabeth ThomasVaillo**,<sup>13</sup> Stollmeyer J (as he then was) summarized the applicable principles to due execution as follows;

*"1. The onus of proving a will as having been executed as required by law is on the party propounding it;*

*2. There is a presumption of due execution if the will is, ex facie, duly executed;*

*3. The force of the presumption varies depending upon the circumstances. The presumption might be very strong if the document is entirely regular in form, but where it is irregular or unusual in form, the maxim omnia praesemuntur rite esse acta cannot apply with the same force, as for example, would be the case where the attestation clause is incomplete;*

*4. The party seeking to propound a will must establish a prima facie case by proving due execution;*

*5. If a will is not irregular or irrational, or not drawn by a person propounding the will and benefitting under it, then this onus will have been discharged;*

*6. If by either by the cross-examination of witnesses, or the pleadings and the evidence, the issues of either testamentary capacity or want of knowledge and approval are raised, then the onus on these issues shifts again to the party propounding the will;*

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<sup>13</sup> H.C.A. No. CV 1396 of 1996

*7. Even if the party propounding the will leads evidence as to due execution, there is still the question of whether the vigilance and suspicions of the court are aroused. If so, then the burden once again reverts to the party seeking to propound; The onus as to other allegations such as undue influence, fraud, or forgery, generally lies on the party making the allegation.”*

166. **Halsbury’s Laws of England, Volume 102 (2016), paragraph 903** provides as follows;

*“Whenever the circumstances under which a will is prepared raise a well-grounded suspicion that it does not express the testator’s mind, the court ought not to pronounce in favour of it unless the suspicion is removed, even though those opposing the will do not raise any positive case but merely insist that the will is proved in solemn form. Accordingly, where a person propounds a will prepared by himself or on his instructions, under which he benefits, the onus is on him to prove the righteousness of the transaction and that the testator knew and approved of it. A similar onus is raised where there is some weakness in the testator which, although it does not amount to incapacity, renders him liable to be made the instrument of those around him; or where the testator is of extreme age; or where knowledge of the contents of the will is not brought home to him; or where the will was prepared on verbal instructions only, or was made by interrogating the testator; or where there was any concealment or misrepresentation; or where the will is at variance with the testator’s known affections, or previous declarations, or dispositions in former wills, or there is a general sense of impropriety.”*

167. Further, in **Lalla v Lalla**,<sup>14</sup> Mendonca JA held as follows at paragraph 59;

*“Where there are circumstances which excite the suspicion of the Court, the Court ought not to pronounce in favour of the Will unless the suspicion is removed so that the Court is satisfied that the Will propounded does express the true Will of the deceased (see Barry v Butlin 2 Moo P. C. 480).”*

168. In **Lalla v Lalla**, His Lordship also explained that the circumstances, which have been held to excite suspicion, include the intrinsic terms and the circumstances of the preparation and execution of the will and regard must be had to the circumstances primarily existing at the time when the will was executed, although subsequent events could be relevant.<sup>15</sup>

### **Analysis and Findings**

169. The onus of proving that the purported will of the deceased was executed as required by law lay with Anthony and Esther. This onus was a shifting one. An examination of the purported will appeared to show ex facie that it was duly executed. It was signed at the foot, the attestation clause appeared to be in usual and regular form and the signatures of the two attesting witnesses followed that of the testatrix. Further, it was not drawn by the persons propounding it and benefiting under it. Consequently, the purported will was not on its face irrational or irregular therefore the maxim omnia praesemuntur rite esse acta would have applied, the onus on the defendants having been discharged.

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<sup>14</sup> Civ App No. 102 of 2003

<sup>15</sup> See paragraph 60

170. Be that as it may, there were circumstances surrounding the purported will which excited the suspicion of the court. Those circumstances are as follows.

171. Firstly, Monica gave evidence that sometime in 2015, the deceased informed her that she had executed a will and that after her death, she (Monica) should contact the lawyer who executed same. According to Monica, after the death of the deceased, she contacted the lawyer who prepared the 2015 will and it was confirmed that the 2015 will was executed but the lawyer could not find the original and/or a copy of same. Monica was however provided with an unexecuted, draft copy of the 2015 will.

