

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION**

Claim No. CV 1329 of 2016

BETWEEN:

SHERWIN CAMPBELL

KEVIN CAMPBELL

*(Duly Qualified Administrators of the
Estate of Lester Legay Campbell, deceased)*

FIRST CLAIMANT

SECOND CLAIMANT

AND

PAMELA HENRY

*(as Mother and Next Friend of
SHANIA CAMPBELL and in her personal capacity)*

FIRST DEFENDANT

SHARREA HENRY

SASHA HENRY

SECOND DEFENDANT

THIRD DEFENDANT

Claim No. CV 1330 of 2016

BETWEEN:

SHERWIN CAMPBELL

KEVIN CAMPBELL

*(Administrators and Personal Representatives of
the Estate of Lester Legay Campbell, deceased)*

FIRST CLAIMANT

SECOND CLAIMANT

AND

LAND DEVELOPMENT AND BUILDING LIMITED

DEFENDANT

Before The Honourable Justice Cecil N. McCarthy, Judge of the High Court

Date of Decision: 2021 January 29

Appearances:

Mrs. Kaye A. Williams for the Claimants

Mr. Ernest W. Jackman for the First, Second and Third Defendants

Mr. G. H. Andrew Brewster for Land Development and Building Limited

DECISION

INTRODUCTION

[1] This matter concerns primarily the interpretation of **section 32(1)** of the **Succession Act, Chapter 249** of the Laws of Barbados. That section provides:

“The personal representatives may sell the whole or any part of the estate of a deceased person for the purpose not only of paying debts but also (whether there are or are not debts) of distributing the estate among the persons entitled thereto, but before selling for the purposes of distribution, the personal representatives shall, so far as practicable, give effect to the wishes of the persons of full age entitled to the property proposed to be sold, or in the case of dispute, of the majority (according to the value of their combined interests) of such persons.”

[2] The section has assumed significance in this matter because of a dispute between the parties to this action relating to the main asset of the estate of Lester Campbell, deceased, (“the deceased”) which is a property situate at Edghill Heights, Saint Thomas in Barbados (hereinafter sometimes referred to as “the Edghill property” or “the property”).

- [3] The parties have agreed that the property must be sold as part of the process of administering the estate of the deceased, but there is a dispute in respect of which of three prospective purchasers should be permitted to purchase the property. One of those prospective purchasers is Shania Campbell, now an adult, but who at most material times, was a minor and entitled equally with the claimants to the estate of the deceased.
- [4] This matter first came before me on 17 July 2018. On that day and for several subsequent hearings, I was informed that the parties were seeking an amicable resolution of the matter. It only became apparent about a year ago that the parties would need the assistance of the Court to resolve the matter.

THE FACTUAL BACKGROUND

- [5] The claimants are the sons of the deceased. The deceased died intestate at the Queen Elizabeth Hospital on March 10, 2015.
- [6] The claimants are also the duly qualified administrators and personal representatives of the estate of the deceased (“the personal representatives” or “the claimants”), having been granted and issued letters of administration in respect of the estate of the deceased on November 20, 2015 and December 1, 2015 respectively.
- [7] When the deceased died, he was survived by three (3) children (there are no children who predeceased him):

- (a) Sherwin Campbell, the first claimant herein;
- (b) Kevin Campbell, the second claimant herein;
- (c) Shania Campbell, born on July 22, 1999, who was sixteen (16) years of age at the date on which the fixed date claim form herein was filed. She is represented in this matter by her mother and next friend, Ms. Pamela Henry (the “first defendant”).

[8] By an agreement for sale dated 26 January 1979 made between Land Development & Building Limited (“Land Development”) as Vendor and the deceased and Judy Yolanda Campbell (“Ms. Campbell”) as Purchasers, Land Development agreed to sell and the purchasers agreed to purchase the property.

[9] The deceased and Ms. Campbell were put into possession of the land by Land Development as Vendor, and with the permission of the Vendor, constructed a dwellinghouse thereon and resided in the property from on or about 1979 until his death in March 2015.

