

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-00250

BETWEEN

INDRA BEHARRY

(By her duly constituted Attorney RAMJIT BEHARRY

By virtue of Power of Attorney dated 2nd July 2004

Registered as NO. DE200402322651)

Claimant

AND

ROOPNARINE JINKHOO

First Defendant

SUKHIYA JINKHOO

Second Defendant

ANIL JINKHOO

Third Defendant

JESSICA JINKHOO

Fourth Defendant

DECISION

Before the Honourable Madam Justice Jacqueline Wilson

Appearances:

Mr. Rennie K. Gosine for the Claimant

Mr. Mustapha Khan instructed by Ms. Kristin Khan for the Defendant

The Claimant's Application

1. By Notice of Application filed on 16 February 2018 the Claimant sought orders pursuant to Parts 21.7 and 19.3 of the Civil Proceedings Rules 1998 (the CPR) to appoint Mr. Gerald Parson as a representative of the estate of Patrick Tsoi-A-Sue ("the deceased") and for the grant of leave to add Mr. Parson as the Fifth Defendant to these proceedings.

2. The application came on for hearing before this court on 13 April 2018 when directions were given for the filing of further evidence by the Claimant. The application was adjourned to 18 May 2018 when it was dismissed with costs and oral reasons given. The written reasons are now provided.
3. The substantive proceedings are brought by the Claimant in trespass and, in addition to a claim for damages and injunctive relief, the Claimant seeks a declaration that she has an equitable interest in the lands that are the subject of these proceedings (the subject lands) and an order setting aside the deed under which the First and Second Defendants assert their title to the subject lands.
4. The following grounds in the Claimant's Notice of Application summarise the basis on which the application is made:

(vi) The claimant has been reliably informed that the deceased died in the United States of America from several medical complications;

(vii) The claimant is seeking to challenge the deed dated 9th December 2004 and registered on 17th December 2008. The deed transfers the subject property from the deceased, Patrick Tsoi-A-Sue and Michael Tsoi-A-Sue to the defendant herein; and

(viii) In order to therefore avoid duplication of court proceedings and having regard to the overriding objectives of the CPR to deal with cases justly, it would be more prudent to have someone appointed to represent the estate and/or interest in the estate of the deceased.

5. The Claimant's application was supported by the affidavit of Gerald Parson, the material provisions of which state as follows:

3. I have been apprised by the claimant of the High Court proceedings herein and I was requested to represent the estate of one, Patrick Tsoi-A-Sue who is now deceased. I do not have any objections to being appointed as a nominal defendant to represent this estate so that all of the issues before the court can be resolved.

4. *I have been informed by the claimant and verily believe to be true that various searches were done to find the personal representative of the said Patrick Tsoi-A-Sue but no one could be located.*
 5. *I am of the view that I can fairly and competently conduct proceedings on behalf of the estate of Patrick Tsoi-A-Sue and I do not have any interests adverse to that of the estate of Patrick Tsoi-A-Sue.*
 6. *In the event that a personal representative of the estate of Patrick Tsoi-A-Sue comes forward, I understand that such person can replace me to act on behalf of the estate. I do not have any objections to this but in the interim, I consent to being appointed as the representative of Patrick Tsoi-A-Sue.”*
6. The Claimant’s application was also supported by the affidavit of her duly constituted Attorney, Ramjit Beharry, in which he indicated that efforts to contact both Michael and Patrick Tsoi-A-Sue have proven futile and that Patrick Tsoi-A-Sue is believed to have died in the United States.

The Substantive Proceedings

7. The following summary of the substantive proceedings provides the relevant context.
8. The Claimant alleges that her father was a tenant of the subject lands, which were owned by the landlord, Patrick Tsoi-A-Sue; that prior to his death in 1987 her father, with the consent of Patrick Tsoi-A-Sue, transferred the tenancy to her; that she has been paying rent for the subject lands since 1987; and that the rent was paid to Patrick Tsoi-A-Sue until 2003 when he migrated and left his brother Michael Tsoi-A-Sue in charge of collecting the rent.
9. The Claimant alleges further that in or around November 2003 Michael Tsoi-A-Sue agreed to sell the subject lands to her and that she paid the sum of \$700.00 towards the purchase but has been unable to contact Michael or Patrick Tsoi-A-Sue to complete the

transaction. The Claimant states that she is informed that Patrick Tsoi-A-Sue is now deceased.

10. The Defendants assert that they have been in occupation of the subject lands since 2001 and that by deed of conveyance dated the 9 December 2004 and registered on 17 December 2008, the First and Second Defendants became the owners of the subject lands, having purchased same from Michael and Patrick Tsoi-A-Sue for the sum of \$40,000.00.

