

***COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION***

**# 1 Dec 1997
No. 157 of 1997**

Estate of JOHN F. GAUDREAU, JR., Deceased

**Sur account entitled: First and Final Account of John F.
Gaudreau, Sr., Executor**

Before PAWELEC, J.

**The account was called for audit December 1, 1997, and
January 20 and March 3, 1998
and May 1 and 23, 2000**

Counsel appeared as follows:

**ROBERT W. COSTIGAN, ESQ., and MICHAEL J.
STACK, ESQ., - for the Accountant**

**THOMAS A. CUNNINGHAM, ESQ., - for Richard
Jones, Claimant**

ROBERT E. ANTONI, Claimant - appeared p.p.

**JOHN P. SABATINA, ESQ., - for Andrea Abrams,
Claimant**

**John F. Gaudreau, Jr., died on November 6, 1996, leaving a will
dated July 31, 1995, which was duly probated. He was married to Diane**

Gaudreau at the time of his death, and, was survived by his son, John F. Gaudreau, III.

Letters Testamentary were granted to the accountant on November 14, 1996; proof of publication of the grant of same was submitted and is annexed hereto.

Payment of transfer inheritance tax, \$9,500.00 on February 4, 1997, was duly vouched.

By the terms of his will, a copy of which is annexed hereto, the testator gave his estate to his son, John F. Gaudreau, III, with a provision that his executor shall act as trustee for the benefit of his son until the son shall attain the age of twenty-five (25) years. He appointed his father, John F. Gaudreau, Sr., to act as executor and trustee.

It is stated that the family exemption has been claimed by Diane Gaudreau, surviving spouse, and has been paid.

It is stated that John F. Gaudreau, III, son of the testator, was born on October 26, 1980.

By writing filed with the Clerk on January 29, 1997, Diane Gaudreau, surviving spouse, has elected to take her elective share of her husband's property under Section 2203 (a) of the Probate, Estates and Fiduciaries Code.

It is stated that notice of the audit has been given to all parties having a possible interest in the estate.

By separate "Agreement", a copy of which is annexed hereto, Diane Gaudreau has agreed to accept a conveyance of premises 1705 Benson Street, Philadelphia, to herself and her son, John F. Gaudreau, III, as joint tenants with right of survivorship, in full and final satisfaction of her elective share of property passing from her husband by will.

Counsel appeared for Richard Jones to withdraw any claim which Mr. Jones might have for lost wages or for return of certain items of tangible personal property which were allegedly in the possession of the testator at the time of the testator's death.

Robert E. Antoni appeared, *pro se*, to make a claim for return of certain items of tangible personal property which were allegedly in the possession of the testator at the time of the testator's death. Mr. Antoni's claim has since been withdrawn.

Andrea Abrams has appeared by counsel to make a claim in the amount of \$3,924.59, being the alleged value of certain items of tangible personal property which were allegedly in the testator's house at the time of the testator's death.

Andrea Abrams offered the testimony of herself and three other witnesses, and, eight exhibits, in support of her claim.

Andrea Abrams testified that she lived with the testator, in premises 1705 Benson Street, for a period of seven months which ended with the death of the testator. She stated that she brought items of tangible

personal property with her when she moved into 1705 Benson Street, and, that she bought items of tangible personal property during her occupancy of said premises. According to Ms. Abrams, most of her tangible personal property was left at the Benson Street property when she was ordered off the premises at 11:00 p.m. on the night of the day before the testator died. Ms. Abrams described how the testator's father came to Benson Street, along with three other men, and ejected her from the premises, allowing her to make only one phone call to her father. This was done while the testator lay dying in the hospital. Ms. Abrams testified that she had lived in the Benson Street property with the permission of the testator; that she was given no notice that she was to be evicted from the property; that she was given only fifteen to twenty minutes to gather up as much property as she could carry; and, that she was not allowed to call the police. Ms. Abrams likened this incident to an episode of "Mission Impossible" with her sweating and scared, and, being confronted by four grown men who ejected her from her home and changed the locks.