[10] The full purchase price for the property was paid many years ago by the deceased in pursuance of the terms of the agreement for sale, but the land was never conveyed and title in fee simple remained with Land Development.

[11] The deceased and Ms. Campbell were divorced on the 2 day of April 2002, but the process of division of the matrimonial property of which the Edghill property was a part, was never concluded.

[12] The personal representatives were confronted with two issues concerning the Edghill property. First, the property was never conveyed by Land Development even though the full purchase money was paid. Land Development was of the view that the matrimonial dispute between the purchasers and the absence of a court order meant that the party to whom a conveyance should be made could not be identified. Secondly, when the application for administration of the estate of the deceased was advertised, Ms. Campbell brought a claim against the estate. She contended that as the surviving party to the agreement for sale of the Edghill property she was beneficially entitled to the entire property since there were no words of severance in the agreement. She argued that the property should be conveyed to her.

[13] Arising out of the above developments the personal representatives commenced two actions in the High Court on October 12, 2016. First, in **Suit CV 1329 of 2016, Sherwin Campbell and Kevin Campbell v Pamela Henry, Sharrea Henry and Sasha Henry** they sought possession of the property. They claimed that it was in the best interest of the beneficiaries or those claiming to have an interest, that the property be vacated and tenanted to bring in rental income to offset the expenses of maintenance of the property until the issue of the title to the property was resolved. No orders were made

in respect of possession, however pursuant to an unwritten agreement between the parties, Shania Campbell remained in occupation of the property and the utilities and outgoings relating to the property were paid by the estate for the period from March 2015 to March 2020.

- [14] In the second action, Suit **CV 1330 of 2016, Sherwin Campbell and Kevin Campbell (Administrators and Personal Representatives of the Estate of Lester Legay Campbell, deceased) v Land Development and Building Limited**, the personal representatives filed an administrative action in respect of the claim brought by Ms. Campbell for the benefit of the beneficiaries. The claim was brought pursuant to **Rule 67.4 (1)** of the **Supreme Court (Civil Procedure) Rules, 2008 (“CPR”)** and to the provisions of the **Succession Act, Cap. 249** of the Laws of Barbados (**“the Succession Act”**). It seeks determination of the rights and interests of the person or persons entitled on intestacy of the deceased, or otherwise, to a beneficial interest in the property and a transfer of the legal interest of the property to those so entitled.

- [15] **CPR 67.4 (1)** and **(2)** provide:

“(1) An executor, administrator or trustee may issue a claim form for

- (a) the determination of any question or
- (b) any relief

Without bringing an administration claim.

(2) The “determination of any question” includes the determination of any question

- (a) arising in the administration of the estate of a deceased person;”

[16] On 16 October 2017 the two actions were consolidated pursuant to an Order of **Worrell J**, in **CV 1329/2016 Sherwin Campbell and Kevin Campbell v Pamela Henry, Sharrea Henry and Sasha Henry**. The terms of the Order in part read:

“1. That the action herein **CV 1329/2016 Sherwin Campbell and Kevin Campbell v Pamela Henry, Shareea Henry and Sasha Henry** be consolidated with **CV 1330/2016 Sherwin Campbell and Kevin Campbell v Land Development and Building Limited** and from the date of this order, the two matters shall proceed as one action;

2. The consolidated proceedings go forward bearing the number and title **CV1330/2016 Sherwin Campbell and Kevin Campbell (Administrators and Personal Representatives of the Estate of Lester Legal Campbell, deceased) v Land Development and Building Limited.**”

[17] Pursuant to an agreement between the parties and Land Development, I made an order on 12 February 2020 directing Land Development to convey the Edghill property to the personal representatives.

[18] The personal representatives and the defendants have agreed that the property must be sold. However, Pamela Henry, the mother of Shania Campbell, contends that the property should be sold to her on the ground that Shania Campbell was a beneficiary of the estate of the deceased.

