

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2013-00267**

**BETWEEN**

**JAIME DOLAN**

**Claimant**

**AND**

**RENE KATWAROO**

**Defendant**

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

**Date of Delivery: 29<sup>th</sup> May 2013**

**Appearances:**

**Mr. Gregory Delzin instructed by Ms. Andrea Goddard for the Claimant**

**Mr. Farai Hove Masaisai for the Defendant**

**JUDGMENT**

1. There are two procedural applications before the Court. The Claimant's application to enter judgment in default of defence<sup>1</sup> and the Defendant's application inter alia to strike out the Claimant's claim<sup>2</sup> on the basis that the Court has no jurisdiction in this matter. As a matter of sequence, the Defendant's application being filed first, and as a matter of logic, for if there is no jurisdiction, the Court cannot simply cannot enter judgment, the Court must consider the Defendant's application first before the Claimant's.

---

<sup>1</sup> The Claimant's application also seeks an order in the alternative for judgment pursuant to part 26.1(k) of the CPR. The application is dated and filed 12<sup>th</sup> March 2013.

<sup>2</sup> The Defendant's application dated and filed on 26<sup>th</sup> February 2013 also sought relief from sanctions for failing to file his defence.

2. These proceedings were commenced by Jamie Dolan (acting through her lawful attorney Nadira Mohammed) for the purposes of setting aside a Memorandum of Transfer which was purportedly made by her father, Joseph Alphonsus Dolan, now deceased, in favour of the Defendant on 4<sup>th</sup> February 2009. The Claimant's father died intestate on 21<sup>st</sup> December 2011 and the Claimant being the only child would in the case of an intestacy be the sole beneficiary and the only person entitled to administer his estate. The central issue to be decided on the Defendant's application is whether the Claimant had the capacity to commence these proceedings on 22<sup>nd</sup> January 2013.
3. By her claim filed on 22<sup>nd</sup> January 2013 the Claimant sought the following reliefs:
  - An order that the Claimant be appointed Administratrix ad Litem of the estate of the deceased Joseph Alphonsus Dolan who died on the 21<sup>st</sup> day December, 2011 for the purpose of commencing and maintaining High Court proceedings against the Defendant for the preservation of the Deceased's estate;
  - An order preventing the Defendant, his servants and/or agents from selling, conveying, leasing, alienating, converting or parting with possession of ALL AND SINGULAR that piece of land together with the dwelling house standing thereon, situate in the Ward of Arima in the Island of Trinidad delineated and coloured pink in the Plan registered in Volume 2360 Folio 23 being portion of the lands described in the Certificate of Title in Volume 11 Folio 389, and also described in the Certificate of Title in Volume 1330 Folio 395, and shown as Lot 36 in the General Plan filed in Volume 2354 Folio 265, and bounded partly by Lot 35 and partly by a road reserve 33 feet wide, on the South partly by Lot 15 and partly by a road reserve 33 feet wide, on the East partly by a road reserve 33 feet wide and partly by another road reserve 33 feet wide and on the West partly by Lot 35 and partly by Lot 15, or howsoever the same may be abutted, bounded or otherwise described, and which said piece or parcel of land COMPRISES FIVE THOUSAND TWO HUNDRED AND FIFTEEN SQUARE FEET (5,215 sq.ft.) be the same more or less and now described in Certificate of Title registered in Volume 2360 Folio 27 and/or interfering with the said premises in any manner whatsoever and/or dealing with the said premises whatsoever and/or entering the said premises until the hearing and

determination of an inter partes application to continue the injunction or until further order;

- An order that the Defendant do forthwith deliver to the Claimant the furnishings and appliances belonging to the estate of the Deceased which are in the possession of the Defendant;
- An order directing the Defendant to provide information about the location of all furnishings, appliances, fixtures and personal effects of the deceased;
- An order allowing the Claimant and/or her servants and/or agents to enter and inspect the said premises;

4. In her Statement of Case (see para 4 & 5 of claim) the Claimant described herself as the only one entitled to the estate of the deceased as he died intestate. She became aware of the Memorandum of Transfer dated 4<sup>th</sup> February 2009 which purportedly conveyed an asset of the deceased's estate to the Defendant. She contended that the said memorandum was fraudulent and that it was registered in suspicious circumstances. The Claimant also made reference to other High Court proceedings CV2013-00141 in which she seeks an order to pronounce against the force and validity of a purported will executed by the deceased. That action was brought against one Ken Rajpaulsing who is the named executor and beneficiary of that will. On 3<sup>rd</sup> November 2012 she alleged that the Defendant has since unlawfully entered the premises of the deceased and changed the locks as well as removed several items belonging to the estate without the knowledge and/or permission of the Claimant.

