

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2008-00287**

**BETWEEN**

**SHOBHA NARINE DOOKERAN**

**CLAIMANT**

**AND**

**WINSTON DOOKERAN**  
**(Executor of the Last Will and Testament**  
**of CLYDE DOOKERAN, Deceased)**

**DEFENDANT**

**Before the Honorable Mr. Justice V. Kokaram**

**Appearances:**

**Ms. E. Nyack for the Claimant**

**Ms. J. Koorn instructed by Mr. C. Serrano for the Defendant**

**JUDGMENT-**  
**PROCEDURAL APPLICATION**

**Introduction:**

1. Shobha Narine Dookeran, (“the Claimant”), the wife of the deceased, Clyde Dookeran<sup>1</sup>, instituted this claim against Winston Dookeran (“the Defendant”), the executor of the estate of the deceased for the payment to her out of the net estate of the deceased of a lump sum and transfer of such property as may be specified under

the provisions of the Succession Act 1981 as amended by the Distribution of Estates Act 2000. Clyde Dookeran died on 3<sup>rd</sup> October 2007 and the Claimant's contention in this claim is that the deceased did not make reasonable provision for her under his will dated 11<sup>th</sup> January 2007.

2. The deceased in his said will devised to the Claimant 10% of all his real and personal property with the remaining 90% to his children with 40% to the Claimant's children and the remaining 50% to the children of the first marriage, namely Wendy Dookeran Dil John, Shivan Dookeran and Cindy Ann Dookeran ("the Applicants").
3. The claim is now at a fairly advanced stage with the trial scheduled for hearing on 16<sup>th</sup> and 23<sup>rd</sup> November 2010. On 27<sup>th</sup> November 2008, the Applicants made an application to be joined as parties in these proceedings. Prior to making this application, the attorneys at law for the Applicants held a watching brief at the various case management conferences.
4. It is common ground that any order made by this court increasing the provision for the Claimant from the estate would result in a pro rata reduction of the entitlement of the Applicants as beneficiaries under the said will. However, the issue that arises for determination on the Applicant's application is whether this is a sufficient basis to join these applicants as Defendants in these proceedings at this stage of the proceedings.

### **Joiner of parties**

5. Under the CPR, the Court has the discretion to add a new party pursuant to Rule 19.2 (3) CPR which provides:

"The court may add a new party to proceedings if-

---

<sup>1</sup> The Claimant was married to the deceased on 1<sup>st</sup> November 1983. The parties separated and a decree

- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
  - (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.”
- 6. In exercising this discretion the Court will give regard and effect to the overriding objective and the considerations set out in Part 1 CPR. The Court will therefore take into account the principles of equality, proportionality and justice espoused as the philosophy of the overriding objective.
- 7. Rule 19.2 (3) CPR simplified the language of the former rule on the joinder of parties by the Court. Order 15 r 6 (2) RSC provided as follows:

“At any stage of the proceedings in any cause or matter the Court may on such terms as it think just and either of its own motion or on application-

(b) Order any of the following persons to be added as a party namely:

- (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined or adjudicated upon, or
- (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be convenient to determine as between him and that party as well as between the parties to the cause or matter....”

8. The learning under Order 15 RSC suggests that the Court's power to join parties is a generous one. The language of Part 19 CPR appears to simplify the requirements to be added as a party by demonstrating that the party's intervention is "desirable" to either resolve all the issues that fall for determination in the litigation or there is an issue in relation to the intervening party which is connected to the matters in dispute and it is "desirable" to add the new party. The language of rule 19.2 CPR is also wide and generous and in exercising this discretion the Court will give effect to the overriding objective after an assessment of all the circumstances. In Blackstone's Civil Procedure 2008<sup>2</sup> the authors note:

"The court is given a wide discretion under the CPR to order that a person be added, removed or substituted as a party to a claim. The court's attitude is permissive provided that the other party can be appropriately protected in costs."

