

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2011 – 00999

BETWEEN

**IN THE ESTATE OF FREDA MARY CAPE ALSO CALLED FREDA MARY
COOPER ALSO CALLED FREDA MORGAN ALSO CALLED FREDA CAPE,
WHO DIED ON THE 21ST DAY OF DECEMBER 2003**

AND

**PAUL MORGAN
CLARE WILLIAMS**

**(BY THEIR LAWFULLY APPOINTED ATTORNEY BY VIRTUE OF THE
POWERS OF ATTORNEY DEED NO. DE201001831985D001 AND DEED NO.
DE201001832138D001 DATED 12TH JANUARY 2010)**

CLAIMANTS

AND

**NORRIS CAPE
(AS LEGAL PERSONAL REPRESENTATIVE IN THE ESTATE OF FREDA
MARY CAPE ALSO CALLED FREDA MARY COOPER ALSO CALLED
FREDA MORGAN ALSO CALLED FREDA CAPE, DECEASED)**

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Ms. Theresa Hadad-Maharaj instructed by Ms. Nalini Jagnarine for the Claimants

Mr. Martin George for the Defendant, Ms. Derry-Ann Charles holding for Mr. M.

George.

JUDGMENT

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BACKGROUND

1. The claimants are the son and daughter of Freda Cape, (the deceased), who died intestate, on the **21st December 2003**.
2. The defendant is the surviving spouse of Freda, whom he married in or around 1997. The claimants are not his children.
3. The defendant obtained a Grant of Letters of Administration of the estate of the deceased on **18th February 2005**.
4. He has since failed to distribute any assets of the estate.
5. It is alleged that the main assets of the estate comprise –
 - a. a house at Signal Hill, Tobago, (the house) and
 - b. the proceeds of a Lloyds insurance policy (the insurance policy) in the amount of 36,000 pounds sterling, paid upon the death of the deceased.
6. The defendant's defence is that those assets, despite being included by him in the amended inventory, do not in fact belong to the estate of the deceased. The insurance policy proceeds do not form part of the estate. Neither did the house.

ISSUES

7.
 - i. Whether the insurance proceeds and the house were items to be included in the assets of the estate of the deceased.
 - ii. Whether the Defendant should be discharged as Administrator of the Estate of the Deceased.
 - iii. Whether the Defendant is liable for damages for waste and devastavit in the misappropriation and maladministration of assets belonging to the estate of Freda Cape.

- iv. Whether there is an onus on the Defendant to furnish and verify the Accounts of the estate.

FINDINGS

8.

- a. The insurance proceeds and the house are items to be included in the assets of the estate of the deceased. In fact the defendant himself so recognized before he apparently changed his position.
- b. The Defendant must be discharged as Administrator of the Estate of the Deceased. His conduct in
 - i. claiming for himself solely all the assets of the estate listed in the amended inventory, and his defence that these belong solely to him,
 - ii. spending the proceeds of that insurance policy while these proceedings were ongoing,
 - iii. his duplicity in failing to disclose that he had done so,is completely at odds with his duty as legal personal representative to administer the estate of the deceased for the benefit of all beneficiaries entitled thereto by law.
- c. It is common ground that there is an onus on the Defendant to furnish and verify the Accounts of his stewardship of the estate.
- d. Whether the Defendant is liable for damages for waste and devastavit in the misappropriation and maladministration of assets belonging to the estate of Freda Cape will be determined when he has filed an account as ordered hereunder by the court.

DISPOSITION AND ORDERS

9.