172. The **draft** 2015 will purported to appoint Monica and Anthony as executors of the estate of the deceased. Further, the Lambeau property and the Nissan vehicle were bequeathed to Monica. The Bethany property was bequeathed to Anthony and Esther. The **purported** will however appointed Anthony and Esther as executors and bequeathed the Lambeau property to Anthony and Esther. The Bethany property and Nissan vehicle were bequeathed to Anthony. So that it is clear that Monica was being excluded in the purported will contrary to the intention set out in the draft.

173. Anthony's belated evidence during cross-examination of there being a breakdown in the relationship between Monica and the deceased in 2016 was denied and the court finds that there was in fact no such breakdown. The defendants have not provided the court with any other evidence to show why the deceased may have had reason to changed her mind to remove Monica as a beneficiary completely. The existence and contents of

the draft 2015 will were sufficient therefore to excite the suspicion of the court in relation to the validity of the purported will.

174. Secondly, the witness statements of both Anthony and Esther stated that after the death of the deceased, Anthony found a copy of the purported will in the deceased's bedroom. Esther during cross-examination testified that the aforementioned was an error and that same was supposed to be corrected as Anthony did not obtain the purported will in the bedroom of the deceased. Anthony before affirming the contents of his witness statement stated that his evidence that he obtained a copy of the purported will in the bedroom of the deceased was wrong and that he in fact obtained a copy of the purported will from Lenell. That he identified the error after he signed his witness statement and brought same to the attention of his lawyer but the error was not corrected. It is highly coincidental to the point in the court's view of being unbelievable that both witnesses would have fallen into the same error and that both witnesses would have failed to make the corrections to their witness statements accordingly. It reeks of collusion in that it appears to this court that the evidence of finding the will in the bedroom was concocted by both who then realized that such evidence may hamper their success on the claim so that they both once again decided to testify that they made the same error. The nature of the error is also one that does not appear to be capable of being made by both of them at the same time and the court so finds.

175. Lenell in his affidavit of due execution dated January 22, 2018 deposed under oath that after the purported will was executed, he took same to his home in Trinidad for safekeeping. There was no evidence that a copy of the purported will was left in the possession of the deceased. As such, a

reasonable inference to be drawn by the defendants belated attempt to correct their evidence is that they were attempting to connect a crucial missing link between the evidence given by Lenell in his affidavit and their evidence. To dispel that adverse inference, it was incumbent upon the defendants to call Lenell as a witness in this matter and his absence without reason adds to the suspicious circumstances.

176. Thirdly, upon an evaluation of the evidence it is clear that it is the case of Anthony and Esther that they enjoyed a very close relationship with the deceased. According to Anthony, there was a breakdown in the relationships between the deceased and all of her daughters. He however, maintained a good relationship with the deceased up to the time of her death. Further, based on the evidence of the defendants, the deceased held many discussions with Anthony and Esther. As such, they were informed that the claimants asked to reside temporarily at the subject property, that the deceased did not want Monica to expend any monies on her properties, that the deceased used her monies to renovate and repair her properties and that the deceased did not make any promise to Monica.

177. Notwithstanding the aforementioned, Anthony and Esther testified that they knew nothing about the preparation and execution of the purported will. Lenell who was a witness to the purported will is the cousin of the deceased. According to the evidence of the defendants, Lenell is alive. Anthony during cross-examination testified that he and Lenell have a good relationship. Consequently, the court finds it highly suspicious that Lenell was not called as a witness in this matter as he would have had crucial evidence pertaining to the purported will.