[19] The personal representative produced evidence by way of affidavit to the court that three written offers were received to purchase the Edghill Heights property. The first two offers were made on 4 December 2018 and 28 January 2019, respectively. They were both supported by a mortgage loan certificate from a financial institution. The third offer was made on 4 November 2019 by Ms. Pamela Henry as mother and next friend of Shania Campbell. The claimants gave Ms. Henry a deadline of 7 January 2020 for submission of a mortgage certificate to facilitate their making a decision on whom should be given the opportunity to purchase the property. On the 28 January 2020 the personal representatives made a decision in principle to sell the property to a third party. On 9 March 2020 the personal representatives received a mortgage certificate from Ms. Henry.

[20] Pursuant to the decision to sell the property to a third party, the claimants applied to the court for an order that the defendants, Pamela Henry and those residing in the property, deliver up possession of the Edghill Heights property.

[21] Counsel for Ms. Henry opposed the order on the ground that Shania Campbell was a beneficiary; had made a written offer to purchase through her mother; was already in possession of the property; and was therefore entitled to a prior right to purchase by paying the other beneficiaries for their shares in the property. To the contrary, the claimants argued that they acted in accordance

with **section 32** of the **Succession Act** which gave them the power of sale; and before acting, they had sought the wishes of all those beneficially entitled.

[22] The facts give rise to the following issues:

- (1) Whether a beneficiary in possession of the property has prior right to purchase the property of the estate.
- (2) In the circumstances of the case, did the personal representatives discharge the statutory duty to give “effect to the wishes of the persons of full age entitled to the property proposed to be sold or, in the case of a dispute the majority (“according to the value of their combined interests of such persons.”)?
- (3) Are the personal representatives entitled to sell to a third party even though there is a beneficiary in possession who has expressed an interest in purchasing the property?

[23] Three affidavits were filed by or on behalf of the claimants. The first affidavit was sworn by the second claimant; Kevin Campbell and was filed on 10 February 2010. The second affidavit was sworn by both claimants, Sherwin and Kevin Campbell and was filed on 5 March 2020. The third affidavit was sworn by Kevin Campbell and was also filed on 13 March 2020.

[24] The first affidavit itemized the correspondence passing mainly between legal counsel for the respective parties claiming an interest in the Edghill property, including those representing the interest of Shania Campbell. **Paragraph 8** of the affidavit reads:

“The Administrators caused our attorney-at-law to write various letters to the legal counsel for the parties over the course of the

action. A review of the correspondence passing for the past four (4) years show that every effort has been made to fully account and involve the beneficiaries in particular, the minor child, Shania Campbell through her mother and next friend, Pamela Henry.”

[25] The affidavit referenced over twenty pieces of correspondence passing between the parties from October 2016 until early 2020. It also recorded that the personal representatives had reached a settlement with Ms. Campbell and with Land Development.

[26] The second affidavit explains the process, culminating with the decision of the personal representative to offer the Edghill property for sale to a third party. I therefore, set out verbatim the contents of **paragraphs 3 to 10** of the affidavit which provides:

“3. That as Administrators offers to purchase the property situate at #20 Edgehill Terrace St. Thomas (“the property”) were received in writing in late 2018, and in 2019. One offer was dated 4th December 2018. The other offer was dated 28th January 2019. The first two letters of offer were supported by a mortgage certificate from a local financial institution as evidence that the offerees could qualify for a loan facility in the event their bid was successful. The third offer was from Ms, Pamela Henry as mother and next friend of beneficiary Shania Campbell through her Attorney-at-Law, dated 4th November 2019. That offer was not supported by a letter from a financial institution. As the other letters display financial information of persons who are not parties to this action, redacted copies of these letters of offer and mortgage certificates and the offer letter from Shania Campbell are annexed hereto and exhibited as “**SCKC1**”.

4. We crave leave to refer to the Affidavit of Kevin Campbell filed herein on 10th February 2020 and to the correspondence

exhibited therein. We were advised by our Attorney that, in relation to the sale of the property, it was important to consult our sister as beneficiary through her Mother and Next Friend. That was done from as early as 4th April 2017 through the various correspondence exhibited in the Affidavit of Kevin Campbell filed herein on the 10th February 2020.