Andrea Abrams testified that her attorney set up an appointment for her to walk through the Benson Street property and retrieve her tangible personal property. There were to be no members of the Gaudreau family present during this visit. The only people to be present were Mrs. Abrams; her attorney, Mr. Sabatina; and, the attorney for the accountant, Mr. Pettit. According to Ms. Abrams, members of the Gaudreau family were present when Ms. Abrams came to Benson Street for

her tangible personal property; there were boxes in the driveway; most of the items in the boxes did not belong to Ms. Abrams; and, Ms. Abrams did not take anything from the boxes. Ms. Abrams likened this visit to Benson Street to a “garage sale”.

Andrea Abrams identified Exhibit “C-8” as a list of her items of tangible personal property which were left at Benson Street when she was ejected from the premises. Ms. Abrams placed values next to each item on Exhibit “C-8”, and, the sum total of all such valuations is \$3,884.59. According to Ms. Abrams, her attorney arranged for her and an investigator to go to a storage locker to look for the items on Exhibit “C-8”. Ms. Abrams stated that she went to the storage locker twice. On her first visit to the locker, in the company of the investigator, Ms. Abrams made notations on Exhibit “C-8” to indicate which items were found in the locker, and, which items were not found in the locker. According to the notations, the locker contained items of tangible personal property having a total value of \$964.88. Also according to the notations, the locker did not contain items of tangible personal property having a total value of \$2,075.98. There are no notations next to several items on Exhibit “C-8” whose total value is \$843.73. Ms. Abrams testified that she understood that she had until the end of the month to remove her property from the storage locker; that she took nothing from the locker on her first visit; and, that when she returned to the locker to remove her property on the second visit, she found it empty.

Karen Wyzhozowcz was called as a witness for the claimant. Ms. Wyzhozowcz testified that she had known Andrea Abrams for ten years; that she helped Ms. Abrams to move a couple of truckloads of tangible personal property into 1705 Benson Street; that Ms. Abrams and the testator went together for three years before Ms. Abrams moved into Benson Street; and, that Ms. Abrams lived with the testator for seven or eight months. Ms. Wyzhozowcz stated that she accompanied Ms. Abrams on a visit to the testator, in the hospital, two days before the testator died. Ms. Wyzhozowcz said that she was present at the "garage sale" in the driveway, and, that most of the items in the boxes belonged to the testator.

Albert Corson was called as a witness for the claimant. Mr. Corson testified that he serves subpoenas, and, that he accompanied Andrea Abrams on a visit to a storage locker on Grant Avenue on February 26, 1997. Mr. Corson stated that the claimant's attorney, Mr. Sabatina, gave him Exhibit "C-8", and, told him to mark the items on Exhibit "C-8" which were found to be present in the locker. According to Mr. Corson, he marked the items which were present, but, he did not remove anything from the locker because he had not been instructed to do so.

Ken Finley was called as a witness for the claimant. Mr. Finley testified that he was district manager and keeper of records for Public Storage Lockers. Mr. Finley identified Exhibit "A-3" as a copy of a "Vacate Receipt" which was generated by his firm's computer system on February

27, 1997. Mr. Finley stated that the accountant rented a locker at 2700 Grant Avenue for the period February 13, 1997 to March 16, 1997; that Public Storage does not inspect items which are placed in rented units; that renters supply their own padlocks and keys; and, that Public Storage does not keep a record of entries into rented units. Mr. Finley described his firm's policies and procedures of having its employees inspect all units twice daily; of generating a "Vacate Receipt" when a unit is found to be empty; and, of notifying renters to remove property from lockers, by a series of letters, sent over eighty days, in accordance with Pennsylvania law, at the end of a rental period. According to Mr. Finley, the records of Public Storage show that one of its employees found the estate's locker empty on February 27, 1997, but, the firm has no record of who actually entered and emptied the locker on that date.