178. Anthony and Esther testified that they did not know Wallace, the other witness to the purported will. Although they did not know who Wallace is, Wallace provided his contact information on the purported will as well as swore to an affidavit of due execution on January 22, 2018. As such, it is clear that the defendants could have attempted to call Wallace as a witness in this matter although they did not know who he is. Accordingly, the court was entitled to and did draw an adverse inference from the failure to call those persons as witnesses. Additionally, the court was entitled to consider that the evidence from those persons would not have supported the defendant's case.<sup>16</sup>

179. The court finds the production of the affidavits of due execution of Lenell and Wallace were insufficient to discharge the burden which lay upon the defendants to prove that the purported will was executed as required by law especially in light of the fact the alleged error in their witness statements. That this being contentious probate proceedings in which the defendants are seeking to have a court pronounce in favour of the validity of the will, it was incumbent upon the defendants to call Lenell and/or Wallace as a witness so that their evidence of witnessing the execution could be tested by way of cross-examination. This in the court's view was a fundamental flaw in the defendants' evidence and the absence of same adds to the suspicious circumstances and does nothing to assuage it.

180. As set out above, even if the party propounding the will leads evidence as to due execution, as the defendants attempted to do in this case, there is still the question of whether the suspicions of the court was aroused. The failure to lead material evidence from the abovementioned persons and the evidence of the defendants raised the suspicions of the court. A

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<sup>16</sup> See *Wisniewski v. Central Manchester Health Authority* (1998) 7 PIQR 323 at 340 at 340.

court ought not to pronounce in favour of validity of a will unless the suspicion is removed and it is judicially satisfied that the will propounded does express the true will and intention of the deceased.<sup>17</sup> In the circumstances, the court finds that the defendants did not discharge the burden to prove that the purported will of the deceased was duly executed.

181. The court having found that the defendants have failed to establish a prima facie case by proving due execution, there is no need to consider the issues of testamentary capacity, want of knowledge and approval, undue influence and fraud.

**ISSUE 5** - *whether Monica has acquired an equitable interest in the Lambeau property*

### **Law**

182. An estoppel may arise where a property owner makes a representation to another party which is relied on by that other party and which leads that other party to act to their detriment. The representation usually relates to the current or future ownership of land or of interests in land. If the party to whom the representation has been made acts to their detriment in reliance on that representation, the representation cannot be revoked and the courts will enforce it despite the lack of a written agreement.<sup>18</sup>

183. Rajkumar J in ***Fulchan v Fulchan***<sup>19</sup> defined promissory estoppel and proprietary estoppel as follows:

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<sup>17</sup> Lalla v Lalla, Civ App No. 102 of 2003 paragraph 59 per Mendonca JA

<sup>18</sup> See Halsbury's Laws of England Volume 23 (2013) paragraph 153.

<sup>19</sup> CV 2010-03575 at paragraphs 11 & 13

*“11. Promissory Estoppel Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise ) or was reasonably understood by the other party to have that effect , and , before it is withdrawn, the other party acts upon it , altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it emphasis mine ” Snell’s Equity 31st ed. 2005 Para 10-08.*

*13. Proprietary Estoppel If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land , a court of Equity will compel B to give effect to such expectation.” Taylor Fashions Ltd. v Liverpool Victoria Trustee Co. Ltd. Per Oliver J. cited in Snell’s Principles of Equity 31st Ed. Para 10-16 to 10-17”*

### Analysis and findings

184. Upon an analysis of the evidence, the court finds that the claimants have failed outright to establish that Monica has acquired an equitable interest in the Lambeau property. There must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect.<sup>20</sup> It is therefore the claimants’ evidence that is important in this regard.

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<sup>20</sup> See Snell’s Principles of Equity, 31st Edition, 2005, paragraph 10-08

185. Monica in her witness statement testified that the deceased often spoke to her and other persons about the Lambeau property and what would happen to same when she (the deceased) died. That the deceased told her on several occasions to *“go ahead and fix up and do what needs to be done because I cannot do it. The place belongs to you”*. According to Monica, the deceased constantly told her the subject property (the four bedroom house which is one of the three properties on the Lambeau property) belonged to her. During cross-examination, Monica testified that the deceased promised her the Lambeau property. That the promise made to her by the deceased was also made to Marcus.

