THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2010-000534

Between

IAN LA ROCHE

Claimant

and

WINSTON LA ROCHE

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Sagar instructed by Mr. Ahmed for the claimant
Mr. Haynes for the defendant

REASONS FOR DECISION

BACKGROUND

By his Claim Form and Statement of Case the Claimant claims that he is the freehold owner of a parcel or lot of land, situate at Covigne Road, Diego Martin, and (hereinafter called **"the said property"**).

The Claimant claims to have become the freehold owner of the said Lands in the following manner.

Wilson Auguste ("**Wilson"**) by Deed Registered as No. 2291 of 1938 became the Owner of the said property.

Wilson died on the 17th October 1959, intestate, leaving his wife Ambrosine Agnes Auguste **("Ambrosine")** the only person entitled to share in his estate.

Ambrosine was granted Letters of Administration of Wilson's estate on the 1st April 1970.

On the 6th May 1971 Ambrosine made her last will (hereinafter called **"the Will"**). The claimant claims that she thereby left the said property for Ulwin Charles, her son, for life, and after his death to her niece Daphne La Roche (hereinafter called **"Daphne"**), and after her death to the Claimant.

The material clause in Ambrosine's will is as follows:-

> "I direct my Executor to give my Tapia mixed with Concrete House standing on 1 Lot of free-hold land at Covigne Road, Diego Martin, to ULWIN CHARLES, my son of Covigne Road, Diego Martin, for his use during his lifetime. Upon his death I will that my house and land be given to MRS. DAPHNE LA ROCHE. In the event of her death I will that this property be given to IAN LA ROCHE her son, of St. Lucien Road, Diego Martin."

(i) The Will is dated **6th May, 1971.**
(ii) Ambrosine died on the 21st January **1975.**
(iii) Ulwin Charles died on the **16th March 1990,** and
(iv) Daphne died on the **6th October 2006.**

On the 16th May 2008 the Claimant was granted Letters of Administration with will annexed of the Estate of Ambrosine.

On the 13th January 2009 the Claimant, in his capacity as Legal Personal Representative of Ambrosine, was granted Letters of Administration de Bonis Non of the Estate of Wilson.

By Deed of Assent dated 1st May 2009 the Claimant conveyed the said Lands to himself as Legal Personal Representative and Beneficiary under the Estate of Ambrosine.

By Deed of Rectification and Confirmation dated 27th January 2010 and registered as No. DE201000207880 the Claimant purported to assent, convey and confirm the said property to

himself absolutely. The defendant contends this deed is of no effect and seeks a declaration to this effect.

On the 11th February 2010 the Claimant then brought this action against the Defendant, his brother, alleging the Defendant had been wrongfully allowed into the said Lands by Daphne, their mother, and wrongfully allowed to build a house on a part of the said lands and to occupy the same with his family.

The Claimant claims **possession** of the said Lands and **damages** for trespass.

The Defendant contends, via his defence and submissions that **on the proper construction of the will of Ambrosine**, upon which the Claimant's alleged title is based, **the said property never devolved to the Claimant**.

Accordingly the Defendant denies that the Claimant is the freehold owner of the said lands and contends that consequently he is not entitled to bring this action and to the reliefs claimed.

The Defendant contends that on the clear and unambiguous provisions or terms of the will **Ambrosine left a life interest in the said Lands to her son Ulwin Charles,** and **upon his death,** the **freehold interest** in the property **was to vest in her niece Daphne**.

The will then went on to provide, by way of contingency that if Daphne were dead the property would go to the Claimant.

In fact as Daphne was not dead when **Ulwin's** life interest was extinguished, the said property went to her **absolutely**, with nothing left to go to the Claimant.

The Defendant asks that the Claimant's claim be dismissed and ,by way of counterclaim, asks for a Declaration that the Claimant's deed of Rectification and Confirmation Registered as No. 201000207880 in void and of no effect for the purpose of conveying any interest in the said

lands to the Claimant in his personal capacity and asks that the said Deed be removed from the Protocol of Deeds.

By way of Reply the Claimant contends that the wording of Ambrosine's will is clear and unambiguous in that the said property was left to Ulwin Charles for life, and then to Daphne for her life, **and after her death to the Claimant**.

That is - the will created two life interests, one in Ulwin, and then one in Daphne.
In addition to the Claimant's reply that the will is clear and unambiguous, the Claimant submits that other, extrinsic facts should be considered to ascertain Ambrosine's intention in the will.

