

ANTIGUA AND BARBUDA

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

A.D. 2010

CLAIM NO. ANUHCV2007/0388

BETWEEN:

MYRTLE LOOBY

Claimant

And

**DOROTHY GITTENS as Personal
(Representative of the Estate of
GEORGE LOOBY, Deceased)**

Defendant

Appearances:

**Mr Septimus Rhudd for the Claimant
Mrs Eleanor Solomon for the Defendant**

**2010: February 25
November 29**

JUDGMENT

- [1] **THOMAS J:** On 13th July, 2007 the Claimant filed a fixed date claim in which she seeks certain declarations and other remedies with respect to the Estate of the late George Looby. These are detailed above.
- [2] In her Statement of Claim the Claimant pleads that she is the former wife of the late George Looby, having been married on 2nd September, 1972 after knowing each other since 1967 as university students. The Claimant also contends that she bore the Deceased three children.

- [3] It is the Claimant's contention that during the course of her marriage to George Looby "substantial assets" were acquired by them in the islands of Antigua and Trinidad and Tobago which were either in the sole name of George Looby, in the joint names of the Claimant and George Looby or in the names of companies (Geotech Limited and St. Mary's Place Limited). The Claimant's further contention is that these companies were incorporated by the said George Looby and she was "named as a shareholder". Further still, it is pleaded that: *"It was always understood between the parties that assets so acquired would be for the benefit of the parties and the children of the marriage."*
- [4] The matter of the commencement and conclusion of divorce proceedings, by George Looby is pleaded as well as a "matrimonial settlement" which was arrived at as a result of discussions and negotiations between the respective legal representatives. In further detail concerning the matrimonial settlement, it is pleaded that on or around 16th March, 2004, the Claimant's legal representative wrote to the legal representative for the said George Looby and set out a comprehensive and finalized proposal in respect of the settlement.
- [5] The pleading at paragraph 9 of the Statement of Claim is, in part, as follows:
- "By letter dated April 26, 2004, the Legal Representative of George Looby wrote on his behalf agreeing with the points raised in the said letter of March 16, 2004. Specifically, the said Legal Representative indicated that she had been instructed to agree with the said points. It was also agreed that matters that could be addressed on a short term basis would be put into effect without more and that matters that would be addressed over a longer period be made the subject of an agreement between the parties."*
- [6] The Claimant in further pleadings identifies several pieces of correspondence which, according to her, relate to the agreement with George Looby. In particular a letter dated 6th December, 2004, is pleaded. In this regard the contention is that with the said letter duplicate land transfer instruments with respect to the Paradise View property were submitted by George Looby's legal representatives.

[7] It is the Claimant's contention that following the death of George Looby, the Defendant's legal representative by e-mail correspondence indicated that the Defendant would honour the terms of the agreement reached with the late George Looby. And a further letter from the Defendant to the beneficiaries of the Estate of George Looby, which made mention of including the settlement agreement which had been reached, as evidence of the Defendant's acknowledgement of the existence of the **agreement** and that she was prepared to conclude the same.

[8] At paragraphs 16 to 22 of the Statement of Claim the Claimant pleads a number of issues to show a change in the Defendant's position with respect to the agreement. These include the matter of the cessation of the payment of the Claimant's utility bills; the issue of the transfer of shares held by the Claimant in certain companies in which the late George Looby was beneficially interested; the matter of repairs to one of the properties in Trincity, Trinidad; and the monthly sum of \$5000.00 for the Claimant's maintenance. At paragraphs 27 and 28 it is pleaded, in part, as follows:

"27. On or around March 26, 2007, the Defendant's legal representative wrote to the Claimant's legal representative and indicated that the Defendant had taken the position that the Claimant was no longer interested in seeking to give effect to the intended agreements reached before Mr Looby's death. The Defendant thereupon decided the manner in which she felt the Claimant should benefit from the Estate of the said George Looby....

28. The Defendant then asserted that the Paradise View Property was being regarded as a part of the Estate of George Looby and that the Claimant's interest therein ceased after the marriage was dissolved on June 25, 2001. The Claimant was then given until June 30, 2007 to vacate the said premises."

