



**In The Supreme Court of Bermuda**  
**CIVIL JURISDICTION**  
**2012: No. 55**

**IN THE MATTER OF THE PARTITION ACTS, 1885 AND 1914**  
**AND IN THE MATTER OF AN APPLICATION OF MARY CHARLENE BUTTERFIELD**

**BETWEEN:-**

**MARY CHARLENE BUTTERFIELD**

**Petitioner**

**-and-**

**(1) CHARLES EUGENE BRANGMAN**  
**(2) CHIMENE DERISE ANDERSON**  
**(3) LUKE ALBERT JOSHUA HILL**

**Respondents**

**JUDGMENT**  
**(In Court)**

Date of hearing: 7<sup>th</sup> January 2015, 28<sup>th</sup> August 2015<sup>1</sup>

Date of judgment: 29<sup>th</sup> September 2015

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<sup>1</sup> The Court invited written submissions on various matters and authorities which arose during the preparation of the judgment but which had not been canvassed at the hearing. The last of those submissions was received on 22<sup>nd</sup> September 2015.

Mr Bruce Swan, Apex Law Group Ltd, for the Petitioner

Mr Larry Mussenden, Mussenden Subair Limited (7<sup>th</sup> January 2015) and Mr Vaughan V Caines, Marc Geoffrey Ltd (28<sup>th</sup> August 2015) for the Respondents

## **Introduction**

1. The parties are the children of the late Charles William Hill (“the Father”). He died on 10<sup>th</sup> November 2004. On 23<sup>rd</sup> September 2011 the Supreme Court issued a belated grant of probate in respect of his Estate. His Executors were the First and Second Respondents, Mr Brangman and Ms Anderson.
2. In his will, the Father left each of his children a quarter share in his property at 10 Cottage Hill Lane, Hamilton CR02 (“the Property”). By a Petition dated 9<sup>th</sup> February 2012, the Petitioner, Mrs Butterfield, sought an order for the sale of the Property and the distribution of the net proceeds of sale. The sale of the Property is uncontroversial. Accordingly, by a consent order dated 30<sup>th</sup> October 2012 (“the Consent Order”) the Court provided that the parties be at liberty jointly to sell the Property for a price to be agreed and accepted by them.
3. The Property consists of (i) a Main Unit, which has an Upper Level and a Lower Level, which have been treated as separate apartments; (ii) an Upper Apartment; and (iii) a Lower Apartment. They are all part of the same building.
4. The Property has not yet been sold. But a professional valuation dated 6<sup>th</sup> November 2014 which was carried out on the joint instructions of the parties stated that the market value of the Property in its present condition, and with the benefit of vacant possession, was in the opinion of the valuer fairly reflected in the sum of \$700,000.

5. The parties all agree that the Property should be sold, but they cannot agree how the proceeds of sale should be divided. Accordingly, the Consent Order directed that the proceeds of sale of the Property are to held in escrow:

*“pending determination by the Court or by agreement of the dollar amount to be distributed to the parties in accordance with their interests and monies contributed to or for the maintenance, renovation or improvement of the Property from the date of the death of [Mr C Hill] ... to the date of any such sale of the Property.”*

6. I have had the benefit of hearing evidence from Mrs Butterfield and the Third Respondent, Mr Hill, who spoke on behalf of the other Respondents, but not from Mr Brangman or Ms Anderson. Since the commencement of this action, Ms Anderson has written several rather cursory letters and emails to the other parties which set out her position. Although they were exhibited by Mr Hill, I attach little weight to them. They are unsworn, I don't know how they came to be written, and as Ms Anderson chose not to give evidence she was not cross-examined about them.