5. That when a new year started in January 2020, we recognized that it was almost five (5) years since the death of the late Lester Campbell and almost six (6) months since arriving at a settlement with Mrs. July Campbell. We instructed our Attorney to work towards a conclusion of this matter. We caused our Attorney to write the Attorney-at-Law for Pamela Henry on 7th January 2020, asking for evidence of access to funds to assist us in making a decision. A deadline of 17th January 2020 was given. No evidence, whether bank statement, deposit statement, or mortgage certificate was received.

6. As Administrators we verily believed that, as the matter was long outstanding and, as an agreement had been reached since July 2019 with the Attorney-at-law for Mrs. Judy Campbell, it was important to sell the property and have the fund necessary for the Estate to pay prompt settlement of her claim and prompt settlement of the claims of the beneficiaries.

7. That as beneficiaries we each verily believed that it is in the best interest of all the beneficiaries to sell the property to one of the third parties who had placed a written offer and who had supported their offer with evidence of access to funds, so that there could be a prompt settlement of the beneficiaries of the estate.

8. That on the 28th January 2020, we considered all the offers made, including an offer by the Attorney-at-Law for Pamela Henry and Shania Campbell. On the same date 28th January 2020 we informed the Attorney-at-Law for Pamela Henry and Shania Campbell that the deadline was passed and decision will be taken. After due consideration, we instructed and caused our Attorney-at-Law to write to the one of the parties who made an offer on the property. That party had supported their offer with

a mortgage certificate. The letter agreed to sell the property subject to formal contract, as the Administrators were at the time seeking an Order of this Honourable Court to convey the property to the estate of Lester legay Campbell. We are informed by our Attorney-at-Law that the party has since taken the letter to the financial institution and is making arrangements for the mortgage facility. A copy of these letters are annexed hereto an exhibited “SCKC2”.

9. By letter dated 12th February 2020 received 26th February 2020, Attorney for Ms. Pamela Henry wrote, stating the following:

“Shania Campbell with the assistance of her mother will purchase the dwellinghouse in which she resides being the property of the estate of her late father Lester Campbell, deceased, by paying to the other beneficiaries Sherwin and Kevin their share of the estate”.

In respect of the financing of the purchase, the final paragraph of the letter states:

“I have requested my client to provide me with an offer of finance letter which should satisfy you of my client’s ability and willingness to pay to complete a purchase of Sherwin and Kevin’s interest”.

10. We caused our Attorney-at-Law to respond by letter dated 3rd March 2020 indicating that a decision had already been made. Notwithstanding the renewed offer of 12th February 2020, we are advised and verily believe that we are obligated to proceed to formal contract with the third party. Copies of the 12th February 2020 letter and 3rd March 2020 reply are annexed hereto and exhibited “SCKC3”.

[27] The third affidavit was sworn by Kevin Campbell, one of the personal representatives. A mortgage loan certificate in the name of Pamela Henry was

annexed to the affidavit. The certificate was received on 9 March 2020. By that time a decision had been made to sell to one of the other offerors.

[28] The contents of the affidavits filed on behalf of the personal representatives have not been disputed by the defendants. Having carefully scrutinized the exhibits annexed to these affidavits it is fair to say that the attorney-at-law for the defendants was kept abreast of all developments in the matter and every opportunity was given to the first defendant to offer to purchase the Edghill property.

THE DEFENDANTS' SUBMISSIONS

[29] In his submissions, the counsel for the defendants, Mr. Ernest Jackman, refers to the third beneficiary as Sasha Henry (the correct name is in fact "Shania Campbell"). Mr. Jackman argues that Shania Campbell is objecting to the decision of the personal representatives to sell the property to a third party on the basis that as a beneficiary she has a prior statutory right to purchase from the personal representatives. He contends that **section 32(1)** of the **Succession Act** gives her that right.

[30] **Section 32(1)** is set out in the first paragraph of this judgment.

Mr. Jackman makes the following submissions:

1. Section 32(1) does not reduce the power of the personal representatives to sell the property for distribution of the estate, but it guides and directs those person(s) to whom a sale should

be made in the event that a third party and a beneficiary are interested in purchasing the property.