[9] In the circumstances the Claimant says that she wrote to the Defendant's legal representative and outlined the Claimant's final position. That being that the Claimant had made contributions to the acquisition and subsequent improvement of the Paradise View property and had thereby acquired a beneficial interest in it. Further, that it was always the

intention of the late George Looby to transfer the property to the sole name of the Claimant as part of the matrimonial settlement.

[10] It is the Claimant's conclusion that given the course of conduct adopted by the Defendant *"it is apparent that the Defendant does not intend to honour the settlement agreement or any part of the settlement agreement that had been reached between the Claimant and the late George Looby. And further, that the position taken by the Defendant is inequitable, unconscionable and unfair and is in breach of the spirit and intent of the settlement agreement arrived at between the Claimant and George Looby after long and protracted negotiations and discussions."*

[11] The following is claimed by the Claimant:

1. A declaration that the Claimant is entitled to share in the Estate of the late George Looby to the extent of and in accordance with the terms of the settlement agreement reached between the Claimant and the said George Looby in or around April 26, 2004.
2. A declaration that the Defendant as Personal Representative of the Estate of the said George Looby do recognize and give full effect to the terms of the said settlement agreement.
3. The Defendant as Personal Representative of the Estate of the said George Looby be restrained by herself, her servants, agents or otherwise from evicting the Claimant from or otherwise taking possession of the residential premises situated at Paradise View and currently occupied by the Claimant.
4. Such other orders as the Court deem just.
5. Costs to the Claimant.

[12] **Defence**

In general terms the Defendant contends that the Claimant is not entitled to the relief sought in the Claim Form and Statement of Claim. The matters pleaded by the Defendant in support of her case include: the late George Looby died intestate; by virtue of the

intestacy the Estate of the Intestate is to be distributed in accordance with the Intestate Act; the Claimant is not a person entitled to share in the Intestate's Estate by reason of the dissolution of the marriage of the Claimant and the Intestate by order of the Court on 25th July 2001; although the Claimant in answer to the Intestate's Petition for Divorce made certain claims to assets, these were not pursued by the Claimant and, as such no judicial pronouncements have been made concerning the said claims; although there were negotiations between the Claimant and Intestate through their respective attorneys with the intention of reaching an amicable settlement of the Claimant claims, no agreement was reached; the Defendant after her appointment as personal representative of the Intestate in January, 2005 sought to give effect to the negotiations which had preceded the death of the Intestate; when it became apparent that the negotiations between the Claimant and the Defendant attorneys would be fruitless by letter dated March 26, 2007, the Defendant advised that the matter would be conducted strictly in accordance with the law with certain effects, and the Defendant claimed the dwelling house owned by the Intestate at Paradise View and gave the Claimant notice to vacate the said house.

[13] **Counterclaim**

In the Defendant's counterclaim the following reliefs are pleaded:

1. Possession of the property situate at Paradise View, St. Johns in Antigua, recorded in the Land Registry and registered as Parcel 188 in Block 45 1696B in the Mc Kinnons Registration Section.
2. The said parcel is owned solely by the Intestate and forms part of his Estate.
3. An order for possession of the property of the Intestate all as the same is recorded in the Land Registry and registered as Parcel 188 in Block 45 1696B in the Mc Kinnons Registration Section.

+ *Cap 225, Laws of Antigua and Barbuda*

[14] Reply and Defence to Counterclaim

In so far as the reply is concerned the Claimant says that except where it consists of admissions, the Claimant joins issue with the Defendant on her defence. It is the Claimant contention that an amicable settlement had been reached with the Intestate which was acknowledged in writing by the Intestate's attorney-at-law, and upon which reliance will be placed. Further still, that at the time of Intestate's death the respective attorneys-at-law were then only engaged in finalizing the settlement terms upon which the parties had already agreed, and both the Intestate and the Claimant had begun to act in accordance with the settlement reached.

[15] Finally, the Claimants contends that contrary to what is pleaded at paragraph 13 of the defence, the Defendant failed on refused to give effect to the negotiations that had taken place prior to the death of the Intestate. Instead, says the Claimant, the Defendant sought to substantially alter the settlement terms that had been arrived at.

