

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2016-02038**

**BETWEEN**

**NIGEL PASCAL DASS  
INDAR SOOKDEO  
MARISSA SOOKDEO**

**Claimants**

**AND**

**PRAKASH SUKDEO also known as  
PRAKASH SOOKDEO  
MERLE JANKEE**

**Defendants**

**Before The Honourable Madam Justice Margaret Y Mohammed**

**Dated the 4<sup>th</sup> July, 2017**

**APPEARANCES**

Ms. Saira Lakhan Attorney at law for the Claimants.

Mr. Keith Scotland instructed by Ms. Kydd-Hannibal Attorneys at law for the Defendants.

## RULING

1. There are two applications for determination by the Court. The Defendants application filed on the 9<sup>th</sup> February 2017 (“the Defendants application”) and the Claimants’ application filed on the 24<sup>th</sup> February 2017 (“the Claimants application”). In the Defendants application they seek orders to strike out the Amended Claim Form and Amended Statement of Case of the Claimants filed on the 9<sup>th</sup> of December 2016 pursuant to Parts 21.7, 10.10 and 26.2(1) of the Civil Proceedings Rule 1998 (“the CPR”). Alternatively, they also seek an order pursuant to Part 21.7 CPR to strike out all such parts of the Amended Claim Form and Amended Statement of Case that expressly or impliedly touch and concern the estate of Sookdeo Beejwah deceased (“the Deceased”). Alternatively, pursuant to Part 10.10 CPR, they seek to strike out the Reply filed on the 2<sup>nd</sup> February, 2017 and the Claimants’ Defence to Counterclaim. They also seek their costs.
  
2. In the Claimants’ application, they have sought an order for the Second Claimant to be appointed administrator ad litem and/or the representative party of the estate of the Deceased for the limited purpose of pursuing the Claim and Counterclaim and for the Second Claimant in his capacity as Administrator ad Litem be added as an interested party/representative Claimant to these proceedings.
  
3. Both applications were made during the first case management and they were heard together. To place both applications in context it is important at this juncture to set out each party’s respective case as arising from the pleadings.

*The Claimants case*

4. The First and Second Claimants were joint owners of a dwelling house (“the subject dwelling house”) which stood on a parcel of land referred to as Lot No. 8 situated in Chaguanas. The Second Claimant owned a wooden structure standing on iron beams (“the ancestral home”) which stood on Lot No. 7 and Lot No. 8. Both Lot No 7 and Lot No 8 were lands which were rented by the Deceased who was the father of the Second Claimant and grandfather of the Third Claimant. Also on Lot No 7 and Lot No 8 was a wooden structure occupied by one Kishore Sookdeo.
  
5. In March 2009, the Claimants decided to sell the subject dwelling house standing on Lot No 8. According to the Claimants, on the recommendation of the Defendants, the parties retained the services of Attorney at law Mr Victor Hosein (“Mr Hosein”) to prepare the Agreement for Sale. The Claimants averred that they never had any interaction with Mr Hosein prior to the meeting and they trusted him and the Defendants. The Claimants alleged that they were advised by Mr Hosein that the Defendants could not purchase Lot No. 8 on which the subject dwelling house stood until the grant of letters of administration for the Deceased’s estate was obtained and at the time of the Agreement for Sale there was no grant of letters of administration for the Deceased’s estate.
  
6. The Claimants pleaded that on the 14<sup>th</sup> May 2009, (“the Agreement for Sale”) the parties agreed that the Defendants would purchase the subject dwelling house standing on Lot No. 8 for the consideration of sixty-thousand dollars (\$60,000.00). The Agreement for Sale was prepared on the insistence of the Defendants despite being advised by Mr Hosein that the grant for letters of administration had to be obtained prior to the Agreement for Sale. Pursuant to the Agreement for Sale, the

Defendants paid to the Claimants a deposit of forty-seven thousand, five hundred dollars (\$47,500.00) and they had an outstanding balance of twelve thousand, five hundred dollars (\$12,500.00) to be paid within the standard three month period. The sum of \$47,500.00 was paid in cash with the sum of \$28,500.00 paid to the First Claimant and the sum of \$19,000.00 was paid to the Second and Third Claimants.

