THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2018-03898

BETWEEN

SUSANA DROZEK

(Administrator ad Litem in **THE ESTATE CRISTOBAL JAB ALEXANDER** also called **JOB HENRY ALEXANDER** also called **CRISTOBAL ALEXANDER** and the Duty appointed Attorney of **PAULINA DELCINA ALEXANDER**)

Claimant

AND

CECIL ESTRADA

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: June 24, 2019.

Appearances:

1. Rosanna Armoogan for the Claimant.
2. Stefan Mungalsingh for the Defendant.

ISSUES

1. The main issues that arose for the Court's determination in this matter were as follows:

a) Whether the Claimant should not have been appointed as the administrator ad litem pursuant to the Order of the Court;

b) Whether the appointment amounts to an abuse of the court's process;

c) Whether the Claim Form and Statement of Case ought to be struck out.

LAW

2. In **Civil Appeal No. 74 of 2012 Leo Abraham & Ors v Doll Basdeo,** Mendonca JA stated:

> "31. Harris, J. in his judgment referred correctly to the law relating to a grant ad litem in the following terms:
>
> > "10. Administration may be granted limited to an action with a view to beginning or carrying on proceedings whether on behalf of the estate or against it. "If there is no personal representative of the deceased and it is necessary for the estate to be represented in legal proceedings, a grant of administration limited to an action (ad litem) may be made. Such a grant is limited to bringing, defending or being a party to particular legal proceedings. (The Judge's emphasis)
> >
> > 11. Where it is necessary for the Personal Representative of a deceased person to be made a party to legal proceedings (e.g. a claim by or against the estate of the deceased) but the Page 10 of 15 executors or other persons entitled to obtain a grant will not constitute themselves as personal representatives, a grant limited

to bringing defending or being a party to the claim or proceedings in question may be made to a nominee limited to bringing, defending or being a party to the claim or proceedings in question. The grant will in no case be a general grant. The claim or proceedings must be indentified in the oath so far as possible and will be specified in the grant." (The Judge's emphasis.) (The references appearing in the footnotes in the judgment to the authorities relied on by the Judge have been omitted).

32. As is apparent from the above, the ad litem grant may be made with a view to beginning or carrying on or defending proceedings. It is not a general grant. Such a grant is limited to bringing or defending or carrying on particular proceedings. As is noted the proceedings must be identified in the oath so far as possible and will be specified in the grant. Despite that, the Judge thought the limitation in the order of Best, J. did not apply to the ad litem grant. The assumption is that Harris, J. thought that the 2002 order of Best, J. was wrong or deficient. In view of what is clear and straightforward law, I do not think that that is a fair assumption."

3. In **Ingall v Moran [1944] 1 All ER 97**, the Plaintiff issued a writ in an action brought by him under Law Reform (Miscellaneous Provisions) Act 1934, claiming to sue in a representative capacity as administrator of his son's estate, but he did not take out letters of administration until nearly two months after the date of the writ. On appeal, the court held the action was incompetent at the date of its inception by the issue of the writ, and the doctrine of the relation back of an administrator's title, on obtaining a grant of letters of administration, to the date of intestate's death could not be invoked so as to render the action incompetent. Scott, L.J. stated (at pages 164- 165):

> "As the writ was issued on September 17th, 1942 and there was no grant till November, it follows, necessarily, that at the time of writ issued the plaintiff had no shadow of title to his son's surviving chose in action, in respect of which he purported to issue a writ falsely (although no doubt quite innocently) alleging that he issued it as administrator... Such an action was, in my opinion, incapable of conversion by amendment into a valid action... It is true that when he got his title by a grant of administration he prima facie became entitled to sue, and could then have issued a new writ, but that was all... The old was, in truth, incurably a nullity. It was born dead and could not be revived."

Luxmoore, L.J. said (at p. 169):

> "I have no doubt that the plaintiff's action was incompetent at the date when the writ was issued, and that the doctrine of relation back of an administrator's title to his intestate's property to the date of the intestate's death when the grant has been obtained cannot be invoked so as to render an action competent which was incompetent when the writ was issued."

ANALYSIS

4. Having reviewed the provisions of the Civil Proceedings Rules 1998 (as amended) and relevant case law the court is of the view that there is no merit in the position adopted by the Defendant. The court found the approach and interpretation that was suggested by virtue of the Notice of Application to be rather restrictive and overtly technical in nature.

5. The court is seized of the jurisdiction to make an ad litem order and that was done in this case. Once the court is satisfied, as it was when it made the Order to commence the proceedings, the proceedings can in fact be properly instituted.

6. In the instituted claim, the Claimant is seeking an order to set aside the deed of assent. It cannot be said that such an action is not in the interest of the deceased's estate because that deed of assent purports to deal with any entitlement that the deceased may have had in relation to the said lands.

7. Having granted an order which enables the Claimant to act in a representative capacity, the court is of the view that the action was properly instituted and the reliefs sought, namely whether the deed of assent ought to be set aside ,falls within the general jurisdiction that the administrator would have in preserving the assets of the deceased.

8. The court formed the view that there are no circumstances on the factual matrix that support an abuse of the court's process argument. Though the court noted the deceased's death occurred some seventy years ago on the face of the deed of assent, there are issues which raise concern. The court must ensure that due process and statutory conformity is reflected in effected deeds.

9. The court held the opinion that the deceased's estate has a legitimate interest in this matter and the court will not shirk its responsibility to resolve the issue of the bona fides of the deed of assent that was registered.

10. Once that issue has been determined, the next issue would be what entitlement, if any, the deceased had to any part or potion to the subject lands.

11. Accordingly, the Notice of Application filed herein is dismissed and there shall be no order as to costs.