ISSUES

At the trial the defendant elected not to reply on issues of limitation, adverse possession or equitable estoppel.

Both parties agreed that resolution of the primary issue required the meaning of the Ambrosine's will to be ascertained, and in particular:-

a. Whether the will created two life tenancies, one in Ulwin Charles (also called "Ulwin") and then one in Daphne,-(in which case the Claimant would succeed as the property would have passed to him on Daphne's death),or

b. Whether the will created one life interest in Ulwin Charles, with the freehold going to Daphne, (or to the Claimant, but only if Daphne were already dead when Ulwin's life interest expired). In that case the Defendant would succeed as the said property would be vested in the estate of Daphne and not solely in the claimant).

The construction given to this devise will determine the devolution of the property. If the devise vests in Daphne the fee simple then her subsequent dealing with the property will be as owner, (not merely life tenant), during her life time and will be sufficient to bind her estate on her death.

CONCLUSION

It is clear that the claimant had a close relationship with Ambrosine. He regarded her highly and was of the view that she felt the same way. This is natural and understandable he lived with her for 11 years. His assistance to her as pleaded was somewhat overstated, as revealed in cross examination. For example, as a 5 year old child his ability to assist would have been limited. This does not detract from the fact that I find him to have been fundamentally, an honest witness.

I equally find that that to be true of the defendant, and in fact all the witnesses who testified. Such differences as existed in their evidence were at heart a difference of perspective. Considering that much of it involved an assessment of human relationships between Ambrosine, the claimant, the defendant, and Daphne, it would have been surprising if such subjective evidence did not contain substantial differences of perspective.

I find that, ultimately, it makes no difference. I find that the relationship between Ambrosine and the claimant was good. The relationship between Ambrosine and her niece Daphne was also good. It must have been more than the simply casual one the claimant attempted to portray, as the will specifically ensured that the bequest to Daphne, whether absolute bequest of the fee simple, or life interest alone, took effect before any bequest to the claimant.

I find that there is nothing in the evidence to suggest that the relationship between Ambrosine and the claimant was such that she must have intended that he alone, and not the heirs of Daphne after her death, were to benefit.

I find that such evidence, in the context of this case is irrelevant. The will is clear and unambiguous in its terms as the testatrix knew how to, and did, create a life interest for Ulwin, and could have done the same easily by use of the same words, in relation to Daphne – if that were her intention.

I accept the submissions of the defendant, and find that, based upon

a. **the clear wording of the will** and

b. **the presumption in the Wills Act- section 58**.

The device has not been cut down by any words of limitation. (Daphne) was not granted a life interest as contended. Based on the clear and unambiguous provisions of the will of Ambrosine Auguste - it left the life interest in the property to her son Alwyn Charles, and, upon his death, **the freehold interest in the property was to vest in Daphne La Roche absolutely.**

I accept that the will **did not give a life interest to Daphne la Roche**.

I accept that on, the face of the will, it was clear that **the testatrix knew how to create a life interest**, and **she did so** within almost the same paragraph **in respect of another party** (that is - her son Ulwin Charles).

I find that **upon the death of Aldwin Charles**, when Daphne La Roche was alive, **by** provisions of **the will the entirety in the property passed to her**, and when Daphne la Roche died on the 6th October 2006 **the entirety of the beneficial interest** in the property **passed into her estate**, and not to the claimant solely, as alleged.

ORDERS

In those circumstances the claimant's claim is dismissed and the Counterclaim of the defendant is granted, in that:

1. A declaration is granted, that the deed of rectification and confirmation dated 27th January 2010 is void and of no effect for the purpose of assenting or conveying or confirming the freehold interest in the property to the claimant.

It is further ordered that -

1. The Registrar General do remove the said deed from the Protocol of Deeds.
2. The Claimant do pay the Defendant's costs of the claim and Counter Claim in the sum of $14,000.00.

(I decline to award separate costs on the claim and the Counter claim because the material in the claim and the Counter Claim is the same).