2. The section gives Shania Campbell a prior statutory right to purchase the property ahead of any third party.

3. The section makes it obligatory that the personal representatives give effect to the wishes of the beneficiary “and seeks to provide a solution for resolution of a dispute in the wishes of the beneficiaries”.

4. The word “dispute” in the section does not relate to whether the personal representatives should sell but “a disagreement or lack of consensus in the beneficiaries as regard their wishes for the alternative treatment of the asset in order to facilitate distribution.”

5. The personal representatives, even though it is practical to sell, may be restrained from selling or dealing with an asset in a manner that is preferred by a minority of the beneficiaries if there is a dispute amongst them.

6. The personal representatives can only refuse to accede to a beneficiary’s wishes if it is not practical to do so or there is dispute between the beneficiaries over the wish to sell.”

[31] Mr. Jackman offers an interpretation of the following words in **section 32**:

“shall so far as practical give effect to the wishes of the persons of full age entitled to the property proposed to be sold.”

[32] Mr. Jackman interprets this part of **section 32** as speaking “to a wish as to the retention of the property unsold for the beneficiaries’ benefit as opposed to its disposal generally or otherwise, for example, a sale to a third party.

[33] Mr. Jackman submits that despite the delays and the late submission of a mortgage certificate there is no practical reason why the property cannot be

sold to Shania Campbell since there is no signed agreement for sale to a third party. The Court ought therefore, to order that the property be sold to Shania Campbell.

THE CLAIMANTS' SUBMISSIONS

[34] Counsel for the claimants, Mrs. Kaye Williams filed written submissions on 16 March 2020 and 11 May 2020 respectively, on behalf of the personal representatives.

[35] A brief summary of Mrs. Williams' submissions is set out below:

“1. Where a person dies intestate, the personal representatives of the estate hold the estate and assets as trustees for the persons by law entitled thereto as provided by section 3(2) of the Succession Act.

2. The personal representatives of the estate of a person who dies intestate may sell the whole or part of that estate and its assets to pay debts, or to distribute the estate among the beneficiaries.

3. The legal rights of beneficiaries under a will or on intestacy are subsidiary to the legal rights of the personal representatives.

4. Personal representatives must, so far as practicable, discharge the duty imposed on them by section 32(1) of the Succession Act. That duty is to give effect to the wishes of the person of full age entitled to the property, or in case of dispute, to the majority of the beneficiaries according to the value of their combine interests.

5. In the circumstances of this case the personal representatives rightfully discharged their duty, in accordance with section 32 of the Succession Act and properly exercised their power of sale to a third party.

6. The personal representatives extensively consulted the first defendants, the mother and next friend of Shania Campbell, from as early as 4th April, 2017 when a letter was sent to her counsel inviting him to set out Ms. Henry's proposal to purchase in writing."

[36] Mrs. Williams submitted that the contention of Mr. Jackman that there is a statutory obligation to sell the property to Shania Campbell is not supported by the provisions of the **Succession Act** or any authority or any interpretation of the provisions of the **Act**.

[37] Mrs. Williams also took the opportunity to respond to a suggestion by Mr. Jackman that there were two pending agreements between the personal representatives and a third party to sell the Edghill property since there was no signed agreement for sale.

[38] Mrs. Williams responds to the same issue in the following extract from her written submissions of 11 May 2020:

"It is well accepted by the parties that the primary relief sought in this action was title to the estate asset, the property at 20 Edghill Terrace St. Thomas. It is in evidence before the Court that the fee simple interest was in the Defendant Land Development Limited (Affidavit of Sherwin and Kevin Campbell filed in support of Claim Form). The Claimants did not sign the Agreement for Sale with the third party, because the property had not been vested in either the deceased, or the Personal Representatives of the deceased. They were awaiting the Order of this Honourable Court to facilitate conveyance of the land to the estate/Personal Representatives (Order of this Honourable Court in this consolidated action dated 12th February 2020). The terms of the Order was agreed to since late 2019, in

principle and subject to the Court, by Counsel representing the parties. It is with this knowledge that the Administrators made a decision regarding the proposed sale in January 2020. (Affidavit of Kevin Campbell filed 10th February 2020, paragraph 9). While an Agreement for Sale was not signed in January, however, the Administrators provided a letter of agreement which was signed and agreed to by the third party and are of the view they are obligated to proceed to formal Agreement for Sale and ultimately the conveyance. (Affidavit of Sherwin and Kevin Campbell filed 5th March 2020, paragraphs 8 to 10).”

