IN THE SUPREME COURT OF BELIZE, A.D. 2016

CLAIM NO. 300 of 2015

YOLANDA PARHAM	**1st CLAIMANT**
YOLANDA PARHAM AS NEXT OF FRIEND FOR ALBERT ALEXANDER GORDON	**2nd CLAIMANT**

AND

JULIE DENNISON	**DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Hearings
2016
21st January
24th February

Mrs. Samira Musa-Pott for the Claimant.
Ms. Stacey Grinage for the Defendant.

Keywords: Administration of Estates - Claim brought by beneficiary for the benefit of the deceased's estate – Application to appoint Administrator ad litem filed simultaneously with fixed date claim form – Only administrators or executors may bring action for the benefit of the deceased's estate – Proceedings a nullity – Struck out at the court's own volition – Administration of Estates Act Cap 197 (AEA) – Supreme Court of Judicature Act Cap 194 (SCJA) – Civil Procedure Rules (CPR)

DECISION

1. The matter now before the court was brought, by way of a fixed date claim form, by the wife of the deceased, in her own right and as next friend for

their minor child. The Claimants sought to recover property which, they assert, was being held on trust for the deceased before he died and rightly belonged to his estate. The claim is clearly one for the benefit of the deceased's estate. As it plainly states *"… the Defendant holds the said property in trust for the said deceased's estate and the rightful beneficiaries thereof;"*

2. There was also filed, on the same date, an application supported by an affidavit. It sought firstly, an injunction restraining the Defendant from dealing with the property until determination of the claim and secondly, the appointment of the first Claimant as Administrator of the estate of the deceased for purposes of these proceedings. The Defendant joined issue by filing their defence but filed nothing in response to the application.

3. The sole issue raised by the court of its own volition was whether these Claimants had locus standing to commence such a claim. The matter was raised with counsel on both sides at the first hearing and they were given time to consider. In the interim, no applications or any further documents having been filed, the court proceeded to strike the matter out for the following reasons:

Do the Claimants have standing to commence this claim:

4. Before letters of administration are granted, a person, though entitled to such a grant, has no power to do anything as the administrator **– *Wankford v Wankford (1704) 1 Salk299, 309.*** His authority to act comes solely from his appointment by the court.

5. There can be no doubt about this as section 4(3) of the AEA reads:

> *"The personal representatives shall be the representatives of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate."*

Section 26(4) continues:

> *"On the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case maybe, for the benefit of his estate."*

Section 164 of the SCJA gives the court wide discretionary powers to appoint an executor or administrator:

> " 164. Under special circumstances where it may appear to the court to be just or expedient probate or administration may be granted to some other than the person ordinarily or by law entitled to such probate or administration."

6. And section 17.1 of the AEA allows such a grant to be limited in any way the court deems fit:

> "*17(1)* Subject to subsection (2), a probate or administration in respect of the real estate of a deceased person, or any part thereof, may be granted either separately or together with probate or administration of his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate only, and a grant of administration to real estate may be limited in anyway the court thinks proper."

7. Therefore, in special circumstances where it may not be practical or efficient - time wise, to seek a full unlimited grant of probate/letters of administration a limited grant may be given. One such grant is a grant of administration ad litem which is limited to the purpose of commencing, continuing or defending legal proceedings. With the advent of the CPR and the ability to appoint a representative party, such an application will rarely, if ever now be made to appoint a Defendant. However, the situation remains unchanged for a prospective Claimant wishing to commence a claim.

The Procedure to appoint an administrator ad litem:

8. Rule 8.*1. of the CPR* states:

> *(1) A Claimant starts proceedings by filing in the court office the original and one copy (for sealing) of –*
> *(a) the claim form; and …*
> *(b) the statement of claim.*
>
> *(6) A person who seeks a remedy –*
> *(a) before proceedings have been started; must seek that remedy by an application under Part 11.*

9. Rule 17 allows the court to grant interim remedies. Such orders could be made at any time, including before the claim has been made and after judgment has been given. Although the rule lists some types of interim relief, it makes it clear that this list is not exhaustive. Rule 17.1 (3) assures that the court's power to grant a remedy is not affected by the fact that the remedy does not appear on that list. The fact that an application to appoint an administrator is not there is of no moment whatsoever.

10. Any application made for an interim remedy before the claim has commenced must be made in accordance with the general rules relating to applications contained in Part 11. Moreover, a court granting an interim remedy in such circumstances must also direct that the claim be issued and served by a particular date – Rule 17.2 (3).

11. The court also examined Order LX1X Probate and Administration Non-Contentious Business of the SCJA which is still applicable today. It states:

> *1. (1) Application for probate or letters of administration shall be made by petition to the Chief Justice, certified by affidavit and filed in the office of the Registrar in Belize City.*
> *2. (2) All application to the Supreme Court (Probate side) coming under any of*

> *the following heads shall be made by motion in court when the value of the estate, without deduction for debts amounts to one thousand dollars or over; and in cases where such value is less than one thousand dollars by summons or application in chambers.*

12. The section goes on to list five circumstances relating to special, limited or contested grants, none of which are applicable here. I state this section only to show that it is contemplated that an application for a limited grant could be made by way of motion or summons (which under the CPR 8.1 (5)(d) translates to a fixed date claim form) or by application in chambers which maintains its meaning. Although it is arguable that this, being a limited grant for property well over $1000., it ought to be brought before the court by way of a fixed date claim form, I am reluctant so to hold. The section does not speak specifically to a grant ad litem. Moreover, when the overriding objective is applied there could be no real sense to incurring more expense or delaying the process.

