IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 368 of 2014

DOTSY CAIN	**CLAIMANTS**
IVY GARNETT	
RAYMOND DAWSON	
AND	
CHARLES ALEXANDER DAWSON	**DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Hearings
2015
10th November
18th November

Written Submissions
18th November – received unfiled for Defence.

Mr. Hubert Elrington SC for the Claimant.
Mr. Leo Bradley Jr. for the Defendant.

Keywords: Administration of Estates ‑ Administrator - Revocation of Grant – A False Statement in the Inventory – Use of Inventory - Consent of and/or Notice to other beneficiaries ‑ Counterclaim ‑ Adverse Possession ‑ Limitation Act Cap 170, Administration of Estates Act Cap 197, Supreme Court of Judicature Act Cap. 91, Order LX1X ‑ Probate and Administration Rules - Estate Duties Act Cap. 42 (now repealed)

JUDGMENT

1. The deceased, Clifford Dawson, died intestate in 1996. His estate comprised a single piece of real property ‑ approximately 20 acres of land in the Sibun River area (The Dawson Farm). It seems that no one sought to administer his estate until early 2012 when the defendant (one of his children) secured a grant of letters of administration. The Claimants herein, (also children of the deceased), subsequently attempted to apply for a grant and discovered that one had already been issued to their brother. They now apply for the revocation of that grant of letters of administration on the following grounds:

    1. The application for the grant was made without the knowledge or consent of the claimants who are also beneficiaries, and
    2. The administrator stated himself to be the sole beneficiary on the inventory filed, where there were seven other beneficiaries in existence.

2. The Claimants ask further, that their own petition for a grant be admitted to administration. The Defendant, in his defence, simply calls the Claimants to proof on the existence of the inventory, baldly denies that they are otherwise entitled to a declaration or a grant as requested and raises the full defence that the claim is statute barred pursuant to section 26 of the **Limitation Act**. Finally, he explains how he alone was in possession and he alone took care of the Dawson Farm since his father's passing 18 years ago. He then counterclaims for adverse possession of the estate and in the alternative, compensation for his labour and extraneous expenses for maintenance and

upkeep, as well as the sum of $625,840.26, which he claims is the value of improvements he made to the land.

3. In their reply, the Claimants joined issue with the Defendant and explain that it was the Defendant who had forced the Claimant Raymond Dawson off the estate in 1995. They deny that the defendant or his son are entitled to the property and reject the limitation defence outright, as the particular section relied on deals with personalty not realty (the subject matter of the estate).

4. The issues for the court to determine are

1. Whether the claim is statute barred pursuant to Section 26 of the **Limitation Act**

2. Whether the grant can be revoked where the other beneficiaries received neither notice nor gave consent.

3. Whether the grant can be revoked where a false statement was made in the inventory.

4. Whether the defendant owns the estate through adverse possession

Whether the claim is statute barred pursuant to Section 26 of the Limitation Act:

5. The section referred to by the defence is clearly entitled 'Limitation of actions claiming personal estate of a deceased person'. The original claim before the court is neither a claim for the estate of a deceased person nor for that matter, a claim for the personal estate. It is a claim for the revocation of a grant. Such a claim has no limitation period under the statute.

Whether the grant can be revoked where the other beneficiaries received neither notice nor gave consent

6. Pursuant to section 160 of the **Supreme Court of Judicature Act**, the court is empowered to revoke a grant of letters of administration. However, the grounds on which such a revocation would be made are fairly well established. There must be some clear evidence of mismanagement, delay, dishonesty or breach of an administrator's duties to act in good faith towards the estate.

7. In determining whether to grant letters of administration the court is mandated to "*have regard to the rights of all persons interested in the estate of the deceased person, or the proceeds of sale thereof; ...*

Provided that -

(a) Where the deceased died wholly intestate, administration shall be granted to someone or more persons interested in the residuary estate of the deceased if they make an application for the purpose, ..."

8. Any person so interested, therefore, need only make an application proving that he has a right in the residuary estate. Notice of his application is given in accordance with Rule 11 of **Probate and Administration Order LX1X**. That rule is entitled 'Application for letters of administration - how notified.'

(1) ..... notice of application for letters of administration, whether with the will annexed or in cases of intestate, must be given by Gazette for three successive weeks before such letters shall be granted.

(3) The Registrar will prepare the necessary notice of application for insertion in the Gazette and see to its proper insertion upon payment of the proper fees.

9. Unless the Claimants can prove that this notice has not been inserted in the Gazette, as directed by Rule 11, they are deemed to have had notice of the application. Having failed on that ground we now turn our attention to the issue of consent.

10. The order of priority on intestacy is found in Rule 21 of the United Kingdom **Non Contentious Probate Rules No 10A**, which is applicable in Belize by virtue of Rule 56 of Order 59 of the **Probate and Administration Rules**. This Rule, to my mind, remains subject to the notes at the foot of the Petition for Administration in case of intestacy form. Either way, after a husband or wife, the children of the deceased are first in order. And any person who is not primarily entitled to a grant need not be cleared off whether by consent, renunciation or citation. These parties before the court are beneficiaries who all claim in the same degree (children of the deceased). They all have the same right to a grant on intestacy. There is no inferior or superior right to be considered so the issue of consent raised is without merit. It was always open to the Claimants to lodge a caveat at the Probate Registry. This would have ensured that no grant was sealed without notice to them. No such action was taken. Consequently, their claim must fail on this ground as well.

