

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF  
GUYANA  
(CIVIL JURISDICTION)

**2019-HC-DEM-CIV-SOC-237**

BETWEEN:

In the Matter of the Estate of **CHARLES  
RODWELL ALEXANDER HART** also known as  
**CHARLES HART** also known as **CHARLES  
WORRELL**, Deceased.

-and-

**SEMONE ANN NORVILLE**

Claimant

-and-

**JULIA KENDALL** being the duly constituted  
attorney of **JOY JAMES** agreeable with Power of  
Attorney dated the 27<sup>th</sup> day of March, 2018 and  
registered in the Deeds Registry Georgetown on the  
21<sup>st</sup> May, 2018 and numbered 5310 of 2018.

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Kim Kyte-Thomas and Ms. Faye Barker-Meredith for the Claimant

Mr. Lancelot P. Ferreira for the Defendant

**Delivered April 30<sup>th</sup> 2021 via electronic mail**

DECISION

BACKGROUND

The Claimant claims that she was in a common law relationship with **CHARLES  
RODWELL ALEXANDER HART** also known as **CHARLES HART** also known  
as **CHARLES WORRELL**, deceased [hereinafter referred to as the Deceased] from

December 2005 until the date of his death, August 22<sup>nd</sup> 2013, evidenced by New Jersey Department of Health Certificate of Death in favour of Charles R. A. Hart [Exhibit “C”].

The Deceased was the owner of property situate at Lot 505, Kiskadee Drive, North La Penitence, Georgetown, Guyana [hereinafter referred to as the Property] by County of Demerara Transport No. 832 of 1967.

The Claimant claims that the Deceased executed his **Last** Will and Testament on May 11<sup>th</sup> 2009 [Exhibit “D1 - D2”] wherein he appointed the Claimant the Executrix and devisee of the Property.

The Defendant, Joy James, who is the Deceased’s daughter, contends that her father was never involved in a common law or any relationship with the Claimant.

The Defendant asserts that the Deceased executed his **Last** Will and Testament on August 23<sup>rd</sup> 2005 [Exhibit “B2 - B3”] wherein he appointed the Defendant the Executrix and devised the Property to all of his children jointly.

Julia Kendall, in her capacity as the duly constituted attorney of the Defendant, obtained Letters of Administration with Will annexed for the Estate of the Deceased from the High Court of the Supreme Court of Guyana on November 14<sup>th</sup> 2018 in 2018-HC-DEM-EST-466 [Exhibit “B1”].

The Claimant claims that the Will probated by the Defendant is not a valid Will since on the face of that Will she is purported to be a witness, however, she denies witnessing or signing or having any knowledge of the execution of the Will since at that time she was not a part of the Deceased’s life.

The Claimant claims that in any event the Will dated May 11<sup>th</sup> 2009 was executed after that Will and so by operation of law revoked that Will.

The Claimant claims that the Will dated May 11<sup>th</sup> 2009 was lodged with the Probate Registry of the Supreme Court of Guyana on May 11<sup>th</sup> 2009 by the Deceased as is evidenced by **Exhibits “G” and “J1”**.

The Claimant further claims that Defendant caused Julia Kendall to fraudulently obtain Letters of Administration with Will annexed for the Estate of the Deceased from the High Court of the Supreme Court of Guyana since she knew of the existence of the Will dated May 11<sup>th</sup> 2009.

The Claimant claims that shortly after the death of the Deceased, the Defendant had contacted her, (the Claimant), to discuss the Estate and she informed the Defendant that there was a Will lodged.

The Claimant claims that the Defendant requested a copy of the Will and she sent a Copy of the Will to the Defendant.

The Defendant contends that the Deceased had a fixed place of abode in New Jersey, United States of America and was there on May 11<sup>th</sup> 2009 and so could not have executed a Will in Guyana on on May 11<sup>th</sup> 2009 and therefore that Will must be a forgery.