5. On the same day in which she commenced this action she also filed an application seeking an order to be appointed Administratrix ad Litem for the purpose of commencing and maintaining High Court proceedings against the Defendant for the preservation of the deceased's estate. She also sought by that application various injunctive relief to preserve the assets of the deceased. The grounds on which that application was filed was as follows:

- The leasehold title in the said premises is in the name of the Deceased by a Memorandum of the Transfer no. 56 dated 4<sup>th</sup> February, 1988 registered in Volume 3265 Folio 261 and the said property now forms part of his estate.

- The Claimant is the only child of the Deceased and the first person in order of priority to apply for a grant of representation of the estate of the deceased.
  - On or about 8<sup>th</sup> January, 2013 the Claimant became aware of an alleged Memorandum of Transfer No. 12 dated 4 February, 2009 registered on 26<sup>th</sup> October, 2012 in Volume 5498 Folio 31 which purports to transfer the freehold interest in the said premises to the Defendant;
  - The Claimant has instructed her Attorney-at-Law to file suit against the Defendant for an order striking out the said Memorandum of Transfer dated 4<sup>th</sup> February, 2009 on the basis that it is fraudulent and not that of the Deceased;
  - On or around 3<sup>rd</sup> November, 2012 the Defendant unlawfully entered the subject premises and removed the furniture and appliances and other contents of the dwelling house situate thereon.
  - On or about 3<sup>rd</sup> November, 2013 the Defendant unlawfully entered onto the subject premises and has changed the locks on the entrances to the said premises and has thereby taken unlawful possession thereof.
  - The Defendant is attempted to sell the subject premises.
  - The Defendant is a trespasser on the said premises;
  - The Claimant is fearful that unless the Defendant is restrained by the Honourable Court, the estate of the Deceased is at risk of dissipation and spoliation.”
6. Both in the terms in which the application and the claim was framed the substratum of the claim was one for the benefit of the estate of the deceased. The claim for all intents and purposes is one being made for the benefit of and on behalf of the estate of the deceased. Hence the relevance of the pleading that a purported will appointing an executor is being challenged and is the subject of another High Court Action.
7. On the first day of hearing of that application, at which the Defendant was represented by counsel, an order was made appointing the Claimant Administratrix ad Litem of the estate of the deceased for the purpose of commencing and maintaining High Court proceedings against the Defendant for the preservation of the Deceased’s estate.

8. The proceedings have since progressed by the Claimant simpliciter in that she is still acting in her personal capacity and the proceedings has continued by the adjournment of the application for the injunction for hearing and with the Claimant applying to enter judgment in default of defence.
9. The Defendant contends that an administrator derives his title wholly from the Ecclesiastical Court. She has none until the letters of administration are granted and the property of the deceased vest in him only from the time of the grant. See **Wooley v Clark** 5 B & ALD 744. Moreover where there is an executor appointed by a will as in this case the property vests in the executor at the date of the deceased's death and he has the authority to maintain and commence proceedings for the estate. The Court having granted to the Claimant a limited grant of ad Litem she cannot commence the proceedings before obtaining that grant.
10. On this issue the Claimant contends that the Defendant has submitted to the jurisdiction of the Court by making an application for relief from sanctions. In any event it was entitled to a grant of ad Litem and letters of administration. The Claimant relies on the authority of **Caudle v LD Law Ltd** for the proposition that a person who was entitled to a grant of letters of administration but who had not yet been granted letters of administration had an immediate right to possession of property formerly owned by the deceased only if it is necessary to take possession of the estate to safeguard the estate and such right was enforceable by action.
11. It has subsequently transpired that in the contentious probate proceedings Justice Rampersad on 13<sup>th</sup> March 2013 pronounced against the force and validity of the deceased's purported will in an "undefended" trial. There was no appearance entered in those proceedings. In the absence of that will it therefore seems clear at this stage that the deceased died intestate.
12. The short point therefore is whether the Claimant can continue with this claim which was instituted in January 2013 before she was appointed Administratrix ad Litem for the purpose of "commencing and maintaining High Court proceedings for the preservation of the estate."
13. The important starting point in my view is to examine the nature of this claim. It is a claim to set aside a Memorandum of Transfer on the ground of fraud. There is no claim of wrongful interference in the estate of the deceased. For the Claimant to establish her entitlement to