- i. An Order is granted that the Defendant, as Legal Personal Representative by virtue of the Grant of Letters of administration pronounced on the 18th day of February 2005, be **discharged and removed with immediate effect** and that administration be granted to the Claimant Paul Morgan, and/or Paul Morgan through his lawfully appointed attorney as the Legal Personal Representative in the Estate of Freda Cape.
- ii. A declaration is granted that the property situate at #24 Diamond Heights Signal Hill Tobago more particularly described in Deed No. 7125 of 1998 Tobago is an asset of the estate of the deceased, and that the defendant is not entitled to that property.
- iii. A declaration is granted that the proceeds of the policy of insurance in the amount of \$360,000.00, (the local equivalent of 36000 pounds sterling at the date of its local deposit), constitute an asset of the estate of the deceased.
- iv. An Order that the Defendant furnish to the claimants, file with the court, and verify the Accounts of all receipts and expenditure in relation to the estate of the deceased within thirty (30) days of the date of this order. In default the admitted expenditure by the defendant of \$360,000.00 out of the proceeds of the insurance policy is deemed to be personal expenditure and not expenditure for any purpose of the estate of the deceased.
- v. Damages for waste and devastavit in the misappropriation and maladministration of assets belonging to the estate of Freda Cape, if any, to be assessed after the defendant files the accounts as provided above.
- vi. The defendant is to personally pay the claimants' costs on the claim and the counterclaim, on the basis prescribed by the Civil Proceedings Rules for a claim in the amount of **\$1,160,000.00** (being the value of the house and the insurance proceeds, as stated by him in the amended inventory, that he wrongfully claims as his.)
- vii. Liberty to apply.

ANALYSIS AND REASONING

FACTS NOT IN DISPUTE

10. On the pleadings the following facts are not in dispute:
- i. The Inventory, **as amended on the 30th January, 2006**, included (a) the property situate and known as #24 Diamond Heights, Signal Hill, Tobago (the house), and (b) the proceeds of the deceased's life insurance policy (the insurance policy), in the sum of 36,000 pounds (identified as cash in bank in the amount of \$360,000.00);
 - ii. The Inventory was not thereafter further amended;
 - iii. The Defendant, in his capacity as the Administrator of the deceased's Estate since the 18th February, 2005, has failed to distribute the assets of the deceased.
 - iv. The defendant has made a personal claim by his defence to the entirety of the major assets of the estate ,the house and the proceeds of insurance, as identified in the amended inventory,.

FINDINGS /CONCLUSION

11. Whether the insurance proceeds and the house were items to be included in the estate of the deceased

THE ESTATE

Property situate at Diamond Heights, Tobago

12. At the date of her death, the Deceased was the registered owner of premises situate at Diamond Heights/Signal Hill, Tobago, (the house).

13. The Defendant in his witness statement asserted that he had borrowed money from First Citizens Bank to facilitate the purchase of the house. He claimed to have used his property at Montgomery Heights, where he and the deceased had previously resided, **as security for the loan**. The disputed property had been put solely in the name of the deceased **because he left all the financial affairs to her**.

14. The Defendant says he applied for, was granted, and serviced a mortgage. That mortgage is the basis of the defendant's claim to be entitled to the house. He says that though the house was in the name of the deceased, he in fact paid for it, through a mortgage for which he continued to pay the installments, as he was the only one working. He produced no mortgage. He gave no particulars of such mortgage. He could not even remember whether he was still paying the mortgage while giving evidence. His evidence to that effect must be rejected. It was unbelievable and did not reflect to his credit.

15. On April 5th 2011 he stated, and verified by his certificate of truth to be true, that he was paying that mortgage to date. On March 6th 2013 in his witness statement he stated, and also swore this to be true and correct at trial, that that mortgage was paid off in 2006, after 9 years.

16. He was also servicing a Republic bank loan of \$42000.00 which he allegedly applied for to make the down payment for the house, and repaid after 3 years.

17. The alleged mortgage was for \$382500.00. He alleged in his defence he continued to pay to date – April 2011- the amount of \$3423.00 per month. After 9 years- from February 1998, at that rate he would have paid in total \$369,000. This is less even than the principal alone. It takes no account of accrued mortgage interest. He does not claim to have paid it off earlier with any sums accruing from the estate of Freda, and states only that it was paid off via salary deductions. In fact he claimed to have been paying those instalments even after the death of the deceased.

18. As a matter of arithmetic this cannot be true. Oddly, the copy of the deed in his possession states that the consideration was \$325,000.00 while that in the possession of the claimants states that it is \$425,000.0. In any event nothing turns on this as the defendant was claiming that he was responsible for payments totalling \$425,000.00, which as indicated above, I do not accept as true.