7. The Claimants averred that parties agreed to the sale without a valuation and to an unfair purchase price since the First Defendant informed them that he would provide the finances in the sum of \$150,000.00 for the application of letters of administration on behalf of the beneficiaries of the estate of the Deceased and that it would be discounted from the purchase price.
8. The Claimants also pleaded that it was mutually agreed that the First Claimant would continue to reside in the subject dwelling house until the balance of the \$12,500.00 was paid in full and the grant of letters of administration of the Deceased's estate was obtained.
9. Therefore based on the Claimants pleading the terms of the Agreement for Sale was that only the subject dwelling house on Lot No 8 was being sold to the Defendants at a price of \$60,000.00. The sum of \$47,500.00 was paid when the Agreement for Sale was executed. The balance of \$12,500.00 was due three months after 14<sup>th</sup> May 2009. While the balance was outstanding the First Claimant was permitted to reside in the subject dwelling house and until the grant of letters of administration for the Deceased's estate was obtained.
10. In August 2009, the Claimants begun making requests to the Defendants to pay the outstanding balance due and owing to them arising from the Agreement for Sale

but they were informed that due to financial challenges, the outstanding balance was not yet paid and that it would be paid by November 2009.

11. Throughout 2010, the First Claimant made several requests from the Defendants for the outstanding balance due and the Defendants continued to reassure them that the balance would be paid soon.
12. Sometime in 2011 the Claimants attempted to return the initial deposit of \$47,500.00 to the First Defendant and he indicated that the Agreement for Sale was terminated but they was given further assurances by the First Defendant that he would pay the balance within a few months. The Claimants continued to make requests for the outstanding money in 2012, however the Defendants never met their financial commitments to pay the balance of the monies or provide the finances to begin the application for letters of administration.
13. In January 2013, while the Second Claimant was in the process of executing repairs to the floor of the ancestral home in January 2013, the First Defendant demanded that she desist from doing so since the First Defendant had "rights to the land". Two days later, during the course of the renovations, the First Defendant, accompanied by a police officer produced a document indicating that it was a deed in favour of the Defendants for sale of the ancestral home. The First Defendant claimed that he was the owner of the ancestral home having paid \$100,000.00 for it and he indicated to the Second Claimant that he wanted to demolish it. The Second Claimant maintained that he never signed any deed for the sale of the ancestral home. He maintained that the only agreement made with the Defendants was for the sale of the subject dwelling house standing on Lot No. 8 which the Defendants

were still indebted to them for. He maintained that the ancestral home did not form part of the Agreement for Sale and he was never shown a copy of the deed.

14. On the following day, the First Defendant again returned with a police officer at the ancestral home with a document purporting to be a deed for the sale of the ancestral home. On the 22<sup>nd</sup> January 2013, whilst the Second Claimant was at the subject dwelling house, the First Defendant entered, demanding that he leave immediately. The Second Claimant left immediately and contacted the First Claimant. The First Claimant was threatened when he arrived at the subject dwelling house and he left immediately. The Claimants reported the threats to the police.
15. After the First Claimant vacated the subject dwelling house, it remained vacant but occupied by unknown persons.
16. The Second Claimant continued to reside at the ancestral home however the Defendants removed the only standpipe on Lot No 8 which prevented the Claimants from having access to water. On the 31<sup>st</sup> January 2013, the Defendants blocked the access road which was the Claimants only means of ingress and egress to and from the ancestral home so that the Claimants were unable to enter or exit the road for about three days. On the 2<sup>nd</sup> February 2013 the First Defendant with the use of a backhoe caused the ancestral home to be slightly shifted off its iron beams. The First Defendant continued to make death threats to the Second Claimant who reported this to the Chaguanas Police Station.
17. After conducting some investigations at the offices of the Registrar General on the 4<sup>th</sup> February 2013, the Claimants discovered that there was a registered document,

purporting to be Deed of Conveyance dated the 13<sup>th</sup> May 2009 and registered as No. DE200901070069 (“the 2009 deed”) in which the Defendants were alleged to be the purchasers of the subject dwelling house and the assignees to the tenancy rights for Lot No 8. On reviewing the 2009 deed, the Claimants observed several differences from the document which they had signed at the office of Mr Hosein namely: (a) the word “deed” was inserted on page 1; (b) the date was amended; (c) the sum of \$60,000.00 for the purchase price of the subject dwelling house was not stated; and (d) other noticeable changes.

