REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2020-02397

BETWEEN

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT CHAP 9:01, SECTION 10 OF THE LAWS OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE ESTATE OF MANBODE OF SUM SUM HILL IN THE WARD OF COUVA WHO DIED ON 27TH DAY OF MARCH 1946

IN THE MATTER OF THE ESTATE OF MARGARETE PANCHAM also called BEEPATEE also known as BIPTEE OF SUM SUM HILL IN THE WARD OF COUVA WHO DIED ON 24TH DAY OF FEBRUARY 1961

RUBY PAUL (NEE PANCHAM) IN HER CAPACITY AS THE LEGAL PERSONAL REPRESENTATIVE OF MARGARETE PANCHAM also called BEPATEE also known as BIPTEE

1st Claimant

RUBY PAUL (NEE PANCHAM)

2nd Claimant

AND

ARLENE ASH

1st Defendant

KEITH PANCHAM

2nd Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: September 28, 2021

Appearances:

Claimant: Mr. R. Thomas instructed by Ms. A. Olowe

First Defendant: Mrs. M. Maharaj

Second Defendant: Mr. C. Dindial instructed by Mr. J. Rampersad.

REASONS

Introduction

1. By an application dated May 17, 2021, the second defendant sought an order that the Statement of Case be struck out. The application was opposed, and on September 9, 2021, the court made the following order:

    i. *The claim is stayed to permit the Claimants to perfect title and shall be brought back on by application within 24 months on the basis that title has been perfected. In default the claim is struck out.*

    ii. *The Claimants shall pay to the Defendants 50% of the costs of the application to be assessed by a Registrar in default of agreement*.

2. For convenience, the court will refer to the claimants as "the claimant". The substantive claimant Ruby Paul passed away on July 29, 2021 and at the date of providing these reasons Anthony Paul has been appointed to represent the estates of Margaret Pancham and Ruby Paul for the purpose of the claim only.

Background

3. The relevant facts for the purpose of the instant application are as follows.

4. The claimant's case is that the defendants have unlawfully interfered with her right to pass and repass by foot and motor vehicle over an access road.

5. By Deed registered as 2961 of 1914 one Manbode and Joothun became seized of ALL and SINGULAR that certain piece or parcel of land situate at Sum Sum Hill, Claxton Bay in the Ward of Savonetta in the Island of Trinidad comprising of One Acre of Land and bounded on the North upon lands of Phoenix Park Estate on the South upon the Public Road on the East upon lands of SOOBANIE and on the West upon lands of JACOB ARRINDEL or howsoever otherwise the said parcel of land may be bounded, (hereinafter referred to as the "said lands") known designated or described to hold the same unto and to the use of the said MANBODE and JOOTHUN as joint tenants[1] ("the subject lands").

6. Manbode passed away on April 27, 1921 and by his last will and testament, he bequeathed the one-acre parcel of the subject lands to his granddaughter, Beepatee. On March 27, 1946 Beepatee, also known as Margaret Pancham was granted Letters of Administration with a will annexed[2]. She passed away on February 24, 1961 intestate. There appears to be no evidence that she assented the subject lands in her name prior to her death save and except a return which gives an assent as the basis for the contents of the return. The claimants argue that this return is evidence upon which the court can infer that a Deed of Assent was done.

7. Carlton Pancham, one of the children of Beepatee applied and obtained Grant of Letters of Administration on August 3, 1984[3]. However, he failed to administer the estate of Beepatee. According to the claimant, she was legally advised to apply for a de bonis non to administer the

[1] See "C" attached to the SOC, PDF 29 namely a Deed of Conveyance dated October 13, 1913 between Amiran of one part and Manbode and Joothun of the other part.

[2] See "B" attached to the SOC, PDF 27 namely Letters of Administration with will annexed dated March 27, 1946 granted to Beepatee the sole beneficiary under said will.