[39] In all circumstances, Mrs. Williams submitted that the personal representatives have rightfully exercised their power to sell to a third party and are not obliged to sell to Shania Campbell as contended by counsel for the defendants.

THE RELEVANT LAW

[40] When difficult questions arise in the administration of an estate, one option available to the personal representatives is to refer those matters to the Court for determination.

[41] The personal representatives have exercised their right pursuant to **CPR 67.4 (1)** above, and to the provisions of the **Succession Act**.

[42] Whereas here, a person dies intestate, the personal representatives hold the estate and the assets in accordance with the laws of intestacy and shall hold the estate as trustees for the persons entitled by law. That is the effect of **Sections 3(1) and (2)** of the **Succession Act** which provide:

“3(1) The real and personal estate of deceased person shall on his death, notwithstanding any testamentary disposition, devolve and become vested in his personal representatives.

(2) The personal representative for time the being of a deceased person shall the representatives of the deceased in regard to his real and personal estate, and shall hold the estate as trustees for the persons by law entitled thereto.”

- [43] The Privy Council defined the role of the personal representative in **Commissioner of Stamp Duties v Livingston [1964] 3 All ER 692** at page **696 C-E** where **Lord Radcliffe** stated that:

“There were special rules which long prevail about the devolution of freehold land and its liability for the debts of a deceased, but subject to the working of these rules whatever the property came to the executor virtue officii came to him in full ownership without distinction between legal and equitable interests.... [a trustee] held the unadministered property for the purpose of carrying out the functions and duties of administration, not for his own benefit and these duties would be enforced on him by the Court of Chancery.... he was in a fiduciary position with regard to the assets that came to him in the right of his office.”

Lord Radcliffe further stated that:

“those trusts are trusts to preserve the assets, to deal properly with them and to apply them in due course of administration”.”

- [44] **Section 3(2)** of the **Succession Act** specifically provides that the personal representatives shall hold the estate as trustees for the persons entitled thereto by law. That section clearly incorporates both executors and administrators.

[45] **Section 32(1)** of the **Act**, which is set out in full in the first paragraph of this judgment, expressly gives the personal representative a power of sale.

THE CENTRAL ISSUE

[46] The issues identified in **paragraph 22** hereof can be collapsed into one broad issue: namely, whether the personal representatives are authorised by **section 32(1)** of the **Succession Act** to sell the estate of the deceased to a third party, where a beneficiary has signified his or her intention to purchase that part of the estate.

[47] Before I discuss that issue, it seems to me that a keen reading of the facts before the court demonstrates that Shania Campbell, who is the third beneficiary in accordance with the intestacy provisions of the **Succession Act**, and who made an offer to purchase, has not given a mortgage certificate to show her capacity to finance the purchase of the property.

[48] The letter of offer from Mr. Jackman reads:

“I ... write to inform you that my client, Shania Campbell with the assistance of her mother will purchase the dwellinghouse in which she resides being the property of the estate of her late father Lester Campbell, deceased by paying to the other beneficiaries Sherwyn and Kevin other shares of the estate.”

[49] The mortgage loan certificate tendered is in the name of Pamela Henry alone. Therefore, the offer to lend is being made to her mother and not to the beneficiary.

- [50] Based on the above information alone it can be justifiably argued that the third beneficiary has not complied with the terms of the offer set by the personal representatives because Shania Campbell who is now full age ought to be the one submitting proof of her capacity to pay.
- [51] It should also be noted that even though the personal representatives consulted with Pamela Henry on the basis that Shania Campbell was a minor, **section 32(1) of the Succession Act** only requires consultation with persons of full age.
- [52] Therefore, the initial consultation with Shania Campbell's mother was not mandated by law but demonstrates the good faith of the personal representatives in attempting to facilitate the interests of their sibling and beneficiary.
- [53] But what does **section 32(1)** mean? On the face of it the section seems to be free of ambiguity. The section permits the personal representatives to sell the whole or part of a deceased person's estate for the purpose of paying debts or for distributing estate among the beneficiaries. In this regard both counsel agree that the personal representatives may sell the property.
- [54] The section also stipulates that before selling the personal representatives "shall so far as practical give effect to the wishes of person of full age entitled to the property proposed to be sold". It then adds that in case of dispute it

must give effect to the wishes of ‘the majority’ (according to the value of their combined interests).