### **Mrs Butterfield's claim**

7. Mrs Butterfield contends that she should be credited with the cost of repairs and improvements which she made to the Main Unit (“the renovations”). She claims \$245,802 which she paid to a contractor, Eugene Ball (“Mr Ball”) trading as Bally's Home Maintenance, and a further \$77,883.49 as additional expenses. These figures come to \$323,683.49.
8. Mrs Butterfield further claims the interest payable on two loans which she states that she took out to fund the work on the Property. The first loan was \$300,000 of a \$400,000 mortgage which Mrs Butterfield, her husband and in-laws obtained from HSBC Bank Bermuda Limited in April 2008. The mortgage was secured by a charge against another property which they owned jointly. Mrs Butterfield stated that the second loan was for \$12,320 but provided no further details or any supporting documentation. As at 31<sup>st</sup> December 2014, the interest claimed was on the first loan \$68,231.76 and on the second loan \$4,973.77, for a total of \$73,205.53.

9. Mrs Butterfield claims that she carried out the renovations by agreement with the Respondents. It is common ground that shortly after the death of their Father the parties agreed that Mrs Butterfield and Ms Anderson would take responsibility for the maintenance and renovation of the Main Unit and that Mr Hill would do likewise for the Upper and Lower Apartments. Each kept the rent for the part of the Property for which he or she was responsible, which was therefore available to fund the cost of maintenance and renovation.
10. However Mrs Butterfield stated in an affidavit that at a subsequent meeting held at her husband's family's property in Somerset it was agreed that she would extensively renovate the Main Unit. She stated that Mr Brangman and Ms Anderson, who were named as the Executors in the will, although it had not yet been probated, told her to do whatever was necessary and to keep them and Mr Hill informed. She further stated that at that meeting Mr Hill agreed that she should fix the premises, but did not wish to be involved in how this was to be paid for. I am satisfied that any such meeting would have taken place after a fire damaged the Lower Level of the Main Unit in or about June 2007, but before Mrs Butterfield obtained the \$300,000 loan in April 2008 to carry out the renovations.
11. When cross-examined about a statement in an affidavit filed by Mr Hill that Mr Brangman and he were not involved in any decisions about the renovations of the Main Unit, Mrs Butterfield stated that Mr Brangman came to her yard and asked her to continue with the renovations, and that he suggested that Ms Anderson and Mrs Butterfield work together to carry them out.
12. On 13<sup>th</sup> April 2008 Mrs Butterfield emailed Mr Brangman and Ms Anderson. The email stated in material part:

*"I really feel that now is the time to carry out any improvements to the property, which will increase the value. I promise that before any action is taken, I will discuss this with you. I am laying the ground work and having all the discussions, and they are moving ahead as discussed on the phone. Please note I will be providing Luke with a copy of this email.*

- *We are going to test the roof for asbestos.*
- *We are going to draw plans with a view to moving the floor and see if we can receive planning approval.*
- *If the roof is removed, depending on the costs, at least we can give some additional height to both rooms.*
- *If the roof is not removed, the Engineer has some beautiful plans that will make Dad's room very attractive.*
- *I would like for you to see the repayment plan that I feel will work for us.*

*If we are able to receive rent in the amount of \$4,000, we can clearly repay this debt in full in 7 years at the most. I have allotted at least \$300,000 for the work, but if we need a little more, expenses go over I have funding which will cover this. The plan, however, is to keep within a 7 year time frame. Please note the 7 years includes one year of possible interest only, but with Derise [ie Ms Anderson] coming home, we are intending to apply as much as we can to the principal at the beginning phases, which will reduce the amount outstanding.*

*Please see the loan amount and the approximate repayments below.*

*[Various possible repayment schedules were then set out]"*

13. On 18<sup>th</sup> April 2008, Mrs Butterfield wrote to Mr Hill. She stated:

*"Please note no concrete decisions have been made at this point as to how we will move forward. They are all in the initial stage of the project, and will be confirmed and advised to yourself, and Charles prior to any action being taken."*

14. Mr Hill adduced in evidence a draft contract to renovate the Property, dated 25<sup>th</sup> April 2008, which was made between Mr Ball of the one part and both Mrs Butterfield and Ms Anderson on the other ("the Building Contract"). This document provided that Mr Ball would undertake various building works in relation to both the Upper Level and the Lower Level of the Main Unit for a contract price of \$151,200. The contract price appears to have included the cost of labour but not the cost of materials, which was to be borne by Mrs Butterfield and Ms Anderson.