19. He gave evidence under cross examination ,within the space of minutes, that he had paid off the mortgage in 2006, then 2004, then that he was **not** still paying, and then that he **was** still paying it. He gave evidence that the mortgage was taken on a house he previously owned at Montgomery Heights, and then that it was taken on the house at Diamond Heights. That fiasco may have been avoided if he had disclosed, as he was bound to under his duty of disclosure, the documents in his possession relating to the alleged loan/mortgage pleaded in his defence for \$382,500.00. He disclosed no such documents.

20. I find that he did not because he could not. His several inconsistent answers under cross examination revealed clearly that he had no actual knowledge of this mortgage that he was supposedly paying from his earnings every month.

21. The failure to provide any relevant documentation in support corroborates its non existence. It is not explained why he is able to attach alleged policies of insurance taken to secure the alleged mortgage loan, including a Republic Bank loan, long paid off, but no documents relating to the alleged mortgage loan itself. He had notice that the claimants, by their Reply, were requiring strict proof of this alleged mortgage. Those documents were obtainable from the bank, if they existed at all, and were fundamental to his claim to be entitled solely and personally to the house.

22. I find that is far more likely that it was the deceased who purchased the house. She was in receipt of a share in a lump sum paid to her from the sale of property in settlement from her first marriage. That is not disputed, though the defendant denies that it was used for the purchase of the house.

23. On the evidence however, that is the only source of funds that has been established that could finance the purchase of the house at Signal Hill /Diamond Heights. There is evidence that she received an offer for sale of that property in England in November 1997 for 83,500 pounds. There is evidence from Claire that the deceased's share was 50% of the sale price.

24. The Signal Hill house was purchased for \$425,000 in March 1998. The deceased did not work. Yet the house was conveyed solely in her name. That prima facie, suggests that she financed the purchase. That is far more likely than the defendant's version, that the deceased was responsible for all financial affairs, and, (despite his taking a loan and a mortgage, repayment for which he was solely responsible), the deceased, (and the bank, and their lawyers), did not consider that he should be named as an owner of the property. More so if, as he attempted to testify in one of his several versions of this mortgage, it was actually taken over the Signal Hill property.

25. To explain this it was obviously essential that the existence of such a mortgage be established, together with the parties thereto, and its terms. In cross-examination the answers of Cape concerning this mortgage were contradictory, with extremely long periods of silence between each conflicting response.

26. There could be no doubt that he was simply not being truthful in his evidence concerning the alleged mortgage. In fact this brought into question the credibility and trustworthiness of all his evidence. I find that the defendant has not proved that he financed any purchase or that he ever had such a mortgage.

27. I find that there is no basis for imputing any type of trust or equitable interest on the basis of contributions allegedly made by the defendant to finance the acquisition of the house.

28. I find as a fact that there were no such contributions by him to its acquisition. Neither is there any sufficient evidence of any contributions thereafter sufficient to create or confer any equitable interest therein. I find that the defendant has established no such interest.

29. The house was in the sole name of the deceased, and now forms an asset of the estate. The house was included in the Inventory and Amended Inventory as an asset of the estate. It is an asset of the estate of the deceased and must be administered as such.

Alleged Debts due to the defendant in respect of the deceased's medical care

30. The defendant alluded to debts due to him in respect of the deceased's medical care prior to her death. He has claimed reimbursement of these in the sum of \$356,755.00. He has supplied no bank statements, nor receipts to substantiate them.

31. This claim is suspiciously close in amount to the proceeds of insurance, the difference being just \$3,245.00. He claimed, in his defence filed on April 5th 2011, to be awaiting the bills. No such bills were ever produced.

32. I find that this claim is unsubstantiated and, in all probability, based on the dearth of the evidence adduced in relation to it, spurious. I find that the Defendant is not entitled to claim the medical expenses, which he has not proved.

Insurance policy proceeds

33. The defendant claims that he was a named beneficiary under this policy. Therefore the policy proceeds did not form part of the estate. He produced no copy of the policy, nor any documentation from the insurance company to establish that he was a named beneficiary.

34. The Defendant failed to produce, voluntarily, the **complete** bank statements for the account into which the proceeds were deposited, and it became necessary to obtain them by subpoena.

