

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **PROBATE AND ADMINISTRATION DIVISION**

3 **CAUSE NO. P 4 OF 1999**

4
5 **IN THE MATTER OF THE SUCCESSION LAW (2006 REVISION)**

6
7 **AND IN THE MATTER OF THE ESTATE OF LAYMAN HOPKIN EBANKS**
8 **(DECEASED)**

9
10
11 **BETWEEN: RONNIE EBANKS**

PETITIONER

12
13
14 **AND EFFIE MITCHELL JOHNSON**

1ST RESPONDENT

15
16
17 **AND JEANNIE EBANKS GREEN**

2ND RESPONDENT

18
19
20 **IN OPEN COURT**

21
22 **Appearances:** **Mr. Laurence Aolfi of Samson & McGrath for the Petitioner**
23 **Mr. David Dinner of Dinner Martin for the 1st Respondent**
24 **Mrs. Jeannie Green In Person**

25
26 **Heard:** **13 & 15 May 2015**

27
28 **Petitioner's Closing**

29 **Submissions Delivered: 27 July 2015**

30
31 **1st Respondent's Closing**

32 **Submissions Delivered: 23 July 2015**

33
34 **Judgment Delivered: 21 September 2015**



35
36 *Contentious Probate and Administration - Removal of Administrator and appointment of new one -*
37 *Accounting*

38
39 **JUDGMENT**

40 1. This is a very strange matter. It concerns the Estate of Layman Hopkin Ebanks, the father
41 of the parties, who died from as far back as 2 March 1992. Mr. Ebanks died leaving three

1 children whom he had fathered with his wife Vera Ebanks. Those three children are the
2 Petitioner and the Respondents.

3
4 2. Letters of Administration of the Estate of Mr. Ebanks, deceased, were granted to Vera
5 Ebanks. On the 23 May 1992 Mrs. Ebanks filed an Inventory of Mr. Ebanks' Estate,
6 which stated that Mr. Ebanks died possessed of real estate and personal items as follows:

7 **REAL ESTATE -**

- a) West Bay North West, Block 4d Parcel 276 CI\$ 14,000.00
b) West Bay North West Block 4D Parcel 277 CI\$135,000.00

PERSONAL ITEMS -

- a) A chattel fish shop CI\$ 26,000.00
b) A boat with 30 HP engine CI\$ 2,300.00

BANK ACCOUNTS-

- a) Bank of Nova Scotia Account #912843 US\$ 2,470.69
b) Bank of Nova Scotia Account #5086 CI\$ 6,909.42

17 3. However, Vera Ebanks herself died on the 23 October 1998, without having completed
18 the administration of the Estate of Mr. Ebanks. Before her death Vera Ebanks had
19 transferred Parcel 277 into her name as Administrator.

20
21 4. The 1st Respondent was granted Letters of Administration de Bonis Non in relation to
22 Mr. Ebanks' Estate on the 15 April 1999.



1 5. It would seem that at some stage of this matter Parcel 276 was transferred to the 2nd
2 Respondent Jeannie Ebanks Green, ("Mrs. Green") because there is a deed of transfer
3 which shows Mrs. Green on 7 July 1998 transferring that property into the names of
4 herself and her husband Martin Green.

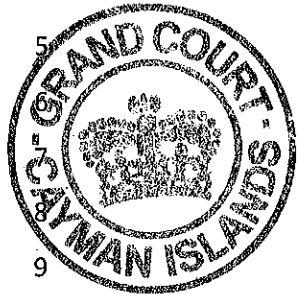
5
6 6. The Petitioner Ronnie Ebanks is currently an inmate at Northward prison, Grand
7 Cayman, serving a prison sentence for a serious offence. On the 16 July 2014, he filed a
8 Summons seeking the following relief:

