COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PROBATE DIVISION

FILE NO. 2016/PRO/cpr/00047

BETWEEN

IN THE ESTATE OF THE LATE JOHN BENJAMIN MCKENZIE of #16 Carraway Street, Prince Charles Drive in the Eastern District of the Island of New Providence one of the Islands of the Commonwealth of The Bahamas, deceased

AND

MONA MARIA McKENZIE-CULMER
[HOLDING POWER OF ATTORNEY FOR ADINA MARTIN-McKENZIE]

Plaintiff

AND

WILLIAM TAYLOR

AND

NATHANIA DIANNE-TAYLOR

Defendants

Before: The Honourable Madam Justice Donna D. Newton

Appearances: Mrs. Kelphene Cunningham, for the Applicants

Mr. Darren Ellis and Mr. Phillip McKenzie for the Respondents

Hearing Dates: 7th November 2017 and 3rd October 2018

Judgment: 2nd July, 2020

JUDGMENT

NEWTON J.

1. *Probate -Validity of Will - Suspicious Circumstances - Testamentary capacity - Application to decree will in solemn form - Application for will to be declared void – Request for injunction to restrain Executor and Beneficiary.*

Introduction

2. The Plaintiff's claim is that the deceased's purported will wasdrawn and executed under suspicious circumstances and as such the court should pronounce against its validity and declare that the deceased died intestate and his estate is distributed in accordance with the Inheritance Act 2002. Further that an injunction is granted to restrain the Defendants from disposing of the deceased's property.

3. ***HELD***: The degree of suspicion is low and is dispelled by the evidence of the Defendants' witnesses. It is declared that the Last Will and Testament of John Benjamin McKenzie is valid. That the Caveat entered is discharged.

Background facts

4. The Plaintiff by Power of Attorney for her mother ("the wife") initiated these proceedings by way of Writ of Summons filed on 26th December, 2016.

5. The Writ alleges that the last will and testament ("the will")was drawn and executed under *suspicious circumstances*. The will was executed on the 11th September, 2015 by the Plaintiff's father ("Mr McKenzie") who passed away on the 8th July, 2016 at the age of 87 years.

6. The Plaintiff also alleges that the deceased was suffering from several medical conditions namely advanced prostate cancer, hypertension, diabetes, mellitus and hypercholesterolemia at the time the will was drawn and executed at his home.

7. The will was drawn by an attorney, Miranda Adderley, from the law firm of Davis & Co. who were the defendant's attorneys. The devises of the will did not include the Plaintiff, the wife or any of the deceased's blood relatives. Mr. Taylor, the deceased's neighbour is

named as the sole executor and he and his daughter, the Second Defendant, are the beneficiaries. The deceased disposed of his entire estate inclusive of his interest in a property in Abaco which he shares with his siblings to Mr Taylor and his daughter.

8. The Plaintiff claims that Mr McKenzie could not have known and approved of the contents of the document and it did not represent his true intention.

9. That his actions disinherited his spouse together with his three adult children and his siblings. She described the testator's conduct as **"unusual in the circumstances"**.

10. The Defendants deny that there were any *suspicious circumstances* surrounding the drawing or execution of the deceased's will and have filed a Defence and Counterclaim asking the Court to declare that the deceased died testate and pronounce the will was validly made and executed; that Mr. Taylor is the executor of the estate of the deceased; and that the Caveat entered by the Plaintiff on the 15th September 2016 be discharged.

The Issues

11. The issues here are:

12. Whether the circumstances surrounding the drawing and execution of the will fall within the parameters of the doctrine of *suspicious circumstances*, thereby exciting the vigilance and suspicion of the Court.

13. Whether the Defendants have discharged the burden of dispelling the suspicion by raising the presumption that the testator knew and approved of the contents of his will.

14. Whether the will should be pronounced void.

The Statutory Framework

15. ***Section 3*of the *Wills Act* (the Act) provides that every person may by will, executed in accordance with the Act, dispose of his**

real and personal property which he owns at the time of his death.

16.***Section 4*** **outlines a person's legal capacity to make a valid will, that he must be;**

(a) aged eighteen years or over; and

(b) of sound disposing mind.

Doctrine of Suspicious circumstances

17. The Plaintiff claimed that there were *suspicious circumstances* in the drawing and execution of the deceased's will.