18. On the 5<sup>th</sup> February 2013 the First and Second Claimants attempted to return to the ancestral home to retrieve their signed copy of the Agreement for Sale but they were prevented from doing so since the First Defendant had placed a chain link across the access road which prevented them from having access to the ancestral home.
19. On the 6<sup>th</sup> February 2013, the Defendants demolished the ancestral home. The Second Claimant was unable to retrieve the only signed copy of the Agreement for Sale in their possession which was signed in the office of Mr Hosein. The Claimants averred that all of the personal items belonging to the Second Claimant including the bed, stove, clothing and all documents were destroyed. The Claimants alleged that they were not afforded any assistance from the Chaguanas Police Station when they attempted to make a report and they also made a report to the Fraud Squad with respect to the 2009 deed.
20. On the 17<sup>th</sup> February 2013 the First Defendant filled the land upon which the ancestral home stood and built a shed. Sometime in 2014 the Second and Third Claimants constructed a wooden structure which they currently occupy.

21. The Claimants conducted additional searches at the Chaguanas Borough Corporation which revealed that the assessed owner of Lot 7 was in the names of the Deceased and the Second Claimant.
  
22. Based on the aforesaid averments the Claimants have sought the following orders from the Court:
  - i. **DAMAGES FOR TRESPASS** including aggravated damages to a parcel of land situate in Charlieville, in the Ward of Chaguanas, in the Island of Trinidad, comprising **FIVE HUNDRED AND FORTY SEVEN POINT TWO SQUARE METRES (547.2M<sup>2</sup>)** (being portion of a larger parcel of land described in deed no. 982 of 1977) and bounded on the North by Lot No. 6 on the South by lands of B. Cassie on the East by Lot No. 7 and on the West by a Road and shown as Lot No. "8" on the plan attached to Deed No. 198424453020 ("hereinafter referred to as "Lot No. 8") and the Claimants' flat concrete dwelling house comprising two bedrooms measuring 30 feet by 24 feet standing thereon which lands form part of the estate of Sookdeo Beejwah, deceased;
  - ii. (Deleted by amendment).
  - iii. **AN INJUNCTION** restraining the defendants whether by themselves, their servants, agents or otherwise howsoever from entering upon, remaining upon,, transferring, leasing, selling and/or exchanging or in any way interfering or dealing with the said dwelling house standing on a piece or a parcel of land known as **Lot No.8**;
  - iv. **AN ORDER** setting aside and rescinding the document purporting to be a Deed of Conveyance, bearing registration number DE 2009 010700 69 D001 dated the 13<sup>th</sup> day of May, 2009;



- v. **AN ORDER** to expunge the purported Deed of Conveyance registered as Number 200901070069D001 from the records of the Registrar General on the ground of fraud and/or misrepresentation and/or failure of full consideration and or because it does not reflect the true intention of the parties and/or was materially altered by the Attorney at Law who prepared same subsequent to its execution without notification to and/or the knowledge and/or consent and/or approval and/or authorization of the parties thereto and in particular the Claimants;
- vi. A further declaration that the said alterations vary the rights, liabilities or legal position of the parties as ascertained by the document in its original state, or otherwise vary the legal effect of the document as originally intended, and/or may otherwise prejudice the Claimants who may be bound by the document as originally executed;
- vii. **A DECLARATION** that the Second Named Claimant was at all material times up to the actions of the Defendant complained of in this action entitled to occupy the wooden structure dwelling house standing partly on Lot No. 7 and partly on Lot No. 8;
- viii. **DAMAGES FOR TRESPASS** to that certain piece of parcel of land situate at Charleville in the Ward of Chaguanas in the Island of Trinidad comprising **FOUR HUNDRED AND NINETY SEVEN POINT FOUR SQUARE METRES (497.4m<sup>2</sup>)** (being portion of larger parcel of land described in the Schedule to Deed No. 982 of 1977) and bounded on the North by Lot No. 6 on the South by lands of B. Cassie on the East by a Road and on the West by Lot No. 8 and shown as Lot No."7" on the Plan attached

to Deed No. 198424453020 and known as Lot No. 7. ("hereinafter referred to as "Lot No. 7") which lands form part of the estate of Sookdeo Beejwah deceased;

- ix. Possession of the flat concrete dwelling house standing on the parcel of land known as Lot No. 8;
- x. Damages for breach of the Agreement of Sale dated the 14<sup>th</sup> day of May, 2009;
- xi. **A DECLARATION** that the actions of the Defendants whether by themselves, their servants, agents on the 6<sup>th</sup> day of February, 2013 in forcibly evicting the Second Named Claimant from his wooden structure dwelling house and demolishing same was unlawful;
- xii. (Deleted by amendment);
- xiii. A declaration that at all material times to the agreement entered into with the Defendants for the sale of the dwelling house standing on Lot 8 neither the Claimants nor any of them were tenants of the lands on which the said dwelling house stands and that the Second Claimant as one of the persons interested on intestacy in the estate of Sookdeo Beejwah, deceased, did not have and still does not have any proprietary interest in any particular asset of the estate while the estate of the said deceased remains un-administered and as such was also not entitled in law to enter into any contract for the sale thereof.