35. Republic Bank's Representative produced the bank statements relative to account number 550182058001, which clearly reveal that the Defendant had spent the entire amount deposited into that account. (Thirty Six Thousand (36,000) pounds sterling converted to local currency).

36. It is therefore proved that:-

- i. the account was opened to receive the proceeds of the life insurance policy.
- ii. those proceeds were deposited therein.

iii. withdrawals were continually being made by the defendant from this account, depleting it to the point where the account was closed while these proceedings were ongoing.

37. The court was asked to infer that the insurance company would not have paid him, before he had received the grant of Letters of Administration, if he were not a named beneficiary. In the circumstances of this case I decline to draw any such inference.

38. He specifically and deliberately, with legal advice, amended the inventory when he received the proceeds of that policy. He swore, on January 30th 2006, that those proceeds formed part of the estate of the deceased.

39. Having amended the inventory of the assets of the estate to include the policy proceeds, the onus is on him to prove that he was a named beneficiary, and that the policy proceeds did not belong there. He failed to do so. There is no evidence whatsoever of any attempt by him to communicate with Lloyds to obtain a copy of the policy, or certification from Lloyds that he was a named beneficiary, or otherwise entitled to the proceeds of that policy in his own right.

40. I find that the policy proceeds were part of the estate of the deceased.

The Defendant's Conduct

41. a. In correspondence sent to him he required, through his attorneys, proof that the claimants were in fact the children of the deceased, when it was never in dispute that they were, and he admits that he always knew that they were. That was clearly a stalling tactic. To his credit he made clear under cross examination that he had absolutely no reason to doubt that the claimants were the children of the deceased. It was submitted that the history of correspondence between these parties clearly reveals that the Defendant has spent years avoiding the Claimants and misled them into believing that he would distribute the Estate. I accept that this is clearly so. His credibility did not survive cross examination.

b. He failed, and in fact refused to provide on a voluntary basis or even disclose necessary documentation in relation to bank accounts, the Lloyds insurance policy, or the alleged mortgage.

c. While this matter was before the court the defendant continued to spend the proceeds of the insurance policy, as revealed by statements of account supplied by Republic Bank in response to a witness summons. In fact he attached statements from Republic Bank which suggested that there still remained in that account the sum of \$336,000.00 when he obviously knew, and admitted at trial, that he had spent it all. This is obviously duplicitous conduct. He has clearly demonstrated a reluctance to cooperate with the process of supervision by the High Court of the performance of his duties as administrator. That account now has nothing left in it. The last withdrawal took place in 2012 while this matter was ongoing. The defendant admitted under cross examination, in the face of the accounts produced to the court by Republic Bank, that he has in fact spent all of those proceeds. He failed to disclose in his own Witness Statement that he closed the Republic Bank Account after depleting all of the monies.

This demonstrates an extreme lack of good faith on the part of the defendant, in dealing with a major part of the estate, and a subject of dispute. It also demonstrates an attempt to put that asset beyond the reach of the Court, in reckless disregard of, (or possibly in contemplation of), the possibility of a finding adverse to him.

d. I find as a fact that the defendant was dishonest and evasive in his responses under cross examination. The inability to remember details of the alleged mortgage that he says he was responsible for paying was merely part of a startling performance under cross examination, at the end of which the defendant retained no credibility whatsoever.

His answers under cross examination were inconsistent, and punctuated by long silences, in relation to very straightforward and simple issues.

e. the defendant has raised a personal defence to the claimant's claim. His defence to their claim that he should properly distribute the estate is in effect that the entire estate belongs to him personally.

Whether the Defendant should be discharged as Administrator of the Estate of the Deceased

42. The defendant has raised a personal defence to the claimants' claim. In the face of such a position, his interest and his duty clearly conflict. By virtue of his defence, his **interest** in these proceedings is to establish that the major assets of the estate belong to him. His **duty** is to administer the assets of the estate according to law, not to attempt to grab all the assets for himself.

43. If his defence is that-

- a. the alleged major assets of the estate are not in fact assets of the estate, and
 - b. in the case of the insurance proceeds, that he was entitled to spend these, and has in fact proceeded to spend all,
- then in reality there would be very little if anything, left for him to administer.