18. Counsel for the Petitioner relied in support of her submissions on a number of authorities including the leading case of **Barry v. Butlin(1838) II Moore 480** which laid down the principle of suspicious circumstance, that,

19. "...**it is twofold, that the onus probandi lies in every case upon the party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator. Secondly that if a party writes or prepares a will under which he takes a benefit, that is a circumstance which ought generally to excite the suspicion of the Court".**

20. Counsel for the Plaintiff submitted that the will was executed under suspicious circumstances. She contends that suspicion arises from the fact that Mr Taylor engaged the services of the attorneys who prepared the will for the deceased. Additionally, Mr Taylor's son drove the attorney and the attesting witnesses to the deceased's home. At the home, Mr Taylor was in the kitchen while the will was being executed, albeit he left the house before the attorney did.

21. She further submitted that the Attorney was never called to give evidence as to who gave the instructions to prepare the will and she stated that it was incumbent on Mr Taylor to call **expert** *(emphasis mine)* evidence to explain how the document came into existence. This submission was not supported by the authorities presented. The compelling inference she said, is that it must have come from Mr Taylor. This she said raises grave suspicions whether Mr McKenzie had knowledge and approved of the contents of the will.

22. The only reasonable inference, she suggested, is that the document was already prepared before Ms Adderley was taken to the home and that the contents could not have come from Mr McKenzie.

23. Suspicion could be aroused in varying degrees and depending on the circumstances and what is needed to dispel the suspicion would vary accordingly. **(Fuller vs Strum (2002) 2AER)**

24. In **Fuller and Strum** the testator and the executor went into a bedroom where the will was executed leaving 30% of the testator's disposable assets to the executor. The court held that the actions aroused the courts suspicion but at a very low level.

25. **In Gill and Woodall (2011) Ch 380** the plaintiff's parents had attended the chambers of the father's attorneys where similar wills were prepared and executed leaving their estate to one another (in the event one predeceases the other) and then to the Royal Society for the Prevention of Cruelty to Animals (RSPCA). The father having predeceased the mother, on her death the estate fell to the RSPCA on the mother's death. The court found that the father had exerted undue influence over the mother when executing the will. It was held that in these circumstances the court's suspicion was aroused

26. Counsel for the Plaintiff also referred to Winder, J's decision in **Moss and Moss and another 2013/CLEgen/00398** where the attorney attended the hospital bed of the testator and after questioning him she proceeded to have him execute his will. Again the court found that there were suspicious circumstances in the execution of the will.

27. In **Devillebichot (deceased) Brennan v Prior and others (2013) All ER (D) (Sep)** the court found as suspicious the fact that the will was drawn by members of a family who stood to benefit under it.

28. The test (according to **Lord Wilberforce in Lucky v Tewari (1965) 8 WLR**) is that the evidence which gives rise to suspicion must create a real doubt whether the testator knew and approved of the contents of the will.

29. Hence, the burden of exciting the court's suspicion lies with the Plaintiff and once this is accomplished the burden then shifts to the

Defendants to prove that the testator knew and approved of the contents of the will.

30. Applying **Lord Wilberforce's** test to the instant case, the facts that I find that give rise to suspicion and thereby create a doubt as to whether Mr McKenzie knew and approved of the contents of the will are;

31. Mr Taylor, the beneficiary and executor secured the attorney to prepare and execute the will; his son drove the attorney as well as the witnesses to Mr McKenzie's home; and he was present in Mr McKenzie's home at the time of the execution of the will;

32. These, I find are sufficient to "excite" the court's suspicion. Consequently the court must be vigilant and examine the circumstances surrounding the execution of the will.

33. It is therefore incumbent upon the Defendants to discharge the burden of establishing that the will represents Mr McKenzie's testamentary intentions. If suspicion is aroused and not removed the Court may exercise its discretion and not grant probate and declare that the deceased died intestate.

34. In order to determine whether the Defendants have discharged this burden it is necessary to examine the evidence of the witnesses and draw inferences from what was presented.

The Plaintiff's Evidence

35. The Plaintiff stated that she was **"close"** to her father and that they maintained a telephone relationship. She explained that they spoke **"frequently"** and that she considered frequently to mean if "need be". She went on to say that she would give him a call seasonally, on his birthday, on Father's Day, Christmas or whenever she felt the need to speak with him. This telephone contact occurred about four to five times a year. However, under cross examination she was unable to re-call her father's home telephone number correctly. On further questioning she explained that she was unaware that he had a mobile phone as she had never called a mobile number to reach him. The last time she spoke with him would have been the Father's Day before his death.

