

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(Sub-Registry, Tobago)

Claim No: CV2017-03302

IN THE MATTER OF THE ESTATE OF GRETA SANDY (Deceased)

AND

IN THE MATTER OF THE ESTATE OF SELWYN SANDY (Deceased)

BETWEEN

SELWYN SANDY (Jnr)

Claimant/Applicant

AND

BRIAN PHILLIPS

Defendant/Respondent

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: June 08, 2020

Appearances:

Claimant: Ms. D. Moore-Miggins

Defendant: Ms. C. Bernard

RULING ON PRELIMINARY POINT

1. This is a decision arising out of an application on a preliminary point filed by the defendant to strike out the claim. The claimant was declared to be the lawful son of Selwyn Sandy (Snr) (the deceased) by way of Order of Paternity made in June 2016 subsequent to the death of the deceased in January 2005. The mother of the claimant was not married to the deceased and the deceased grew up at the subject property until he migrated at the age of thirty two years. The defendant is the son of the lawful wife of the deceased (Greta Sandy) but is not the child of the deceased.
2. The claim is one that seeks several declarations namely, one that the assets that comprise the estate of Greta Sandy (also deceased) are derived from the estate of the deceased and that Greta held the assets on trust as to a 50% share on behalf of the claimant. Further, a declaration that by reason of the above the claimant and defendant are both entitled to share equally in the estate of Greta Sandy. The claimant seeks an order for joint possession of the said assets and consequential injunctive relief. In the alternative relief is sought in terms of compensation by the defendant for money expended on the property by the claimant.
3. It is the pleaded case for the claimant that Greta died on the 12th May 2013 and that prior to her death his father took him in to reside with both he and Greta at the family home at 30 Sergeant Cain, Tobago from where he attended school. As a teenager he worked at the family business without salary for over twenty years. He claims that the defendant did not reside at the family home or play a part in the family business.

4. When the deceased died he was the owner of two properties, the family home and Breeze Hall, Milford Road, Tobago, the location of the business. Greta obtained a grant of letters of administration of the estate of the deceased and vested the property in her sole name but informed both the claimant and defendant consistently they both would hold an equal joint interest in whatever property was left after her death, suggesting that the claimant would have the downstairs and the defendant the upstairs of the family home. The claimant in reliance on the promise expended \$25,000.00 in 1998 on the downstairs to use as a residence and for his air condition business. In 2012 he assisted with expenses for the upstairs ceiling. He occupied downstairs and had full access to upstairs where Greta lived. After Greta passed, the defendant changed the locks on the house and the claimant has not had access since then.

The application to strike

5. In essence the defendant submits that the claimant by way of order of the court made disclosure on May 10, 2019 of a Memorandum of Transfer of April 17, 1970, two years prior to her marriage whereby Greta transferred her half share of the property at Sergeant Cain to the deceased. The said property was originally vested in both Greta and the deceased as joint tenants. The deceased predeceased Greta and on the pleaded case, Greta was not at the date of her death the Administrator of the estate of the deceased. It follows that in any event Greta would at the highest have been a beneficiary of the estate of the deceased as a spouse of the deceased and so entitled under the Rules of Intestacy to share in the estate with the lawful issue of the deceased.

6. However, the defendant is not the administrator of the estate of the deceased but is in fact the administrator of the estate of Greta's estate only. According to the submission of the defendant therefore he is improperly before the court on this administration claim and it should be dismissed under **Part 26.2 CPR** on the basis that the statement of case discloses no grounds for bringing the claim against the defendant.
7. The effect of the pleading of the claimant having regard to the subsequent disclosure is that the pleaded case is diametrically opposed to the documented proof in the claimant's possession which document (the deed) appears to have been accepted by both parties as being genuine. It would therefore follow in law that the defendant is equally not entitled to a share on the basis of the principles of intestacy until administration is taken of the deceased's estate and the property is assented according to the rules of intestacy.
8. Without making any findings of fact at this stage, it appears to the court that on the case of the claimant, having regard to the disclosure, the claim is that the property was vested in the deceased and upon his death, would have devolved to Greta and the lawful issue of the deceased, the claimant, in equal shares. So that at the highest, should the defendant be the only lawful issue of Greta, he would be entitled on intestacy to his mother's half share. This of course is all preliminary and aside from other related claims in equity and otherwise.
9. However, on the pleaded case, the defendant has taken possession of the entire property when he may be entitled only to a half share thereof all things being equal. It follows that the case for the claimant is wrongly pleaded in that regard and the court has the discretion to strike out that

aspect of the claim. Should the court so do, the other aspect of the claim would of course remain, namely the issue of the money expended on the premises by the claimant which is a matter of evidence to be led and facts to be determined.

10. The court is of the view however that so to do would be to shut out the claimant from a valid claim in relation to possession of the premises which he may have an entitlement to on the basis of the rules of intestacy. The court accepts the submission of the defendant that the defendant has no power to order any transfer of property in the circumstances as he is not the legal personal representative of the deceased but the claimant does not seek such relief. The relief claimed are those of declarations of the court declaring a certain state of affairs to exist. The fact that the defendant is not the LPR of the estate of the deceased is of no relevance in that context. That is a matter of form. Put another way, the claimant's real claim is that Greta was only entitled to a half share and so he has sued her LPR for averring unto her estate more than that to which her estate is entitled. That claim can be brought against no other besides the LPR of Greta.

11. The claim of the claimant is pellucid, namely that the defendant is entitled to only one half share and he has wrongfully taken possession of the whole. Throughout the proceedings it was consistently been made clear by attorney for the claimant that she had been trying to locate the said Memorandum of Transfer filed eventually in May of 2019 but was experiencing tremendous difficulty in so doing. The document now having been located what is required is an amendment of the claim.

12. To be clear, the claimant has brought a claim in the alternative for money spent so that in any event that claim would exist separate and apart from the possession claim.

13. For those reasons the preliminary point will be dismissed.

Locus standi

14. Although the issue has not been raised by the defendant as a ground for striking out, it equally follows that the claimant holds no legal interest in the property but may hold a beneficial interest by way of intestacy which would have arisen upon the death of the deceased. This beneficial interest is not of its own sufficient to confer locus standi on the claimant to bring the claim. The court will however not dismiss the claim on that basis as the remedy for this is a simple one. In any event, should the court dismiss the claim on this basis nothing would prevent the claimant from making an application to be appointed administrator ad litem of the estate of the deceased for the purpose of filing a new claim which would then be properly brought.

15. The court will therefore make suitable orders so as to ensure that the real issues of the case are determined in the interest of all of the parties

16. Finally, the issues in this case are well defined and the court strongly advises that parties make the effort to avoid further costly litigation by adopting an approach that lends itself to the fulfilment of overriding objective of the CPR to come to an early common sense resolution that benefits both litigants.

17. The order is as follows:

- i. The claimant shall file an application to be appointed administrator ad litem of the estate of Selwyn Sandy Senior deceased, for the purpose of the continuing this claim within 14 days of the end of the court suspension.
- ii. In default, the claim is dismissed.
- iii. In the interim the claim is stayed pending compliance with paragraph I of this order.
- iv. Should there be compliance with paragraph I of this order and should such application be granted, the claimant shall file and serve an amended statement of case within 14 days of the grant of such order and a case management conference shall be listed for electronic remote hearing on the 8th October 2020 at 11:00 a.m.
- v. The costs of this preliminary application shall be costs in the cause.

Ricky Rahim

Judge