- 9 "1. *The removal of the Respondent as administrator of the Estate of*
10 *Layman Hopkin Ebanks and/or in the alternative:*
11 2. *An order compelling the Respondent to execute a transfer of the*
12 *land at Block D, parcel 277, West Bay, Grand Cayman, into the*
13 *name of the Petitioner.*
14 3. *An inventory of Layman Hopkin's estate.*
15 4. *An account of the monies received and expenses paid from the*
16 *estate since appointment as administrator by the Respondent.*
17 5. *The appointment of Ronnie Ebanks as administrator...in place of*
18 *the Respondent."*
19

20 7. At the time of filing the Summons the Petitioner was still an inmate and Mrs. Green was
21 not yet a party to the application.
22

23 8. On the 15 October 2014, Williams J., upon the 1st Respondent's undertaking not to
24 transfer the property Parcel 277 and not to add any further charges to it, pending the
25 determination of the issues outlined in the Summons filed by the Petitioner, made a
26 number of orders, including that:





1 “1. The Respondent provide a full account for the estate of Layman
2 Hopkin Ebanks by 16th February 2015, to include but not limited
3 to, an account for:

- 4 i. Medical expenses incurred by the Respondent in relation to
5 the treatment of Layman Hopkin Ebanks and all payments
6 made towards the medical expenses for Layman Hopkin
7 Ebanks.
8 ii. All charges on the Property and repayment of those
9 charges, including the charge for a loan to Vincent
10 Mitchell.
11 iii. All expenditure on the property, including renovations.
12 iv. Rental income from the property.”

13
14 9. There were affidavits and a certain amount of accounting information filed by the 1st
15 Respondent in respect of those orders. When this matter came on for hearing before me in
16 May, I indicated to Counsel that my understanding of the nature of the office of
17 Administrator of an estate would point away from the Petitioner, a person serving prison
18 time for a serious offence, being a suitable person for such appointment. As to some of
19 the grounds for objection to the selection or appointment of an administrator, see Tristan
20 & Coote's Probate Practice, 26th Edition, Chapter 14, - Right of Court to Select an
21 Administrator at page 428.

22
23 10. Mrs. Green was also in attendance as a witness. In light of the way in which the evidence
24 unfolded, and certain positions taken by the parties, I formed the view that it was
25 necessary to have Mrs. Green added as a party to these proceedings and I so ordered.

1 11. A number of different discussions also took place between the parties, after we had
2 already commenced the taking of evidence. This was also after I had made my
3 preliminary comments in relation to the appropriateness, or rather inappropriateness, of
4 the Court of its own motion appointing the Petitioner as an Administrator. The parties
5 entered into agreements, embodied as consent orders as follows:



- 6 "1. Jeannie Green agrees to make no further claim in the Estate of
7 Layman Hopkin Ebanks.
8 2. The Petitioner and the Respondent agree to make no further claim
9 against WBNW Block 4D Parcel 276.
10 3. Jeannie Green and the Respondent have no objection to the
11 appointment of the Petitioner as the Administrator in the above-
12 captioned estate."
13

14 12. I also ordered that the Petitioner was to file and serve written closing submissions and
15 authorities, if any, and draft orders, including consent orders proposed, by 29 May 2015.
16 The 1st Respondent was ordered to file and serve written closing submissions and
17 authorities, if any, by 12 June 2015.
18

19 13. The closing submissions for both parties were not filed on time. I understand that
20 Counsel had been engaged in further discussions. Eventually, closing submissions were
21 received from the Petitioner on 27 July and from the 1st Respondent on 23 July. It is
22 because of the lateness of the submissions that the Court is only now able to hand down
23 judgment on the sole remaining issue. This determination has not been easy, in part
24 because of the way the claim has been made, the many years over which the
25 administration of this Estate has been allowed to meander, and the lack of documentary

1 evidence or proper accounting procedures in relation to numerous aspects of the claim.