[3] See E attached the SOC, PDF 41 namely Letters of Administration dated August 3, 1984 of the estate of Margaret Pancham granted to Carlton Pancham.

estate of Beepatee. Therefore, with the consent of her surviving siblings, the claimant obtained a de bonis non on March, 2005 to continue the administration of the estate of Beepatee[4].

The Application

8. The basis of the second defendant's application is that the claim constitutes an abuse of process and failed to disclose any ground of law and fact for bringing the claim.

9. The defendant was also of the view that this court has no *locus standi* and issues in the claim ought to be rectified by the Registrar General's Department.

10. The subject lands are now divided into five lots. The claimant resides on Lot No. 5 and the second defendant on Lot No.1. The defendant says that there has been no easement over Lot No. 1 and Lot No. 5 is not landlocked.

Easement/right of way

11. An easement is a private right over someone's land. It confers a benefit on the dominant tenement (the land enjoying the easement) and places a burden on the servient tenement (the land over which the easement is exercisable). The claimant's claim is based on the easement of a right of way. The four essential requirements of a valid easement were set out in ***Re Ellenborough Park***[5].

[4] See "B" attached to the SOC, PDF 26 namely an Administration de bonis non dated March 14, 2005.

[5] [1956] Ch. 131

i. There must be a dominant and a servient tenement, whereby an easement cannot exist without being attached to a particular piece of land;

ii. The easement must accommodate the dominant tenement in that the easement must confer an advantage on the dominant land and not the owner himself;

iii. The dominant and servient owners must be different persons and one owner cannot exercise a right against himself;

iv. The right must be capable of forming the subject matter of a grant. Therefore, the easement must be capable of being expressly conveyed by deed.

12. The claimant says she enjoyed a free uninterrupted passage to Lot No. 5 until or about 1992 when Carlton blocked her access to a five meter road reserve. Until then her access was partially through the lands of another occupier and unto the paved access road that led to Lots 2 and 3. She contends that for over thirty years, there has been defined access by foot and vehicle to the parcel of land.

13. The second defendant denied this and averred that, in or around 1992, no one resided on Lot No. 5 nor was there a road leading to it. However, the only access to Lot No. 5 was via Fitzroy Turner's land.

14. The second defendant submitted that there exists no dominant and servient tenement in this matter because neither party is in possession of proper paper title to the subject land. Therefore, an easement cannot be granted as against a person who holds no proprietary interest in land.

15. Further, the claimant erroneously registered deeds of assent unto all the surviving beneficiaries, including herself. Importantly, the survey was wrongly undertaken, and the access road in the plan is of no binding effect.

16. The claimant says that she is entitled to an easement by necessity by foot and vehicle to pass and repass by reason that Lot No. 5 is landlocked. In order for the claimant to succeed with her claim for a right of way, she must show that there was an implied easement of necessity[6]. The second defendant pleaded that there is an alternative access route.

Locus standi

17. It was submitted on behalf of the second defendant that no action was taken to administer the estate of Manbode. The effect of a deed of assent is to release the property to the beneficiary to whom it was left in the will[7]. Therefore, until the assent is given, the beneficiaries under the estate of Manbode acquired no legal interest in the subject lands.

18. Through the chain of representation, the defendant rightly submitted that there was no grant of a de bonis non in his estate that would cause anyone to initiate a claim. However, the court notes that a Certificate of Assessment No. G-227, list Beepatee as the owner of the subject lands[8].

[6] See **Halsbury's Laws of England, Volume 87 (2017), para. 885**

[7] See section 12 of the Administration of Estates Act, Chapter 9:01, which sets out the obligation of the LPR to execute the assent.

[8] See "M" attached the SOC, PDF 72 namely a title search report dated August 7, 2020. The report states that searches were conducted for the period 1948-2009 at the Couva Inland Revenue Department and the Registrar General's Department. The Department stated that a credible search for the period 1946 to 1960 was precluded because the County Books were missing or in a dilapidated condition.