Whether the grant can be revoked for an incorrect statement in the inventory:

11. A grant can certainly be revoked where it was obtained by a false or incorrect statement. But that false statement must go to the root of the grant. It must falsely suggest or suppress something material to the case. Something which is legally essential to the grant. For example lying about the capacity in which you have applied for the grant or about one's age

when you are in fact a minor or claiming, untruthfully, to be the widow of the deceased.

12. In this case, the Defendant, in the inventory, stated himself to be the son of the deceased. That has not been proven false. He also stated incorrectly that he was the beneficiary. However, in the case of ***Re Ward (1971) 1 WLR 1376***, the court faced with a similar problem refused to revoke a grant merely because it misstated the persons entitled to share in the estate. The better approach was to amend, to reflect the correct circumstances.

13. The refusal to revoke makes good sense for a number of reasons. Firstly, in making an application for a grant, Rule 10 provides what forms are required (and an inventory is not one):

Petition
Verifying affidavit
Oath of Administration
Affidavit of Justification of sureties
Bond of Administration
Grant of Administration

14. Rule 4 explains that in the case of intestacy the petition must state the death of the deceased intestate and briefly set out the grounds on which the petitioner has applied. That would clearly include his status as a beneficiary and his position in the order of priority. Nowhere is it required that he state the other beneficiaries who are entitled to the estate because such information has no purpose in the consideration of an application for a grant. Rule 6 adds that the petition must state the probable value of the estate to be

administered. Such a value is to be without any deduction for debts and appears on the grant itself.

15. Under the **Administration of Estates Act** a personal representative is expected to file a true and perfect inventory only as he is lawfully required to do - see section 25. The court is empowered to require an administrator to file such an inventory and account and it must then be made under oath. Rule 34 adds that any inventory or accounts required to be filed in accordance with the bond of a petitioner must be verified by oath or affidavit. When one considers the terms of the bond one realizes that a true and perfect inventory of the entire estate including effects and credit coming to the personal representative's hands, possession or knowledge (or the hand of any person on his behalf) must be exhibited in the court office within six months of the date of the grant. It must also be noted that the oath and the grant itself state the very same. It again becomes obvious that the contents of such an inventory could not possibly have any effect on the issuing of a grant where it is expected to be exhibited after the grant has been issued.

16. Of necessity, one must add that in fact, the inventory to which the Claimants refer in their claim is not the inventory required by the **Administration of Estates Act** or the **Probate and Administration Rules**. It is one which is required to be filed in accordance with section 15(1)(a) & (b) of the **Estate Duties Act Cap. 42** (now repealed). The inventory states this on its very face. This document is no longer a statutory requirement for a grant. How then could its contents have any material effect on the issuing of a grant? It is but a relic of a past regime.

17. Sections 15 and 17 of the repealed **Estate Duty Act** may clear up some of the confusion which seems to exist today.

> *"15.-(1) The representative of every deceased person shall, if such person died in Belize, within three months after his death, or if such person died out of Belize, within six months after his death appear by himself or some other competent person before the Registrar and -*
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> *(a) deliver a full and true inventory of all the property in respect of which duty has, subject to the deductions mentioned in section 12, become payable on the death of the deceased together with a statement of the deductions which are to be made therefrom, and the names and degree of relationship to the deceased of those persons to whom the property has passed and shall exhibit, at the same time, the will, if any, of the deceased, and*
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> *(b) make a statutory declaration verifying and setting forth the particulars required by paragraph (a) setting forth that such property is of the value of a certain sum therein specified to the best of the deponent's knowledge, information and belief."*

> *"17.-(1) On the duty payable being assessed as aforesaid, the Registrar shall cause to be made on the declaration a memorandum of the amount of estate duty payable.*
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> *(2) The person making the declaration, or his agent, shall thereupon pay to the Accountant General the duty so assessed, and the Accountant General shall give a receipt on the declaration for the amount so paid, which declaration shall be filed with the Registrar.*
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> *(3) The Registrar shall thereupon prepare a certificate under his hand, setting forth that the inventory and declaration have been duly delivered and that the estate duty, if such duty is payable, has been paid, and stating the value as shown by the inventory of the property on which estate duty is payable, and a*

certified copy of such certificate made by the Registrar shall be issued to the person who paid the amount of any estate duty.

(4) No probate or letters of administration shall issue from the Registrar's Office and no will shall be registered in the Registry unless and until the certified copy of the certificate mentioned in subsection (3) has been issued by the Registrar.

(6) A judge of the Supreme Court shall, before granting probate or letters of administration or sealing a probate or letters of administration or a confirmation under the Administration of Estates Ordinance, be satisfied that the estate duty payable under this Ordinance has been paid or that sufficient security has been given for payment as provided by subsection (5)."

