

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-04086

BETWEEN

RUTHILDA SPENCER CLAIMANT

AND

DENNIS ROUSE DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH

Appearances:

Ms. Karen E. Piper for the Claimant

Mr. Newton P. James for the Defendant

Dated: 12 July 2013

REASONS

1. These are the written reasons following an oral judgment given on 26 July 2012. Olsen Rouse owned a house on a lot of land at Couva. He had no children. He was not married. At the time of his death on 10 May 2004, he was survived by one brother, Evans Ural Rouse. Olsen

had 2 other brothers, Albert Banfield Rouse and Fitz Rouse, both of whom died before him. The defendant is the son of Fitz Rouse. He is Olsen's nephew.

2. Evans Rouse lived with his wife in Canada. Shortly after Olsen's death, Evans started the process to secure his estate by having his attorneys send out letters to persons. Among the persons a letter was sent to, was the defendant, on 27 July 2004, to deliver up items he had in his possession belonging to the deceased, it being suggested that he had taken the papers, documents and valuables of the deceased as well as the keys to the property for safe keeping.

3. This drew a prompt reply from the defendant's then attorney, Mr Wesley Ramjattan, stating:

"My client has been given personal instructions from his uncle in Canada, Evans Ural Rouse, to look after the subject property and keep all papers pertaining thereto since the death of Olsen Rouse. Dennis was given the keys to the house by his uncle Olsen Rouse when he became ill and was taken to a home for the Aged, with instructions to take care of the property and be fully in charge.

After the death of Olsen Rouse, Evans Ural Rouse instructed Dennis to continue to be in charge of the property because he (Evans) was ill and unable to travel to come to Trinidad to pursue getting Letters of Administration which he could not do from Canada.

In the circumstances my client cannot give up keys, papers or other valuables until he has direct instructions from his uncle Evans Ural Rouse."

4. This begot a reply from Wheeler and Company on 3 August 2004 as follows:

“We spoke with our client Mr Evans Ural Rouse at 10.30 a.m. today. Our instructions from our client are that he last saw and spoke with your client in the month of December 2001. Our client strongly denies the alleged personal instructions in your said letter, in particular no instructions were given by our client to your client “to look after the subject property and keep all papers pertaining thereto”, and “to continue to be in charge of the property”.

The letter went on to note that Evans had by Power of Attorney appointed Ian Spencer his legally constituted attorney to apply for Letters of Administration of Olsen’s estate. A copy of the power of attorney was attached.

5. On 19 August 2004, Mr Ramjattan then wrote:

“In reply to your letter re matter at caption dated 3rd August 2004, I kindly wish to inform that I conveyed the contents of that letter to my then client, Dennis Rouse. He has subsequently indicated that he no longer required my services. As such he is no longer my client. I regret I cannot be of further assistance.”

6. These letters are important from the perspective that they provide a contemporaneous record of the assertions by the respective parties at the material time. For the defendant, they show his response and conduct.

7. Evans then died on 20 September 2004, some 4 months after Olsen. He left a will leaving his property to his wife, Ruthilda Rouse. Ruthilda was 80 years and lived in Canada. She authorised the claimant, her granddaughter, by power of attorney dated 13 October 2004 and registered on 25 October 2004 to apply for Letters of Administration with the Will Annexed of Evans' estate and, after that, for a Grant of Letters of Administration for the estate of Olsen Rouse.

8. The defendant then filed caveats. After requests for him to lift the caveat, the claimant has brought this claim to have the caveat dismissed.

9. The first point raised by the defendant is that Ruthilda Rouse, the widow of Evans, is not entitled to benefit from the estate of Olsen and to apply for administration of his estate.

10. The **Administration of Estates Act, Chap. 9:01** is clear. Section 26A of the Act states:

“26A. Where the intestate leaves no spouse, no issue, no cohabitant and no parent, then **his estate shall be distributed to or held on trust for his next of kin living at the time of his death in the following order and manner:**

(a) to the brothers and sisters of the whole blood in equal shares;

(b) where there are no brothers or sisters of the whole blood, to the brothers and sisters of the half blood in equal shares;

(c) where there are no brothers and sisters of the whole or half blood to the grandparents of the intestate in equal shares;

(d) where there are no grandparents to the issue of grandparents to the issue of the brothers and sisters of the whole blood;

(e) where there is no issue of the brothers and sisters of the whole blood to the issue of the brothers and sisters of the half blood; and

(f) where there is no issue of the brothers and sisters of the half blood to the uncles and aunts of the intestate, being brothers and sisters of the whole blood and then of the half blood of a parent of the intestate.”

(Emphasis supplied)

11. Section 2 of the Act (the interpretation section) states:

“kin” means, in relation to a deceased person, the issue of the deceased, his father or mother, his grandparents and greatgrandparents;

“**next of kin**” means, in relation to a deceased person—

(a) the brothers and sisters of the deceased;

(b) the issue of the grandparents of the deceased;

(c) the brothers and sisters of a parent of the deceased;

(d) the issue of any brothers or sisters of the deceased,

and the kindred of the half blood shall rank immediately after those of the whole blood of the same degree of kinship to the estate.”

12. Evans Rouse was the next of kin living at the time of Olsen’s death. He was also first in order of priority. Thus Evans was entitled to benefit from the estate at the time of Olsen’s death. He was also entitled to apply for letters of administration.