2 The Court has also not been assisted with any current valuation of the property.

3
4 14. Since the evidence hearing was concluded, I understand that the parties have made even
5 more progress towards resolving this matter. That is fortuitous, because a number of
6 aspects of the matters that the parties wanted the Court to consider could only take place
7 by agreement. The parties have agreed, upon the 1st Respondent undertaking to pay the
8 debt owed to the Cayman Islands Government for the medical bills of Layman Hopkin
9 Ebanks totaling \$94,682.95, the further terms of a Consent Order as follows:

- 
- 10 "1. *Effie Mitchell Johnson is removed as Administratrix of the Estate*
11 *of Layman Hopkin Ebanks.*
- 12 2. *Ronnie Ebanks is appointed as Administrator of the Estate of*
13 *Layman Hopkin Ebanks.*
- 14 3. *All existing charges against the property are to be removed by*
15 *Effie Mitchell Johnson within 90 days of this Order.*
- 16 4. *Title to the property Registration Section West Bay at Block 4D,*
17 *Parcel 277 ("the Property") is to be transferred from Effie*
18 *Mitchell Johnson into the Estate of Layman Hopkin Ebanks within*
19 *90 days of this Order or within 7 days of a Final Order, which ever*
20 *date is later.*
- 21 5. *A new charge in favour of [Effie Mitchell Johnson] is to be made*
22 *against the property at the time of transfer of title in such sum as*
23 *the Court deems Effie Mitchell Johnson to be a creditor of the*
24 *Estate."*

25
26 15. The remaining issue is the extent to which there should be a new charge against the
27 property to protect the 1st Respondent as creditor of the Estate for any expenditures she

1 has paid from her personal funds or assuming the debt to the Cayman Islands
2 Government for medical expenditures originally owed by the Estate.

3
4 16. The Respondent says that she has made the following payments or accepted the following
5 liabilities on behalf of the Estate:

6	Medical	CI\$150,000.00
7	Renovations	75,000.00
8	Post-Ivan repairs	15,068.00
9	Accounting fees	1,000.00
10	Legal Fees-appointment	2,000.00
11	Funeral Expenses	5,000.00
12	Furniture	7,270.99
13	TOTAL	CI\$255,338.99

14
15 17. The Respondent also now claims that there was a total rental income of \$114,369.18, less
16 rental expenditures of \$74,385.11, resulting in a rental profit for the Estate of \$39,984.07.
17 On the 1st Respondent's claim, subtracting the rental profit from the total expenditure,
18 there would be approximately \$205,214.72.92 owed to her by the Estate.

19
20 18. The Petitioner has disputed many of the items claimed. I agree with Mr. Aolfi, Counsel
21 for the Petitioner, that in these circumstances, the 1st Respondent, as Administrator of the
22 Estate has the burden of proving the sums claimed, to the Court's satisfaction.

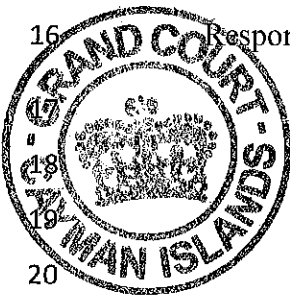
1 19. In considering each of the disputed heads of the claim the credibility of the 1st
2 Respondent and the account given by her are very important features of this case. This is
3 so in an overall sense, as well as in respect of each specific head of claim.
4

5 20. There are a number of features to this case that have caused me to find that the 1st
6 Respondent is not the most credible of witnesses. Firstly, the 1st Respondent has stated
7 her occupation to be that of a Property Manager. With that background, it is difficult to
8 accept that she would not have appreciated the importance of keeping proper records of
9 the expenditure and income relating to the management of the property. A number of the
10 excuses put forward by her for being unable to find documentation, for example, that the
11 documents were lost after Hurricane Ivan, or that she just does not know where receipts
12 books are, seemed very lax and unreasonable to me. The 1st Respondent has also given
13 evidence that has been contradictory, inconsistent and has demonstrated a completely
14 cavalier approach to her duties as an Administrator. For example, some of her answers
15 are vague and lacking in specificity. In her affidavit sworn to on 10 October 2014, the 1st

16 Respondent evidently considered it sufficient to give evidence at paragraph 17 that:

17 *"Thus, over the past 13 years the property has generated income of*
18 *roughly CI\$54,600.00, while at the same time costing me roughly the same*
19 *amount in expenses during the times that it was not rented. Thus, there is*
20 *no surplus in income generated."* (My emphasis).