186. She further testified during cross-examination that the deceased did not ask Marcus to give up his job in the USA. That Marcus gave up his job in the USA voluntarily because his mom who lived in Trinidad was also ill. Monica then testified that Marcus gave up his job in the USA because of the promise the deceased made. Monica then stated that she would like to change her evidence. That the promise was made to her alone and that it was untrue that Marcus gave up his job based on the promise.

187. Subsequently during cross-examination, Monica testified that Marcus expended monies on the Lambeau property based on the oral assurances of the deceased that they would get the Lambeau property. That Marcus was also promised the entire Lambeau property.

188. In his witness statement, Marcus testified that he was aware from being present during conversations with the deceased and Monica that the deceased promised the subject property to Monica. During cross-examination, Marcus testified that the deceased promised him the Lambeau property on a few occasions. That the promise was initially made

to Monica and then the deceased made it to him and Monica jointly when they were together.

189. Brenda testified that in 2008 the deceased stated that she would give Monica the subject property. That although she (the deceased) would be giving the subject property to Monica, it should be used as a place for all of her (the deceased's) children. Brenda further testified that in 2014 she visited the deceased and that the deceased informed her that she was giving "the Lambeau" (which the court interpreted meant the Lambeau property) to Monica. That over the years from 2014 to 2017 the deceased said on numerous occasions that she was giving the Lambeau property to Monica.

190. Firstly, a court has to approach the aforementioned evidence with much scrutiny as by its very nature, such evidence admits easily of fabrication where the other party is deceased and is unavailable to answer the allegation. In that regard, what is said by the claimants must, in the court's view accord with common sense, what is plausible and reasonable in the circumstances.

191. The court finds that the evidence of the alleged promise was entirely inconsistent and unreliable. In one instance the promise was made to Monica only and in another, it was made to both Monica and Anthony. Further, in another instance the promise can be interpreted to mean that the subject property alone was promised to Monica and in other it can be interpreted to mean that the entire Lambeau property was promised to Monica. As such, the court finds that the claimants have failed to prove that the deceased made a clear and unequivocal promise or assurance

intended to effect legal relations or reasonably capable of being understood to have that effect.

192. The court therefore finds that Monica did not acquire an equitable interest in the Lambeau property.

**ISSUE 6** - *whether the claimants are entitled to damages for trespass to their goods*

### **Law**

193. **Halsbury's Laws of England**, Volume 97 (2015), paragraph 687 provides as follows;

*“The defendant must be responsible for some physical contact with the claimant's chattel in order to be liable for trespass to goods. Deliberately scratching the panel of another's car, puncturing its tyres or smashing its window, would all be examples of a trespass, as they each involve some form of unauthorised physical contact with another's chattel. Although physical contact often results in damage to the claimant's chattel, in the sense of physical change, it need not. Mere unauthorised physical contact, not causing damage, can be sufficient for liability in the tort. For instance, if a defendant, without lawful authority, attaches a clamp to the claimant's car, then this can constitute a trespass, even though the car is not thereby damaged, but merely immobilised. Merely picking up the claimant's property, and moving it to a different room in the claimant's house, is sufficient to render the defendant liable in trespass. In this sense trespass is actionable per se, with such minor interferences, which do not damage the claimant's chattel, being actionable.*

*Although minor interferences are actionable in the tort, two factors should be noted. First, in cases involving minor interferences, damages are likely*

*to be nominal only. Second, whilst the minimal requirements for liability in the tort create the danger of excessive liability, there is a general defence in cases of reasonable touching of chattels, particularly those in the public domain, which avoids liability attaching to everyday contact with another's goods."*

### **Analysis and findings**

194. According to the claimants, on November 4, 2017 the defendants accompanied by three police officers and some loaders forcefully entered unto the subject property without their permission and/or consent and threw their goods onto the public road at the mercy of the rain. The claimants testified that the defendants' actions on November 4, 2017 caused damage to several of their items.