15. The Building Contract stated that the work to be carried out by Mr Ball was to include:

- (1) Rewiring the Upper and Lower Levels.
- (2) Removing and replacing windows in the Upper and Lower Levels.
- (3) Installing new kitchen cabinetry and sink in the Lower level and removing and replacing kitchen cabinetry in the Upper Level.
- (4) Connecting all water supplies to the bathroom and kitchen in the Lower Level and laying new bathroom drainage and water supply pipes in preparation for new tub, toilet and vanity sink.
- (5) Removing and reinstalling floor tiles in the Lower Level and in the kitchen and dining room in the Upper Level.
- (6) Constructing floor and storage space separating the Lower Level from the Upper Level along the present stairway connecting the two Levels.
- (7) Removing the existing slab and raising the height of the ceiling in the Lower Level by 2 feet, providing a clearance of 8 feet 4 inches, and raising the floor and roof levels of the Upper Level proportionately.

16. The Building Contract further provided that Mr Ball would:

*“Provide to the Contractee [ie Mrs Butterfield and Ms Anderson] all invoices for which any additional purchases are made for supplies and materials for reimbursement.”*

17. I have not been provided with a signed copy of the Building Contract. However by an undated letter addressed “To Whom This May Concern”, Mr Ball stated:

*“I was retained by Charlene Butterfield and Derise (nee Hill) to complete work on their homestead residence at 310 Cottage Hill, Hamilton Parish, CR02[.]*

*I had issued them with a contract outlining the scope of work to be completed. ...*

*I had met with Charlene and Derise throughout the course of the work advising them of its progress and they had come by to check on me periodically.”*

18. None of the parties to the action disputed the contents of the letter. I am satisfied that irrespective of whether the Building Contract was ever signed, Mrs Butterfield and Ms Anderson agreed with Mr Ball that he would carry out building works at the Property on the terms set out in the Building Contract. I accept Mrs Butterfield’s evidence that this work was in fact carried out.

19. Mr Ball’s letter stated further:

*“Charlene had asked me to meet and retain individual contractors for the work that I was not able to do myself for which she supplied me with funds to complete such work.*

.....

*I had contacted the health department to also advise them and retained the services of B&B who were licensed specialist[s] in the field of removing asbestos.”*

20. The sum of \$245,802 which Mrs Butterfield paid Mr Ball includes the contract price of \$151,200 for labour and an additional \$94,602. It is not clear from Mr Ball’s letter whether the \$94,602 includes the cost of labour for the sub-contractors that he hired or was for materials only.

21. Eg the payments under the Building Contract were made in instalments from April through to December 2008. Mrs Butterfield identified a payment of \$25,523 which she made on 24<sup>th</sup> September 2008 as relating to the cost of removing asbestos. It is not clear whether this payment formed part of the \$151,200 contract price or alternatively whether it formed part of the additional \$94,602.

22. However it is clear from the terms of the Building Contract that \$151,200 was to cover all the labour to be performed under the contract and that Mr Ball should not have charged extra for the labour of the sub-contractors.

23. As to the \$77,883.49 which Mrs Butterfield claims on top of the \$245,802, much of this appears to relate to the cost of items to be installed by Mr Ball.

