

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV No. 2008-02860

Between

DE VERTEUIL DANIEL

1st Claimant

VIVET HARRY

2nd Claimant

DOWAGA DANIEL

3rd Claimant

THERESA DANIEL

4th Claimant

Administrator ad Litem of the state of MITCHELINE DANIEL, deceased

5th Claimant

CURTIS DANIEL

Administrator ad Litem of the estate of ELOZIA DANIEL, deceased

6th Claimant

And

RUTHVEN DANIEL

Executor of the estate of the deceased LEIGH HUNT DANIEL

Also know as LEE HUNT DANIEL or LEEHUNT DANIEL

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

Ms. Ramjit for the Claimants

Ms Palackdharry Singh for the Defendant

Mr. Peterson SC instructed by Ms. Palackdharry Singh for the intended Defendant

REASONS

The matter was heard by way of video conference on the 26th April, 2013 it was initially called at 9:25 a.m., the Court was in Port of Spain and the matter was called in SF06. Ms. Ramjit was present but the audio system was not working. As a result the matter was stood down and the court indicated that the matter would be recalled at 11:15 a.m. The court never issued any directions that the matter would be rescheduled. When the matter was recalled at approximately 11:30 a.m., there was no appearance of Ms. Ramjit in San Fernando and no one held for her, I proceeded to deliver my ruling with respect to the Notice of Application filed on the 18th January 2013 having previously read and considered in chambers, the said application and all the affidavits in support of and in opposition to same as well as Part 19.2 (3) a and (b) of the Civil Proceedings Rules as amended. Mr. Peterson SC was present and the Court heard no oral submissions from Mr. Peterson SC relative to the said notice of application as no further assistance was needed from either Attorney relative to my determination of the application

The Claimant in this action sought inter alia ‘A declaration that the Certificate of Title issued on the 18th August 2003 under the provisions of the Real Property Ordinance Ch. 27 No. 11 be cancelled. In her re-amended Statement of Case the Claimant pleaded that a consent dated 27/08/2010 and an affidavit dated 22/01/2012 which purportedly was signed by her was in fact fraudulent and that she never signed same.

The said document in question bore the signature of Deborah Moore-Miggins appended thereto as a witness. By implication the position advanced by the claimant raised a serious issue in the mind of this court as it related to Deborah Moore-Miggins. Ms. Moore-Miggins specifically

stated in her affidavit at paragraph (9) that the parties all attended her office and signed the consent dated 27th August 1990 and that she witnessed same.

The allegation advanced by the Claimant was that the document was never signed by her in front of Ms. Moore-Miggins. The Court viewed this as a very serious allegation, one which if proved to be true, could in accordance with the provisions of the Legal Profession Act, have serious consequences for Ms. Moore-Miggins in her professional capacity as an Attorney-at-Law.

Ultimately it is the consent document that is in issue in this matter and the Court was firmly of the view that Ms. Moore-Miggins ought to be added as a party to the action so that a proper opportunity to be heard could be afforded her in recognition of the fact that any adverse decision at the end of the trial with respect to the consent document in question would most likely have an impact on Ms. Moore-Miggins professional reputation.

The Court was and is firmly of the view that there is a live issue involving Ms. Moore-Miggins which is directly related to the matters in dispute in this case. I considered the fact that the timeline for the trial would be unaltered by my decision as it was not possible for me to give a trial date in Tobago for 2013. I also was firmly of the view that having regard to the potential impact upon her professional reputation, that she ought to be given an opportunity to lead evidence and call witnesses in relation to the “consent form” if added as the Defendant. I was also of the view that any evidence by Ms. Moore-Miggins on this issue could greatly assist the court.

Further the Court felt that it would be fundamentally wrong and not in accordance with the principles of natural justice, if the only opportunity to deal with the issue of the consent or lack therefore in relation to the document in dispute and the evidence led in determining this issue,

was to come from and be controlled by the defendant without giving Ms. Moore-Miggins the opportunity to fully engage the issue within the parameters of the case management directions issued by the court. Even if Ms. Moore-Miggins had filed a witness statement on behalf of the Defendant, she had no control as to whether or not she would actually be called at the trial to give evidence nor would she have any control as to any other witness whom the Defendant chose to call.

I also considered the history of the matter and the fact that several claimants were struck out by order of the court on the 21st November 2011 and that the matter thereafter proceeded with only Dowaga Daniel as the Claimant. I considered the fact that the Glen Parmeser report was obtained in October 2010 and noted the difficulty in this jurisdiction to obtain the services of a qualified reputable and reliable forensic document examiner. I also considered Ms. Moore-Miggins unfortunate period of illness in November 2011 and the fact that upon her recovery she located and subsequently obtained a report from Mr. Patrick Sealy a hand writing expert from Barbados. In the circumstances I formed the view that the delay in bringing the Notice of Application was excusable and did not amount to an abuse of the court's process. Ultimately I felt certain, that as the Judge charged with the responsibility of conducting the trial, that I would be significantly aided by the direct involvement of Ms. Moore-Miggins as a party to this action.

I addressed my mind to the overriding objectives of the CPR and the requirement to determine matters justly and since a trial date for the matter had not been set and a trial would not have taken place before the first quarter of 2014, I issued very strict time deadlines after I decided to grant the orders sought, so that I would be able to conduct a PTR in December with the view of still being able to fix trial dates in the first quarter of 2014. I also considered that in this matter

there was no application for budgeted costs so the addition of Ms. Moore-Miggins would not disrupt or alter the position in relation to costs at this stage.

Consequently I granted the order sought and gave directions which I am of the view were consistent with the overriding objectives of the CPR, for the further management of this matter.

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FRANK SEEPERSAD

JUDGE