“protect the assets” or enjoy the benefit of the assets of the deceased qua administrator or beneficiary she must first establish that the inter vivos deed purportedly made by the deceased is a forgery. It is clear from the face of the claim, pleadings and application that the intention of the Claimant is to launch proceedings to set aside that deed on behalf of the estate of the deceased and not in her capacity as beneficiary.

14. It is plain that the proceedings have not been commenced in a representative capacity on behalf of the estate of the deceased. The claim has not been intituled in that representative capacity nor has she described herself in this claim as having commenced this claim in that capacity. When the claim was issued in January 2013 the Claimant at that date had no shadow of a right to commence this claim on behalf of the estate of the deceased either by a full grant of letters of administration, a limited grant of ad item, or without any such grant for the purpose of preserving the estate. Until the deed is set aside the subject premises do not fall part of the estate of the deceased.
15. The order appointing her the Administrator ad Litem cannot “relate back” to the date of the commencement of the claim. See **Ingall v Moran** [1944] KB 160 and **Walcott v Alleyne** HCT 92 of 1988 per Hamel Smith J and **Alexandrine Austin and others v Gene Hart** [1983] 2 AC 640. In **Austin**, Lord Templeman approved of the ratio of the **Ingall** line of cases that where there is no entitlement to sue at the date of commencement of the proceedings it is a nullity. In **Austin** there was an entitlement in the claimant to sue as a dependent under the fatal Accident Ordinance and the issue of the premature issue of the writ was not a nullity but an irregularity. Where there is no prejudice caused to the defendant such an irregularity will not be treated as nullifying the whole proceedings.
16. In this case however the claim is being brought for the benefit of the estate of the deceased however there is no capacity to so commence those proceedings at the date of the claim. The purpose of a grant of administrator pendente lite is to limit the authority of the representation to the commencement of proceedings on behalf of the estate. The duties of an administrator pendente lite commence from the order of appointment. See *Williams on Executors and administrators* para 390.
17. In Halsbury Laws of England at para 817:

“Grant limited to an action.

Administration may be granted limited to an action<sup>1</sup> with a view to beginning<sup>2</sup> or carrying on proceedings<sup>3</sup> whether on behalf of the estate or against it<sup>4</sup>. The administrator under such a grant sufficiently represents the estate for the purpose of the proceedings, where it is merely desired to bind the estate of a person who, if alive, would have been a necessary party<sup>5</sup>.”

18. In **Meyappa Chetty v. Supramanian Chetty** [1916] 1 AC 603 at pg. 608 said:

*“An administrator, on the other hand, derives title solely under his grant, and cannot, therefore, institute an action as administrator before he gets his grant”.*

19. In **Millburn-Snell and others v Evans** [2012] 1 WLR 41 **Ingall** was found to be still good law. In that case Lord Neuberger MR went even further to state at paragraph 16 that:

*“I regard it as clear law, at least since Ingall that an action commenced by a claimant purportedly as an administrator, when the claimant does not have that capacity, is a nullity. That principle was recognised and applied by this court in Hilton v. Sutton Steam Laundry [1946] KB 65 (per Lord Greene MR, at 71) and Burns v. Campbell [1952] 1 KB 15 (per Denning LJ, at 17, and Hodson LJ, at 18). In Finnegan v. Cementation Co. Ltd [1953] 1 QB 688, Jenkins LJ... at 700...”*

20. In **Millburn**, the claimants’ claim to pursue their father’s share in a business he owned with the defendant was struck out at first instance and the appeal dismissed for want of capacity of the claimants to bring the claim as they had neither sought nor obtained a Grant of Letters of Administration of his estate. In that case, it was held that whereas an executor derived his title to sue from the will and not from the Grant of Probate, he could validly sue before obtaining a grant. Contrastingly, an administrator derived his title to sue solely from the Grant of Letters of Administration and so a claim brought on behalf of an intestate’s estate by a claimant without a grant was an incurable nullity.

