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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE # 33/89

IN THE ESTATE OF STACEY WATLER, DECEASED.

For the applicants: Norman Hill QC instructed by Steve McField & Associates

For the respondent: Mr. Michael Parkinson

HARRE C.J. **REASONS FOR RULING**

By this originating Summons the applicants seek the determination by the Court of the the question whether a document dated 23rd July 1988 constitutes a valid Will and Testament of the late Stacey Watler, in accordance with the provisions of the Wills Law and the Probate and Administration Rules.

On the 23rd July 1988 Mr. Stacey Watler (whom I will call "Mr. Stacey") was gravely and indeed terminally ill. He had been recalled to hospital where he was found to need emergency surgery, having already been operated upon a matter of weeks before. On being told in hospital that the operation was necessary Mr. Stacey asked his, sister Mrs. Bartel, for pen and paper so that he could make his will in case he did not come through the operation. Mrs. Bartel got the pen and paper and Mr. Stacey wrote the document and signed it in her presence. He then asked one of the nurses present for an envelope, which he was given, placed the document inside it and sealed it. After that was done Mr. Charles Watler, Mr.Stacey's brother, arrived in the hospital room and Stacey gave the sealed envelope to him.

These events were amply witnessed in the sense that they were seen by a number of people. It is also not in question that Mr. Stacey was lucid and of sound mind when he wrote the document. The present

question now arises because no one other than Mr. Stacey himself subscribed to the Will or attested to it.

The relevant part of section 6 of the Wills Law (Revised) reads as follows:

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

I also refer at this point to rules 24 and 25 (1) of the Probate and Administration rules which read as follows -

> "24. Where it appears to the Judge that there is some doubt as to the due execution of a will by lack of any sufficient attestation clause or other reason the Judge may require an affidavit of execution from one or more of the attesting witnesses or, in the unavailability of such witness, from any person who was present at the execution.
>
> 25. (1) If no affidavit can be obtained in accordance with rule 24, the Judge may accept evidence of affidavit from any person to show that the signature on the will is the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the will.".

The requirements of s. 6 of the Wills Law (Revised) correspond to those of s. 9 of the Wills Act 1837 in England before that statute was amended by s. 17 of the Administration of Justice Act 1982. As amended it now reads as follows -

> ""**Signing and attestation of Wills**
>
> 9. No will shall be valid unless -

(a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and

(b) it appears that the testator intended by his signature to give effect to the will; and

(c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(d) each witness either -

(i) attests and signs the will; or

(ii) acknowledges his signature,

in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation shall be necessary.".

No amendment corresponding to that made in England has been made to the Wills Law (Revised) in the Cayman Islands.

The change in the English Statute Law followed re Colling (1972) 1 WLR 1440 which was a striking example of its former strictness. In that case the testator made a Will a few days before his death and started to sign his name in the presence of two witnesses. One, a nurse, was called away and the testator completed his signature in her absence. It was attested and subscribed by the other witness in the testator's presence and when the nurse returned both the testator and the other witness acknowledged their signatures to her and she then signed. It was held that the requirements of section 9 of the Wills Act as it then stood had not been complied as it was essential that the testator should have signed the Will or acknowledged his signature in the presence of both witnesses before either of them had attested and subscribed the document. The amendment made to the Law in England relaxes that requirement, but even such an amendment would not have saved the will in a case such as the present one, where no witness has subscribed or attested tot he will at all. To say, as does section 9 of the Wills Act and section 6 of the Wills Law that no form of attestation is necessary is not to say that no attestation was neccessary at all. There is a presumption of validity without further evidence when an attestation clause in a recognised form is used. That matter is addressed in Rules 24 and 25 (1) of the Probate and Administration Rules, which only come into play if there is some doubt as to the due execution of the will. In this case there is no

doubt. The mandatory requirements of section 6 of the Wills Law were not complied with. It makes no difference that the document was entirely in the handwriting of the intended testator - a holograph will.

Accordingly I determined that the documment dated 23rd July 1988 did not constitute a valid Will and Testament of the late Stacey Watler in accordance with the Wills Law and the Probate and Administration Rules.

G. E. Harre
Chief Justice

26th January 1994.