[16] With respect to the Defendant's counterclaim it is disputed on the following grounds:

1. The Defendant is not entitled to possession of the property situated at Paradise View in St. John's.
2. The Claimant has acquired an equitable interest in the said property by virtue of financial and other contributions.
3. The said beneficial and equitable interests were recognized and acknowledged by the Intestate up to the time of his death and were embodied in the terms of settlement arrived at between the Claimant and the Intestate.

[17] Evidence – Myrtle Looby

In her witness statement filed on 23rd May, 2008, the witness gives an overview of events relating to the Intestate and herself, their marriage, their residence during various periods in Trinidad and Antigua, her employment, the advent of children, the business interests of

the Intestate, the divorce and subsequent settlement discussions, the demise of the Intestate and the events surrounding the settlement agreement which she claims was reached with the Intestate.

[18] At trial Ms Myrtle Looby testified that she stood by her evidence contained in her witness statement.

[19] In cross-examination by learned counsel for the Defendant, Mrs Eleanor Solomon, the witness gave evidence that after her marriage to the Deceased she accompanied her husband to England where he was studying; and that after one year they returned to Antigua and remained there for two years. She also testified that she was married to Mr George Looby for twenty-nine years and there were three children of the marriage aged 36, 34 and 32. It was also revealed by the witness that her former husband fathered other children who in her estimation were younger than her children.

[20] With respect to the Paradise View property, it was put to her by learned counsel that the land was purchased prior to the marriage. This was denied by the witness and she went on to say that a house was eventually built on the land.

[21] It is Mrs Lobby's evidence that while in Trinidad she worked, took care of her children and also studied for her diploma. She added that during this period her late husband travelled back and forth to Antigua to visit relatives and to deal with business.

[22] When cross-examined on Geotech Associates, the witness said it was a one-man business carried on by George Looby in Antigua and another business carried on by him in Trinidad under the same name. She disagreed with the suggestion that she had no association with Geotech Associates.

[23] In so far as the company Geotech Limited, the witness testified that it was incorporated in 1988 and she was one of the subscribers. According to her this company was a property developed and purchased land, for example, at Roses Development at Falmouth.

[24] In further cross-examination by Mrs Eleanor Solomon, it was put to the witness that Geotech Limited had a loan account; to which Mrs Looby said that she was not aware of this. She went on to say that the money for the development was borrowed by her husband and herself. Mrs Looby also said that she never wrote a cheque for Geotech Limited.

[25] On the matter of assets Mrs Looby gave evidence that these consisted of property and businesses. It is also her evidence that some of the properties were in both names while others were the name of George Looby alone. She also said that in Antigua and Barbuda there were three properties in both names, but the majority was in the Deceased's name alone. According to her, one such property was Paradise View since at that time, not being a citizen of Antigua and Barbuda a licence had not been obtained.

[26] Returning to Geotech Limited, Mrs Looby testified that this company owned much land in Antigua and Barbuda, the majority of which was in Falmouth. She also said that transfers were done by the Deceased.

[27] With respect to directors meetings of Geotech Limited, Mrs Looby's evidence is that there were several at which she was always present. It is her further evidence that there were no members meetings.

[28] There was no re-examination of Mrs Looby.

[29] **Evidence – Rosina Lake**

Ms Rosina Lake in her witness statement says that she is the sister of the late George Looby. She also says that she knew Myrtle Looby from about 1971 when she first came to Antigua.

[30] With respect to what she referred to as the matrimonial home, Ms Lake, her brother built it and was assisted by friends in the construction. It is also her evidence that her mother and

Myrtle Looby would go out to shop and prepare meals for the people involved in the construction of the said home.

[31] Ms Lake also speaks of her knowledge of savings made by Myrtle Looby for her wedding and to assist her brother in the construction of the said matrimonial home.

[32] In cross-examination by learned counsel for the Defendant, Ms Lake testified that Geotech Limited was incorporated in 1988. She said that she looked at the Articles and Memorandum of the company and that they were signed by her brother and Myrtle Looby, only. And on being shown a document at page 126 of Trial Bundle I, Ms Lake identified the signatures of George Looby and Myrtle Looby.