44. In such a clear situation of conflict he must be removed as Administrator. His defence, and his actions in securing and treating with the major assets of the estate as his own personal assets, while cloaked with the authority of administrator, verges on the dishonest. It is vital that a more trustworthy administrator be appointed in those circumstances.

Whether the Defendant is liable for damages for waste and devastavit in the misappropriation and maladministration of assets belonging to the estate of Freda Cape

45. If the insurance proceeds represented an asset of the estate, then clearly, as he has spent it all, without any regard to the interests of the claimants, the defendant could be liable for waste. I find that the proceeds of the insurance policy do form part of the estate.

46. The defendant himself amended the inventory to include it. He has not established any basis for its removal therefrom. These proceedings were his opportunity to do so. Its status as an asset of the estate was directly in issue, and in fact made an issue by his defence.

Whether there is an onus on the Defendant to furnish and verify the Accounts of the estate

47. It is conceded that there is such an onus on the part of the defendant. He did not need to wait for this court to order that he do so. Such an account was required even if his administration had not been questioned. Once it was questioned however, it was not optional. It was mandatory to provide a proper account. It is not appropriate therefore to submit that the sole relief that this court should now order is the provision of the Account as it *“is the only way to decide which assets of the estate are available for distribution after the settlement of debts and expenses and whether the Claimants are entitled to any further relief.”*

48. The evidence is clear that the defendant has not regarded the role of administrator as one of trust. He has been prepared to ignore all other claims on the estate. His interest in securing all the assets of the estate for himself conflicts with his duty to the claimants. If the sole relief that the claimants are entitled to is an order that he now provide an account, when he has failed to do so since 2005 that, by itself, would be an empty order, and would ignore the continuing disregard of the claimant for his obligations.

49. The defendant has converted assets of the Estate to his own use and has failed to distribute any assets of the deceased to the lawful beneficiaries.

50. In all the circumstances, and having regard to the Defendant’s own evidence, I am satisfied that such an order must be coupled with an **order that the defendant be discharged as administrator with immediate effect.**

51. The claimants are prepared to concede, (based upon their written submission), and it is noted, that upon being ordered to account, the defendant **may** be entitled to assert that a portion of the sum he spent from the policy proceeds, was properly spent on the maintenance and insurance of the Estate property, subject to the surcharge and falsification of the accounts that he must provide.

52. Any sum improperly spent or disallowed becomes the personal liability of the Administrator and he must account for same.

53. There are items of jewelry and other items of property, which the Defendant failed to disclose in the Inventory, as amended or otherwise, which must be properly accounted for. The Defendant admitted under cross-examination that he received certain items of jewelry from Claire Williams for the purpose of distribution.

Debts of the Estate

54. The Claimants have produced documentary evidence of the funeral and memorial expenses incurred in respect of the deceased. They are entitled to be compensated for those. The Defendant has alluded to substantial debts allegedly incurred on behalf of the deceased. He has failed to substantiate these.

55. In the circumstances the only proper debt appears to be the funeral and memorial expenses in the approximate sum of 2,777.08 pounds sterling.

Appointment of Administrator

56. By s. 11 of the Administration of Estates Act Chap. 9.01, the Defendant was a Trustee for the other persons beneficially entitled to such of the Estate property which comprised real property.

57. In accordance with s. 12 of the Administration of Estates Act, the Defendant had one year within which to distribute the assets of the deceased which comprised real property, failing which the Claimants became entitled to apply to Court to compel him to

distribute those assets.

Several years have passed since **18th February 2005, when** the Grant of Letters of Administration was obtained.

58. By s. 28 of the **Wills and Probate Act Chapter 9.03:**

*The court may by decree **in any suit discharge** a representative from his office, and, upon any such discharge, **may** (if necessary) **grant administration to any person, or persons** which administration shall be as valid as if the representative so discharged had died.*

59. The Defendant obtained the grant of Letters of Administration for the Deceased's estate on **18th February 2005**. The assets of the estate comprise mainly the proceeds of the policy of insurance and the house.

60. The debts would be such funeral expenses as proved, and arguably, medical expenses as proved. Distribution of such an estate could not possibly take 8 years.