Striking out

19. The court's power to strike out a statement of case is set out in Rule 26.2 of the Civil Proceedings Rules 1998, as amended ("the CPR"). The section reads:

> *26.2 (1) The court may strike out a statement of case or part of a statement of case if it appears to the court—*
>
> *(a) that there has been a failure to comply with a rule, practice direction or with an order or direction given by the court in the proceedings;*
>
> *(b) that the statement of case or the part to be struck out is an abuse of the process of the court;*
>
> *(c) that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim; or*
>
> *(d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10*.

20. This power must be weighed, as explained by Jones J, (as she then was) in ***Export-Import Bank of Trinidad and Tobago v. Water Works Limited and Others***[9]. The Honorable Judge stated the following:

> *10. The Real Time decision, therefore, requires the court to perform a delicate balancing act so as to determine whether the facts presented establish a complete cause of action but are merely lacking sufficient particulars to allow a Defendant to properly defend the case or whether the lack of particularity has resulted in the Claimant failing to establish a complete cause of action.*

[9] CV2010-03594

11. It would seem to me that what is required is a consideration of whether the facts pleaded by the Claimant establish a cause of action with respect to the various claims. If a cause of action is established but the claim lacks particularity, then an order for further and better particulars is usually appropriate. If, however, no cause of action is established or the claim is groundless, in the sense of having no merit or being doomed to fail in any event, then particulars of the pleading will not assist and an order for further and better particulars is inappropriate.

21. In ***Real Time Systems Limited v Renraw Investments Limited and others***[10], the Board considered Part 26.2 (1) (c) of the CPR and its interpretation. Lord Mance stated the following at para. 17:

The court has an express discretion under rule 26.2 whether to strike out (it "may strike out"). It must therefore consider any alternatives, and rule 26.1(1) (w) enables it to "give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective", which is to deal with cases justly. As the editors of The Caribbean Civil Court Practice (2011) state at Note 23.6, correctly in the Board's view, the court may under this sub-rule make orders of its own initiative. There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period.

[10] [2014] UKPC 6

22. The White Book 2020 in the notes to CPR r 3.4. (UK CPR) contains the following guidance:

> *The statements of case which are suitable for striking out on ground (a) include those which raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides (Harris v Bolt Burdon [2000] L.T.L. Feb 2, 2000, C.A.). A claim or defence may be struck out as being not a valid claim or defence as a matter of law (Price Meats Ltd. v Barclays Bank PLC [2000] 2 All ER (Comm) 346, ChD. However, it is not appropriate to strike out a claim in an area of developing jurisprudence, since, in such areas, decisions as to novel points of law should be based on actual findings of fact (Farah v. British Airways, The Times, January 2000 referring to Barratt v.Enfield B,C, [1989] 3 W.L.R. 83, HL, [1999] E All E.R. 193). A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence (Bridgeman v. McAlpine-Brown [2000] LTL January 19, CA). An application to strike out should not be granted unless the court is certain that the claim (or defence) is bound to fail (Hughes v. Colin Richards & Co. [2004] EWCA Civ. 266; [2004] P.N.L.R. 35, CA)*.

Discussion

23. The claimant relied on the steps taken, namely the production of the assessment roll, which indicates that the property was in fact assented to Beepatee. The claimant also relied on the various grants obtained later on in the chain of title to prove that she is entitled to the subject lands. The claimant also referred to section 6 of the Land and Building

Taxes Ordinance[11], and submitted that the effect of this section is an implication of the existence of a deed of assent as a return was signed by an Attorney and sent to the relevant Warden office to have the subject lands assessed in the name of Beepatee.