3. Liberty to Apply.
4. Stay of execution 28 days.

ANALYSIS AND REASONING

LAW

In **John A Charles v Yvette Barzey Privy Council Appeal No. 11 of 2002,** delivered 19th December 2002, the Court was asked to construe a devise in a will which provided as follows:-

> *"I hereby give and bequeath to my niece Mrs. Yvette Barzey my house and Lot at 18 Cork Street, Roseau, Dominica. The addition to the house where the garage and storeroom is located I give to my nephew John A. Charles to be used by him as long as he wishes."*

Both the house and the garage and storeroom were registered in the Register of Titles in Dominica as a single lot and held under the same Certificate of Title. The Respondent (Mrs. Barzey) claimed that upon a true construction of the will she took an unencumbered freehold interest in the whole registered title and that the Appellant (Mr. Charles) took nothing. The Court at paragraph (6) of the judgment observed as follows:-

> "The interpretation of a will is in principle no different from that of any other communication. The question is what a reasonable person **possessed of all the background knowledge which the testator might reasonably have expected to have,** would have understood the testatrix to have meant by the words which she used. Furthermore as Lord Greene MR said in Re Potter's Will Trust (1944) Ch. 70, 77-
>
> '**It is a fundamental rule in the interpretation of wills** that **effect must be given,** so far as possible **to the words which the testator has used**. It is equally fundamental that apparent inconsistencies must, so far as possible be reconciled, and **that it is only when reconciliation is impossible that a recalcitrant provision must be rejected**. Even if the case of two irreconcilable provisions, it is the latter that prevails, but in the present case there is no need to have recourse to this rule of despair."

Megarry and Wade 6th Edition, Law of Real Property at page 611, para 11-060 states:-

> "*…the cardinal rule of construction is that effect must be given to the intention of the Testator as expressed in the will, the words being given their natural meaning.* ***The will alone must be looked*** *at, and* ***in general no evidence can be received to contradict the meaning of the words used in the will****. The will must be in writing and the only question*

is, what is the meaning of the words used in the writing." vide Grey v Pearson (1857) 6 HLC 61 at 106 per Lord Wensleydale.

Further

"*The words of the will must normally be given their natural meaning or the most appropriate of their several natural meanings, except so far as that leads to absurdities or inconsistencies. But there is nothing to prevent words from being construed in some special sense if the will clearly shows that they are used in that sense...*"

Extrinsic evidence - para 11-064

The general rule is that only the words of the will may be considered. Extrinsic evidence of the testator's intention (i.e. evidence not gathered from the will itself) is normally inadmissible. But the rule is subject to qualifications and its rigour has been mitigated by statute.

Para 11-065

1. Surrounding circumstances. Evidence of facts and circumstances existing when the will was made is always admissible in order to explain its terms. "You may place yourself, so to speak, in [the testator's] armchair". Thus extrinsic evidence is admissible to show that certain words had a peculiar meaning to the testator by the custom of the district or the usage of the class of persons to which he belonged or that a description was mistaken, in which case the testator's true intention is carried out; ...

For the purpose of ascertaining the intention the will is read, in the first place, without reference or regard to the consequences of any rule of law or construction- see **Halsbury's Laws of England 4th Edition Volume 50**, page 241, paragraph 410.

Section 58 of **The Wills and Probate Act Volume 4, Chapter 9:03** provides as follows:-

"*Where any real estate has been devised to any person* ***without any words of limitation****, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by Will in such real estate,* ***unless a contrary intention shall appear by the will."***

(This section reproduces section 28 of the English Wills Act 1837. See A Charles v Yvette Barzey Privy Council Appeal No. 11 of 2002- where the equivalent provision from Dominica was considered)

The Concise Oxford English Dictionary 11th ed. revised page 494 defines "in the event of" as - *if* (the specified thing) *happens*.

This meaning, transposed to Ambrosine's Will, which states: "In the event of her death, I will that this property be given to IAN LA ROCHE…" would mean if she (Daphne) is dead **or *if she dies***, I will that this property be given to IAN LA ROCHE….

It is therefore not determinative of the issue, as the latter construction is consistent with a life interest in Daphne, while the former is consistent with a devise to Ian contingent upon Daphne's death at the time the gift vests.