- xiv. A further declaration that by virtue of section 10(4) of the Administration of Estates Act Chap: 9:01 on the death of Sookdeo Beejwah deceased all his estate real and personal whatever within Trinidad and Tobago vested in law in the Administrator General until the same is divested by Letters of Administration to some other person or persons entitled thereto;
- xv. A further declaration that in any event by virtue of Section 17(1) Conveyancing and Law of Property Act Ch. 56:01 the purported conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the Claimants prospectively had, in, to or on the property conveyed, or expressed or intended so to be, which they respectively have power to convey in, to, or on the same;
- xvi. (Deleted by amendment).
- xvii. Damages including special damages and aggravated damages for trespass and for loss and/or destruction on the 6<sup>th</sup> February 2013 of the Second Claimant's wooden dwelling house and the Second Claimant's property and belongings therein standing on iron beams comprising two bedrooms, kitchen and living room and straddling Lots Nos. 7 and 8 being proton of a larger parcel at Clarke Road Extension, L.P. No. 5, Charlieville , Chaguanas, described in Deed No. 982 of 1977 which lands form part of the estate of Sookdeo Beejwah, Deceased;
- xviii. An injunction restraining the Defendants whether by themselves, their servants, agents, employees, and or workers or otherwise from obstruction or denying the Claimants, their servants and/or agents the use of Access

Road or interfering in any way whatsoever with the Claimants' use of the said Access Road;

- xix. An injunction restraining the Defendants whether by themselves, their servants, agents, employees, and or workers or otherwise from entering upon, destroying, and or remaining upon or interfering with the Claimants' occupation, use and enjoyment of the wooden structure dwelling house;
- xx. An injunction restraining the Defendants whether by themselves, their servants, their agents, employees and or workers howsoever, from molesting, harassing, threatening, intimidating, annoying, abusing, committing and battery, cursing, assaulting and or interfering with the Claimants their servants, agents or guests in anyway whatsoever whilst on or at Lot No. 8;
- xxi. Costs.
- xxii. Such further and/or other relief and/or consequential orders and or/directions as this Honourable Court may deem just and/or appropriate."

### *The Defence and Counterclaim*

- 23. The Defendants case is that they are the legal owners of the subject dwelling house and the ancestral home since 14<sup>th</sup> May 2009.The Defendants' Defence can be divided into the following categories.
- 24. The Defendants admitted that they entered into the Agreement for Sale. They averred that the terms were:

- (a) The Claimants agreed to sell and the Defendants agreed to purchase the subject dwelling house for the sum of ninety-thousand dollars (\$90,000.00);
- (b) The Defendants also agreed to purchase the ancestral home from the Second Claimant for the sum of ten thousand dollars (\$10,000.00);
- (c) The Claimants and Defendants agreed that the ancestral house would be demolished at a time convenient to the Defendants;
- (d) The parties agreed that the Claimants would be permitted to occupy the subject dwelling house until such time as they were able to secure alternative accommodation or when the Defendants were ready to renovate it;
- (e) They also agreed that the Claimants would apply for letters of administration of the Deceased estate;
- (f) Upon receipt of the letters of administration, the Defendants would be given first option to purchase Lot No 8 upon which the subject dwelling house is situated; and
- (g) Upon the purchase of Lot No 8 it would be transferred to the Defendants.

25. They denied that there was any offer or agreement whereby the Defendants would provide the finances for the applications of the letters of administration for the estate of the Deceased. They averred that it was the First and Second Claimants who had secured the services of Mr Hosein and the First and Second Claimants initiated the sale and determined the non- negotiable purchase price. They were informed by the First and Second Claimants that there was a previous intended purchaser for the subject dwelling house who had paid a deposit but that they had

subsequently returned the deposit and they had preferred to enter into the Agreement for Sale with the Defendants.