21. **Caudle** is also helpful. It establishes that the power of an administrator to act before the grant of letters of administration, and indeed before the grant of a limited grant of ad Litem, were exceptional and limited to essential actions to preserve and protect the deceased’s estate. The authority is unexceptional for the proposition that such a person has an immediate right to

possession of property formerly owned by the deceased if it was necessary to safeguard it not where the property has already been divested to a third party under an inter vivos transaction. The following portions of Wyn Williams J judgment are instructive:

*“A person has no right to commence proceedings as an administrator before letters of administration have issued for until such time, he has no right of action. Under existing case law, the subsequent issue of letters of administration will not assist, for the grant does not for this purpose relate back... On the basis of these authorities, it has been held that proceedings brought by a person supposedly as administrator, but before obtaining a grant, are a nullity and cannot be validated by a later grant of administration...*

*...It is as well to remember that the issue of whether or not the claimant has an immediate right to possession of the property in question falls to be considered in the context of whether or not he has standing to sue for wrongful interference with that property. In this context it is generally accepted that a person can maintain such an action if, and only if, he had at the time of the alleged wrongful interference either actual possession of the property in question or the immediate right to possess the property...*

*...In the absence of a clear statement of principle in an authority binding upon me I find it impossible to hold that a person who has not been granted letters of administration but who has the right to apply as a matter of priority acquires an immediate right to possession of property formerly owned by the deceased in circumstances in which there is no immediate need for him or her to be in possession of such property. In reality, such a finding would go well beyond the circumstances in which non-owners have traditionally been considered to have an immediate right to possession. Further, it may lead to a blurring of the understanding of the discrete differences between the rights of executors and administrators as from the time of death but before a grant. While in very unusual cases on the facts this conclusion may appear to work a possible injustice, in the vast majority of cases the person entitled to a grant will in fact obtain possession of the property of the deceased. Once that has occurred, he can rely upon his possession of the same to ward off unmeritorious claims against it.”*

22. As I have observed earlier the claim is predicated on an action on behalf of the estate of the deceased. The Claimant having obtained the order appointing her the Administratrix ad Litem, ought to have commenced its proceedings against the Defendant. She simply did not have the capacity at the date of commencing this claim to sue on behalf of the estate.
23. Accordingly the claim as it stands is unsustainable and ought to be struck out, the Court having no jurisdiction to entertain this claim. However that is not the end of the matter.
24. The Court did grant an order upon the Claimant's application to appoint it the Administratrix ad Litem. That order stands. I see no reason why that order cannot stand and it is now for the Claimant to re file her claim in that capacity.
25. The Claimant did raise two preliminary points. First that a notice of change of attorney was not served in these proceedings. That is too trite a procedural error to dismiss the Defendant's application and I am quite surprised that this submission is still being made in light of my comments at the hearing of the application for the Defendant to simply serve the relevant change of attorney and I proceeded to give directions to the Defendant's attorney to assist this Court in this matter. Second that the Defendant has submitted to the jurisdiction of the Court in filing its application for relief from sanctions. The Defendant did not submit to the jurisdiction of the Court as it also filed at the same time its application to dispute the Court's jurisdiction. I understood the applications, when it was made and came up for hearing, to have been made as to be heard in the event that the application challenging the jurisdiction failed in other words there was an express challenge to the jurisdiction accompanying the filing of that application as well as at the hearing of the application.
26. The Defendant therefore succeeds in its application and there is no reason therefore to consider the application for judgment. The Claimant is to pay the Defendant its assessed costs in default of agreement.

**Vasheist Kokaram**  
**Judge**