John F. Gaudreau, Sr., testified that Andrea Abrams left his son's house, at 1705 Benson Street, on November 5, 1996, and, that his son died at 2:00 a.m. on the next day. Mr. Gaudreau stated that he and his grandsons went to Benson Street to assist Mrs. Abrams in removing her belongings from the premises. According to Mr. Gaudreau, his wife told him of a conversation between herself and Ms. Abrams, in the hospital, on Monday, November 4, 1996, during which conversation Ms. Abrams had agreed to leave Benson Street and asked for assistance in moving out. And so, according to Mr. Gaudreau, he and his grandsons went to Benson Street, on November 5, 1996, to help Ms. Abrams to move out.

John F. Gaudreau, Sr., testified that he told Andrea Abrams to take whatever she could carry from the house on Benson Street on November 5, 1996; that he told her that she could return to the house at a later date to take the remainder of her property; that he did not deny her the opportunity to take any item on November 5, 1996; and, that she took about one hour to load two jewelry boxes and other items into her car on November 5, 1996.

John F. Gaudreau, Sr., testified that he received a call from an attorney named Guttman, representing Andrea Abrams, at 8:00 a.m. on the morning of November 6, 1996, that is, on the morning that his son, John F. Gaudreau, Jr., had died. According to Mr. Gaudreau, attorney Guttman expressed Ms. Abrams' desire to pick up the remainder of her property in 1705 Benson Street, and, Mr. Gaudreau told attorney Guttman that this matter could wait until after the funeral.

John F. Gaudreau, Sr., testified that Andrea Abrams brought a truck to 1705 Benson Street at 10 a.m. on the morning of Sunday, November 10, 1996, at which time Mr. Gaudreau and some of his grandsons carried a bedroom set and some kitchen furniture from the basement of the house and put it into Ms. Abrams' truck. Mr. Gaudreau stated that he told Andrea Abrams, on November 10, 1996, that she could get the remainder of her tangible personal property from the house at a later date. According to Mr. Gaudreau, this visit to Benson Street, on November 10, 1996, was

conducted in the presence of himself, some of his grandsons, two Philadelphia Police Officers, and, Ms. Abrams' friend, Karen Wyzhozowcz.

John F. Gaudreau, Sr., testified that Andrea Abrams' attorney, Mr. Sabatina, supplied Mr. Gaudreau's attorney, Mr. Pettit, with a list of items which allegedly belonged to Ms. Abrams and remained in 1705 Benson Street. Mr. Gaudreau then catalogued the items and put them in cartons, and, placed the cartons in the driveway of the house on Benson Street, at 3:00 p.m. on the afternoon of November 21, 1996, for pick up by Ms. Abrams. Mr. Gaudreau stated that he saw no reason to let the attorneys into the house on Benson Street when they arrived, along with Ms. Abrams, at 3:00 p.m. on the afternoon of November 21, 1996. According to Mr. Gaudreau, Ms. Abrams only stayed in the driveway of the house on Benson Street for seven or eight minutes, on the afternoon of November 21, 1996, and, took nothing from the boxes because she said that none of the items therein belonged to her.

John F. Gaudreau, Sr., testified that he arranged for Andrea Abrams to retrieve the remainder of her tangible personal property from a locker on February 26, 1997. Mr. Gaudreau stated that he went to the locker on February 27, 1997; that there were items of tangible personal property in the locker on that date; that the said items were in a state of disarray; and, that he left them as he found them.

Catherine Gaudreau was called as a witness for her husband, the accountant. Mrs. Gaudreau testified that she had a conversation with

Andrea Abrams, in the waiting room of the cardiac care unit of Jeanes Hospital, on November 4, 1996. Mrs. Gaudreau stated that, during this conversation: she asked Ms. Abrams to move out of her son's house on Benson Street; Ms. Abrams said that she did not want to cause problems for the Gaudreau family, and, that she would go to her father's house; that Ms. Abrams did not ask for assistance in moving out; and, that no time was set for Ms. Abrams to move out of Benson Street. Mrs. Gaudreau testified that she told her husband of her conversation with Ms. Abrams, but, she did not tell her husband that Ms. Abrams needed help in moving out. Mrs. Gaudreau stated that she was present at the hospital, at about 7:00 p.m. or 8:00 p.m. on the evening of November 5, 1996, when her husband and three of her grandsons left the hospital to go to her son's house on Benson Street.