36. She explained that the last time she actually visited her father's house was on the 8 July 2016, the date he died. She said that she last visited the house about 5 years prior to her father's death but she did not see him at the time. She relied on her cousin, her father's nephew Roger Mortimer ("the nephew") to inform her of her father's condition as he visited her father regularly. She emphasized that she and her father communicated by telephone.

37. She admitted that she knew her father had been diagnosed with prostate cancer through the nephew, whom she stated took care of her father. When pressed as to why she never visited with him after learning of his terminal illness she responded that she and the deceased knew why it was that way. She gave no further explanation.

38.. The Plaintiff stated that her parents had been separated for decades – she said since about 1988 - anywhere between twenty-eight to twenty-nine years. Recalling her parents' separation she said when she left she took her mother with her. She went on to say that her mother did not have the type of relationship with the deceased which would cause her to visit him. Describing her parents' relationship she said **"they were not friends, they did not get along"**. Stating further that there was no communication between them and to her knowledge her mother never visited the house after she left. Even after learning of his illness.

39. However, she explained that the deceased's grandchildren visited with him and when they were younger he would often times treat them to ice cream. It is worth noting that the grandchildren she referred to are now 22 and 35 years old respectively.

40. She said that Mr. Taylor requested her to make all of the funeral arrangements as he would cover the cost and he did.

41. The Plaintiff said she had known Mr Taylor for many years, recalling that he was her father's neighbour and that **"he was my father's friend, he was a family friend, he was our friend"** adding **"that he was like family"** and that the family had kept in communication with him.

42. She said that she knew that Mr. Taylor was the Executor of her father's will but was unaware that he and his daughter were the only beneficiaries of her father's estate.

43. She explained that her brother Attorney Alfred Sears, QC, obtained a copy of the will and read it aloud in the presence of her and Mr Taylor. It was then she realized her father had given property in Abaco which belonged to him and his siblings, to Mr Taylor.

44. The Plaintiff categorically denied that her father was bedridden prior to his death and countered this assertion by stating that he had in fact bought a car when he was 80 years old adding that he was not ill to the point before he died that he **"could not do for himself"**. I note that this purchase was made some eight years prior to her father's death. Also of note is that the Plaintiff's information of her father's condition prior to his death is not within her own knowledge, having admitted to not seeing him for some five years prior to his death and she depended on her cousin for information as to her father's condition.

45. The Plaintiff' could not say whether her father's condition deteriorated from the time he was 80 years when he purchased the car to the time he died at 87years. She explained that she did not physically see her father but she heard that he was **'doing good'**.

46. She said she brought the lawsuit not for her own gain but representing her deceased brother's children whose mother had also passed and she wanted to ensure that the children received an inheritance from their father. Further she contended that Mr. Taylor was well off and his children were comfortable.

<u>Evidence of ROGER MORTIMER – the nephew</u>

47. Mr. Mortimer, the nephew, said as a teenager he lived with the Mr McKenzie for a period of time and as his health started to decline, which was about 3 years prior to his death, he began to take care of him which included running his errands, bringing lunch, looking after his laundry and attending to his personal hygiene. He said he never saw anyone else take care of Mr McKenzie.

48. Mr Mortimer said that he visited Mr McKenzie twice daily, except on Sundays, at 12pm and again at 3pm but he ceased the 3pm visits after he and Mr Taylor disagreed as to the type of food Mr McKenzie should eat. He further stated that he knew the deceased and Mr. Taylor would go riding together on Sundays.

49. In order to avoid **"bumping"** into Mr. Taylor on the property he said that he would only visit at 7am and this continued until a few days prior to Mr Taylor's death.

50. Mr. Mortimer gave evidence that a few days before his death Mr McKenzie could not open the door and he, Mortimer, requested Mr Taylor to give him a key to do so which Mr Taylor refused therefore he did not return. He admitted however that two days before his death he and Mr Mckenzie spoke and he appeared to be in his right mind.

51. Mr. Mortimer stated that he was informed by the gardener, Mr. Stanley Lightbourne (about a year prior to Mr McKenzie's death) that it looked as though Mr. Taylor, his sons and a lawyer went in to see him.

52. He said it was not right the way Mr. Taylor shut him out and this caused him to become upset and therefore he did not attend his uncle's funeral. Through cross examination he admitted that he found out about a month prior Mr McKenzie's death that Mr Taylor was entitled to all of the deceased's possessions and also admitting that the last time he saw the Plaintiff visit Mr Mckenzie was when he was residing there which would have been sometime in the 1980's.

<u>Evidence of WILLIAM TAYLOR - Defendant</u>

53. Mr. Taylor stated that he knew the deceased since 1971 and that they bought their properties at the same time in Gleniston Gardens in 1983. He said that since Mr McKenzie's wife left him and up to the time of his death Mr McKenzie never wanted to see or speak of them.

54. Mr. Taylor explained that Mr McKenzie had complained of not feeling well and he took him to a doctor who diagnosed him with prostate cancer. Mr Taylor said that as he became increasingly ill, he (Taylor) took on the responsibility of assisting Mr McKenzie by looking after his properties. He stated that he would often sit with him and keep his company. Further that he would run other errands for him.

55. He stated that the deceased did in fact purchase what he believed to have been a used car prior to his death.

56. He also acknowledged in cross examination that the nephew visited and cooked for Mr McKenzie but denied that he deliberately excluded this detail from his evidence in chief to make it appear that he and his daughter were the only persons to look after Mr McKenzie.

57. He said he paid Mr Lightbourne, the gardener to look after the deceased and his property. That he made purchases including medication from his (Taylor's) own funds for him. His daughter, he said, would cook for McKenzie on weekends when the nephew was not around.

58. Regarding the deceased home he stated that he only obtained a key a week before Mr McKenzie died.

59. He said that as Mr McKenzie became increasingly ill he (McKenzie) asked Mr Taylor to find a lawyer for him. He did as was requested and contacted a lawyer from Davis & Co. Mr. Taylor stated that the deceased executed his will after the lawyer visited his home. He acknowledged that he was in the kitchen of the home at the time and he explained that he left the house before the lawyer did.

60. Mr. Taylor said that he did not assist or influence in the drafting of the will nor did he influence in having himself added as a beneficiary.

61. Mr. Taylor went on to explain that when Mr McKenzie passed away he was with him at his home along with his (Taylor's) daughter and Stanley Lightbourne, the gardener. That none of the deceased's family members were there. He called the police and the undertaker and paid $7,000.00 in funeral expenses from his own funds.

62. He explained that up to the time of Mr McKenzie's death he was in his right mind, alert and remembered everything.

Evidence of Nathania Taylor – Defendant

63. Miss Taylor, the Defendant's daughter said from the time she was young she knew Mr McKenzie to be living alone. That her relationship with him was like a father/daughter one. That he would call her over and supply her with food and drink on her birthdays, and he would give her small gifts as a child.

64. She stated that after he became ill sometime around 2015 she did not see his wife or daughter visit and that she and her father would assist him and make sure that he was properly taken care of.

65. She stated that she visited him once or twice per week beginning in 2015 when he became ill. She said that she would take him small supplies like drinks and would assist him if he needed to get up from the bed by holding his hands, but she maintained that he was not bedridden.

66. She testified that she had no conversation with Mr McKenzie about leaving his property to her.

Evidence of Stanley Lightbourn –Gardener

67. Mr Lightbourne, the gardener said that he knew the deceased for about 15 years. He was a neighbour and they became friends. He would assist around the property and he did odd jobs around the house since about 2002.

68. Mr. Lightbourne explained that he worked for the deceased about 10 years before he became ill, afterwards Mr. Taylor paid him. This arrangement continued for a couple of months prior to the deceased's passing. Mr. Lightbourne said that he moved in with Mr McKenzie when he became ill and that he was still residing in the Gleniston Gardens property taking care of the house.

69. Mr. Lightbourne stated that the deceased and Mr Taylor were best friends and that Mr Taylor and his daughter assisted the deceased. He said he never saw relatives visit Mr McKenzie and was told by Mr McKenzie not to open the door if relatives ever came to it.

70. He also said the deceased was in his right mind and alert up to the time of his death.

71. He said that he knew the nephew from the time he was a child and had seen him at Mr McKenzie's house, daily. Further, that the nephew came by a few times, but he stopped coming when Mr McKenzie informed him that he made his will and did not leave anything for him in it.

72. Mr Lightbourne also said that he met Marcus, one of Mr McKenzie's grandchildren, a utility meter reader, who attempted to visit "a few times", but Mr McKenzie did not let him into the home.

Evidence of Angela Rolle and Tootsie Hunter - Attesting Witnesses

73. The evidence of both attesting witnesses were very similar. Counsel for the Plaintiff made much about the similarities of the witness statements. I do not think anything turns on it as it is not unusual for attesting witnesses to have similar evidence.

74. Ms. Rolle's evidence is that Mr McKenzie appeared to be in "good spirits" at the time of execution. That he read over the will and was alert and answered questions posed by Attorney Miranda Adderley in reference to the date and his date of birth. That he was sitting up in the television room, watching television when they arrived at his home.

75. Ms. Hunter said that Mr. Taylor's son drove them to Mr McKenzie's house where Mr McKenzie greeted them warmly and offered drinks to them.

76. Further she stated that she thought he was ill because they were attending at his house and not at the office.

Analysis

77. In all the circumstances which give rise to suspicion it is for those who propound the will to remove such suspicion and to prove satisfactorily that the testator knew and approved of the contents of the will. It is only when this is done that the onus is thrown on those who oppose the will to prove fraud or undue influence

78. Suspicion alone is not sufficient to invalidate a will. The undisputed fact is that Mr Taylor, the sole executor and a beneficiary was instrumental in the process of having the will executed. The question is, did Mr Taylor prove that Mr Mckenzie intended to grant his entire estate to him and his daughter thereby disinheriting his wife and other family members.

79. The proof required is for Mr Taylor to establish whether Mr Mckenzie possessed the requisite capacity to enable him to make the devises,

that is, whether he had sufficient knowledge and approved of the contents of the will..

80. In **Gill** *supra* where both parents made similar wills, **Lord Neuberger of Abbotsbury** adopting the decision of **Sachs, J**, in **Re Crerar** while explaining knowledge and approval, stated that the court should consider all the relevant evidence and the fact that the testatrix read over the document and executed it must be given the full weight that is appropriate, but in law those facts are not conclusive nor do they raise a presumption.

81. The court in **Gill** found that the testator did not have knowledge of the contents of the will. The plaintiff was the only child of the testator and she had a close relationship with her parents, she assisted them with their farm in a substantial way, they expressed their gratitude for her help and assistance, she cared and provided support for her mother after her father had passed, expert evidence was given to establish that her mother suffered from a mental condition that affected her understanding.

82. Lord Neuberger went on to explain that **"there may be a danger of this decision being seen as something of a green light to disappointed beneficiaries, and in particular to close relatives of a testatrix, who have not benefitted from her (his) will, to challenge the will even where it has been read over to the testatrix, or to appeal a first instance decision upholding a will's validity....".**

83. The court should not be quick to conclude that a will does not represent the genuine wishes of the testator simply because its terms are inconsistent with what the testator said during his lifetime or that it is unfair.

84. The strict meaning of *onus propandi* was discussed by Chadwick, LJ In **Fuller v Strum (2002) 2 All ER** referring to **Parke B, in Barry v Bullin**

85. "....if no evidence is given by the party on whom the burden is cast, the issue must be found against him. In all cases the onus is imposed on the party propounding a will, it is in general discharged by proof of capacity and the fact of execution from which the knowledge of and assent to the contents of the instrument are assumed."

86. He explained further that;

87. **"It cannot be that the simple fact of the party who prepared the will being himself a Legatee is in <u>every case</u> (*emphasis mine*) and under all circumstances, to create a contrary presumption and to call upon the court to pronounce against the will unless additional evidence is produced to prove the knowledge of its contents by the deceased......if a person, whether attorney or not, prepares a will with a Legatee to himself, it is at most a suspicious circumstance, of more or less weight according to the facts of each particular case....but in no case amounting to more than a circumstance of suspicion demanding the vigilant care and circumspection of the court in investigating the case and calling upon it not to grant probate without full and entire satisfaction that the instrument did express the real intentions of the deceased".**

88. I adopt ***Chadwick's, L J*** explanation that it cannot be necessary in every situation, even if capacity is doubtful, to require the precise evidence of the testator's knowledge of the will to be in the form of instructions or reading over the document. They for the most part are satisfactory but they are not the only satisfactory description of proof by which the contents of the will may be brought home to the deceased. It has no right in every case to require it.

89. The evidence of the attesting witnesses is that the will was read over and executed by Mr Mckenzie in their presence. Further, I accept the evidence of Mr Lightbourne, the gardener who said that Mr McKenzie told him that he left nothing in the will for his family. Also, that upon learning this the nephew ceased visiting his terminally ill uncle. This, I find not only confirms that Mr McKenzie was knowledgeable of the contents but also his approval of it.

90. The onus is discharged by proof of capacity.

91. All the witnesses's evidence including the Plaintiff's, were on one accord regarding the deceased's physical and mental state at the time the will was executed. The Plaintiff's knowledge as to the deceased's wellbeing is limited to her telephone conversations with him coupled with the nephew's reports to her. Notwithstanding, she said that he was doing good up to the time of his death. The attesting witnesses

both said he, greeted them warmly and was in good spirits at the time of execution.

92. The standard of proof required is the civil standard, that is, on a balance of probability that the contents of the will represent the true intentions of the testator.

93. It seems to me to follow that the devise is evidence of Mr McKenzie's love towards his best friend and daughter. A friendship, spanning some thirty years which friendship extended to the daughter.

94. I do not agree with Counsel for the Plaintiff that there is no obvious and compelling reason for Mr McKenzie to disinherit his entire family. The fact that a parent disinherits a child may be shocking to persons in a community but that does not invalidate a will.

95. Mr. Taylor had a very long friendship with the deceased and no doubt over the passage of more than three decades gained the love and trust of the deceased. I believe that this friendship was the motivating factor behind the deceased's last wishes. The Plaintiff referred to Mr Taylor as "family" and Mr Taylor's daughter described her relationship with Mr McKenzie as akin to father/daughter relationship.

96. I find that Mr McKenzie's conduct in not granting his property to any of his family members is not unusual and inconsistent with his relationship with them.

97. The deceased at the time of the execution of his will was not bedridden and was by the account of every witness who gave evidence, alert and capable of conducting his business.

98. **Gill's** case and **Moss's** case can be distinguished from the instant case, as in both of those cases the testator had a close relationship with her/his family. In **Gill**, the testator suffered from a mental condition while in **Moss** the court found that the testator was heavily medicated at the time of execution.

99. The Plaintiff claimed the testator suffered from several medical conditions but no evidence was produced to show that these affected his ability to execute the will or give instructions for its preparations.

100. It is a fact that the Plaintiff and her mother were estranged from the deceased for approximately three decades and did not have a relationship with him. As such I am not convinced by the evidence of the Plaintiff that they should have been in his contemplation when he made his will. Further, I do not believe as she said, that she initiated this action as a purely unselfish act with consideration only for her orphaned niece and nephew. My belief is founded by the claim which specifically states that the deceased disinherited his spouse, his three children and his siblings and left the Abaco property to Mr. Taylor, a complete stranger. As stated earlier, Mr Taylor was described as "family" rather than a stranger as mentioned in the claim.

101. As to the property in Abaco, I refer again to the decision in **Re Devillebichot** *supra* where the court said that,

102. "...the law does not require a testator to be shown to have knowledge and approval of every effect and consequence of his will. All that is required is satisfactory evidence that he knew and approved the contents of his will".

103. Thus, it is not necessary to show that Mr McKenzie knew the effect of granting the Abaco property, believed to be "generation property" to Mr Taylor.

104. Considering all the relevant evidence, the fact that Mr McKenzie and Mr Taylor were best friends for decades; Mr Taylor providing care and friendship to Mr McKenzie throughout his illness and up to the time of his death; Mr McKenzie described as warm and welcoming and appearing to be in his right mind and aware of his surroundings when he executed the will some ten months prior to his death; his nephew becoming upset after he was made aware that there was no gift in the will for him; Mr McKenzie having been estranged from his wife and daughter; drawing from all of this I conclude that the Defendants have discharged the burden of establishing that Mr McKenzie knew and approved the contents of his will.

105. I do not believe the Plaintiff's claims that she brought this action to benefit the testator's grandchildren. If, as she asks the court, the will is set aside then the rules of intestacy will come into play thereby she has a direct benefit with her mother, the spouse of the deceased, who would be entitled to one half of the testator's estate and the Plaintiff and her siblings entitled to share the other half.

106. I agree with Counsel for the defendants that the deceased had a good reason for disinheriting his family, that he recognized Mr Taylor and his daughter as his family and described the Plaintiff's claim as " **one borne out of sour grapes and disappointment"**.

Conclusion

107. I find that the degree of suspicion raised by the circumstances in this case is minimal and is dispelled by the evidence of the Defendants' witnesses.

108. I am satisfied that the Defendants have discharged the onus of proving that the testator had knowledge and approved of the contents of his will. That the document is the last will of a free and capable testator. The onus falls upon the Plaintiff to prove that the execution of the will was by fraud or undue influence which she has failed to do.

109. The Last Will and Testament of John Benjamin McKenzie dated 15th September 2015 is a valid will and the Caveat is hereby discharged.

110. The costs of the action to follow the event to be taxed if not agreed.

DONNA D. NEWTON
Justice