21
22 This evidence also differs greatly from her evidence in her later affidavits and in cross-
23 examination.
24





21. The parties have consented to the Petitioner being the Administrator, and he claims that he can from inside prison obtain relevant documents, sign papers, employ persons outside to collect rent, and to generally help him with the overall running and administration of the Estate. When I queried of the parties whether it would not have been more appropriate to have a different Administrator appointed, all parties were of the view that that would not prove cost or time effective. The Petitioner states that although when he went into prison he could not then read and write, he has now learnt how to do so whilst serving time. Thus, I am going to concern myself solely with trying to arrive at a reasonable, proved sum which would represent a new charge to be put on the property in favour of the 1st Respondent.

22. As regards, the medical claim, there is no documentary proof that this sum was ever the sum of CI\$150,000 claimed by the 1st Respondent. Such documentary proof as there is, is in the sum of \$120,373.35 which was the sum which the Government recovered in a Default Judgment in respect of a promissory note signed by the 1st Respondent, and in respect of which there is said to be a garnishee order against the 1st Respondent in the sum of \$400 per month. Further, the evidence of Mrs. Green was that the 1st Respondent told her that the amount involved in the medical bills was \$135,000.00 and not \$150,000.00. The evidence is that the sum of \$94,682.95 was now the sum outstanding as at 20 January 2015.

23. As regards the sum of \$75,000.00 claimed in respect of renovation, it is not in dispute that some amount of expenditure occurred and was organized by the 1st Respondent in

1 order to bring the property into a state of readiness for rental. However, the
2 receipts/invoices produced by the 1st Respondent only amount to \$34,810.15, thus there is
3 some amount of shortfall. Further, the 1st Respondent really has, I agree with Mr. Aolfi,
4 handled this property as if it were hers and has not acted as one would expect an
5 Administrator to act. Even before the transfer of the property into her own name as
6 Administratrix, the 1st Respondent and her husband had the benefit of several loans raised
7 against the property. The 1st Respondent transferred the property into her name as
8 Administratrix on or about 10 May 1999. The 1st Respondent then transferred the
9 property into her and her husband's joint names on or about 18 June 1999. On 14 June
10 2011 the property was then transferred back into the sole name of the 1st Respondent. She
11 claims to have obtained the consent of the Petitioner for this latter transfer. He however
12 denies this. There is no document proving such consent. At around this time the
13 Petitioner was in prison.

14
15 24. Further, on 23 June 2011 the 1st Respondent raised a new charge on the property as
16 collateral to secure a mortgage for her personal home. This was done without the consent
17 of the Petitioner or Mrs. Green. I agree with Mr. Aolfi that there was no conceivable
18 benefit to the Estate in doing this. The 1st Respondent then combined the new charge for
19 the collateral to a personal mortgage together with the charges of \$75,000 for claimed
20 renovations. The 1st Respondent clearly, as argued by Counsel for the Petitioner, mixed
21 what she now claims to be Estate expenditures with her personal expenditures.





1 25. I agree that in the absence of other proper documentary proof, it is reasonable to use the
2 figure of CI\$45,000 that appears in the Quantity Surveyors Estimate of works done,
3 being the Deloitte & Touche Report dated 12 July 2000 as there are no receipts and/or
4 invoices in respect of the \$75,000.

5
6 26. However, in her affidavit the 1st Respondent stated that the combined new charges
7 relative to the renovation loans and her personal expenditure has now been reduced to
US\$22,124.60. I agree with Mr. Aolfi that it would seem likely that the estate loan was
repaid first, and secondly, that the 1st Respondent would have used rental money to repay
these sums, not her own personal funds. In any event, the manner in which the 1st
Respondent has mingled the business of the Estate with her own personal business, does
12 not assist her in her claim that sums are owed to her in respect of the Estate expenditures.

