

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2017-01307

BETWEEN

JOSEPH LAWRENCE JARDINE

FIRST CLAIMANT

DENISE JARDINE

SECOND CLAIMANT

AND

HAZERON MARIA MOHAMMED-JARDINE

DEFENDANT

Before the Honourable Madame Justice Quinlan-Williams

Date: 7th May 2019

Appearances: Mr. Kenneth Thompson for the Claimants
Mr. Gregory Delzin instructed by Ms. Dianne Mano for the Defendant

REASONS FOR THE DECISION DELIVERED ON THE 8TH JUNE 2018

1. Dennis Jardine (the deceased) died intestate on the 5th of July 2006 in New York, U.S.A. Hazeron Maria Mohammed-Jardine (the defendant) is the deceased's widow. The first claimant claims to be a son of the deceased and the second claimant is the daughter of the deceased. The defendant was granted letters of administration for the deceased's

estate on the 13th March 2009. An amended grant of letters of administration, with an amended inventory was made to the defendant, on the 15th October 2014.

2. The claimants have disputed the defendant's handling of some of the deceased's estate. In particular, the claimants dispute the defendant's handling of the Arima property. The Arima property had a stated value in the inventory to the deceased estate in the sum of \$9,000,000.00. This property was sold for \$2,300,000.00. The claimants also allege mishandling of the Mali Street property. The claimants asserted that the Mali Street property was actually valued at \$10,000,000.00. The Mali Street property was assigned a value in the inventory of \$3,000,000.00 and subsequently sold for \$2,500,000.00.
3. The claimants claim that the defendant sold the properties at values below their market value, in breach of her duty of trust. The claimants also claim the defendant did not distribute to them their fair share of the value, according to the law of intestacy, from the proceeds of the sale of the Arima property or the Mali Street property. The claimants say that their share should have been one half from those proceeds. Instead, what was distributed to them was TT\$500,000.00 and US\$50,000.00 respectively, amounting to a total approximate value of TT\$930,000.00. As per the amended inventory, the claimants claim that their share of their father's estate should amount to \$6,475,000.00.
4. The defendant's defence is that she had no knowledge or information that the deceased was the first claimant's father. The deceased always represented to the defendant, during his lifetime, that he was the father of one child, the second claimant. After the deceased's death, the first claimant contacted the defendant and made the assertion of the now alleged parentage. In fact, after the death of the deceased, the first claimant changed his name by Deed Poll dated the 29th June 2010 from "Joseph Bernard Lawrence" to "Joseph Bernard Lawrence Jardine".
5. With respect to the Arima property, this sale was made with the full knowledge and prompting of the first claimant. Firstly, by CV 2010-02009 the first claimant requested an order for sale of the Arima property. This claim was never served on the defendant and it was later dismissed.

6. Secondly, by letter dated the 18th September 2012, the first claimant through his attorney at law, informed the defendant that he had sourced a purchaser for the Arima property at a proposed sale price of \$2,000,000.00. The defendant acting in good faith and on the belief that the first claimant was in fact the child of the deceased, allowed him to negotiate the sale of the Arima property. The first claimant negotiated a sale price of \$2,300,000.00 and the Arima property was sold for that price.
7. The defendant admits that the Mali Street was sold for \$2,500,000.00.
8. Out of the proceeds of the deceased's estate, the first claimant has received \$1,000,000.00 and the second claimant a sum of US\$104,280.90. The disbursements were made although the first claimant has not as yet, as a matter of law, proven that the deceased is his biological father.
9. The defendant claims that at the time of the filing of the claim, the residue of the deceased's estate had not been ascertained. The accounting exercise to determine the debts and expenses of the deceased is ongoing. The defendant claims that the claimants are aware of this fact since she had kept them abreast of everything done with respect to the deceased's estate.
10. At a Case Management Conference, the defendant made an application to strike out the claimants' claim on two preliminary grounds. The two grounds are:
 - a. Firstly, the claim form and statement of case are both signed by the first claimant on his behalf and on behalf of the second claimant. There is no explanation provided for any authorization given to the first claimant by the second claimant for the imitation of the claim on her behalf; and
 - b. Secondly, the defendant is sued in her personal capacity for "Breach of Trust". The purported breaches of trust are alleged to have arisen out of the defendant's duties as trustee in the handling of the deceased's estate.

Analysis and Findings:

The first issue

12. The court considered the submissions made by the defendant as well as those made by the claimants. The court accepted the defendant's submission that the claimants are required by Rule 8.6 of the CPR to plead material facts. Rule 8.6 provides as follows:

"8.6 – Claimant's duty to set out his case

(1) The claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies.