ANALYSIS OF THE WILL

The Will provides as follows:-

> "I direct my Executor to give my Tapia mixed with Concrete House, standing on 1 lot of freehold land at Covigne Road, Diego Martin, to ULWIN CHARLES, my son, of Covigne Road, Diego Martin, **for his use during his lifetime.**
>
> **Upon his death** I will that my house and land **be given to** MRS. DAPHNE LA ROCHE.
>
> **In the event** of her death, I will that this property be given to IAN LA ROCHE her son, of St. Lucien Road, Diego Martin." (All emphasis added)

There is no issue arising with respect to the first sentence above. The first sentence devises the property to the testatrix's son. It is clear that it is left to him for his **use during his lifetime** as the testatrix uses those very words to indicate with crystal clarity that his interest is a life interest, and that he enjoys the **use** of the property **during his lifetime**. There is no ambiguity whatsoever with respect to this aspect of the devise. That is emphasised by the next sentence "***Upon his death*** *I will that my house and land be given to MRS. DAPHNE LA ROCHE."* The property passes to Daphne after the death of Ulwin.

It is the third sentence above that is the bone of contention, as it is contended by the claimant that the gift to Daphne, in the second sentence, is simply of a life interest and that after her death the property passes to him, Ian.

The defendant however contends that the gift to Daphne, in the second sentence, was absolute. The defendant contends that the reference to Ian was merely to address the **contingency** that Daphne may not have been alive at the time of Ulwin's death, when in the normal course the property would have passed to her. However once the contingency - (the death of Daphne **before** the death of Ulwin) did not arise, then the gift to Daphne was absolute. In that case the property passed to Daphne's beneficiaries on her intestacy as part of her estate.

It is clear however from this will and the words used by this testatrix that she was able to effectively and clearly create a life interest. She knew what words to use and used them when she created the life interest for Ulwin, her son.

She was able to emphasis the limited nature of his interest, by using the words **use**, and "during **his lifetime** "with the further explanation that the gift to Daphne was to take effect ***"upon his death".***

However when she addresses the disposition of the property **after** the gift to Daphne she simply states ***In the event of her death*** *I will that this property be given to IAN LA ROCHE her son, of St. Lucien Road, Diego Martin."*

At issue is whether ***"in the event of her death"*** means exactly the same thing as ***"Upon her death"* –** the words she used to create the life interest for Ulwin. The obvious answer is that it does not. She could have used the very same words "**upon her death** "in relation to Daphne to indicate that Daphne's interest was limited to her lifetime.

She could have used the additional words "**for use during her lifetime"** to emphasise that Daphne's interest was limited to her lifetime.

She did not do so, when just two sentences before she had clearly and unambiguously done so in creating the life interest for Ulwin.

The logical explanation is that she did not intend to do so.

She intended to benefit Daphne, not by a life interest, (which she could easily have indicated, as she clearly knew how to do so), but rather, absolutely. She did make provision for the claimant in that he was to take the property **in the event of Daphne's death**. But there is no reason to believe that this testatrix, who was capable of expressing herself clearly enough to create, unambiguously, a life interest in her property, by the words "**use during <u>her</u> life time"**, and "**upon <u>her</u> death",** would not have done so if that were what she intended. Instead she used quite different language **– "*<u>In the event of</u> her death*"-** indicating that she contemplated, not the expiration of Daphne's lifetime, at the end of which Ian would get the property, but rather the event or contingency, of her Daphne's death, at the time when the gift to Daphne would have vested – the date of death of Ulwin.

This analysis is consistent with the authorities cited above by attorneys at law for each party.

a. effect must be given, so far as possible **to the words which the testator has used**. I consider that the testatrix used language that was unambiguous to create the life interest that she intended in favour of her son. She could easily have done the same within the next few sentences in her will to unambiguously create such a life interest with respect to Daphne if that were what she intended.

b. The will alone must be looked at, and **in general no evidence can be received to contradict the meaning of the words used in the will**. **When the words used in the will are unambiguous there is usually no need to resort to background.**

In the instant case I consider that there is no need to resort to background facts to interpret the words used in this will. The testatrix has demonstrated beyond a shadow of a doubt that, if she

intended to create a life interest, she knew how to so express herself, and did so within that very will.

c. "Where any real estate has been devised to any person **without any words of limitation**, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by Will in such real estate, **unless a contrary intention shall appear by the will."**

No words of limitation were used in the devise to Daphne**. The will stated "*Upon his death** *I will that my house and land **be given to** MRS. DAPHNE LA ROCHE". The presumption is that she intended Daphne to have the fee simple after the death of Ulwin. I find that no intention appears by her will contrary to that presumption that she intended that Daphne receive the fee simple.