24. In an exchange of emails between Mr Brangman and Mrs Butterfield in May 2011, Mr Brangman agreed that he had come to Mrs Butterfield's house with Mr Hill, but stated that this was before the fire and that there was no discussion about a \$400,000 loan and who would be paying for it. In an email in reply Mrs Butterfield stated that Mr Brangman had come to her house and instructed her to go ahead with the work and that this was in 2009.
25. When Mrs Butterfield was cross-examined, it was suggested to her that Mr Brangman and Mr Hill were not involved in any decisions with respect to the Main Unit. Mrs Butterfield disagreed and stated that Mr Brangman had come to her yard and suggested that she work with Ms Anderson to do the work. This appears to be a reference to the same conversation as Mrs Butterfield mentioned in her May 2011 email. I accept that the conversation took place, but infer from the suggestion that Ms Anderson should be involved that it most likely happened in 2008 before the contract with Mr Ball was signed.
26. Returning to the May 2011 email, Mrs Butterfield appeared to concede that she had not obtained everyone's consent. This concession was made explicit when, under cross-examination, Mrs Butterfield accepted that Mr Hill did not agree to the renovations.
27. So what did the parties intend? Upon the death of the Father, his Estate vested in the Executors. This gave them wide powers to deal with the Estate even before the grant of probate. As Kekewich J stated in In re Pawley and London Provincial Bank [1900] 1 Ch 58, Ch D at 64:  
  
*"It is common knowledge that an executor derives his title from the will, and not from the grant of probate, and that he can in his representative character do many things, including the transfer of chattels real, notwithstanding that he has not proved the will."*
28. Indeed, as stated in Halsbury's Laws of England, Fifth Edition, volume 103 at para 634, an executor may generally do before probate all things which pertain to the executorial office.



29. In the premises I am satisfied that when Ms Anderson entered into the Building Contract she did so on behalf of the Estate. I am further satisfied from Mr Brangman's conversation with Mrs Butterfield as mentioned in the latter's May 2011 email that in so doing Ms Anderson was acting with the consent of her fellow Executor, even though he may not have been aware of the precise steps that she was taking to renovate the Property. It is therefore immaterial that Mrs Butterfield did not, as she said she would in her email of 13<sup>th</sup> April 2008, keep Mr Brangman personally informed of the building work.
30. I am also satisfied that Mrs Butterfield entered into the Building Contract on behalf of the Estate with the knowledge and approval of the Executors. I base this finding upon Mrs Butterfield's aforesaid conversation with Mr Brangman and the fact that Ms Anderson was also a party to the contract. Mrs Butterfield's email of 13<sup>th</sup> April 2008 supports the inference that she understood that she was undertaking the renovations on behalf of the Estate.
31. The Estate is therefore liable to reimburse Mrs Butterfield for the cost of labour which was agreed at \$151,200 and the reasonable cost of materials incurred under the Building Contract, whether they were purchased by Mr Ball or by Mrs Butterfield. This is in accordance with the principle, stated by Lord Clarke when giving the majority judgment of the UK Supreme Court in Benedetti v Sawiris [2014] AC 938 at para 9, that where the amount of remuneration due under a contract is not spelled out, the law will normally imply a term into the agreement that the remuneration will be reasonable in all the circumstances.
32. I am not concerned with whether the decision to enter into the Building Contract was prudent. However it is for Mrs Butterfield, who was in effect the project manager, to satisfy me that the cost of materials was reasonable. It is that she paid a reasonable price for the materials that were necessary to do the work covered by the Building Contract.