24. The court did not agree with the submission of the claimant that this would have been the legal effect of the return. Section 6 of the Ordinance reads:

> *6. Every person who at any time comes into possession in his own right, or in that of his wife, or as attorney or agent or guardian or committee of any other person, of any land or building by grant from the Crown, purchase, devolution, devise, lease or agreement for lease, or otherwise shall, within one month next after he comes into possession, make to the Warden of the Ward within which such land or building is situate a return according to such form as may from time to time be approved by the Governor, specifying such land or building, the local situation and annual value of such land, and the title under which such possession has been acquired and also a sub-return as required by the last preceding section.*

25. It must be borne in mind that the purpose of the Ordinance was to ensure that the names of those who own lands were comprised on an assessment roll so that land and building taxes were levied and paid. The Ordinance did not create a deeming provision either by section 6 or otherwise nor did it create a legal inference of proper paper title ownership of land by those named in the roll. Section 20(2) deems the owner of the land named in the roll to be the owner of any building

[11] No. 14 of 1920 or Chapter 33 No.2

thereon for the purpose of collection and recovery but not otherwise. This section is not relevant to present case.

26. Therefore, it was the finding of the court that the claimant did not have standing to bring the claim at this stage, as there appears to be no acceptable evidence before this court that the property was assented to Beepatee thereby giving the claimant locus. But this appears to be a matter of proof, which can be rectified.

27. The claimant also submitted that the court has a discretion to consider the alternative of staying the proceedings to facilitate the rectification of the chain of title. Attorney for the claimant argued based on the authority of **Lenore Walcolt v. John Clement Alleyne**[12] the claimant could commence the action but would need the grant in order to maintain the action. In this case, there was an appointed executrix.

28. The exercise of the power in Rule 26.2 is a matter of judicial discretion, which must be exercised with regard to all of the circumstances of the claim. The court was therefore not prepared to strike out the claim for the following reasons.
    a. The automatic dismissal of the claim against the claimant would go against the spirit and intent of the overriding objective to do justice between the parties. In short, it will be a nuclear option. These proceedings are brought between parties who are related as descendants of the original owners and who have all acquired title from the same chain of title. The evidence before the court is that the records for the period during which the deed of assent may have been allegedly registered were either damaged or missing. It would be thus fair and just that claimant be given an opportunity

[12] H.C.A. No.92 of 1985

to make further enquiries of whether there is an assent and if not attempt to rectify the title.

b. In any event, were the court to dismiss the claim on this basis nothing would have prevented the claimant from proceeding with an application for a special grant, for the purpose of filing a new claim.

c. Further Part 25 of the CPR mandates that the court further the overriding objective of the rules by actively managing its cases. The court must give effect to the overriding objective of the CPR so as to achieve the outcome that is just. The court is also guided by the considerations at Rule 1.1 of the CPR[13]. The resources spent in the instant proceedings, up to this point ought not to be wasted. A dismissal of the matter at this stage would also mean that the parties would have to incur further and separate expense should the claimant bring a fresh claim after rectifying her title. This can be avoided.

29. In relation to the issue of the easement the law is well settled. Whether the two lots were owned by the same person at the material time the claimant began to use Lot 5 for passage appears to be dependent on the issue of title, which itself is dependent on the validity of the assents and whether the property was in fact initially assented to Beepatee. The court was of the view that the latter was an issue that should be resolved prior to the resolution of the issue of the easement. It followed that in the event that the claimant rectifies her title and by

[13] *1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly. (2) Dealing justly with the case includes— (a) ensuring, so far as is practicable, that the parties are on an equal footing; (b) saving expense; (c) dealing with cases in ways which are proportionate to— (i) the amount of money involved; (ii) the importance of the case; (iii) the complexity of the issues; and (iv) the financial position of each party. (d) ensuring that it is dealt with expeditiously; and (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases*.

extension that of all of the other paper title owners, the issue of whether that there exists a dominant and servient tenement would be one to be determined at trial.

30. For these reasons, the court stayed the claim and permitted the claimant to perfect the title within a particular period failing which the claim would be struck out.

Ricky N. Rahim

Judge.