EXTRINSIC CIRCUMSTANCES

It was submitted that in ascertaining what the Testatrix meant in **Charles v Barzey,** the Court at paragraph (7) stated that even though the testatrix could have stated the position more clearly by using certain words, nevertheless her intention was obvious and this was supported by the **background** which was that the garage and storeroom –in that case had for many years been used in connection with the pharmacy next door, and not with the house.

*'It is supported by the **background** which was that the garage and storeroom had for many years been used in connection with the pharmacy next door and not with the house."*

Similarly, in the present case the close relationship between the Testatrix and the Claimant, the fact that she chose him to reside with her and assist her and her ailing husband, and then herself, for about eleven years assists in ascribing the intention to her that she intended that the property eventually devolve to him in fee simple upon the death of Daphne.

Assuming but not accepting that it is necessary to examine the evidence of background and context to assist in the interpretation of Ambrosine's intention the following were submitted to be relevant.

At Paragraph 2 of the Reply: - Of Daphne's eleven children, Ambrosine only referred to the Claimant as a beneficiary.
This does not prove that she intended that Daphne only be given a life interest.

At Paragraph 3:- Daphne never probated the will became she knew that Ambrosine intended to benefit the Claimant.
However, I do not consider that fact determinative of that conclusion.

At Paragraph 4 (i) – The Claimant lived with Ambrosine from age 5 to 16.
However, I do not consider that fact determinative of that conclusion.

At Paragraph 4 (ii):- During the 11 years the Claimant lived with Ambrosine the Claimant assisted Ambrosine and they had a close relationship and Ambrosine treated him like a son. After the Claimant ceased living with Ambrosine he assisted her financially and she entrusted him with making deposits into her friendly society accounts.

At Paragraph 4 (iii):- After the Claimant's marriage he continued to maintain Ambrosine and to look after her and he took her into his house.
This would be after the will was executed on 26th May, 1971 .The claimant got married in that year.

At Paragraph 4 (iv):- The relationship between Ambrosine and Daphne was casual, Daphne visited Ambrosine occasionally, they did not have a close bonding as Daphne was busy with her own family responsibilities including 11 children and grandchildren.

CONCLUSION

It is clear that the claimant had a close relationship with Ambrosine. He regarded her highly and was of the view that she felt the same way. This is natural and understandable he lived with her for 11 years. His assistance to her as pleaded was somewhat overstated, as revealed in cross examination. For example, as a 5 year old child his ability to assist would have been limited. This does not detract from the fact that I find him to have been fundamentally, an honest witness.

I equally find that that to be true of the defendant, and in fact all the witnesses who testified. Such differences as existed in their evidence were at heart a difference of perspective. Considering that much of it involved an assessment of human relationships between Ambrosine, the claimant, the defendant, and Daphne, it would have been surprising if such subjective evidence did not contain substantial differences of perspective.

I find that, ultimately, it makes no difference. I find that the relationship between Ambrosine and the claimant was good. The relationship between Ambrosine and her niece Daphne was also good. It must have been more than the simply casual one the claimant attempted to portray, as the will specifically ensured that the bequest to Daphne, whether absolute bequest of the fee simple, or life interest alone, took effect before any bequest to the claimant.

I find that there is nothing in the evidence to suggest that the relationship between Ambrosine and the claimant was such that she must have intended that he alone, and not the heirs of Daphne after her death, were to benefit.

I find that such evidence, in the context of this case is irrelevant. The will is clear and unambiguous in its terms as the testatrix knew how to , and did , create a life interest for Ulwin, and could have done the same easily by use of the same words , in relation to Daphne – if that were her intention.

Evidence of relationships

The Claimant lived at Ambrosine's house for eleven years from 1955 to 1966. The Claimant and, the Defendant agree that the Claimant and Ambrosine were very close.

It was submitted that as none of the children is mentioned by name in the Will as a beneficiary except the Claimant this lends credence to the contention that the Claimant was the one to ultimately enjoy the bequest of the remainder of her estate. This is a persuasive argument but it must ultimately be subject to the construction of the words actually used in the will and their context.

The evidence given at the trial on cross examination however revealed a slightly different picture of the relevant relationships. The Claimant was of assistance to Ambrosine when he was 5 or 6 years old, limited to fetching and carrying, as an infant, to assist in the care of Ambrosine's bed ridden husband, Wilson.