26. The Defendants averred that on the 13<sup>th</sup> May 2009 the First and Second Claimants visited the office of Mr Hosein. After inspecting the Certificate of Assessment, Mr Hosein informed the First and Second Claimants that the Third Claimant must be a party to the Agreement for Sale since she was stated as an owner of the subject dwelling house on the Certificate of Assessment.
27. On the 14<sup>th</sup> May 2009 the Claimants and the Defendants returned to Mr Hosein's office where they entered into a Bill of Sale for the sale and purchase of the subject dwelling house for the sum of \$90,000.00. The sum of \$90,000.00 was paid in cash to the First Claimant on the said day. There was a further executed agreement between the Second Claimant and the Defendants for the sale and purchase of the ancestral home for the sum of \$10,000.00 and this sum was paid in cash to the Second Claimant on the said day.
28. The Defendants averred that they paid Mr Hosein the legal costs for drafting and execution of the Bill of Sale for the subject dwelling house. They denied that the Claimants gave them any money to pay legal fees since the Claimants stated that they were financially unable to bear such costs. They also denied that there was any outstanding balance owed to the Claimants.
29. On the allegation of the location of the subject dwelling house, the Defendants averred that they were informed that the subject dwelling house was situated on Lot No 7 however having reviewed Exhibit C to the Amended Statement of Case

they admitted that it is located on Lot No 8. They also admitted that Lot No 7 and Lot No 8 formed part of the estate of the Deceased.

30. The Defendants admitted that at the time they purchased the subject dwelling house and the ancestral home there were three structures on Lot No 7 and Lot No 8. They averred that the three structures were a red brick house which was the subject dwelling house; an unoccupied dilapidated wooden structure which was the ancestral home and a wooden structure occupied by one Kishore Sookdeo.
  
31. With respect to the allegations of the 2009 deed, the Defendants averred that:
  - a. On the 14<sup>th</sup> day of May 2016 the Claimants and the Defendants, at the office of Mr. Hosein executed the aforesaid Bill of Sale which was prepared by Mr. Hosein based on the instructions of the Claimants.
  - b. The Defendants agreed to purchase the subject dwelling home from the Claimants for the cash consideration of ninety thousand dollars (\$90,000.00);
  - c. The Defendants further agreed to purchase the ancestral home from the Second Claimant for the cash consideration of ten thousand dollars (\$10,000.00);
  - d. The subject dwelling home, is the building identified in the Certificate of Assessment Number CBC-A-12, exhibited as "A" in the Statement of Case.
  - e. The subject dwelling home was at that time described as being located on Lot No. 7 shown on the plan attached to Deed No DE 24453 of 1984.
  - f. The payments were made on said date in accordance with the agreed purchase price as evidenced by the receipts which were attached.

- g. The Claimants and Defendants, in the presence of Mr. Hosein and Ms. Sheriffa Hosein all affixed their signature to the aforementioned Bill of Sale;
- h. The Defendants, upon receiving the registered copy of the Bill of Sale recognised that there were changes made to the documents, but averred that such changes were not made in their presence or on their instructions but the Defendants thought nothing of it as the substantive matters contained therein were correct;
- i. Upon receiving the Pre action protocol letter from the Attorney at law for the Claimants, the Attorney at Law for the Defendants wrote to Ms. Sheriffa Hosein, the witness to the deed, regarding any changes that were made to the deed since Mr Hosein died. Ms Hosein responded on the 19<sup>th</sup> of May 2016 and a copy of the response was attached to the amended Defence.

- 32. The Defendant also averred that there was no duty on them to explain the nature of the transaction to the Claimants as the latter had initiated it.
- 33. The Defendants denied the Claimants allegations of trespass. They stated that after the ancestral home was sold to the Defendants they marked it for demolition. Prior to the demolition, they indicated to the First and Second Claimants that they were giving them the opportunity to remove any salvageable building material from the ancestral home. With the consent of the Defendants, the First and Second Claimants proceeded to strip the ancestral home over a period of time, concluding in 2012. The First and Second Claimants thereafter constructed a new structure with the salvaged material. They denied that the First Defendant approached the Second



Claimant in January 2013 and told him to desist from making repairs to the ancestral home or that a deed was shown to the Second Claimant.

34. The Defendants admitted that they completely demolished the ancestral home in 2013 after permitting the First and Second Claimants to remove any salvageable material from it. They admitted that in late 2012 to early 2013 they began filling the land immediately surrounding the subject dwelling house with the use of a backhoe. The backhoe did not obstruct the access road to Lot No 7 and at no time they obstructed access to Lot No. 7.
35. The Defendants admitted that on the 22<sup>nd</sup> January 2013 the First Defendant asked the First and Second Claimants to leave the subject dwelling house. They averred that this was done in a lawful and respectful manner. The Defendants contended that in or about mid to late 2012, they visited the subject dwelling house and they were appalled with the dilapidated and unhygienic state of the subject dwelling house. They made several oral requests to the First and Second Claimants to clean the subject dwelling house and surrounding areas and on the 22<sup>nd</sup> January 2013 after failing to adhere to the requests, they asked the First Defendant to vacate it.
36. The Defendants also denied the allegations of threats and abuse towards the Claimants. They admitted that they were visited by a police officer accompanied by the First and Second Claimants and that they showed the said officer their documents showing that they had purchased the subject dwelling house but that the First and Second Claimants were asked to leave due to the unhygienic and dilapidated state of it. They also admitted that there was private complaint brought by the First and Second Claimants against them for the use of violent language with intent to provoke but that it was settled at mediation.