33. I am not assisted in this task by the fact that, on the evidence before me, Mr Ball did not, as the Building Contract required, provide Mrs Butterfield or Ms Anderson with invoices for the materials which he purchased.
34. Mrs Butterfield purchased the following materials, which were to be installed by Mr Ball, directly:
- (1) Tiling for upper apartment: \$11,117.86.
  - (2) Cabinets for upper apartment: \$7,296.
  - (3) Tiling for lower apartment: \$2,410.13.
  - (4) Cabinets for lower apartment: \$4,367.
  - (5) Bathroom tiling: \$764.75.
  - (6) Front doors/windows: \$7,571. (She also purchased blinds in the sum of \$5,497.40, but these have not been installed so I shall ignore them.)
  - (7) Extra window for kitchen: \$1,462.89.
  - (8) Kitchen door. \$1,224.00.
- Sub-total: \$29,513.63.
35. These expenses are documented and I am satisfied that they were in fact incurred. Thus the total amount which Mrs Butterfield spent pursuant to the Building Contract was \$275,240.63 (ie \$245,802 plus \$29,483.63). Of this, the cost of labour should have been limited to the contract price of \$151,200. The difference between that amount and \$275,240.63 is \$124,040.63.
36. To put this figure in context, on 9<sup>th</sup> April 2010 Bermuda Realty Company Limited issued a valuation of the Property as of 10<sup>th</sup> November 2004, ie the date of the Father's death, for the purpose of probate ("the Bermuda Realty Valuation"). This assessed the cost of rebuilding the Main Unit as of that date, which was adjusted down from the then current rebuilding cost, as being \$316,341 (\$255,380 for the Upper Unit and \$60,961 for the Lower Unit).
37. Although I did not have the benefit of expert evidence on the point, \$124,040.63 strikes me as excessive in relation to the work done. I am not assisted by the dearth of evidence as to how \$94,602 of that sum was made

up. However I accept that Mr Ball would have needed to purchase materials in addition to those which Mrs Butterfield purchased directly. Doing the best I can, I will allow \$50,000 of the \$94,602, plus the \$29,483.63, as a reasonable amount for materials, ie \$79,483.63. The Estate is therefore liable to reimburse Mrs Butterfield the sum of \$230,683.63 (ie \$151,200 plus \$79,483.63).

38. I am further satisfied that in consideration of Mrs Butterfield borrowing the monies to fund the renovations for the benefit of the Estate, the Executors impliedly agreed with her that the Estate would bear the cost of borrowing, eg the interest payments, legal costs and stamp duty, in relation to the loan monies that were reasonably applied for that purpose, ie \$230,683.63. Mrs Butterfield has supplied documentation showing that the legal fees and stamp duty came to \$4,100. I accept that she is entitled to be reimbursed in that sum. I shall leave it to the parties to calculate the interest, which will, of course, be less than the interest on the full loan of \$300,000. Mrs Butterfield must give credit for the rental income which she has used to discharge the interest payments.
39. Thus I am satisfied that the Executors were aware that Mrs Butterfield proposed to fund the building works by way of a loan, and that, having willed the end, namely the renovations, they impliedly willed the means, namely the loan, without which the renovations could not have taken place. The timing of the loan *vis-à-vis* the Building Contract is not material (the loan agreement was signed on 25<sup>th</sup> April 2008, three days prior to the Building Contract): what matters is the purpose for which the loan was obtained and for which the material portion of the loan monies were applied.
40. As I have disallowed the cost of borrowing in excess of \$230,683.63, I have not allowed the cost of borrowing the further loan of \$12,320. As Mrs Butterfield has not produced any documentation to support the existence of the loan I would not have allowed this claim in any event.
41. As all the payments made under the Building Contract occurred in 2008, I conclude that Mr Ball completed his work on the Property in 2008 or early

2009. Any subsequent work on the Property was not carried out by Mr Ball and did not fall under the Building Contract.

42. As to the expenses which Mrs Butterfield incurred in relation to that subsequent work, ie the balance of the \$77,883.49, Mrs Butterfield relies on the law of restitution, and specifically the principle of *quantum meruit*. Ms Anderson and Mr Hill rely upon the same principle with respect to the expenses which they seek to recover. The relevant considerations were explained by Lord Clarke in Benedetti v Sawiris and may be summarised thus:

- (1) The correct approach to the amount to be paid by way of *quantum meruit* where there is no valid and subsisting contract between the parties is to ask whether the defendant has been unjustly enriched and, if so, to what extent. *Per* Lord Clarke at para 9.
- (2) A court must ask itself four questions when faced with a claim for unjust enrichment. (i) Has the defendant been enriched? (ii) Was the enrichment at the claimant's expense? (iii) Was the enrichment unjust? (iv) Are there any defences available to the defendant? *Per* Lord Clarke at para 10.
- (3) A claim for unjust enrichment is not a claim for compensation for loss, but for recovery of a benefit unjustly gained by a defendant at the expense of the claimant. *Per* Lord Clarke at para 13.
- (4) The enrichment is to be valued at the time when it was received by the defendant. *Per* Lord Clarke at para 14.
- (5) What is to be valued are the services provided, not endpoint or subsequent profit made by the defendant. *Per* Lord Clarke at para 14.
- (6) The starting point in valuing the enrichment is the objective market value, or market price, of the services performed by the claimant. *Per* Lord Clarke at para 15.

- (7) However it is permissible to reduce the objective market value in order to reflect the subjective value of the services to the defendant. *Per* Lord Clarke at para 18.

In the context of the present case, “claimant” and “defendant” should be read as references to the Petitioner and the Respondents.

43. Eg, if renovation works cost more than the value which they added to a property, their subjective value to a defendant might be less than their cost. This example is apposite to the present case. Appraisals obtained by Mrs Butterfield in September 2006 (before the renovations were carried out) and April 2009 (after the renovations were carried out but before the crash in the local property market) from Horsefield Property Services Ltd (“Horsefield”) suggest that the property increased in value between those dates by \$150,000. This is substantially less than the cost of the renovations.
44. Turning to the detail of Mrs Butterfield’s remaining expenses, and having heard from her in person, save where indicated below I accept that the expenses were in fact incurred. This is notwithstanding that in some cases she has produced quotes rather than invoices to support them. The expenses were all incurred from 2009 onwards, after the last payment was made to Mr Ball under the Building Contract. In reviewing her claims, and those of the other parties, I have not set out all the arguments made to me, although I have taken them into account, but have stated my findings in concise terms.
45. Mrs Butterfield claims \$700 for work on a kitchen door frame; \$1,290.70 for cabinets; \$887.20 for a shower stall; and \$1,645 for light fixtures and two ceiling fans. These items go to the renovation of the Property and should have been covered by the Building Contract. I was therefore initially minded to disallow them on the basis that the Executors would have been unlikely to approve any further renovations to the Main Unit. However, Ms Anderson was carrying out work on the Main Unit in March 2009. This is dealt with later in this judgment. I infer that she was most likely aware that Mrs Butterfield too was working on the Main Unit after the work under the Building Contract had come to an end, and that Mrs Butterfield did so with

her tacit approval. In those circumstances the cost of these items is allowed, in the total sum of \$4,522.90.

46. Mrs Butterfield claims \$7,474.46 for miscellaneous expenses incurred in 2009 which appear to relate largely to renovations. The exceptions are a payment of \$1,450 which relates to the 2009 appraisal carried out by Horsefield, and a payment of \$300 which relates to an appraisal carried out in 2009 by Bermuda Realty Ltd (not the Bermuda Realty Valuation, which was carried out in 2010) which I have not seen. It is not clear to me how the Estate has benefited from either appraisal, so those claims are disallowed. As I am satisfied that the rest of the items claimed have benefitted the Estate, they are allowed in the total sum of \$5,724.46.
47. Mrs Butterfield claims \$59.49 for a measuring level. The causal connection between this expense and any benefit which the Estate derived from it has not been made out. This expense is therefore disallowed.
48. Mrs Butterfield claims \$1,783 for a pump and tank; \$1,778.30 for pump installation; \$803.75 for hiring a plumber to repair a leak; and \$4,000 for re-routing a “connected line” for the fresh water tank.
49. As to the \$4,000, the invoice provided gives no details of the work carried out. Mr Hill, who is a qualified plumber, states that the reinstatement of fresh water to the premises was in fact carried out by him at a later date. In the circumstances I am not satisfied that the \$4,000 was an expense which benefited the Estate and the claim is disallowed.
50. I accept that the other expenses were incurred for the benefit of the Property and that they do not fall within the plumbing work covered by the Building Contract. These items are therefore allowed in the total sum of \$4,365.05.
51. I shall allow a further \$682.50 which Mrs Butterfield claims for seven loads of fresh water, which I understand were needed to refill the fresh water tank.
52. Mrs Butterfield claims \$758.96 for the cost of re-rendering what was formerly the porch area of the Upper Unit to stop leaking and water