That situation lasted about two years and thereafter the Claimant's life was that of a normal child doing chores, who was in turn assisted by Ambrosine,

The Claimant admitted that his mother Daphne was also involved in assisting Ambrosine by carrying her to the doctor and the supermarket, as was her son, his mother Daphne cared for Ambrosine in her old age and period of infirmity, with the Claimant also contributing to her care.

The evidence detracted from the attempt to suggest distance between between Ambrosine and Daphne. The Claimant sought to establish that the relationships between Ambrosine, Daphne and the Claimant were such that it would have been perverse for Ambrosine to have given the freehold in the said Lands to Daphne as opposed to the Claimant.

The evidence points to a different position. Ambrosine was close to the claimant. She was also close to Daphne. The defendant also enjoyed a familial relationship with Ambrosine though not such a close one as that she shared with the claimant.

It was submitted that the evidence as to the relationship between the Claimant and Ambrosine reveals nothing so remarkable or out of the ordinary to suggest that the Court should resort to the examination of the nature of that relationship or to find, upon so doing, that it was unthinkable

that Ambrosine should have given Daphne the freehold in the said Lands as opposed to giving the freehold to the Claimant.

It was further submitted that
(i) The evidence (Paragraphs 3 to 9) in the Claimant's witness statement and his evidence on cross examination reveal only a normal upbringing, consistent with the time and place, and the trust thereafter to make deposits in Ambrosine's friendly society accounts.

(ii) There is no doubt that having grown up with Ambrosine and having that close mother and son relationship pleaded by the Claimant would have made the Claimant Ambrosine's favorite of Daphne's children and that is reflected in her Will, which, it was submitted, provides that if the said Lands do not go to Daphne then they are to go to, Ian, (the Claimant).

I accept these submissions as being consistent with the evidence. There is absolutely no reason why Ambrosine would not wish to confer the fee simple in Daphne who looked after, and was consistently and sufficiently close to Ambrosine throughout Ambrosine's life, including her final years.

ORDERS

In those circumstances the claimant's claim is dismissed and the Counterclaim of the defendant is granted, in that:

1. A declaration is granted, that the deed of rectification and confirmation dated 27th January 2010 is void and of no effect for the purpose of assenting or conveying or confirming the freehold interest in the property to the claimant.

It is further ordered that -

1. The Registrar General do remove the said deed from the Protocol of Deeds.
2. The claimant do pay the defendant's costs of the claim and Counter Claim in the sum of $14,000.00.

   (I decline to award separate costs on the claim and the Counter claim because the material in the claim and the Counter Claim is the same).

3. Liberty to Apply.
4. Stay of execution 28 days.

Dated this 18th day of May 2012

Judge
Peter A. Rajkumar

Oral Decision

Friday 13th January 2012

POS 16

I have read the submissions of the claimant and the defendant and I think it is clear from the wording of the will that the claimant's interpretation cannot be supported. I accept the submissions of the defendant, based upon

a. **the clear wording of the will** and

b. **the presumption in the Wills Act - section 58**.

I do not find that the device has been cut down by any words of limitation.

I do not find that (Daphne) was granted a life interest as contended. I accept the contentions in the defence, that, (based) on the clear and unambiguous provisions of the will of Ambrosine Auguste - it left the life interest in the property to her son Alwyn Charles, and, upon his death, **the freehold interest in the property was to vest in Daphne La Roche absolutely.**

I accept that the will **did not give a life interest to Daphne la Roche**.

I accept that on, the face of the will, it was clear that **the testatrix knew how to create a life interest**, and **she did so** within almost the same paragraph **in respect of another party** (that is - her son Ulwin Charles).

I find that **upon the death of Aldwin Charles**, when Daphne La Roche was alive, **by** provisions of **the will the entirety in the property passed to her**, and when Daphne la Roche died on the 6th October 2006 **the entirety of the beneficial interest** in the property **passed into her estate**, and not to the claimant solely, as alleged.

ORDERS

In those circumstances the claimant's claim is dismissed and the Counterclaim of the defendant is granted, in that:

1. A declaration is granted, that the deed of rectification and confirmation dated 27th January 2010 is void and of no effect for the purpose of assenting or conveying or confirming the freehold interest in the property to the claimant.

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3. Liberty to Apply.
4. Stay of execution 28 days.

Peter A. Rajkumar

Judge