[55] In the instant case all three beneficiaries have a one-third interest in the property of the deceased. Two persons constitute a majority and, therefore, are able to exercise the option to direct the sale of the property.

[56] It would seem, therefore, that unless the personal representatives commit some breach of duty they can decide to whom the property should be sold.

[57] Our **Succession Act** is modeled after the **Irish Succession Act 1965**. In the case of **Aileen Doyle v Niamh White et al [2017] 1EHC, 44** the Irish High Court had occasion to consider **Section 50** of their **Act** which is in similar terms to our **Section 32(1)**.

[58] In that case, the plaintiff, who was one of seven beneficiaries in the estate of Emily White, complained that the personal representatives had failed in their duty to the beneficiaries by not obtaining the best price on the sale of the deceased’s home.

[59] The major issue that the Court had to decide was whether the personal representatives are bound by the views of the majority of the beneficiaries in respect of how the estate is to be realised or whether they may be liable in negligence.

[60] This is how **Humphrey J** regarded **section 50** of the **Irish Succession Act** the equivalent Irish provision in **Doyle Humphrey J** said at **paragraphs 106, 107 and 108** of his judgment:

“106. Personal representatives must act in good faith and should not follow the majority wishes if they consider that to do so would be negligent (for example, by not resulting in maximum value for the non-consenting beneficiaries). But if they incorrectly **but by good faith think that following the majority view would not be negligent, the mandate to comply with the majority as set out in s. 50 seems to me to provide an implicit protection for the personal representatives unless the negligence is gross.** However, I emphasise that there is no protection under the section in the absence of good faith.

107. Thus mere negligence without more that arises due to following in good faith and without conflict of interest **the wishes of a majority of beneficiaries by value seem to me to be protected by s. 50 as long as it is not so manifestly unreasonable as to constitute gross negligence.**

108. In the present case I am satisfied on the evidence that even if there was some form of breach of duty of the administrators (which I do not accept), **it was not so manifestly unreasonable as to oust the protection of s.50.** Nor was there any absence of good faith.”

[61] Essentially, what the court held in this case was that as long as the personal representatives acted in good faith they would be protected by having acted in accordance with the wishes of the majority of the beneficiaries, unless it could be demonstrated that by following the wishes of the majority they would be acting with gross negligence. I agree with the decision in **Doyle**, and the

reasoning of **Humphrey J** and I adopt the rationale expressed within the quoted paragraphs for the purposes of this judgment.

[62] It is my view that the language of **section 32(1)** clearly mandates the personal representatives to act in accordance with the wishes of the majority of beneficiaries. In the instant case this is precisely what the personal representatives did.

[63] The facts show that the personal representatives acted with due care by ensuring that the property be sold at its market value; that Shania Campbell through her mother was consulted, and given every opportunity to purchase; and that a decision was taken to sell only after they considered three offers.

[64] The estate accounts also reveal that each beneficiary will benefit from the sale of the property in equal shares.

[65] The circumstances leading to the sale of the property are captured in the affidavits filed by or on behalf of the personal representatives. In my view they do not reveal any impropriety or lack of care. On the contrary, they reveal a transparent and diligent process leading to the ultimate decision.

DISPOSAL

[66] I therefore uphold the decision of the claimants to sell in accordance with **section 32** of the **Succession Act** and hereby order that they are permitted to sell the property to a third party at market value.

[67] Having consulted with counsel for both parties, it is hereby ordered that Shania Campbell shall quit the premises at Edghill Heights by the 30 day of April 2021.

[68] I will hear the parties with respect to costs.

Cecil N. McCarthy
Judge of the High Court