settlement. I am satisfied that this work benefitted the Estate and this item is therefore allowed.

53. Mrs Butterfield claims \$2,721.75 for two ranges and a fridge; \$978.35 for the cost of their installation; and \$1,000 for the cost of a washer and a dryer. The documentation for the washer and the dryer is dated 2004, some four years prior to the renovations, and it is not clear to me from that documentation how the figure of \$1,000 has been arrived at. This item is therefore disallowed. I am satisfied that the purchase of the other appliances has benefitted the Estate, and these items are therefore allowed in the total sum of \$3,700.10.
54. Mrs Butterfield claims \$1,050 for two appraisals carried out by Horsefield for which she was invoiced in 2007. As only one of them relates to the Property the amount claimed should in fact be \$525. It was actually carried out in 2006. It is not clear to me how the Estate has benefited from the appraisal, so this item is disallowed.
55. Mrs Butterfield claims \$459 for advice on improvements to the Property from Woodbourne Associates Ltd. I take judicial notice of the fact that on its website the company describes itself as a multi-disciplinary practice covering all facets of building and civil engineering. Of this sum, \$385 was billed on 31<sup>st</sup> October 2007 and \$74 on 31<sup>st</sup> March 2009. I accept that it was in the best interests of the Estate that Mrs Butterfield should seek professional advice before embarking on the renovations, but I do not understand why she sought such advice once the Building Contract had been completed. The claim for \$385 is therefore allowed and the claim for \$74 is disallowed.
56. Mrs Butterfield claims \$4,000 for four weeks of manual labour carried out on the Property from 1<sup>st</sup> February to 31<sup>st</sup> March 2009 by her nephew. His family has invoiced the Estate for this amount, which I understand has not yet been paid. The invoice is dated 17<sup>th</sup> November 2010, ie more than one and a half years after the work was carried out. Mr Hill accepts that some work was carried out but disputes the amount. No time sheets have been

provided. It is not clear to me what the work was and how it benefited the Estate. In the circumstances, this item is disallowed.

57. Mrs Butterfield's claim for miscellaneous expenses is therefore allowed in the sum of \$20,138.97.
58. Mrs Butterfield received a cheque for \$3,500 from the Property's insurer with respect to the 2007 fire damage to the Main Unit. This amount should be offset against the cost of the renovations.
59. In summary, therefore, I award Mrs Butterfield the following amounts, which are to be deducted from the net proceeds of sale of the Property before the proceeds are distributed among the parties.
  - (1) \$230,683.63 under the Building Contract.
  - (2) \$4,100 legal fees and stamp duty.
  - (3) \$20,138.97 miscellaneous expenses.
  - (4) Less \$3,500 insurance money

Sub-total: \$251,422.60

  - (5) Plus interest on \$230,683.63 of the bank loan, to be assessed.

### **Ms Anderson's claim**

60. Ms Anderson claims \$624 on behalf of herself and two other members of her family as the cost of labour incurred in painting walls, cleaning windows, staining doors before they were hung, and assembling shelves in the master bedroom. I am satisfied that the amount claimed is reasonable and that the services benefitted the Estate. Her claim, which is not opposed, is therefore allowed.

### **Mr Hill's claim**

61. Mr Hill claims \$111,826 for the cost of construction of the Upper Apartment, which he built on to the Property while the Father was still alive.