The Submissions

11. At the hearing of the application Counsel for the Claimant submitted that Mr. Parson's role in representing the estate of the deceased, Patrick Tsoi-A-Sue, would be that of a nominal defendant whose involvement was sought only in the event that an order was made setting aside the deed of conveyance to the Defendants, as the subject lands would be vested in the estate of the deceased.
12. Counsel for the Defendants opposed the Claimant's application contending that there was nothing in Mr. Parson's affidavit to indicate his familiarity with the lands in question and that all of his knowledge was derived from what he was told. Counsel questioned whether, in the circumstances, Mr. Parson could assist the court. Counsel contended that no death certificate was tendered to confirm Mr. Patrick Tsoi-A-Sue's death and no information was provided to indicate whether searches were conducted at the Probate Registry to determine whether there was a representative of his estate.
13. Counsel argued further that no relief was sought by the Claimant in respect of Patrick Tsoi-A-Sue's estate and that, in the event that the deed of conveyance to the Defendants was set aside, it was open to the Claimant to bring an action against Mr. Tsoi-A-Sue's estate seeking a transfer of the subject lands to her.

The CPR Provisions

14. Part 21.7 of the CPR provides that:

- (1) *Where in any proceedings it appears that a dead person was interested in the proceedings then, if the dead person has no personal representative, the court may make an order appointing someone to represent his estate for the purpose of the proceedings.*
 - (2) *A person may be appointed as a representative if he—*
 - (a) *can fairly and competently conduct proceedings on behalf of the estate of the deceased person; and*
 - (b) *has no interest adverse to that of the estate of the deceased person.*
 - (3) *The court may make such an order on or without an application.*
 - (4) *Until the court has appointed someone to represent the dead person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.*
 - (5) *A decision in proceedings where the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.*
15. It is clear from the provisions of CPR Part 21.7 that the starting point in determining an application to appoint a representative of a deceased person is to establish the deceased's death. This obvious and critical requirement has not been satisfied by the Claimant. The assertions regarding Mr. Patrick Tsoi-A-Sue's death are based entirely on hearsay statements and speculation unsupported by documentary evidence. This omission is fatal to the Claimant's application to appoint Mr. Parson as Mr. Tsoi-A-Sue's representative pursuant to CPR Part 21.7.
16. The provisions of Part 19 of the CPR arise for consideration. CPR 19.2(3) provides that the court may add a new party to proceedings if:
 - (a) *It is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or*

(b) There is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

17. The provisions of Part 19.2(3) were subject to detailed analysis by Kokaram J in ***Shobha Narine Dookeran v Winston Dookeran (Executor of the Last Will and Testament of CLYDE DOOKERAN, Deceased) CV 2008-00287*** where the question for determination was whether the deceased made reasonable provision for his wife under his will. The proceedings were brought by the deceased's wife and, at an advanced stage of hearing, his children who were named as beneficiaries under the will made an application to be joined as defendants so that they could be heard in the event of any proposed settlement or compromise of the proceedings by the Executor. In dismissing the application the learned Judge held that:

(13) On an application to be joined as a party under rule 19.2 CPR it is the duty of the Applicants to properly set out their case for the Court to determine who they would assist in the determination of the matters in dispute in the claim. The Applicants in this case, however, do not assert that they should be joined to assist in the determination of the matter in dispute of whether reasonable financial provision has been made for the Claimant or that there is an issue between them connected to that issue that needs to be resolved.

*(16) In my opinion, if the Executor breaches his duty in arriving at and effecting a compromise in this action it is no basis to join some of the beneficiaries to the estate in this dispute. The Applicants will be protected by bringing their own action against the executor for breach of duty if that issue ever arises. There is nothing on the evidence however which remotely suggests that this is imminent or likely. A similar conclusion was held in ***Umm Qarn Management Co Limited v Valeria Ann Bunting*** where the Court of Appeal affirmed that simply having a proposed cause of an action if an event occurs does not make it necessary or desirable to join the applicant to the*

proceedings. It will be premature to make any such judgment on the conduct of the defendant at this stage. The fear of any compromise being affected does not make it desirable to add these applicants to these proceedings.

18. In *Prakash Singh v Afzal Mohammed* the Court of Appeal held that the objective of CPR 19.2(3) was “to ensure that all parties necessary for the Court to determine the question arising in the litigation” were present before the Court. It was “not a rule to permit the joinder of separate actions but to ensure that the necessary parties to the existing action for the complete adjudication of the issue are before the Court.”¹

Analysis and Conclusion

19. The question whether Mr. Parson’s involvement in a representative capacity would facilitate the resolution of the matters in dispute must be considered in the context of the issues that arise for determination in this case, as discerned from the pleadings.
20. As indicated above, the Claimant seeks a declaration that she has an equitable interest in the subject lands and an order setting aside the deed of conveyance to the First and Second Defendants. The Claimant’s application fails to articulate any dispute between Mr. Tsoi-A-Sue and the parties or to demonstrate how Mr. Parson’s involvement in a representative capacity would facilitate the resolution of the existing dispute. No claim has been brought by the Claimant against Mr. Tsoi-A-Sue and no allegations have been made against him that are relevant to establishing the equitable interest asserted by the Claimant or to defeat the title claimed by the Defendants. Similarly, no relief is sought against Mr. Tsoi-A-Sue in the event that the deed of conveyance to the Defendants is set aside. There is nothing to prevent the Claimant from taking appropriate action against the estate of Mr. Tsoi-A-Sue, in the future, if it becomes necessary.

¹ Shobha Narine Dookeran v Winston Dookeran, CV 2008-00287 at para. 18

21. For the above reasons, the Claimant's application was dismissed.

Dated this 16th day of July 2018

Jacqueline Wilson

Judge