Having observed the demeanor of the witnesses on the stand and considered their respective interests in the outcome of this matter, and, having considered the exhibits which have been received into evidence, this Court believes that Andrea Abrams, Karen Wyzhozowcz, Albert Corson, Ken Finley and Catherine Gaudreau testified truthfully and to the best of their respective recollections. This Court believes that John F. Gaudreau, Sr., dislikes Andrea Abrams intensely, and, that the conduct and testimony of Mr. Gaudreau were highly colored by his feelings of aversion and disapproval of Ms. Abrams. This Court believes that John F. Gaudreau did not testify truthfully.

Having considered the testimony of Andrea Abrams, John F. Gaudreau, Sr., and Catherine Gaudreau, this Court finds that Ms. Abrams did not ask for assistance in moving out of Benson Street; that Mrs. Gaudreau and Ms. Abrams did not set a time for Ms. Abrams to move out; that Ms. Gaudreau did not tell her husband that Ms. Abrams needed help in moving out; and, that Mr. Gaudreau did not go to Benson Street to help Ms. Abrams to move out on November 5, 1996. This Court believes that Andrea Abrams gave a truthful and accurate account of the events which occurred at the Benson Street house on the night of November 5, 1996, and, that John F. Gaudreau, Sr., knowingly, intentionally and forcibly ejected Ms. Abrams from the premises, without notice or apparent authority, and, with full knowledge that the house contained many items of tangible personal property which belonged to Ms. Abrams.

Having forcibly taken possession of tangible personal property which belonged to another person, John F. Gaudreau, Sr., assumed an affirmative duty to return said property to the owner in a reasonable and expeditious manner. This Court finds that Mr. Gaudreau did not fulfill this duty because of his intense dislike and disapproval of Ms. Abrams.

This Court finds Exhibit "C-8" to be an accurate record of items which Andrea Abrams was forced to leave at the Benson Street house. This Court believes the testimony of Albert Corson and Andrea Abrams as to which items they found in the estate's locker on February 26,

1997. An employee of Public Storage Locker found the locker to be empty on February 27, 1997. This Court holds that John F. Gaudreau, Sr., failed in his duty to return the items on Exhibit "C-8" to Andrea Abrams.

As an owner of property, Andrea Abrams could state her opinion of the value of her tangible personal property. However, the claimant's opinion of value is not binding on this Court. Upon a consideration of the entire record in this matter, this Court holds that the estate must pay the sum of \$2,500.00 to Andrea Abrams because the accountant failed to return the items on Exhibit "C-8" to Ms. Abrams. This Court further holds that the accountant should be surcharged in the amount of \$2,500.00 because his conduct has caused the estate to incur a liability. There was no objection to the account which shows a balance of principal, personal property, of \$18,791.68 to which add surcharge of the accountant of 2,500.00 making a balance of \$ 21,291.68 which, composed as indicated in the account, is awarded as follows: \$2,500.00 to Andrea Abrams, in satisfaction of her claim; and, the balance then remaining, or residue, to John F. Gaudreau, Sr., as trustee of the trust for the benefit of John F. Gaudreau, III, under the will of the testator.

The account shows unconverted real estate appraised at \$ 80,000.00 being premises 1705 Benson Street, Philadelphia, Pennsylvania, which is awarded to Diane Gaudreau and John F. Gaudreau, III, as joint tenants with right of survivorship, in accordance with the Agreement regarding the elective share of the surviving spouse.

The above award of premises 1705 Benson Street is made subject to the distribution of said premises which is reflected in the account.

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, _____, unless exceptions are filed to this adjudication within twenty (20) days, the account, as modified by this adjudication, is confirmed absolutely.

J.