[33] In further cross-examination, Ms Lake testified that she was the company secretary from the inception until her departure in 2006. She also said that she was aware that the company was struck off the company register in 1995.

[34] There was no re-examination of Ms Lake.

[35] **Evidence – Dorothy Gittens**

In her witness statement Dorothy Gittens says that she is the widow of the Deceased, George Lobby and that they were married on 12th June 2004. In broad outline the witness addresses the following matters: being aware of discussion with the Claimant through their respective "*Solicitors*" from about April 2001, taking possession of correspondence received upon being granted letters of administration the fact that there were discussions, the essence of the documentation relating to the discussions, the nature of correspondence exchanged shortly before the death of the Intestate, retirement of company loans, indication as to willingness to give effect to the discussions which had taken place up to the death of the intestate, subject to the concurrence of the beneficiaries of the Estate, demands of the Claimant that fell outside the discussions and lack of good faith on the part of the Claimant, the actions of the Claimant in purporting to act on behalf

of the Estate, the demand of the Claimant to be paid \$5000.00 per month plus payment of certain bills, a request for an increase of the payment and the duration of the payments, and the conclusion reached that further discussion was pointless and all matters should be determined in accordance with law.

[36] Pursuant to an order of the Court to expand on her witness statement, Ms Gittens testified that the ages of Mr Looby's other children were 22, 25 and 29.

[37] In cross-examination by learned counsel for the Claimant, Mr Rhudd, Ms Gittens said that she was married to the Deceased for six months having been married on 12th June, 2004. She also testified that Geotech Limited was incorporated in 1987.

[38] With respect to the Articles and Memorandum of Geotech Limited, it is Ms Gittens' evidence that she was not a signatory, but she went on to say that she is now a director from January 2005 in her capacity as the administrator of the Estate.

[39] In giving evidence as to her actions as director, the witness said that she took responsibility of the company and convened a meeting on 27th January, 2005. She said that she was the only person present at the meeting along with the acting secretary, Ms Henry. In her further cross-examination, Ms Gittens said that the directors were not invited to the meeting. She also said that the Claimant was not invited to the said meeting. She added that there is no reason for the absence of an invitation.

[40] On being referred to a transfer exhibited at page 407 Trial Bundle Vol. II, the witness said that she had gone through what she considered salient when she took over Geotech Limited and discovered that the company owned six properties.

[41] In terms of the shareholding of Geotech Limited Ms Gittens testified that she is now the sole shareholder in her capacity as Executrix which responsibility she would have assumed from the date of her appointment in that office. She contended that the instrument gave her that authority.

[42] Speaking of her knowledge of companies and Geotech in particular, Ms Gittens gave this testimony:

"I consider I have some expertise in the registration of companies. I consider that the responsibility of a director is to provide the leadership with respect to decisions. I am familiar with the Constitution of Geotech Limited. I have reviewed the articles, but I cannot recall if I did so in 2005.

I understand a general meeting of shareholders. I recall changing an article in 2005 whereby the directors were changed to one."

[43] Giving further evidence Ms Gittens said this:

"There was a gap when I did not have control of the records. Geotech had a loan account; but I did not know how the account was serviced."

[44] With respect to the interest of Mr Looby and Mrs Looby, the witness testified that Mr Looby had interests in other companies in Antigua and Barbuda, while Mrs Looby had an interest in St. Mary's Place. The record shows that they were shareholders. It was explained further that Mrs Looby did not have to make a claim with respect to St. Mary's Place. The witness went on to say that Mrs Looby was not challenged and that the Estate did not hold her shares. According to her, Mr and Mrs Looby held joint shares.

[45] There was no re-examination of Ms Gittens.

[46] **Issues**

The issues for determination are whether the Claimant is entitled to the reliefs sought in her Statement of Claim; and whether the Defendant is entitled to the reliefs pleaded in her counterclaim.

[47] **Claimant's Submissions**

The submissions on behalf of the Claimant began with a synopsis of the Defendant's contention. This, according to learned counsel for the Claimant, is that there was no binding agreement between the Deceased and the Claimant since whatever was

discussed was not reduced to writing and signed. It is contended that this position is flawed.