Determination:

13. In my humble estimation an application in accordance with Rules 8.1 (6), 17 and 11 would more than suffice. Once an order appointing the applicant as administrator ad litem has been secured the Claimant would then have the requisite standing needed to bring the action for the benefit of the estate. It follows ineluctably, therefore, that in the present circumstances this court does not have the jurisdiction to allow anyone who has not been appointed an administrator to bring an action for the benefit of the estate.

14. It must be stated that courts are generally reluctant to permit a person to take a limited grant when a regular grant could be made. It is not the practice to

allow such a special grant to be made except for strong reasons. The first Claimant is the wife of the deceased and is therefore entitled to a general grant. Nowhere in the supporting affidavit does the first Claimant explain why she had not sought an ordinary grant or the special circumstances which existed to satisfy the requirements. In fact, the claim was filed some two months after the death of the deceased which was certainly sufficient time in which to have successfully applied for an ordinary grant of letters of administration. Furthermore, although the Claimants filed an application for appointment and an injunction simultaneously with the claim form, that application was on notice and was never served until the 25th November, 2015. There clearly was no immediate need.

15. ***Caudle v LD Law Ltd (2008) EWHC 374 (QB)*** is strong authority for the view that a person who is entitled to a grant but had not yet received one, had an immediate right to take possession of the deceased's estate if it needed to be protected or safeguarded. He may ever enforce this right by action. However, in the case at bar the property was transferred twice inter vivos – it was no longer legally owned by the deceased at the time of his death. When all this is considered, it is doubtful that the requirements for so special a grant would have been satisfied. But I digress.

16. Lord Neuberger MR in ***Millburn-Snell and others v Evans (2012) 1 WLR*** 41 stated at paragraph 16:

> *"I regard it as a clear law, at least since Ingall then an action commenced by a Claimant purportedly as an administrator, when the Claimant does not have that capacity, is a nullity. That principle was recognized and applied by this court in Hilton v Sutton Steam Laundry (1946) KB 65 (per Lord Greene MR, at 71) and Burn v Campbell (1952) 1 KB 15 (per Denning) LJ, at 17, and Hudson LJ, at 18)."*

17. Closer to home, I consider the Trinidadian case ***Jaime Dolan v Rene Katwaroo Claim No. CV 2013 – 00267*** where an almost identical claim and application to the ones being considered here, were filed. In striking out the claim, the court relied on ***Caudle*** (ibid) and stated:

> 21. "…… *The following portions of Wyn Williams J* (sic) *judgment are instructive: "A person has no right to commence proceedings as an administrator before letters of administration have issued for until such time, he has no right of action. Under existing case law, the subsequent issue of letters of administration will not assist, for the grant does not for this purpose relate back… On the basis of these authorities, it has been held that proceedings brought by a person supposedly as administrator, but before obtaining a grant are a nullity and cannot be validated by a later grant of administration …*
> *…It is as well to remember that the issue of whether or not the claimant has an immediate right to possession of the property in question falls to be considered in the context of whether or not he has standing to sue for wrongful interference with that property. In this context it is generally accepted that a person can maintain such an action if, and only if, he had at the time of the alleged wrongful interference either actual possession of the property in question or the immediate right to possess the property…*
> *In the absence of a clear statement of principle in an authority binding upon me I find it impossible to hold that a person who has not been granted letters of administration but who has the right to apply as a matter of priority acquires an immediate right to possession of property formerly owned by the deceased in circumstances in which there is no immediate need for him or her to be in possession of such property. In reality, such a finding would go well beyond the circumstances in which non-owners have traditionally been considered to have an immediate right to possession. Further, it may lead to a blurring of the understanding of the discrete differences between the rights of executors and administrators as from the time of death but before a grant. While in very unusual cases on the facts this conclusion may appear to work a possible injustice, in the vast majority of cases the person entitled to a grant will in fact obtain possession of the property of the deceased. Once that has occurred, he can rely upon his possession of the same to ward off unmeritorious claims against it."*
> *22. As I have observed earlier the claim is predicated on an action on behalf of the Estate of the deceased… She simply did not have capacity at the date of commencing this claim to sue on behalf of the estate.*
> *23. Accordingly the claim as it stands is unsustainable and ought to be struck out, the court having no jurisdiction to entertain this claim…"*

18. For these reasons I find that the Claimants have no locus standi to bring an action for the benefit of the deceased's estate without first having obtained a grant. Since standing cannot be obtained retrospectively, the claim is a nullity and must accordingly be struck out. The Defendant, being aware of the issue, filed no application whatsoever, consequently, there will be no order as to costs.

SONYA YOUNG
JUDGE OF THE SUPREME COURT