9. Although there is a wide discretion to order the joinder of parties under rule 19.2 CPR, the Court must still ensure that the joinder is necessary or desirable having regard to the tests set out in rules 19.2 (3) CPR. The Court can in this regard still obtain guidance from the learning under the RSC in making its assessment of what is "desirable" in the circumstances. In *United Film Distribution Limited v Chabria*<sup>3</sup> the Court of Appeal examined the nature of the court's discretion to join parties under rule 19.2 CPR (UK) which is similar in terms to the local rules:

"Although the Rules of the Supreme Court have been replaced by the Civil Procedure Rules, it is not suggested that ... the circumstances in which a person may properly be joined as a defendant to a claim are narrower under rule 19.2(2) of Civil Procedure Rules than under its relevant predecessors, namely Order 15 rules 4(1) and 6(2) (b) of the Rules of the Supreme Court. Rule 19.1(2) of the Civil Procedure Rules

---

<sup>2</sup> paragraph 14.3

<sup>3</sup> [2001] EWCA Civ 416

provides that the court may order a person to be added as a new party if (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue. The court's power to add or substitute a party is wide. Although the expression "necessary or proper party" to the claim does not appear in that rule, it can scarcely be supposed that the court would order a person to be added or substituted as a party on the ground that it is "desirable" to do so if that person were not either a necessary or a proper party to the claim in question.

10. Simply giving the Court the power to order a joinder where it is "desirable" therefore did not remove from the Court's consideration of whether the proposed party is a "necessary or proper party" or whether the joinder is "necessary" or "just and convenient" to determine the issues in the main claim. It can hardly be argued that the Court will order the joinder of a party because it is "desirable" even though it is not necessary or just and convenient to determine the issues or matters in dispute that fall for determination between the intervening party and the other parties in the action. These are simply considerations that are to be taken into account by the Court in dealing with the case justly to give effect to the overriding objective.
11. In *Umm Qarn Management Co Limited v Valeria Ann Bunting* the Court of Appeal refused to order the joinder of a claimant on a finding that the case advanced by the existing party did not raise any issues in relation to the proposed new party. In that case the Court of Appeal considered whether the joinder of a party was necessary having regard to the issues raised in the litigation. The Applicants in their application must therefore demonstrate primarily therefore the starting point in determining whether it is desirable to join these Applicants is to

identify the main issue(s) in dispute and to determine to what extent the Applicants joined would assist the Court in determining those issues. Asking the questions is it proper or necessary or just and convenient may be useful expressions which emphasizes the need to articulate a joinder of issue between the new party and the matters in controversy that should be determined.

**The issue for determination:**

12. The very narrow issue to be determined in this claim is whether the deceased made unreasonable provision for his wife in his will. In conducting this enquiry the Court considers the matters set out in sections 96 and 97 of the Succession Act. Section 96 (1) sets out the types of orders that can be made in this claim. It is noted that the Act contemplates the impact any such order will have on the entitlement of beneficiaries. Accordingly section 96(4) of the Act provides for the Court to make consequential supplemental provisions to ensure that the order “operates fairly as between one beneficiary or the estate of the deceased and another”. Section 97 sets out the matters to be considered by the Court on the issue of a reasonable financial provision for the spouse. One of the matters to take into account is “the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future.” See section 97(c). The Court must also pay regard to any obligations and responsibilities which the deceased had towards any applicant for an order under section 96 or towards any beneficiary of the estate of the deceased. See section 97 (d)
13. On an application to be joined as a party under rule 19.2 CPR it is the duty of the Applicants to properly set out their case for the Court to determine who they would assist in the determination of the matters in dispute in the claim. The Applicants in this case, however, do not assert that they should be joined to assist in the determination of any of the matter in dispute of whether reasonable financial provision has been made for the Claimant or that there is an issue between them connected to that issue that needs to be resolved.

14. The grounds on which the Applicant submits it is desirable that the be joined in found in paragraph 7 of their application:

“I am informed by my attorney at law and verily believe that any order made by this Honorable Court would directly affect our beneficial interest in the estate. The executor is accountable to the beneficiaries and in the event of any proposed settlement the consent of all the beneficiaries in respect to all major decisions involving the estate may be required. Consequently it is necessary that all necessary parties be joined in this action so that they have a right to file a defence and be heard.”