18. Issues of devolution were of particular interest in the consideration of estate duties as the beneficiaries were liable to account for or repay the death duty as required. More importantly, the percentage of the overall assessed duty to be paid was also dependent on the status of the beneficiary involved. Certain groups, such as parents, spouses and children or grandchildren were required to pay only half of the duty levied. Furthermore, debts and funeral expenses were deducted from the value of the property before the assessment was made. Such deductions, as stated earlier were not part of the petition for a grant.

19. Devolution really has no direct bearing on the issuing of the grant. It may, down the road, affect the administrator's fulfillment of his statutory duties. That is when the full and perfect inventory becomes important and necessary. A false statement therein could be a sufficient ground for revocation as they may be demonstrative of some misconduct or dishonesty on the part of the administrator. It is otiose therefore, that statements in

either inventory are not material to the issuing of a grant. Material statements are to be found in the Petition which is the foundation document for both the bond and the grant.

20. In their reply the Claimants seem to allude to some mismanagement, and in their witness statements, some neglect of duty, on the part of the administrator. However, those were not the grounds pleaded in their claim. They cannot seek to depart from those grounds without first amending their statement of claim. Rule 8.7 (1) of the **Civil Procedure Rules** state *"The Claimant must include in the claim form or in the statement of claim all the facts on which the claimant relies."* The reply is as it states a reply to the defence, not a defence to the defence or an opportunity to add new facts. One is expected to respond by either admitting or denying what is stated in the defence not state entirely new grounds. Attempting to include new grounds in the reply is really setting up a new case which should have been in the claim form. This is clearly embarrassing. Moreover, a party is not ordinarily allowed to file or serve any statement of case beyond a reply-Rule 10.9(3). If new claims or new grounds could be included in a reply that would really leave the Defendant with no way of defending same. That simply cannot be. The allegations originally made in the claim refer to the conduct of the administrator in obtaining the grant, this later switched (without warning) to his conduct in administering the estate. These new allegations are not supported by any proof. The court remains unaware of whether the estate has been administered or not.

21. The claimants must also fail on this final limb. I find that any statement in the inventory before the court is not material to the issue of the grant and

could easily be corrected by an amendment if necessary. However, I do not find such an amendment to be at all necessary, in the circumstances. There is no proven reason to revoke the grant of letters of administration.

Whether the Defendant owns the estate through adverse possession

22. It is the Defendant's counter claim that he has been in sole possession of the estate since 1996. Pursuant to section 12(2) and 22 of the **Limitation Act**, title to land is extinguished after 12 years where no action has been brought by the true owner to recover same. Therefore, if the defendant can prove that he has been in deliberate and undisturbed possession of the estate without the consent of the true owners, he could be declared the legal owner.

23. The Defendant says that he has been in open and continuous possession and occupation of the estate since 1996. The evidence before the court is that, in 1995 or 1996, the defendant forced Raymond Dawson off the estate. There is no evidence provided of Raymond Dawson, or any of the other beneficiaries, taking any action whatsoever to assert their legal rights, until the instant matter was filed in 2014. This court finds that the Defendant has been in undisturbed possession since 1996 and therefore became the legal owner in 2008, through the operation of adverse possession. The Claimants' title to the estate was likewise extinguished. When the Defendant perhaps attempted to gain legal ownership through a grant of letters of administration in 2012, he was, in fact, already the legal owner.

24. It is also stated that in 2005 the Defendant gave some land to his son. The son is not a party to these actions. It remains unclear whether the land the Defendant allegedly transferred formed part of the estate or was even

transferred for that matter. I will simply quote, for completeness from **Commonwealth Caribbean Land Law p272**

> *" A squatter who does not remain in adverse possession for the full limitation period acquires title which is therefore transmissible to his heirs on intestacy or devisee or which can be alienated by him to another person whose title matures if the paper owner is kept out of the property for the whole limitation period. The squatter can effect transfer of his inchoate title by turning the property over to a third person. In* ***Wallis's Cayton Bay Holiday Camp Ltd v Shell-Mex and BP Ltd [1974] 3 All E.R. 575 Stamp L.J****. held:*
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> > *that if a squatter who has been in possession for less than the full statutory period transfers the land, he can give the transferee a right to the land which is as good as his own and the latter can add the former's period of possession to his own."*

25. I have also considered the issue of cost herein. This is a matter between siblings which has been pleaded and presented in a most disconcerting manner. Case management and pretrial orders have been repeatedly ignored. Some have never been complied with. Counsel have been late or simply not shown up to court on occasions, sans excuse or permission. Adjournments became a pattern, until it's firm and final listing for trial. Even closing submission ordered to be filed by midday yesterday have not been received accordingly. Consequently, I will make no order as to costs.

IT IS ORDERED THEREFORE:

1. The claim is dismissed.
2. Judgement for the Counter Claimant.
3. It is hereby declared that the Defendant/Counter Claimant is entitled to possession of the land generally described as 20 acres of land in

the Sibun River area formerly belonging to the estate of the late Clifford Dawson.

4. No order as to costs.

SONYA YOUNG
JUDGE OF THE SUPREME COURT