[48] In outlining the Claimant's position, it is submitted that that the Deceased and the Claimant contributed to the acquisition of substantial personal and business assets. This was recognized by both parties and for this reason it is contended that that the Deceased was prepared to compensate the Claimant which was the Deceased's clear and unequivocal intention.

[49] It is further submitted that the agreement arrived at was the result of several years of discussions, letter writing and emails with implementation being the final stage.

[50] In the remainder of his submissions learned counsel for the Claimant cites a number of issues or instances to demonstrate that an agreement existed and the Deceased had taken steps to implement it. These include the payment of a monthly maintenance to the Claimant; the Claimant was allowed to remain in the matrimonial home and allowed to keep a motorcar provided by the Deceased. Added to these, is the fact that the Deceased's attorney-at-law in one instance indicated on behalf of the Defendant; the Defendant's intention to honour the terms of the agreement agreed between the parties.

[51] In support of his submissions learned counsel for the Claimant referred the Court to the case of *Soulsbury v Soulsbury* which concerns an oral agreement in similar circumstances.

[52] **Defendant's Submissions**

In submissions on behalf of the Defendant the contention is that while there were discussions between the Deceased and the Claimant prior to the former's death, though reduced to writing, there was no signed agreement. As such there is no settlement agreement before the Court.

[53] At another level the following is submitted:

"The law is quite clear regarding the property of the deceased. The property, whether personal or real, to which a deceased person is entitled for an interest not ceasing on his death now devolves upon his personal representative: **Halsbury's Laws** Vol. 17(2) paragraph 335, page 186. In the present case the property at Paradise View which was registered as Parcel 188 of Block 45 1696B in Mc Kinnons Registration Section was owned solely by the deceased and as such upon the grant of letters of administration, ownership was vested in the defendant. Under the doctrine of relation back, matters, relative to that property, including any repairs, would have to be determined by the defendant and not the claimant. The property is now estate property and must be dealt with in accordance with the applicable law, namely, **The Intestates Act, Cap 225.**"

[54] The submissions go on to make reference to the legal status of joint property under **section 101(1) (b) of the Registered Land Act, Cap 374** and to the case of **Braithwaite v Harper** 72 WIR 40 in terms of joint bank accounts. According to the submission, in terms of real property the survivor becomes the owner; in so far as joint bank accounts it depends not merely on the written agreement under which the account was established but also the intention of the parties.

[55] The matter of the discussions between the Deceased and the Claimant; says learned counsel, is personal in nature¹ and upon death, any such agreement; in the absence of a Will would be unenforceable.

[56] In the final analysis the contention is that the matter of the Deceased's property is to be distributed or dealt with in accordance with **The Intestates Act** and not by any agreement.

¹ In this proposition a dictum of Rollock CB in **Hall v Wright and Chitty on Contracts** 29th ed. Vol. 1, page 1330 are cited.

[57] **Analysis**

It is common ground there were discussions between the Deceased and the Claimant. In fact this is noted in Defendant's evidence at paragraphs 11 – 12 of her witness statement:

- "11. *However discussions were pursued between the parties from April 2001 up to shortly before George Looby died in December, 2004, with regular correspondence between the solicitors representing both the Claimant and George Looby.*
12. *Based on the documentation, the point at which the discussions reached was broadly, that George Looby was prepared to give the Claimant his dwelling house at Paradise View and his interest in the house at Trincity in Trinidad, his shares in the Antigua Commercial Bank and a motorcar and the Claimant would relinquish her interest in two(2) parcels of land at Royals Estate in Antigua in respect of which she was a joint proprietor together with George Looby. Also, that the parties would await the maturity of two (2) fixed deposits held in their joint names in the RBTT Bank in Trinidad and Tobago, at which date the proceeds of the fixed deposits would be divided equally between them."*

[58] On July 13, 2004 the following letter was dispatched from Ms E. Ann Henry, attorney-at-law for the Defendant, to Mr Septimus A. Rudd attorney-at-law for the Claimant.