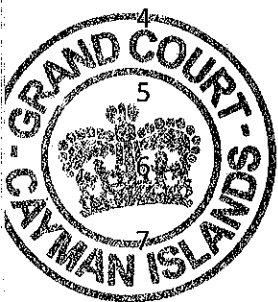
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14 27. At paragraph 18 of the Petitioner's submissions, it was submitted that the 1st Respondent
15 never truly expected to be held to account as she has now been by the Petitioner. She
16 knew that her brother had been sentenced to a very lengthy period of imprisonment and
17 that he was at the time unable to read and write. Mrs. Green had received a form of
18 compensation already in that Parcel 276 had been transferred to her. It was advanced that
19 the 1st Respondent believed that she could convince the other beneficiaries that the
20 expenditures had far exceeded the value of the Estate and that there was nothing
21 whatsoever left in it. Mr. Aolfi submitted that this was supported by the two claims made
22 in the 1st Respondent's affidavits, which are also at variance with each other, notably,
23 CI\$247,068.90, in her affidavit sworn on 10 October 2014, and CI\$325,514.76, in her

1 affidavit of 2 March 2015. I agree with those submissions. It was also, in my view,
2 telling, that in cross-examination, the 1st Respondent accepted that her accounting
3 involved significant double-counting. She also conceded that on her own figures and
4 accounts, there should in fact be, and was, a net operating profit.

5
6 28. I now turn to consider the aspect of this case that relates to rental income and
7 expenditure. In his written submission to the Court Mr. Aolfi states that his client
8 disputes the sum of \$114,369.18, put forward by the 1st Respondent as being rental
9 income. He makes serious allegations of fraud, which in my view, cannot properly be
10 raised in the manner in which the Petitioner has sought to raise this case, i.e. simply by
11 filing a Summons for removal of the 1st Respondent as Administrator, substitution of
12 himself, and seeking Inventory and Accounts. There is not even a claim made in
13 negligence, which would have required proper pleadings in a different type of claim than
14 the one being made here. This is what is submitted at paragraph 36 of the written
15 submissions on behalf of the Petitioner:

16 "36. This amount is disputed. It [is] submitted that this figure is
17 significantly lower than the actual amount received from the
18 property. It is not possible to ascertain exactly how much was in
19 fact made by the Estate due to fraud by the Respondent. It is
20 however submitted that the Court can with reasonable certainty
21 conclude that the Respondent would not have paid off property and
22 Estate from her personal income without reimbursing herself from
23 rental profits. Further the Court can estimate with reasonable
24 certainty a higher rental figure than that claimed by the
25 Respondent." (My emphasis).





1 29. It would not be appropriate for me to make any findings about fraud, nor indeed to
2 estimate the higher rental figure which Mr. Aolfi proposes later on in his submissions that
3 I should arrive at (i.e. at paragraph 57 of the written submissions Counsel asks me to find
4 that the rental income before expenses would have been at least \$150,000). There is no
5 proper foundation upon which I could estimate what the rental would have been.
6 However, I am satisfied that the 1st Respondent has not rendered a true and proper
7 account and further, that the rental income was in all probability much higher than the
8 figures which she has put forward.

9
10 30. I have come to this conclusion for a number of reasons. I will start with the completely
11 unsatisfactory state of the records for rental income. On the evidence of the 1st
12 Respondent herself there would have been more rental receipt books than were made
13 available to the Court. For example, one rental receipt book effectively stops at March
14 2012, with only three entry receipts post-dating that. Yet the accounts provided by the 1st
15 Respondent purport to account for the period of March 2012 to the beginning of 2015
16 without any receipt book, with the 1st Respondent claiming that there was only one tenant
17 in occupation and only for some of that period. The 1st Respondent was therefore
18 purporting to provide this information, just "from the top of her head". In any event, this
19 was a completely arbitrary approach to the proper provision of accounting.