15. In their written submissions the Applicant further submit that “if the Applicant is also parties to the action they would have the right to be heard and would participate in any compromise. In this way the Defendant would be protected from any suit.”
16. In my opinion, if the Executor breaches his duty in arriving at and effecting a compromise in this action it is no basis to join some of the beneficiaries to the estate in this dispute. The Applicants will be protected by bringing their own action against the executor for breach of duty if that issue ever arises. There is nothing on the evidence however which remotely suggests that this is imminent or likely. A similar conclusion was held in *Umm Qarn Management Co Limited v Valeria Ann Bunting* where the Court of Appeal affirmed that simply having a proposed cause of action if an event occurs does not make it necessary or desirable to join the applicant to the proceedings. It will be premature to make any such judgment on the conduct of the defendant at this stage. The fear of any compromise being affected does not make it desirable to add these applicants to these proceedings.
17. The Applicants also contend that any order made between the Claimant and Defendant “would affect the applicant’s legal and beneficial interest.” It is accepted by the parties that any order will necessarily affect all the beneficiaries in the will.

The net estate may be reduced if the Court rules in favor of the Claimant. Equally however, the same can be said of the other three beneficiaries who are not parties to this action, who would be affected by the reduction in the size of the net estate and who have made no application to be similarly joined in these proceedings. It is clear that an order will also affect their entitlement if an order was made. The Applicants must, however, identify a matter in dispute that makes it desirable to join these applicants at this stage or any issues connected to the matters in the dispute which makes it desirable to join the new party. There is nothing produced to this Court to demonstrate a joinder of any issue involving these parties with the matter in dispute in this claim of whether the will made reasonable financial provisions for the deceased spouse. It is quite open to the Applicants to demonstrate this however, there is no evidence on this Applicant that these Applicants can add to or assist in the resolution of the questions that arise when the Court is exercising its discretion set out in section 96 (1) (c) and (d) of the Act. The applicants have shown no interest in determining that issue.

18. In *Prakash Singh v Afzal Mohammed* the Court of Appeal agreed the primary object of the rule is to ensure that all the parties necessary for the Court to determine the question arising in the litigation is present before the Court. It is not enough if the parties commercial rights are affected, it is only where his legal rights are affected will an order be made. It is not a rule to permit the joinder of separate actions but to ensure that the necessary parties to the existing action for the complete adjudication of the issue are before the Court. The Applicants' application does not advance any evidence to demonstrate any separate interest which can be protected by the executor of the estate. In *Gutner v Circuit* Denning MR stated:

“It seems to me that when two parties are in dispute in an action in law and the determination of that dispute will directly affect a third person in his legal rights or in his pocket in that he will be bound to foot the bill then the court in its discretion may allow him to be added as a party or such terms as it thinks fit. By so doing the court achieves the



objectives of the rule. It enables all matters in dispute to be effectually and completely determined and adjudicated upon between all directly concerned in the outcome.”

20. Viscount Dilhorne stated in *Re Vaderwells Trusts*:

“I cannot construe the language of the rule as meaning that a party can be added whenever it is just or convenient to do so. That could have been simply stated if the rule was intended to mean that. However wide an interaction is given, it must be an interpretation of the language used. The rule does not give power to add a party when it is just and convenient to do so. It gives power to do so only if he should be joined or if his presence is necessary for the effectual and complete determination and adjudication on all matters in dispute in the cause or matter.”

22 The Applicants' case lies in stark contrast to the proximity of interest in the dispute as considered in HC 2507 of 2003 *Mathura v Jagdeo, Parkah Singh* and *Technovision Investments Incorporated v Mossai Hardware* CA 68 of 2003.

23 From the Applicants' bold assertion in their application therefore one must conclude that their concern is really of a purely commercial interest of a reduced share in the net estate as a possible outcome of this matter. The applicants are not bound to satisfy any judgment debt to the Claimant and there is no legal right being asserted in the claim. In my opinion it is undesirable simply to join some of the beneficiaries to these proceedings, which is being defended by the executors, on the simple assertion that they are “affected” by a possible outcome. If that was so then in all matters brought under section 95 of the Act all beneficiaries under the will should be joined as parties without more.

- 24 The main issue in this case is whether reasonable provision has been made for the Claimant. The applicant does not seek to join in that issue at all. In any event I cannot see how it would be fair to allow three out of six beneficiaries to be joined where equally there are other beneficiaries who would be affected by any upward adjustment in the provision for the claimant. The applicant has not demonstrated on its application that it is desirable to be separately represented in this matter and that the Defendant executor is not competent to deal with the issue of reasonable provision under the will or distribution and the consequential order or direction that should or should not be made.
- 25 The application is therefore dismissed with costs to be assessed at the date of trial.

Dated: April 15, 2010

Vasheist Kokaram  
Judge