*"Re settlement of Property Issues
Your client: Mrs Myrtle Looby
Our client: Mr George Looby
I refer to our discussions concerning the above and our agreement that you proceed to finalize the Instruments of Transfer of the property to be conveyed to your client. I would be obliged to receive your drafts for vetting."*

[59] Matters reached a point where it may reasonably be said that it was intended to be the final stage with this letter December 6, 2004 from Mr Rhudd to Henry and Burnette, Deceased attorney. The letter referred to *"Duplicate original Land Transfers and Duplicate original Share Transfers"*. The essence of the said letter is *"I shall be grateful if you would review these and, if they are acceptable arrange to have them executed and processed."*

[60] With the death of George Looby on December 2004, Ms E. Ann Henry wrote to Mr Rhudd, in these terms and having acknowledged receipt of his letter on December 7, 2004 went

on to say: *"It would seem that events may well have overtaken us. I am not in a position at present to take any further steps in regard to this matter."*

[61] The further question concerns the status of the agreement in this context.

[62] **Status of the Agreement as Against the Intestates Act**

The Court's attention has been drawn to the case of ***Soulsbury v Soulsbury*** in which there arose for consideration certain financial provisions in an oral agreement made between a husband and his ex-wife, the Claimant. The parties acted on the agreement, but on the re-marriage of the husband and his subsequent demise the new wife refused to continue to give effect to the said agreement.

[63] The ex-wife sought to enforce the agreement and at first instance and in The Court of Appeal it was held that such an agreement was enforceable. The Court of Appeal held in part as follows:

"That an agreement containing financial arrangements made between spouses or former spouses with the intention of creating legal relations between them was enforceable in the Civil Courts, even if it has not been approved by the Court provided it did not compromise a pending application for ancillary relief; that since when the 1993 agreement was made there had been no pending application for ancillary relief to compromise, the agreement was valid and enforceable; and that since the events on which payment depended had occurred but the husband had failed to make effective arrangements to provide payment, his estate was in breach of the agreement and the claimant was entitled to damages claimed."

[64] In the Court of Appeal Lord Justice Ward relied on the following general principles contained in ***Williams*** on Wills:

"Although a will is by its nature always revocable, yet a testator may bind himself personally as to the contents of his will and may bind his assets so that his personal representative, whether he dies testate or intestate, must give effect to such agreement at the expense of the beneficiaries under the will or intestacy. There must, however, in such a case, be a binding agreement by the testator to dispose of his property in a certain way, and this involves two certainties. It must be shown that there was an

agreement in law and not a mere statement of intention or mere representation. It must also be shown with certainty what the subject matter of the gift by will was to be."

[65] The learning from *Williams on Wills* indicates that the law requires in this context certainty of subject matter and certainty of obligation. In the case of the former the Court holds that that certainty exists in view of the various pieces of correspondence between the attorneys-at-law for both parties. In particular the letter from the Claimant's attorney dated March 16, 2004 in which the subject matters are fully outlined and the Deceased's attorney's letter of April 26, 2004 and referring to the letter of March 16, 2004 said in part thus:

"We have discussed this matter in full with our client and are pleased to advise that finalization should occur shortly. In particular we are instructed to agree with the points raised by your client."

[66] With respect to the requirement of certainty of obligation, it was noted in this case of *Soulsbury*¹⁵ an oral agreement was held to be certain in that context. But in *Williams on Wills* the learned authors also say that: *"There must be a contract to entitle that person to relief that is, the representation must amount to a positive undertaking."* They go on to cite numerous circumstances that were held *"sufficiently positive to be enforceable"*. This include *"proposal to leave house and lands to induce a party to marry the proposed devisee ..."*

[67] The submissions by Mrs Eleanor Solomon concentrates on the narrow rule that: *"All property, whether personal or real to which a deceased person was entitled for a interest not ceasing on his death now devolves upon his personal representatives: Halsbury's Laws Vol. 17 (2) paragraph 335 page 186"*. This submission overlooks entirely the rule that a testator may bind himself personally as to the contents of his will and may bind his assets so that his personal representative, whether he dies testate or intestate, must give effect to such agreement at the expense of the beneficiaries under the will or intestacy.