37. The Defendants filed a counterclaim seeking the following orders:
- (a) A declaration that they are the legal owners of the subject dwelling house;
  - (b) A declaration that they hold an equitable interest over Lot No. 8 based on the Agreement for Sale entered into between the parties;
  - (c) An order that the 2009 deed be rectified to accurately reflect the location of the subject dwelling house;
  - (d) Damages for breach of contract; and
  - (e) Cost.

*The Defendants application*

38. The grounds of the Defendants application to strike out are: (a) the Claimants' claim against the Defendants is not maintainable and/or is premature on the basis that the Claimants have no locus standi to bring the action as neither a general nor limited grant of letters of administration has been obtained in any of the Claimants' favour; (b) by Order dated the 18<sup>th</sup> November 2016, the Court did not give permission to the Claimants to file a Reply, therefore the Claimants are in breach of Rule 10.10 CPR. The Reply to the Defence of the Claimant filed on the 2<sup>nd</sup> of February 2017 ought to be struck out and the Claimant's Defence to Counterclaim filed on the 2<sup>nd</sup> of February should be struck out on the basis that it discloses no reasonable cause of Defence since it is hinged on paragraph's 1-13 of the Reply to Defence; (c) with the exclusion of the Reply which is improperly before the Court, the Defence to Counterclaim is defective by reason of the inadequacy of facts disclosed and not in keeping with Rule 10.5 CPR and the Defence to Counterclaim

discloses no discernible and/or discloses no sustainable Defence against the Defendants and lacks in particularity and ought to be struck out.

39. At the hearing of submissions, Counsel for the Claimants indicated that her notes stated that the Court had granted the Claimants permission to file and serve a Reply and Defence to Counterclaim. After the hearing the Court's recording was checked and it confirmed that such permission was indeed granted and a corrected order was issued by the Court Office. In this regard, the order sought by the Defendants with respect to the striking out of the Reply and the Defence to Counterclaim are no longer in issue since the basis for the striking out was the Claimants failure to obtain the said permission.
40. The sole basis for the Court to consider to strike out the Claimants Claim is whether the Claimants had the locus standi to institute the instant proceedings before the Court.
41. It was argued on behalf the Defendants that the Claimants action or parts thereof should be struck out since the Claimants do not have locus standi to institute the instant proceedings. They submitted that of the 18 orders which the Claimants are seeking 8 are with respect to Lot No 7 and Lot 8 which are owned by the Deceased and that prior to the institution of the action there was no application for any grant of letters of administration ad litem or otherwise for the Deceased's estate. They have not disputed that the Second Claimant may be entitled to obtain a grant of letters of administration. However, they submitted that the Claimants were not entitled to commence the instant action because they did not possess the grant of administration of the Deceased's estate at the time of the initiation of the instant action since the administrator derives his title wholly from the grant and has no

title until the letters of administration is granted. In support the Defendants relied on the learning in **Austin v Hart**<sup>1</sup>; **Paul Sankar v Veronica Nanan**<sup>2</sup>; **Ingall v Moran**<sup>3</sup>; **Millburn-Snell & Ors v Evans**<sup>4</sup>.

42. The Claimants submitted that they instituted the instant action in their personal capacities to obtain reliefs for trespass, orders with respect to the Agreement for Sale, the 2009 deed and consequential orders. It was argued on their behalf that these matters do not touch and concern the Deceased's estate since it was acknowledged between the parties that the Agreement for Sale was entered into without any party being a representative of the Deceased's estate.

### Law and Analysis

43. Part 26.2 (1) (c) CPR gives the Court a discretion to strike out a Statement of Case or part of it where it discloses no ground for bringing the claim. Abdulai Contej C.J. in **Belize Telemedia Limited v Magistrate Usher**<sup>5</sup> considered the interaction between striking out under the court's case management powers in Part 26 and the power to award summary judgment under Part 15 CPR. He stated:

"15. An objective of litigation is the resolution of disputes by the courts through trial and admissible evidence. Rules of Court control the process. These provide for pre-trial and trial itself. The rules therefore provide that where a party advances a groundless claim or defence or no defence it would be pointless and wasteful to put the

---

<sup>1</sup> [1983] 2 AC 640

<sup>2</sup> CV 2013-04516

<sup>3</sup> {1944} KB 160

<sup>4</sup> [2012] 1WLR 41

<sup>5</sup> (2008) 75 WIR 138

particular case through such processes, since the outcome is a foregone conclusion.”