20
21 31. Another example is the information in respect of the year 2012. According to the
22 accounts, a total income of just \$1,900 was received from mainly one tenant at a time
23 living there for that year. (In fact the last two entries, I agree with Mr. Aolfi, were mis-



1 recorded and should have been for 2013). Thus the total would be \$1250 rental income
2 for that year. Yet the total CUC electricity bills for that year were \$3370 and water bills
3 were for \$975, an expense of \$4,345, being more than three times the value of the
4 recorded income. The 1st Respondent's evidence that she did not charge tenants for
utilities at certain points and that she thus allowed the property to be subsidizing the
needs and lifestyles of the tenants and running at such a loss, really is completely
incredible. Further, the 1st Respondent's evidence via the accounts, was that for the
period July 2012 to March 2013 there was no tenant and the place was vacant. However,
9 monthly electricity bills were approximately \$200-\$300. It was put to the 1st Respondent
10 that if the property was vacant at this time, then one would expect negligible bills. Her
11 response that these bills could be explained by the need to have outdoor lights on and to
12 prevent the onset of mould was not, in my view, capable of belief. In any event, it would
13 be contrary to business sense, to run the property in such a way and at such loss.
14 Business sense is not a quality which the 1st Respondent appears to have been short of,
15 when it came to running her own personal business and securing loan financing for her
16 own affairs.

17
18 32. There is also inconsistency between the evidence of the 1st Respondent and of Mrs.
19 Green, who lived right next door (on the property transferred to her many years ago), in
20 relation to the frequency and level of occupancy by tenants. The 1st Respondent's
21 evidence was that for long periods of time the property was let to only one person or
22 sometimes two. Mrs. Green, on the other hand, gave evidence that not only was the



property almost always rented out, but also that it was more often than not rented out at full capacity, with three or four rooms being rented out.

3

4 33. The evidence is replete with many other examples that in my judgment plainly suggest
5 that there was greater rental income flowing in than has been accounted for by the 1st
6 Respondent. However, I think that the foregoing amply make the point. Suffice it to say
7 that this has led to a most unsatisfactory and irregular state of affairs.

8

9 34. The Petitioner is prepared to agree to the figures of \$2,000 being claimed for the legal
10 fees for appointment and to \$1,000 for accountancy fees. However, because the Petitioner
11 submits that the Court should estimate the rental profit at \$135,000, and that the 1st
12 Respondent has been able to, and has accessed funds from the Estate that would have,
13 and did enable her to pay down the Renovation Loan and medical expenditure debts, he
14 has proposed a figure of \$40,344.34 as a final figure. On the other hand, Mr. Dinner on
15 behalf of the 1st Respondent, has submitted that a total claim for reimbursement in the
16 sum of C\$205,214.72 is appropriate in the circumstances.

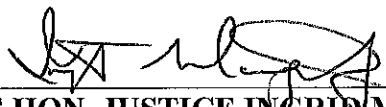
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18 35. The 1st Respondent has assumed the medical expenses debt as her own debt, and there is
19 extant a judgment against her in favour of the Cayman Islands Government. Authority
20 has been conferred on the Court by and at the request of the parties to make an order as to
21 the amount that could constitute a new charge in favour of the 1st Respondent.

22

1 36. In all of the circumstances of this case, trying my best to achieve the overriding objective
2 of dealing with this case justly, and bearing in mind the input of the parties and their
3 Counsel, I am of the view that I will have to adopt a rough and ready approach to this
4 accounting exercise. This is primarily because it is plain that the 1st Respondent has not
5 rendered a just and true account. As to whether there is other relief available to the
6 Petitioner, I leave to be considered by himself and his attorneys. In all of the
7 circumstances, I am of the view that the sum in respect of which the 1st Respondent
8 should be considered a creditor, and in respect of which the parties have agreed in
9 principle that they will place a charge on the property, upon transfer back to the Estate, is
10 CI\$120,073.35.

11
12 37. In my judgment, the Petitioner should be awarded costs against the 1st Respondent on the
13 standard basis. Since this is a complicated matter and an application that may need
14 further input from the Court at a later stage, I will grant the parties liberty to apply.

15
16
17
18 
19 THE HON. JUSTICE INGRID MANGATAL
20 JUDGE OF THE GRAND COURT