195. On November 5, 2017 Marcus examined some of the items that were placed in both in his vehicle and trailer and also those items placed on the side of the road. He observed that some of Monica and his items were loss and/or damaged as follows;

- x. The touchscreen Samsung cash register, estimated value of \$400.00 USD was missing;
- xi. The receiver for the camera system and five cameras which remained at the subject property estimated at \$7,000.000 were missing;
- xii. Samsung 32-inch smart television valued at \$3,000.00 TTD was cracked and required a screen replacement;
- xiii. One of the belts to the retractable seats of the seven-seater motor vehicle was damaged, estimated cost \$700.00;

- xiv. The hook which allows the seat of the said motor vehicle to remain retractable was broken and as a result the seat cannot be retracted, estimated cost \$900.00;
- xv. The whirlpool double-door fridge was dented at the side and at the front;
- xvi. Motor vehicles diagnosis testers valued at \$700.00 was missing;
- xvii. Motor vehicle rear view camera system valued at \$550.00 was missing;
- xviii. The following bottles of alcohol were also removed;
  - e) One black and white whiskey estimated at \$250.00;
  - f) Hennessy (pure white) estimated at \$400.00;
  - g) Absolut vodka estimated at \$300.00;
  - h) One thousand-grand estimated at \$315.00.

196. Anthony and Esther testified that on November 4, 2017 they were accompanied by Phillips, along with three police officers and some loaders. That they proceeded to remove the items belonging to the deceased from the Lambeau property to move same to a safer location, in an effort to manage, protect and secure the assets belonging to the deceased until same were to be distributed to the named beneficiaries. The said items were neither used nor owned by the claimants. The subject property was thereafter secured by Esther and Anthony.

197. During cross-examination, Anthony denied that he entered the subject property on November 4, 2017 by breaking down the back door of the property. He further denied that he caused items belonging to the claimants to be thrown on the public road and to be placed in Marcus' car. According to Anthony, Marcus was asked what he wanted to do with his belongings and he (Marcus) gave instructions on where to put his

belonging. Although Anthony agreed that the sole purpose of him going to the subject property on November 4, 2017 was to put the claimants out of the property, he denied forcing Marcus out of the subject property.

198. During cross examination, Esther testified that she and Anthony went to the subject property to get Marcus to leave. She denied that they gained entry to the subject property by breaking down the back door. She further denied causing damage to the claimants' goods.

199. By letter dated October 4, 2017 the claimants were informed that if they failed to vacate the subject property, steps would be taken to forcibly remove and eject them therefrom and that Anthony and Esther would not be responsible for any loss or destruction to their items and possession during such a process.

200. Based on the aforementioned letter, the court finds that the defendants did forcefully enter the subject property on November 4, 2017 with the intention of putting out the claimants therefrom. Further, the court accepts the claimants' evidence that the defendants removed their goods from the subject property and placed same in Marcus' vehicle and trailer and some on the side of the road. As such, the court finds that the claimants have made out their case for damages for trespass of their goods.

201. The claimants however have not provided any receipts or other proof to show that those sums they have stated as the value of their items are the actual cost for same. As such, the court will award the claimants nominal damages in the sum of \$10,000.00.

## **DISPOSITION**

202. The court will therefore make the following order in relation to the claim, counterclaim and application for default judgment of May 13, 2019 against the Third Defendant;

- i. It is declared that the purported last will and testament of Sylvia Celestine otherwise called Sylvia Callender deceased ("the deceased") dated February 17, 2017 is not a valid will and testament of the deceased.
- ii. Probate application LO245 of 2018 filed on January 26, 2018 by Anthony Callender and Esther Charles is dismissed.
- iii. A copy of this order shall be delivered to the Assistant Registrar of the Supreme Court (Probate Section).
- iv. The first, second and third defendants shall pay to the claimants, nominal damages for trespass to goods in the sum of \$10,000.00.
- v. The counterclaim is dismissed.
- vi. The first and second defendants shall pay to the claimants the prescribed costs of the claim in the sum of \$14,000.00.
- vii. The first and second defendants shall pay to the claimants the prescribed costs of the counterclaim in the sum of \$14,000.00.
- viii. The third defendant shall pay to the claimants the costs of the application for judgment in default assessed in the sum of \$2,850.00.

Ricky Rahim

Judge