(2) The claim form or the statement of case must identify or annex a copy of any document which the claimant considers necessary to his case."

13. The defendant relied on the case of *Danish Mercantile Co Ltd and Others v Beaumont and Another* [1951] 1 All ER 925 where the court decided that a claim is not properly constituted without appropriate authority for its institution.

14. Additionally, the claim form and statement of case must include a Certificate of Truth. Rule 8.8 sets out the requirements for the Certificate of Truth, as follows:

"8.8 – Certificate as to truth

(1) The claimant must certify on the claim form or his statement of case that he believes that the contents are true and that he is entitled to the remedy claimed.

(2) If it is impractical for the claimant to give the certificate required by paragraph (1) it may be given by his attorney-at-law.

(3) If the certificate is given by the attorney-at-law he must also certify—
(a) the reasons why it is impractical for the claimant to give the certificate;
and
(b) that the certificate is given on the claimant's instructions."

15. The defendant must know with certainty, the persons making a claim against her. If a claimant gives authorization for a claim to be initiated on his or her behalf, this must be a fact on which the claimant relies. That fact must be included in the claim form or in his statement of case. It is pellucid that it was not included in the claim form and statement

of case filed in this matter. The exclusion caused the court to conclude either, that the second claimant did not know that she was a party to the proceedings, or that she did not authorize the filing of the claim. On either account, the claim was not properly constituted. If there is another explanation, that too needed to be included in the claim form or statement of case.

16. The court also agreed with the defendant's submission that the failure of the second claimant to sign the claim form and statement of case as required by Rule 8.8 was fatal to the claim. The court did not agree with the claimants' submission that a claimant's authorisation to bring a claim on their behalf is not a material fact and does not need to be pleaded. The attorney submitted in his legal arguments that he had authorisation to bring the claim on behalf of the second claimant. Such submission does not satisfy the requirements of the CPR.

17. By a similar measure, the claimant is required to sign the Certificate of Truth. The claimant's attorney may sign it if there is certification which explains the reason that it is impracticable for the claimant to sign himself. Neither of these occurred here. The Certificate of Truth was signed by the first claimant on behalf of the second claimant. The first claimant was not the second claimant's attorney at law and therefore the required certification was not provided/endorsed.

18. The court, therefore agreed with the defendant's submission that the Certificate of Truth is of paramount importance. The requirements of Rule 8.8 must be strictly complied with by the claimants. Lack of compliance with Rule 8.8 did not leave the court with the requisite confidence that the second claimant's claim was known by her to be true.

19. On both bases; the second claimant not signing the statement of case and the claim form as well as not signing the certificate of truth, the second claimant's claim against the defendant was dismissed.

The second issue

20. The second issue was the status of the defendant as a party in light of the particulars of the claim made against her.
21. The court also agreed with the defendant's submission, that the defendant is sued in her personal capacity. However, the claim is for breach of trust in her capacity as Legal Personal Representative of the estate of the deceased. The pleadings do not make any allegations against the defendant in her personal capacity.
22. Rule 8.5 (5) sets out the requirements for the intituling of a claim against a defendant if he is sued in a representative capacity. The claimant is required to state that the defendant is being sued in a representative capacity and what that capacity is. On the pleadings, no case can be made out against the defendant in her personal capacity and it is pleaded that the claim is against the defendant as she exercised her duties of trustee. Therefore, pursuant to Rule 8.5 (5), the defendant should have been sued in her representative capacity as the LPR of the estate of the deceased and the claim so instituted. As it stood, the claim was brought against the defendant, in her personal capacity without the pleadings having disclosed any case against her.
23. The court did not agree with the claimants' submission that the claim being one for breach of trust did not require the claimants to plead and establish "a duty of care, a breach of that duty and resultant damage". What the claimants submitted they were not required to establish is precisely what their claim entailed according to what they pleaded.
24. Therefore, since the defendant was not before the court in her representative capacity and no claim could have been sustained against her in her personal capacity, the court dismissed the first and second claimants claim against the defendant (that is assuming that the second claimant had a subsisting claim against the defendant).
24. As a corollary to the defendant's main submissions, the court also agreed with the defendant's submission that there can be no amendment to the claim form and statement of case without permission being granted by the court pursuant to Part 20.1 (2) of the

CPR. At the time of the application by the defendant, the parties were before the court in the First Case Management Conference. In those circumstances, therefore, the claimants required the court's permission to make any amendment to the claim form and statement of case.

25. However, based on the multiplicity of issues that affected the validity of this claim the court was of the opinion that permission to amend the claim form and statement of case should not be granted. The court held that view after considering the overriding objection of the CPR in Rule 1.1 to deal with the claim justly and the claimants' submission in that regard.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran