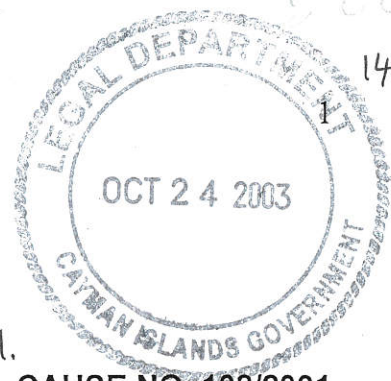


CIRCULATE



14-10-2003

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

-Gml.

CAUSE NO. 108/2001
CAVEAT NO. 91/2001

PROBATE & ADMINISTRATION

In the Estate of Walter Elgin Coe

BETWEEN:

MAGGUI PUPO

Applicant

AND:

1. STEVEN ANTHONY COE
2. BRIAN DAVID COE

Caveators

BEFORE: MADAME JUSTICE LEVERS

APPEARANCES:

Counsel for the Applicant: Mr. Wade DaCosta of Broadhurst DaCosta

Counsel for the Caveators: Mr. Kenneth Farrow of Quin & Hampson

Heard: 26th August & 8th & 9th September, 2003



JUDGMENT

The Application

By Summons dated the 29th May, 2002, the applicant, Maggui Pupo asks for the following relief:

1. That the applicant is declared the lawful spouse/widow of Walter Elgin Coe;
2. Letters of Administrations in the Estate of Walter Elgin Coe be granted to the applicant; and
3. The costs of this application be provided for.

Her application is opposed by Caveators who by Summons dated 17th May, 2002 ask for the following relief:

1. That Letters of Administration in the Estate of Walter Elgin Coe be granted to the Caveators,
2. That the Costs of this application may be provided for:

Other relief is also sought to restrain the spending of monies inherited pending the determination by the Court of all issues, but that need not be addressed at this time, for the purpose of this application.

The Evidence

The facts have been set out in several affidavits and based on those affidavits and cross-examination of the parties and their witnesses, I have summarized the evidence as best as I can.

The Applicant

The applicant, Maggui Pupo-Coe and the deceased, Walter Elgin Coe were married on the 5th August 2000, in the Cayman Islands after a relationship that had developed from late 1997/January 1998. At the time of the marriage, the

applicant a Cuban national domiciled in Cuba was 22 years old and the deceased, Walter Elgin Coe, a Caymanian domiciled in the Cayman Islands was some 60 odd years old.

The deceased had been married previously and due to marital problems with his first wife for some considerable number of years divorced her. The applicant states that the deceased had two children of the marriage with whom he was not particularly close. The applicant further states that her relationship with the deceased became intimate in/or around 1998 and that the deceased, Walter Elgin Coe frequently visited her in Cuba and that she too frequently visited him in the Cayman Islands (at his expense) for approximately 30 days at a time.

In February 1998, the deceased and herself met an Italian Silvio Roccia in a hotel in Cuba and as the applicant was unable to leave Cuba without a special reason, she alleges that the deceased arranged for a marriage between herself and Silvio Roccia in order that the Cuban authorities would give her permission to leave Cuba. The marriage took place in February 1998, but the applicant did not leave Cuba or utilize the opportunity to seek permission to leave Cuba.

In August 2000, (it is her evidence) that despite the previous marriage, Walter Elgin Coe encouraged her to enter into a second marriage in the Cayman Islands. According to her it was her understanding that the Cuban marriage would not matter in the Cayman Islands. She partook in these proceedings, got

married in August 2000 to the deceased and returned to Cuba on the 20th August 2000. On her return she filed for divorce from Mr. Roccia. She states that the marriage was annulled on the basis that Roccia never lived with her. She contends that the deceased, Walter Elgin Coe paid for the divorce proceedings. As the marriage was annulled, she submits that the first marriage was void. She therefore asks this Court to hold that she is the lawful widow of Walter Elgin Coe and that she is entitled to any gifts her husband left for her and that she should be granted letters of administration as the lawful widow of Walter Elgin Coe.

Walter Elgin Coe

Walter Elgin Coe, the deceased was a worker at the Caribbean Utilities Company ("CUC)" and was some 60 odd years old when he married for the second time. He died suddenly. He was a law abiding citizen who was respected in the community.

Mr. Coe was divorced from his first wife and had two adult children (the Caveators in this matter), Steven Anthony Coe and Brian David Coe. He worked for many years at CUC Limited. He had moved out of the matrimonial home and was building an apartment complex. At the time of his death he lived in a small apartment on his own. After the marriage ceremony on the 5th August 2000, the "second wife" Maggui Pupo-Coe left the Cayman Islands on the 20th August and

did not return until shortly after his death. His Estate comprised of a pension fund, life insurance and real estate.

The Caveators

Both adult sons gave evidence, Brian Coe expanded on his several affidavits. He stated that he was close to his father. They saw each other frequently. According to him, his mother, the first wife had a close relationship too with his father who used to come to feed the dogs at his mother's residence and have dinner with her regularly. He confirms that he did not know of the marriage to Maggui Pupo-Coe but that the father frequently visited Cuba. His testimony as to the close relationship with his father is corroborated by the fact, that he had a key to the father's apartment.

Steven Anthony Coe too gave evidence. His evidence was similar in nature to Brian David Coe and he too stated that he was close to his father. He denies that there was any family rift but both sons state that they advised their father not to get married to someone so young and that it is their belief that the applicant was marrying their deceased father for financial gain alone. That basically was the outline of their evidence.

Other witnesses

There was evidence given by a Mr. Rivers which I shall refer to when analyzing some aspect of the issues in this matter and also evidence from Sandra Mae Coe, a sister-in-law of the deceased. On behalf of the Caveators, the first wife, the mother of the Caveators gave evidence as well as Helen Mildred Rivers, the sister of the deceased. These witnesses either corroborated what was said by the main witnesses to whom I have referred previously or contradicted them and I will only refer to their evidence when I discuss the issues joined in this matter, if the evidence is relevant.

The Evidence

The applicant joins issue with several of the allegations raised in the affidavit. In response she denies that this is a marriage of convenience. It would be appropriate at this stage to analyze the evidence in some detail in order to assess the credibility of the evidence given by the applicant and the Caveators allegations.

(A) The Date of meeting between Applicant and Deceased

It is admitted by the applicant, Maggui Pupo-Coe that she married Mr. Silvia Roccia in February 1998. In an affidavit filed on the 18th January 2002 she says and I quote:

“That I am a Cuban citizen from Havana and it is correct that I first met the deceased (“my husband”) in Havana in 1998. My husband was at that time married to his former wife but he told me they had been separated some years and that the marriage had long since irreconcilably broken down.”

It is to be noted that at the stage when this affidavit was filed on the 18th January 2002, the applicant did not reveal the fact that she had been married to Silvio Roccia. She was forced to admit it after the Caveators filed an affidavit annexing the marriage certificate and bringing it to the attention of the Court. When this happened the applicant changed her evidence stating that the date of the meeting between herself and the deceased was in late 1997. It is her evidence now that she met the deceased on the 4th November 1997. There is affidavit evidence from the son of the deceased that the deceased was in the Cayman Islands on the 4th November 1997 when the applicant claims to have met him for the first time in Cuba. He was not cross-examined on it, despite this being of some importance in the chronology of events.

(B) The marriage to Silvio Roccia

I make allowance for the fact that English is not the applicant's first language. However, the evidence is crystal clear. She did not reveal her first marriage in

any of the affidavits to this Court until the Caveators ascertained the fact that she was previously married. It is a fact that Mr. Coe married the applicant some thirty days before divorce proceedings were commenced in Cuba. The evidence of the applicant on this matter is that she thought the law permitted her to remarry in Cayman or as she puts it, she was not a lawyer and did not know any of the legal niceties pertaining to bigamous marriages. The question must be asked why were the divorce proceedings conducted so expeditiously? And why would a man who up until then was a law abiding citizen not wait 30 days more to obtain a divorce and get married if he knew there was a previously existing marriage.

(C) The Divorce/Annulment

In her *viva voce* evidence, the applicant states that at the same time as the divorce was granted in September 2000, her marriage was also annulled. Indeed, she goes as far as to say she got an annulment granted and that she only had to present herself. However, in her affidavit evidence dated the 29th May 2002, at paragraph 32 she states:

“Upon my taking advice from Mr. DaCosta, it became apparent that based on the facts as presented to him the first marriage ceremony was a nullity. Accordingly I contacted a lawyer in the Court in Cuba and on the 23rd May 2002 the marriage to Silvio Roccia was annulled. There is now shown to me marked “MPC 2” a true copy of the annulment together with an English translation thereof. I have been advised that this was

the proper course to have followed and that the effect of this annulment supercedes the divorce certificate, as the "first" marriage never truly existed."

Whether it is in the Spanish language or in the English language, the above passage leave no doubt that it was only after she consulted Mr. DaCosta that she took steps to have the marriage annulled. This was not her evidence in this Court. In his submissions Mr. DaCosta urges the Court to hold that there is admissible evidence before this Court that the marriage between the applicant and Silvio Roccia has been formally annulled. He relies on the opinions of Attorney Calzadilla as secondary evidence that the decree exist, this is found at "MPC 7" of the Fifth affidavit of Maggui Pupo-Coe and at "MPC 13" of the Eighth affidavit of Maggui Pupo-Coe. The decree of nullity is the document which is found at "MPC 13" of Maggui Pupo-Coe's Eighth affidavit. That is not the evidence in this case. I shall deal with the question of the acceptability and the admissibility of the evidence at a later stage. The evidence from the applicant is totally contradictory on this point. Her *viva voce* evidence is that the annulment was granted at the same time as the divorce and yet, the first documents that emanated from the Cuban Courts was a decree of divorce and not annulment. Indeed, it is perhaps important to highlight that despite strenuous efforts on the part of Mr. DaCosta to extract a reason why her affidavit evidence is in such contradiction to her *viva voce* evidence, he was unable to get a coherent answer. Even making allowance for the language difficulties, there can be no doubt that there is a total contradiction in this very important aspect of the evidence.

The Documents

The documents in this case cause some concern and need to be addressed. The first one is the certificate of marriage which is accepted by all the parties as confirmation that the first marriage did take place between the applicant and Roccia. The Court does not have to address its mind as to the question of the first marriage and the validity of the certificate. The marriage certificate is dated the 25th of February 1998. The same document that was handed to the Court by the Caveators was the marriage certificate endorsed with the details of the divorce and I quote from the endorsement thereon: "The marriage has been dissolved by sentence of divorce by the popular Regional Court of Holguin on the 25th September 2000 recorded on the 4th October 2000." Up to the year 2000 some three months after the marriage to the deceased Walter Elgin Coe, this marriage was not annulled on the face of the document. Mr. DaCosta submits that there is admissible evidence for this Court that the marriage between the applicant and Roccia has been formally annulled. The Court has to resolve the issue as to whether in fact this marriage was void or voidable and whether this alleged annulment did in fact take place at the time the applicant states it did. The divorce certificate does not have the marriage as having been annulled. There is now another certificate produced which appears to be a translation of a documents translated for this Court by Mrs. Pupo-Coe's attorney which does not bear the seal or official stamp of the proper authorities. This document speaks of an annulment.

The Applicant's actions after the Deceased death

The Court has addressed its mind to the applicant's action listed below:

1. It is accepted by all parties that on occasions the applicant visited the Cayman Islands and stayed for 30 days at a time. On one particular occasion in fact she extended her stay to two months. Soon after the marriage however, on the 20th August 2000, she decided to leave and go back to Cuba and did not return for some two years. Her explanation was that she was awaiting the processing of her permanent residency application.
2. On hearing of the death of her late husband, she arrived on the Island a few days after and did not attempt to contact his family. There was no evidence of hostility between the family but it would appear that she did not wish to meet with the two sons with a view to resolving any issues amicably.
3. She visited the RCIP with a view to alleging that the children had broken into the apartment of the deceased and removed her belongings. To date there has been no list of her belongings provided to the sons despite several requests by them.

4. Despite many requests by the sons she refused to meet with them .
5. She reported to the RCIP that the sons had broken into the deceased's apartment when in fact the deceased had given the key to the apartment to one of his sons.
6. When she filed for Letters of Administration, one of the affidavits stated that there were no other interested parties to this Estate when she knew, in fact, there were two sons who were entitled to be considered. The subsequent affidavit corrected the omissions.
7. Since she arrived in the Island for the funeral of her late husband she has stayed on for some two years and has now applied for Caymanian Status.

Submissions

Mr. Farrow, on behalf of the Caveators submits that the following facts are not in dispute:

1. There was a marriage to Silvio Roccia in Cuba in the early 1998.
That Mr. Coe, the deceased married Maggie Pupo in the Cayman Islands on the 5th August 2000 and that on the 25th September

2000, Maggui Pupo and Silvio Roccia were divorced. He submits that under Cayman Law, a divorce decree does not have retrospective effect and there is no evidence that Cuban Law is any different in this respect.

2. He further submits that there is in fact no admissible evidence as to a decree of nullity have being obtained as the document "MPC 2" does not satisfy the requirements of section 12 of the Evidence Law (2003 Revision). He goes on that it does not even purport to be a decree of nullity since it refers to the fact that "the Municipal Agency declared null the marriage bond." He submits that I should not accept the evidence that the marriage of Maggui Pupo and Silvio Roccia was formally annulled.

3. The Estate can be divided into two; the land and the nominated funds. The funds in question are the proceeds of a British American Life Policy, WEC's Provident Fund Plan through the deceased employers, CUC. the WEC's Pension Fund also effected through CUC. Mr. Farrow submits that the gifts can be rescinded on the grounds of misrepresentation as Ms. Pupo portrayed herself as being free to get married to Mr. Coe.

4. Mr. DaCosta, on the other hand, submits that the applicant is the assured under the insurance policies and the nominated funds and that the gift to her should not be set aside. He asks the Court to bear in mind that Spanish was not the applicant's first language and that any contradictions in the affidavit to the *vive voce* evidence should be resolved in her favour. He further goes on to state that there is no authority cited by the Caveators that would confer the right to personal representatives of the Deceased to revoke a gift that the deceased had made during his life and he submits strongly that an *inter vivos* gift cannot be set aside by the personal representatives. In any event, it is the applicant's contention that the CUC Provident Funds and the Pension Funds do not form part of the Estate and therefore should not be interfered with by this Court.

5. He says that there is ample evidence that the Deceased did not intend for his sons to receive the benefits of those funds and says that the Court should not interfere with those funds because there was neither fraud nor misrepresentation and it was clearly intended by the Deceased that these Funds should be for the benefit of his wife Maggui Pupo-Coe.

6. As to the validity of the annulment he submits that Court should accept the evidence of an annulment on the basis that the document that has been put forward (and I will address that at a later stage) is admissible.

The Law

In applying the law to the facts I have to answer two simple questions (a) is the applicant the lawful widow of the Deceased and (b) whether the applicant has any entitlement under the Deceased's British American Insurance Company policy No. 144019076, the Caribbean Utilities Company Provident Fund Plan and the Deceased's Caribbean Utilities Company Pension Fund. Perhaps it is convenient to start with the first question which is, is this applicant the Deceased's lawful widow? The chronology of events has already been dealt with above as has the evidence in support thereof. The applicant was married to Mr. Roccia at the time of the marriage to the deceased, Walter Elgin Coe on the 5th August 2000. The question therefore is: Was the marriage annulled in Cuba in September 2000 or was it a decree of divorce that was granted. If, in fact, it was an annulment then the marriage would have been void *ab initio* and would put a different complexion on any decision arrived at by this Court. If however, the parties were divorced then the marriage would not have been void *ab initio* and the marriage to Walter Elgin Coe, deceased would have been bigamous. At the outset I should deal

with a certain submission made by Mr. DaCosta. He wishes me to accept a certified synopsis of what transpired in the Court in Cuba. I do not agree that I can accept a certified synopsis certified by the applicant's Cuban attorney. He also wishes me to ignore any evidence as to the Cuban Law produced by the Caveators but wishes me to accept his evidence as to the Cuban Law. If, in fact, the evidence or the contents of both documents are identical I am at a disadvantage as to which one I should reject. In both documents exhibited by Caveators and the applicant the Cuban Law as stated therein appears to be identical.

Before dealing with that I will address section 7 of the Matrimonial Causes Law (1997 Revision) in Cayman:

"The Court will recognize the decree or order of a foreign court or other legally effective proceeding with reference to the marital status of the parties to a marriage where, irrespective of whether the grounds for the making of such decree or order would, in the Islands, be grounds for the making a similar decree or order, the Court is satisfied that with respect to the country within which the foreign court has jurisdiction either spouse was at the date of the petition giving rise to the proceedings (whether in the first instance for legal separation or divorce) and culmination in such decree or order –

- (a) habitually resident in that country;
 - (b) a national of that country; or
 - (c) domiciled in that country under the law relating to domicile there appertaining;
- and the court is satisfied that the foreign court, tribunal or authority was competent in that

country to make the decree or order or other legally effective pronouncement:

Provided that the validity of such decree or order of a foreign court granting a divorce or judicial separation shall not be recognized in the Islands if it was granted at a time when, according to the law of the Islands, there was no subsisting marriage between the parties.”

Section 8 (1) (b):

“For the purpose of this section a marriage is void if –

(b) it is bigamous.”

I now turn to the Evidence Law (2003 Revision) (Cayman Islands) in particular section 12:

“Proclamations, treaties and other acts of state or of any foreign state, Commonwealth country or British Colony and judgments, decrees, orders and judicial proceedings of any court of any such foreign state, Commonwealth country or British Colony and affidavits, pleadings and other legal documents filed in any such court may be proved in any court either by examined copies, or by copies authenticated as hereinafter mentioned, that is to say, if the document sought to be proved be a proclamation, treaty or other act of state the authenticated copy, to be admissible in evidence, must purport to be sealed with the seal of the foreign state, Commonwealth country or British Colony to which the original document belongs; and if the document sought to be proved be a judgment, decree, order or other judicial proceeding of any foreign, Commonwealth or colonial court, or an affidavit, pleading or other legal document filed or deposited in any such court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the court to which the

original document belongs or, in the event of such court having no seal, to be signed by a judge of such court; and such judge shall attach to his signature a statement in writing on the said copy that the court whereof he is a judge has no seal; but if any of the aforesaid copies purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary or of the signature or of the truth of the statement attached thereto, where such signature or such statement is necessary, or of the judicial character of the person appearing to have made such signature and statement.”

None of the documents presented by the applicant had the seal or order signed by a judge or a statement by the judge of the Cuban Court in the absence of a seal. What we have is a marriage certificate which perhaps comes closest to the requirements of the section, in that, it is certified and signed by the Registrar of the Civil Estate. The divorce is mentioned on that marriage certificate. As I have said that document is the closest to an authenticated document that comes within the meaning of the section 12 of the Evidence Law (2003 Revision). The so called “annulment document” is not done on judicially headed paper, it does not have the certification by a judge and does not have a seal. It has a rubber stamp which is different to the stamp on the marriage certificate. Had the applicant wished to authenticate this annulment document she certainly, in my view could not do so by a translation of it by her own lawyer. Either, the lawyer should have been called to give evidence and tested on cross-examination or some explanation as to why the document is not sealed in the same manner as the marriage certificate should have been addressed. This Court is in no doubt

that it cannot with any element of certainty accept the document of annulment as a judicial document without further proof. An added concern as to when and whether the annulment could properly be granted has not been addressed by the applicant. I shall now refer to the Cuban Law that has been annexed both by the applicant and the Caveators.

Under Article 43, (3) of the Cuban Family Law:

“The marriage shall be dissolved if the marriage is legally declared to be annulled.”

The third section, Article 45 states:

“Formal marriages are annulled: by infringement of any of the prohibitions stated in article 4 and 5.”

Unfortunately, the applicant has chosen not to annex article 4 and 5 to which reference has been made in article 45. However, the Caveators have done so and I accept that this is Law Number 1289 Family Court title 1 of marriage chapter of marriage in general of the Cuban law. Article 4 “no marriage shall take place by: those who are joined in marriage or a legally recognized union.” If therefore, the marriage was not annulled, the second marriage to the deceased would be in breach of Article 4 (2). The applicant has chosen to annex articles 25, 43, 45, 49 and 52, but not article 47 of the Cuban law which deals with annulments: “the annulment shall be exercised within a term of 6 months as of the formalization of marriage, in the cases provided in the article 3 and sections

(2) and (3) of article 45. If no action has been taken upon expiration of the term of six months in applicable cases, then the marriage shall be legally validated.

This Court is uncertain as to the validity of these annulment proceedings. The contradiction in the evidence has not been explained satisfactorily. The 6 months period within which it would appear under Cuban Law that the annulment should have been filed has not been explained to this Court and in view of the nature of the documents, in view of the lack of authentication and in view of the evidence that is clearly contradictory, this Court finds it is unable to accept that the marriage was annulled.

Findings on the first question, is the applicant the lawful widow of the late Walter Elgin Coe?

1. I find that the applicant was married to Mr. Silvio Roccia at the time she married Walter Elgin Coe;
2. I find that a divorce was granted in September 2000 dissolving the marriage of the applicant and Roccia;
3. I find that the applicant has not produced sufficient proof to satisfy this Court that the marriage was annulled;
4. I find that Maggui Pupo-Coe is not the lawful widow of Walter Elgin Coe, as the second marriage to Mr. Coe was bigamous.

I now turn to the second question. Is she entitled to retain the funds nominated to her by Walter Elgin Coe? The applicant contends that these were gifts to her by the deceased and therefore the personal representatives can not set it aside.

It is well established in law that a gift may be set aside on the ground of mistake or misrepresentation and that if the mistake has been induced by those who derive benefit under the gift and the mistake is of such serious character, the court can set it aside. The position would be same in equity even if the misrepresentation was innocent. The documentary evidence is that the deceased intended his wife and/or fiancé to receive the benefit of the estate. Wife and/or fiancé are words of some importance. He did not name the applicant individually, but her description of their relationship is what entitled her to the benefit of this gift. There is evidence from Mr. Ruel Rivers that the deceased would have intended to give it to the applicant whether he married her or not. That to my mind is not the question to be answered by this Court. The question is, did he give her this money based on her misrepresentation that she was free to marry him. See Halbury's Laws of England 4th Edition, Volume 20, paragraph 59 and in *Re Glubb, Bankfield v Rogers* [1900] CA and see *Adams v Adams* [1941] 1 All ER at page 334:

"It may be pointed out, however, that, if a husband enters into a separation deed in ignorance of the fact that his marriage was void – because, for instance, the marriage was bigamous, or the parties were within the prohibited degrees of affinity, and he did not know of the impediment – the deed is void, as was decided in *Law v Harragin* (9), following *Galloway v Galloway* (10)."

I am guided by principles from the cases reviewed, as well as the principle that the jurisdiction to interfere with testamentary dispositions should be exercised

with great circumspection. I have come to the conclusion that the gifts were given due to the misrepresentation induced by the applicant and that the applicant is not entitled to any of the nominated funds. I find therefore, that the funds do not belong to the applicant.

For the reasons set out above, the inevitable consequence of the decision of this Court, is that the monies expended by the applicant were not hers to utilize. I discharge the Injunction and order the funds to be released to the estate and I further order that the Caveators Steven Anthony Coe and David Coe be granted Letters of Administration.

Dated this 14th day of October 2003



Madame Justice Priya Levers
Judge of the Grand Court