The Claimant therefore seeks a Declaration that the Will dated August 23<sup>rd</sup> 2005 is void and/ or revoked and consequently an Order recalling and setting aside Letters of Administration with Will annexed for the Estate of the Deceased from the High

Court of the Supreme Court of Guyana on November 14<sup>th</sup> 2018 in 2018-HC-DEM-EST-466.

The Defendant counterclaims for an Order declaring the Will dated May 11<sup>th</sup> 2009 illegal, void and of no legal effect since it is a forgery.

### **ISSUE I**

Did the Claimant prove Will dated May 11<sup>th</sup> 2009 in solemn form.

### **FACTS**

Andy Brispat testified on behalf of the Claimant with respect to the execution of the Will.

He testified that he has been a Legal Clerk with Templar Chambers since 2008 and that in the Will dated May 11<sup>th</sup> 2009 was prepared by Templar Chambers and that he and another staff member, Lashawna Forde, witnessed the Deceased sign the said Will after which they affixed their signatures as witnesses.

The first challenge made against the evidence of Andy Brispat was that it was not his signature on the Will; that he did not witness the testator executing that Will.

To this end the Defendant called a handwriting expert, Mr. Carlton Charles, who testified that the signature of Andy Brispat on Andy Brispat's witness statement in this Claim dated February 19<sup>th</sup> 2020 and the signature of Andy Brispat on the Will were not made by the same person.

The second challenge against the evidence of Andy Brispat was that the Deceased was not in Guyana on May 11<sup>th</sup> 2009 and therefore could not and did not signed that Will.

To this end the Defendant called Inspector Alexis Adams, a policewoman who was attached to the Central Immigration Office and in charge of the records section, who testified that according to the immigration records for the years 2009 - 2010, the Deceased travelled to Guyana on November 28<sup>th</sup> 2009 and departed April 24<sup>th</sup> 2010 [Exhibit “M1 - M2”] and the witnesses Joy James and Errol Hart, the son of the Deceased, testified that the Deceased was not in Guyana on May 11<sup>th</sup> 2009.

The Claimant called Trevon Bouyea, a Clerk of the Probate Registry of the Supreme Court, who testified that based on the records of the Probate Registry the Deceased personally lodged the Will with the Probate Registry on May 11<sup>th</sup> 2009 as is evidenced by an entry in the Will Register [Exhibit “J1”] and the Will Packet [Exhibit “G”].

The Claimant testified that the Deceased had given her a copy of the Will and the lodgement receipt.

### **LAW**

**George Chee v Cao Min Wei Et Anor** Civil Appeal No 71 of 2002 (Guyana) per Chancellor Bernard ;

*“It is trite law that in seeking to propound a will the burden of proving due execution and that it reflects the wishes of a testator of sound mind, memory and understanding who knew and approved of its contents rests at all times on the party propounding it”.*

**Section 4 of the Wills Act; CAP 12:02** of the Laws of Guyana;

*“No will made in Guyana shall be valid unless it is in writing and executed in manner hereinbefore mentioned, that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and the signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and those witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.”*

**Alvarez v Chandler** [1962] 5 WIR 226 @ 229 per Wooding CJ:

*“The onus which lies in every case upon a party propounding a will is one requiring him to satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator: Barry v Butlin ((1838), 2 MooPCC 480, 1 Curt 637, 12 ER 1089, PC, 23 Digest (Repl) 131, 1357), per PARKE B (2 Moo PCC, at p 482). This is generally recognised as a fundamental rule of probate law. It is quite true that, in the absence of evidence to the contrary, a will which is shown to have been executed and attested in the manner prescribed by law, and which appears to be rational on the face of it, is presumed to be that of a person of competent understanding: Symes v Green ((1859), 1 Sw & Tr 401, 28 LJP & M 83, 33 LTOS 168, 5 JurNS 742, 164 ER 785, 33 Digest 146, 231); but, once there is evidence before the court which casts doubt upon the validity of that presumption in any case, its conscience cannot, or should not, be satisfied without some affirmative proof: Baker v Batt ((1838), 2 MooPCC 317, 12 ER 1026, PC, 23 Digest (Repl) 131, 1356), per PARKE B (2 Moo PCC, at pp 319320).”*