The figure is derived from the cost of construction given in the Bermuda Realty Valuation. Mr Hill said in evidence that he did most of the construction himself, but that he hired a carpenter and a mason, to whom he had paid an estimated \$75,000 to \$80,000. As the work was carried out more than a decade ago he has not retained any invoices. Mrs Butterfield said in evidence that her Father wasn't comfortable with the work and that in the course of discussions about the Property before the Father died both the Father and Mr Hill had told her that the work cost Mr Hill \$60,000.

62. In my judgment justice does not require that, in the absence of any agreement that the Father would pay Mr Hill the cost of construction, the Estate should now do so. On the other hand, it would be unjust if Mr Hill were left out of pocket. In the absence of any invoices, I find Mrs Butterfield's recollection of contemporary conversations a more reliable guide to the cost of hiring labour for the project than Mr Hill's educated guess many years later when asked about it in court. This item is therefore allowed in the sum of \$60,000.
63. Mr Hill also claims for a variety of miscellaneous expenses.
64. Mr Hill claims \$2,621.93 for the cost of improvements to the driveway and parking area which he carried out in 2009. The cost of improvements is fully documented and I am satisfied that they benefited the Estate. This item is therefore allowed.
65. Mr Hill claims \$2,137.50 for insurance for the Property which he paid in 2006 and \$2,479.96 for land tax which he paid for the Property in 2004 – 2009. He is entitled to be reimbursed for these debts of the Estate which he discharged. These items are therefore allowed in the total sum of \$4,617.46.
66. Mr Hill claims \$9,693.83 for plumbing and related work which he carried out in relation to the Property. These items are allowed as they benefited the Estate.

67. Mr Hill claims \$1,130.00 for the cost of the Bermuda Realty Valuation. The valuation was necessary in order to obtain probate and the item is therefore allowed.
68. Mr Hill claims \$844.30 for the cost of miscellaneous odd jobs. These items are allowed as they benefitted the Estate.
69. Mr Hill claims \$5,000 for stamp duty which he states that he paid from rental income from the Upper and Lower Apartments. He has provided documentation that \$4,000 stamp duty has been paid. As the rent was paid from rental income it was paid from the assets of the Estate. This item is therefore disallowed.
70. Mr Hill claims \$1,500 in legal fees which he incurred in relation to obtaining probate of the Estate. This item benefitted the Estate and is therefore allowed.
71. Mr Hill received rents from the Upper and Lower Apartments from 1<sup>st</sup> June 2010 until early 2013. He estimates that they were occupied for a continuous period of 24 months during that period, during which he received an aggregate rent of \$2,500 per month. Assuming the accuracy of his estimates, his total receipts would have been \$60,000. This sum, less \$4,000 which was used to pay stamp duty (ie \$56,000), falls to be offset against the various expenses which he has claimed.
72. In summary, therefore, I award Mr Hill the following amounts, which are to be deducted from the net proceeds of sale of the Property before the proceeds are distributed among the parties.
  - (1) \$60,000 cost of construction.
  - (2) \$20,407.52 miscellaneous expenses.
  - (3) Less \$56,000 rental receipts.

Sub-total: \$24,407.52.

**Further matters**

73. As all parties acknowledge, the outstanding stamp duty payable on the Estate will have to be paid from the proceeds of sale of the Property in priority to any of the payments which I have directed above and before the net proceeds are distributed among the parties. I am told that the amount outstanding is in the region of \$30,000.
74. The Property will not attract a buyer at anything like its appraised value until a certificate of occupancy has been obtained for the Main Unit – the lack of which emerged in 2013 – and any other permissions required from the Department of Planning have also been obtained. Obtaining them is the responsibility of the Estate. Funding them pending the sale of the Property, when the cost can be deducted from the net proceeds of sale before the proceeds are distributed, is a matter which requires the parties’ urgent consideration.
75. I shall hear the parties as to costs and interest.

Dated this 29<sup>th</sup> day of September, 2015

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Hellman J