13. The evidence was clear in this matter. The defendant’s evidence raises no concern regarding the evidence of the claimant about the position of the surviving next of kin at Olsen’s death.

14. The second limb of the defendant’s claim relates to an equitable interest in the property. On this matter this is the evidence contained in his witness statement:

“11. As I recall since the year 2002 the deceased gave me the keys to his house, the title deed to the property and told me to take the property and repair the house and use it for my benefit as it would be mine.”

15. He then went on to say he had been paying the water rates and taxes since then, he repaired the roof of the house, fixed roof and cupboards in the kitchen and repainted the inner walls of the house. He said he expended over \$20,000.00 in carrying out repairs to the house. He said his sister, Eldica Adams, assisted him. He said the receipts were destroyed when the claimant entered the house, demolished the roof and gutted the house.

16. The defendant also gave evidence that he and his siblings had taken care of Olsen when he got ill, made arrangements for him at the Home for the Aged and took care of his funeral expenses. Eldica Adams gave evidence for the defendant that her brother, the defendant, had given her permission to occupy the house. She helped to clean the house and paint the internal walls and fix the drain. She also got some of her co-employees to fix the roof. Joan Rouse-Abinas also said the defendant had carried out repairs.

17. The defendant also put in some receipts. While these do not state clearly that they were for the premises, these were for the period late 2004 to early 2006, after the defendant had got notice that Evans was claiming the property. The claimant had sent persons to take the house on

16 May 2006. Given that he had received a letter concerning the property since 2004, it was strange that the defendant had not secured these receipts.

18. In contrast was the evidence of the claimant. She said she visited the house in February 2005 to take possession of it. It appeared to be abandoned and unoccupied.

19. She visited the property after that. In October 2005 she observed some building material in the yard of the property at 207 Southern Main Road, Couva, the property in question. On 16 October 2005, there was a party in the yard. She then hired Peter Soon, a bailiff, to conduct an investigation of the property. He visited the property on 26 October 2005 and took photographs. The yard was overgrown with bushes. Some fruit trees appeared to have been recently felled. He entered the house which was unsecured and unoccupied. There was broken furniture. He saw missing windows, eaves and ceiling were rotted, and rusting galvanised roof sheets. The concrete column support for the house was crumbling. He took pictures. These pictures support, in general, his evidence that the house was in a dilapidated state.

20. In deciding between the two sides' evidence the defendant's attorney's letter of July 2004 is significant. There was no mention of expending moneys on the property. There was mention of having the keys and looking after the property while Olsen was in the Home for the Aged. The letter also appeared to accept that the defendant's authority came from his contact with Evans and that he could do nothing until he got further instructions from Evans. It also appears

from the attorney's letter in reply that Evans disputed this authority given to the defendant. After the letter from Wheeler and Co., the defendant left his lawyer and did not reply until some considerable time later.

21. The contemporaneous documents can be of assistance when there is hard swearing on both sides. It is significant that no claim was made then in 2004 by the defendant of any entitlement.

22. I do not doubt that the defendant assisted Olsen, along with his family, when Olsen took ill and in his last days. The funeral appeared to have been paid for by Joan Abinas. But these acts of kindness on their part do not, in my view, entitle the defendant to a share in the property in the absence of evidence that they were done based on a promise that if they were done the property would be his.

23. The evidence was not clear as to whether money was left in the house when Olsen died and if this was used to pay his expenses. It probably is the case that the defendant and his family assisted Olsen.

24. However, based on the available evidence, I am unable to find on a balance of probabilities that the defendant was promised the property by the deceased. The evidence was

vague. The only mention of this in his witness statement was sometime in 2002. It is also significant that this was not mentioned in his first attorney's letter of July 2004.

25. The claimant has set out in her witness statement the circumstances in which she has tried to get the defendant to co-operate or to proceed with his claim. He has stoutly resisted attempts to have the reasons for the caveat he lodged be dealt with. This claim was filed to force him as it were to come forward.

26. At the time of Olsen's death his estate was to be distributed to or held on trust for Evans. Evans was also the first in line to whom the estate was to be distributed. (See section 26A of the Administration of Estates Act above). Therefore, at Evans' death, he was beneficially entitled to the property and it formed part of his estate to which his wife became entitled. Letters of Administration have already been granted to Ruthilda Spencer so that the property can be distributed to Evans' estate; Evans being the only person who was entitled to it at the time of Olsen's death.

27. The defendant has no entitlement in law to the estate. Nor, as the court has found, does he have any equitable interest in the property in question.

28. In these circumstances, although the defendant may be entitled to apply for the grant under Section 30 of the **Wills and Probate Act Chap. 9:03**, it would make no sense to revoke

the present grant so that the defendant may apply for a new one to administer an estate he has no interest in.

29. The caveat must therefore be removed. The grant issued to the claimant is valid. The defendant has no entitlement to the estate of Olsen Rouse; Evans being the first living person entitled to it at the time of Olsen's death.

30. In any event, administration of Olsen's estate had already been granted to Ruthilda Spencer. Given that Ruthilda Rouse, as the widow of Evans, is entitled to his estate, there would be no practical reason to make any order for the Grant of Administration to be set aside even if there was an issue with the chain of representation. The claimant is entitled to have the caveat removed and I order this.

31. The counterclaim is accordingly dismissed. The defendant must pay the claimant's costs in the sum of \$14,000.00 representing both the claim and counterclaim.

Ronnie Boodoosingh

Judge