16. An appropriate response in such a case is to move to strike out the groundless claim or defence at the outset.
  17. Part 26 of the powers of the Court at case management contains provisions for just such an eventuality. The case management powers conferred upon the Court are meant to ensure the orderly and proper disposal of cases. These in my view, are central to the efficient administration of civil justice in consonance with the overriding objective of the Rules to deal with cases justly as provided in Part 1.1 and Part 25 on the objective of case management.”
- 
44. In my view the authorities which the Defendants have submitted can be distinguished from the instant case. In **Ingall v. Morgan** the facts can also be distinguished from the instant case since the Plaintiff in that case issued a writ claiming to sue in the representative capacity as administrator of his son’s estate, but he did not take out letters of administration until 2 months after the writ.
  42. In **Austin v. Hart** the facts can also be distinguished from the instant case since in that case the dependents of a deceased person initiated an action outside of the limitation period in their representative capacity pursuant to section 8 of the Compensation for Injuries Ordinance which required the action to be commenced by the executor or administrator of the deceased person. The Privy Council held that the proceedings were a nullity since the plaintiff did not become entitled to sue until it was too late. However, it also considered the modern approach in dealing with technical objections of this nature by treating an irregularity as a nullifying factor only if it causes substantial injustice.

45. In **Paul Sankar v Veronica Nanan** the Second and Fifth Claimants initiated their claim in the capacities as the legal personal representatives of different estates without obtaining any grant of probate or letters of administration. In the instant case there was no misrepresentation of the representative capacities of the Claimants when they initiated the action. The Court adopted the principles enunciated in **Ingall v Moran** that an action commenced by a Claimant in a representative capacity which the Claimant does not possess is a nullifying defect which may be cured by a grant of probate but cannot generally be cured by a subsequent grant of letters of administration or an application pursuant to Part 21.7 of the Civil Proceedings Rules (“CPR”). On appeal Mendonca JA considered the principles in **Ingall and Moran** and the principles of the Privy Council decision of **Austin v. Hart** with respect to whether the prejudice can be rectified.
43. Similarly, in **Millburn-Snell v Evans** the facts can be distinguished from the instant case, as the claimants purportedly acting as personal representatives in the deceased’s estate made a claim for a 50% entitlement in his property.
44. The substantive issues which arise from the pleadings to be determined by the Court at the trial are:
- i. What were the terms of the Agreement for Sale?
  - ii. Was there a breach of the Agreement for Sale? If so, which party should be held liable?
  - iii. Whether the 2009 deed is valid and enforceable? Or whether it was procured fraudulently?
  - iv. Whether the Defendants trespassed on the subject dwelling house? If so are they liable in damages?

v. Whether the Claimants can sustain an action for trespass against the Defendants for trespass to Lot No 7 and Lot No 8? If so are they liable in damages?

46. In my opinion there is no sufficient basis to strike out the Claimants claim since the orders which the Claimants seek with respect to the breach of the Agreement for Sale, the validity of the 2009 deed and the trespass to the subject dwelling house are all in their personal capacities and not a representative capacity for the Deceased estate. In my view there are substantial disputes of facts concerning these issues which can only be determined after hearing the evidence at a trial.
47. With respect to the claims for trespass to Lot No 8, it was not in dispute from the pleadings that the title to Lot No 8 was vested in the Deceased and that the Agreement for Sale was entered into without any party being a representative of the Deceased's estate. However, the Court's finding on the validity of the 2009 deed and the Defendants counterclaim for the Court to declare that they have an equitable interest over Lot No 8, also impact on the tenancy rights of Lot No 8 which forms part of the Deceased's estate. In my opinion these two issues do not concern the Claimants in their personal capacities but on the estate of the Deceased which is not represented in the instant proceedings. I have noted the Defendants submissions that any aspect of the Claimants case which concern the estate of the Deceased should be struck out on the basis that the Claimants have no locus standi since they do not have any general or limited grant for the Deceased's estate. In my opinion, this issue is inextricably bound with the Claimants application which I now turn to.