### **ANALYSIS**

The Claimant seeks to prove a Will that she claims was executed by the Deceased in solemn form and as stated by Wooding CJ in Alvarez v Chandler, citing Symes v Green with approval and Chancellor Bernard in George Chee v Cao Min Wei Et Anor it is mandatory that the Will be shown to have been executed and attested to as prescribed by law.

### **I.Challenge to Andy Brispat's signature**

The challenge to the signature of Andy Brispat is an unusual challenge.

The Defendant is alleging that someone forged the signature of Andy Brispat although Andy Brispat positively testified that the signature is his.

In challenging the authenticity of a signature, the questioned signature is usually the signature of a person not available to accept or refute the authenticity of the signature and it is in that light the Court would consider the evidence of a handwriting expert who would assist the Court by explaining the similarities and differences between the questioned signature and known handwriting and/ or signature samples of the person who it is claimed made the signature.

In this case the person whose signature is being questioned is available and in fact did testify that the signature was made by him.

There is no rule or law that dictates that a person must sign his/ her name in the same way at all times, this is simply a factor that can be considered in determining whether the challenged signature is the signature of an unavailable person, but, apart from that, the fundamental flaw with the analysis conducted by Mr. Charles is that he did not request samples from Andy Brispat, he resolved to conduct his

examination and issue an expert's opinion [Exhibit "L8 - L12"] based on a comparison between the questioned signature and one single sample and further he did not avail himself of Andy Brispat himself.

In any event the Court does not actually find the signatures compared by Mr. Charles to be "*of vast difference*" as he testified.

The Court finds that differences only appear in the "y" in Andy, the "B" and "t" in Brispat and those are not wholly different.

In this light the Court does not find that the opinion of Mr. Charles causes the Court to doubt the veracity of Andy Brispat.

The Court finds that the signature on the Will is that of Andy Brispat, who witnessed the execution of the Will.

It is noted that the Defendant did not avail herself to the expert's analysis of the Deceased's signature on the Will.

## **II. Whether the Deceased was in Guyana on May 11<sup>th</sup> 2009**

With respect to whether the Deceased was in Guyana at the time of the execution of the Will on May 11<sup>th</sup> 2009 the Claimant relies on the evidence of Andy Brispat that he witnessed the Deceased sign the Will on that date at his work place in Georgetown and also the evidence of Trevon Bouyea who testified that based on the records of the Probate Registry the Deceased personally lodged the Will with the Probate Registry on May 11<sup>th</sup> 2009.

Trevon Bouyea further testified that since the Testator has to produce identification to lodge a Will.



The Deceased's passport is recorded as having been the identification produced when lodging the Will.

The Court finds that the evidence of Trevon Bouyea, particularly the documents that he produced are very reliable and provide incontrovertible proof that the Deceased was in Guyana on May 11<sup>th</sup> 2009 at which time he executed and lodged the Will for the following reasons;

- The signature of the Deceased on the Will Packet is an exact match as the signatures of the Deceased on the Will that is propounded by the Defendant [Exhibits "B2" and "B3"] and the other accepted signatures of the Deceased on the tendered immigration documents [Exhibit "M1 - M2"] the Deceased did not have a simple signature that could easily be forged.
- Similarly the signature on the Will [Exhibit "D2"] is an exact match as the signatures of the Deceased aforementioned.
- The fact that the identification produced by the Deceased was his United States of America passport, which is required for travel, as opposed to any other form of identification demonstrates that the Deceased had to be in Guyana.