[68] But this matter has another dimension in that the Defendant for the most part, accepted that there was an agreement reached between her deceased husband and the Claimant. In this context the Court agrees with the following submission by learned counsel for the Claimant which illustrates and identifies that dimension created by the Defendant:

“Specifically in the letter of April 26, 2004 the deceased lawyer stated ‘we are instructed to agree with the points raised by your client’. Again, in the email of May 18, 2005, the lawyer for the Defendant states that ‘we will honour the terms of the agreement agreed on behalf of the parties, George Looby and Myrtle Looby prior to his death in December 2004 as documented in letters...’ Further, in the letter of September 22, 2005 the lawyer for the Defendant states that ‘it was agreed’ as documented in my letter of the 26th April, 2004...’ On June 1, 2006 the lawyer for the Claimant wrote that she is still committed to abiding by the terms of the agreement that has been reached with the late George Looby prior to his death. She does not intend to vary the terms or seek anything that was not agreed. This is reinforced by the letter from the Defendant’s lawyer dated June 8, 2006 wherein it is stated that ‘we are pleased to note that your client is now willing to abide by all of the agreements which were reached prior to the death of George Looby.’”

[69] The effect of the submissions by Mrs Eleanor Solomon, on behalf of the Defendant, is to say that in view of the death of one of the parties and with the absence of a signed document, there is nothing before the Court in this regard. For her, what applies is *The Intestates Act*.

[70] In the face of the evidence it is the conclusion of the Court that even in the absence of a signed document there was an agreement between the Deceased and the Claimant. It is clear from the evidence that it related essentially to the former matrimonial home, a personal allowance and a new motorcar for the Claimant; property situate at Trincity, Trinidad and Royal’s Estate, Hodges Bay, Antigua, two term deposits, shares held by the Deceased in Antigua Commercial Bank, payment of bills relating to utilities, gardener and helper.

[71] Certain actions and events also support the above conclusion: acceptance by the attorneys for both parties that there was an agreement; the payments of bills by the Deceased (which were eventually stopped by the Defendant.) The initial acceptance by the Defendant that there was an agreement and a clear intention to honour it, payment of the allowance and repairs to the former matrimonial home as agreed between the parties commencing with the engineering aspect.

[72] The point of all of this is that the law does not permit the Defendant to approbate and reprobate at the same time.

[73] **Conclusion**

Given the evidence accepted and the law, it is the conclusion of the Court that agreement between the Claimant and the Deceased satisfies the law and as such binds the estate of the Deceased. Accordingly it is hereby declared as follows:

1. The Claimant is entitled to a share of the Estate of the late George Looby to the extent of and in accordance with the terms of the settlement agreement reached between the Claimant and the said George Looby in or around April 26, 2004.
2. The Defendant as the Personal Representative of the Estate of the said George Looby do recognize and give effect to the terms of the said settlement agreement within a reasonable time.

The evidence is that the Claimant was already evicted from the former matrimonial home at the time of the trial and as such the relief sought in this regard will not be granted.

[74] **Counterclaim**

In light of the Court's declarations above, the Defendant's counterclaim cannot be viable and must be dismissed since the reliefs sought run counter to the agreement. In any event the agreement does not speak to any equitable interest in the Paradise View property but rather a legal interest.

[75] Costs

The Defendant must pay the costs in the amount of \$14,000.00.


Apology

It is common ground that after this judgment and others had been reserved a number of other matters which touch and concern governance and/or the national interest of Antigua and Barbuda and in the Commonwealth of Dominica arose and as such were given priority. Further, this judge was transferred to another jurisdiction, where a single judge presides, with effect from 1st September 2010 with the foreseeable consequences. This accounts for the delay. Despite the foregoing a deep sincere apology is tendered for the delay.

[76] ORDER

IT IS HEREBY ORDERED AND DECLARED as follows:

1. The Claimant is entitled to a share of the Estate of the late George Looby to the extent of and in accordance with the terms of the settlement agreement reached between the Claimant and the said George Looby in or around April 26, 2004.
2. The Defendant as the Personal Representative of the Estate of the said George Looby do recognize and give effect to the terms of the said settlement agreement within a reasonable time.
3. The Defendant's counterclaim is dismissed.
4. The Defendant must pay costs to the Claimant in the amount of \$14,000.00.


High Court Judge
Errol L. Thomas