*The Claimants application*

45. The grounds for the Claimants application are: (a) the Second Claimant is the lawful son of the Deceased who died on the 8<sup>th</sup> March 1987; (b) the reason for the Second Claimants seeking to be appointed administrator ad litem or representative party of the Deceased's estate is for the limited purpose of pursuing the claim and the defence and counterclaim on matters related to the Deceased's estate; (c) the Second Claimant has lived on Lot No 7 and Lot No 8 which are in dispute and which forms part of the estate of the Deceased; (d) the Second Claimant has no interest adverse to the Deceased's estate; and (e) to date no one has been appointed as the legal personal representative of the Deceased's estate.
  
46. In support of the aforesaid grounds, the Claimants stated that there is no need for a representative of the Deceased estate to be appointed to address any of the issues which they have raised in the Claim. However, the Court has the discretion to appoint a representative of the Deceased's estate when determining the orders sought in the Defendants counterclaim some of which concern obtaining rights to property which belongs to the estate of the Deceased.
  
47. The Defendants opposed the Claimants' application. Their position was that the Claimants' claim for trespass is grounded on Lot No 8 being part of the estate of the Deceased and that they cannot solely rely on possession alone to maintain an action in trespass to recover possession without having to prove title. The undisputed facts are the subject dwelling house was on Lot No 8 which is part of the estate of the Deceased and as such the interest of the Deceased ought to have been represented in the instant claim prior to its initiation. Both parties recognized at the time of the Agreement for Sale was entered into that the need for letters of



administration of the Deceased estate was important if the sale of Lot No 8 to the Defendants was to follow.

48. Part 21.7 CPR provides that:

“(1) Where in any proceedings it appears that a dead person was interested in the proceedings then, if the dead person has no personal representatives, the court may make an order appointing someone to represent his estate for the purpose of the proceedings.

(2) A person may be appointed as a representative if he – (a) can fairly and competently conduct proceedings on behalf of the estate of the deceased person; and (b) has no interest adverse to that of the estate of the deceased person.

(3) The court may make such an order on or without an application.

(4) Until the court has appointed someone to represent the dead person’s estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.”

49. Rahim J in **Anthony Jackson v James Seurajh**<sup>6</sup> considered Part 21 of the CPR and made the following observations:

“25. ... In this way the provisions of the CPR acknowledge that there are circumstances in which a claim would be instituted without knowledge that the Defendant is in fact deceased and recognizes that in those circumstances there must be a stay of further proceedings until adequate arrangements are made for a representative to be appointed. The Rules therefore identify three broad categories. The first is when a claim is instituted and the

---

<sup>6</sup> CV 2015-05167

defendant dies thereafter in which case the proceedings are stayed [rule 21.9 (5)] and an application for substitution is made (rule 19.5). The second is when it is known prior to the beginning of any proceedings that a deceased person has an interest in those proceedings. In that case there is also a stay of any proceedings (which in this case means for practical purposes that a claim cannot be filed) by virtue of rule 21.7 (4) and the claimant applies for an order that a representative be appointed [rule 21.7 (1)]. The third is when any proceedings (whether a claim or otherwise) are begun and it becomes apparent during the process that a named party in fact died prior to the filing of the claim. In those circumstances, the claim is stayed by virtue of rule 21.7 (4) until a representative is appointed.”

50. I accept that when the Claimants instituted the instant action seeking an order for trespass to Lot No 8 they were aware that the Deceased had already passed away; only the Deceased had the title to the tenancy rights for Lot No 8 and that the estate of the Deceased has an interest in this aspect of the proceedings. In this regard, I agree with the Defendants that the Claimants ought to have ensured before the institution of the action that a party representing the interests of the estate of the Deceased with respect to Lot No 8 was a party to the proceedings. However, that is not sufficient to strike out these aspects of the claim against the Defendants.
51. In my opinion, in order for the Deceased’s estate to be bound by any order with respect to the Defendants counterclaim for equitable rights over Lot 8, representation for the Deceased’s estate in the instant proceedings are important. It is for this reason, I am of the view that there is no prejudice to the Defendants but indeed it is in the Defendants interest that I exercise my discretion and appoint the

Second Claimant as the administrator ad litem to represent the estate of the Deceased in the instant proceedings.

**ORDER**

52. The Defendants application is dismissed.
53. Permission is granted to the Second Claimant to be appointed administrator ad litem to represent the interest of the estate of the Deceased.
54. The Defendants to pay the Claimants costs of both applications to be assessed in default of agreement.

**Margaret Y Mohammed  
Judge**