The Court does not accept the evidence of Inspector Alexis Adams for the following reason;

Inspector Adams testified that she was requested to produce the record of the movements of the Deceased for 2009 - 2010 and she produced an entry record in 2009 and a departure record in 2010, however, the Defendant testified that the

Deceased came to Guyana every November and stayed until April of the following year, therefore there should have been a record of his departure sometime earlier in 2009 yet this was not produced by Inspector Adams.

In this regard the Court does not find the evidence of Inspector Adams reliable.

The Court finds that the evidence of the records of the Supreme Court to be far more reliable and convincing.

The Court therefore finds that the Deceased was in Guyana on May 11th 2009 the day and date that he executed the Will and duly lodged it with the Probate Registry of the Supreme Court.

### **III. Was the Will executed in accordance with the Law**

The Court finds that based on the evidence and the findings above, the Will was executed in accordance with **section 4 of the Wills Act**.

In addition, the Court is satisfied that this is the last Will of the Deceased, a free and capable testator.

### **CONCLUSION**

The Will dated May 11<sup>th</sup> 2009 has been proven in solemn form.

### **ISSUE II**

What is the effect of the Court's finding that the Will dated May 11<sup>th</sup> 2009 has been proven in solemn form.

### **LAW**

**The Civil Law Act; CAP 6:01 section 6** of the Laws of Guyana provides;

*“Where the Wills Act, and any other Act now or hereafter dealing with wills or testaments is silent, the Wills Act, 1837, of the United Kingdom except section 7 thereof so far as it relates to personal property, shall be part of the law of Guyana and shall apply to both movable and immovable property as if the provisions dealing with personal property were specifically enacted to apply to both movable and immovable property ...”*

**The Wills Act, 1837 [UK] section 20** provides;

*“No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner herein-before required, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.”*

### **FACTS**

The Will dated May 11<sup>th</sup> 2009 contains the words “... *do hereby revoke all former Wills, Codicils and Testamentary Instruments heretofore made by me and declare this to be my Last Will and Testament.*”

### **ANALYSIS & CONCLUSION**

In this regard, by operation of law the Will dated May 11<sup>th</sup> 2009 revokes the Will dated August 23<sup>rd</sup> 2005.

### **FURTHER OBSERVATIONS BY THE COURT**

The Defendant having testified that she knew of the Will dated May 11<sup>th</sup> 2009 since August 22<sup>nd</sup> 2013 perpetuated a fraud on the the Claimant and the Supreme Court

when she caused her duly constituted attorney Julia Kendall to apply for Letters of Administration with Will annexed using the Will dated August 23<sup>rd</sup> 2005.

In addition, the Court finds that the purported signature of the Claimant therein, as a witness, is a forgery.

Upon comparing the signatures of the Claimant on the various documents in this case file [Appointment of Attorney; Affidavit dated June 20<sup>th</sup> 2019; Witness Statement dated November 22<sup>nd</sup> 2019] the Court accepts the testimony of the Claimant that she never signed that document.

It is clear that the Will dated August 23<sup>rd</sup> 2005 is not genuine.

In the circumstances the Court **Declares** that the Will dated May 11<sup>th</sup> 2009 revoked the Will dated August 23<sup>rd</sup> 2005.

Further, the Court hereby recalls and sets aside Letters of Administration with Will annexed for the Estate of the Deceased from the High Court of the Supreme Court of Guyana on November 14<sup>th</sup> 2018 in 2018-HC-DEM-EST-466 granted to Julia Kandall in her capacity as the duly constituted attorney of Joy James.

The Court grants a permanent injunction restraining the Defendant, her servants and/ or agents from interfering with the Claimant's peaceful enjoyment of the Property situate at Lot 505 Kiskadee Drive, North La Penitence, Georgetown, Guyana.

The Court awards prescribed costs to the Claimant in the sum of \$1,650,000.00 based on the valuation of the property as declared by the Defendant's duly

constituted attorney in her application for Letters of Administration with Will annexed.

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Justice N. A. Singh