61. The fact that it has in this case not yet been administered is explained by the disclosure in the defendant's defence that he now believes that those assets, which he clearly led the court to believe that he was administering in good faith, by their inclusion in the inventory and amended inventory, in fact belong to him.

62. It was submitted on his behalf that while the Defendant may have been dilatory in presenting accounts of dealings with the estate, this in itself does not amount to maladministration or misappropriation.

63. The evidence is completely to the contrary. His failure was not simply in being dilatory in presenting accounts, but in misappropriating and expending the entirety of the insurance policy proceeds, in circumstances amounting to secrecy and haste, while this matter was in issue before the court.

64. This is coupled with the fact that he clearly sought to buy time in response to inquiries being made of him as to his distribution of the estate, and the fact that it is now clear he has no intention of including the house or the policy proceeds as part of the assets to be distributed.

65. In addition he has presented as a fallback position a claim, which I find to be spurious, for medical expenses for the deceased, which, coincidentally is of the same order as the policy proceeds.

66. In those circumstances he cannot be relied upon or trusted to perform any further duties as administrator, and he must be discharged from that office with immediate effect.

67. According to the evidence of the defendant's friend Mr. Burroughs, on which I rely in this regard, the deceased never had financial demands made on her by her son Paul Morgan. His willingness to accumulate and send information to the Defendant from Lloyds regarding the insurance policy, and the cheque itself, indicates a willingness to bring in the assets of the estate, and not prefer his own interests or intermeddle with the estate.

68. Actions speak louder than words. Though Paul did not attend, evidence of his actions even from the defendant and his witness, demonstrate trustworthiness as to financial matters- certainly far more than the defendant has demonstrated by his actions.

FINDINGS

69. 1. The insurance proceeds and the house are items to be included in the assets of the estate of the deceased. In fact the defendant himself so recognized before he apparently changed his position.

2. The Defendant must be discharged as Administrator of the Estate of the Deceased.

His conduct in:

i. claiming for himself solely all the assets of the estate listed in the amended inventory, and his defence that these belong solely to him;

ii. spending the proceeds of that insurance policy while these proceedings were ongoing;

iii. his duplicity in failing to disclose that he had done so,

is completely at odds with his duty as legal personal representative to administer the estate of the deceased for the benefit of all beneficiaries entitled thereto by law.

3. It is common ground that there is an onus on the Defendant to furnish and verify the Accounts of his stewardship of the estate.

4. Whether the Defendant is liable for damages for waste and devastavit in the misappropriation and maladministration of assets belonging to the estate of Freda Cape will be determined when he has filed an account as ordered hereunder by the court.

DISPOSITION AND ORDERS

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- i. An Order is granted that the Defendant, as Legal Personal Representative by virtue of the Grant of Letters of Administration pronounced on the 18th day of February 2005, be **discharged and removed with immediate effect** and that administration be granted to the Claimant Paul Morgan, and/ or Paul Morgan through his lawfully appointed attorney as the Legal Personal Representative in the Estate of Freda Cape.
- ii. A declaration is granted that the property situate at #24 Diamond Heights Signal Hill Tobago more particularly described in Deed No. 7125 of 1998 Tobago is an asset of the estate of the deceased, and that the defendant is not entitled to that property.
- iii. A declaration is granted that the proceeds of the policy of insurance in the amount of \$360,000.00, (the local equivalent of 36000 pounds sterling at the date of its local deposit), constitute an asset of the estate of the deceased.
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deceased within thirty (30) days of the date of this order. In default the admitted expenditure by the defendant of \$360,000.00 out of the proceeds of the insurance policy is deemed to be personal expenditure and not expenditure for any purpose of the estate of the deceased.

- v. Damages for waste and devastavit in the misappropriation and maladministration of assets belonging to the estate of Freda Cape, if any, to be assessed after the defendant files the accounts as provided above.
- vi. The defendant is to personally pay the claimants' costs on the claim and the counterclaim, on the basis prescribed by the Civil Proceedings Rules for a claim in the amount of **\$1,160,000.00** (being the value of the house and the insurance proceeds, as stated by him in the amended inventory, that he wrongfully claims as his.)
- vii. Liberty to apply.

Dated this 5th day of July 2013

Judge

Peter A. Rajkumar