

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA
IN THE HIGH COURT OF JUSTICE

(CIVIL) DOMHCV2020/0198

BETWEEN:-

CLAUDIA BAHADO

JOHNSON FRANCIS

and

Claimants/Applicants

PAUL FRANCIS

(As Personal Representative of the Estate of Eloi Francis)

Defendant/Respondent

Before: The Honourable Justice Birnie Stephenson

Appearances:

Cara Shillingford Marsh and Kayla Jean Jaques of Cara Shillingford Chambers for the Claimants/Applicants
Ms. Roseanne Charles for the Defendant/Respondent

2022: January 10, 20

Oral Ruling
(with written reasons)

[1] **Stephenson J:** This ruling concerns an application brought by the applicants for an order sustaining the caveat filed by the first named claimant on the 30th April 2019 against the Certificate of Title registered in Book of Titles A10 Folio 68. ("the property") An affidavit with exhibits was sworn and filed in support of the application by Melissa Nelson a legal clerk of the chambers of Counsel representing the claimants.

[2] It is important to note that the land in the case at bar is registered in the name of Eloi Francis of Morne Daniel who is now deceased, this is based on the averments before the court and which is undisputed fact. The Caveatee is the Administrator of the estate of Eloi Francis having applied for

and obtained letters of administration on the 3rd July 2017. The parties are all siblings and are all beneficiaries of the estate of Eloi Francis who died intestate.

- [3] The substantive claim before the court is a contentious probate claim. The defendant applied for and obtained letters of administration and the estate is partially administered. The claimants are seeking to have the defendant removed as administrator of their father's estate and among other things, they have placed a caveat on one of the properties which form part of their father's estate.
- [4] The primary issue for consideration by the court at this time is whether or not the caveat as placed by the beneficiaries of an intestate estate on a particular piece of land can be sustained.
- [5] The Title By Registration Act¹ ("the TBRA") in the Commonwealth of Dominica provides for the Torrens System of Land registration which is the type of land registration system existing in a number of other Commonwealth countries including Australia and New Zealand.
- [6] Pursuant to section 114 of the TBRA a caveat can be lodged by anyone claiming to be entitled to stay the registration of any dealing in land until his rights therein shall be recognised and registered. So long as a caveat remains in force the Registrar of Titles is prohibited from registering any dealing with the land embraced therein. (Re: Section 117 of the TBRA)
- [7] Caveats have been held to be available for the protection of rights to land or to the rights of a person with a registerable interest on an interim basis. Where a caveat has been placed against the title of a property, the caveator is required by law to satisfy the court that there are sufficient grounds in fact and in law for continuing the caveat.
- [8] Where there is an application to remove a caveat the caveator should satisfy the court that on the evidence adduced (though untested) that he or she has a claim to an interest in the property subject of the caveat and that claim raises a serious issue to be tried.

¹ Chapter 56:50 of the Laws of the Commonwealth of Dominica

[9] Moise J in the Nevis Island case of **Pinneys Hotel Development Limited and another –v- Alexis Jeffers and others**² in interpreting a provision similar to Section 114 of the Title by Registration Act said “*It is therefore to be noted that any person who seeks to lodge a caveat under this section must claim to have some right which is capable of being recognised and registered on the Certificate of Title in the form of a caveat*”.

[10] In the case at bar the caveator is a beneficiary to her father’s estate on intestacy. The property which she seeks to caveat forms part of the intestate estate.

[11] The claimant’s contention is that it is important to maintain the caveat on the property so as to ensure that the administrator does not sell the property at an undervalue. They also contend that he will not distribute the proceeds in accordance with the Law. It is noted that the actions and accountability of the defendant is the subject of the substantive matter before the court.

[12] Does the Caveator have an interest in the land registered in Book of Titles A10 Folio 68 registered in the name of Eloi Francis capable of sustaining the caveat?

[13] The well established principle of law is that a person who is entitled on intestacy does not acquire an immediate equitable interest in the estate’s property. **Re: Commissioner of Stamp Duties –v- Livingston**³. The Privy Council in this considering the interest of beneficiaries on intestacy decided that the estate of a deceased devolved on administrators and that it came to them ‘*virtute officii . . in full ownership, without distinction between legal and equitable interests*’. That the administrators hold the estate ‘for the purpose of carrying out the functions and duties of administration, not for [their] own benefit’. Further, that a beneficiary under an intestate estate has no interest in the property to be administered, but only a right to require the estate to be duly administered, and to receive an appropriate proportion of the net estate.

² NEVHCV2016/0049) Moise J

³ [1964] 3 All E R 692;

[14] In the recent case⁴ of **Clarion Housing Association Ltd –v- Carter (As PR of Agnes Monica Carter)**⁵ it was stated that “The general rule that a person entitled on intestacy does not acquire an immediate equitable interest in the estate’s property is settled and entrenched.”(per Mr Justice Kerr at paragraph 73). This case is noted as having applied **Commissioner of Stamp Duties –v- Livingstone**⁶.

[15] Therefore as this court understands it, the caveator in the case at bar as a beneficiary under intestacy does not acquire an immediate interest in the estate’s property. That interest vests in the Administrator. As this court understands it, the established law is that a beneficiary upon intestacy does not have any estate, right, or interest, legal or equitable, in the assets under administration.

[16] It is trite and well established law that the Administrator’s duty is to bring in the estate, settle the estate’s debts and thereafter distribute the estate according the law and rules of intestacy.

[17] The court is therefore not minded to sustain the caveat and therefore the caveat entered is hereby discharged that is, it is not sustained on the ground that the caveators being beneficiaries of their father’s estate on intestacy do not have a “interest or right in the property to sustain a caveat”.

[18] The court understands the claimant’s anxieties however; based on the provisions of Part 68.4 CPR 2000 ⁷ the defendant is required to lodge his original grant of Letters of Administration with

⁴ This case was not referred to by counsel in their arguments it however applies the case mentioned

⁵ [2021] EWHC 2890 (QB).

⁶ Op cit

⁷ Part 68.4 (1) If, at the commencement of proceedings for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration, as the case may be, have not been lodged in court the –

(a) claimant must lodge the probate or letters of administration at the court within 7 days after the issue of the claim where the proceedings are commenced by a person to whom the grant was made; or

(b) applicable defendant must lodge the probate or letters of administration at the court within 14 days after the service of the claim form, if it or them are in the possession or under the control of that defendant.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the proceedings, be ordered by the court to lodge the probate or letters of administration within a specified time.

(3) If an order is made under paragraph (2), a person against whom such an order is made may not take any step in the proceedings without the permission of the court until that person has complied with the order. Affidavit of testamentary script

the Registry upon commencement of these proceedings. It would appear that this has not been done.

[19] The Administrator in this case the defendant would not be able to take any further action in the estate which in effect disallows him from transferring or dealing with the property of selling the property at whatever price as allegedly feared by the claimants. This in and of itself in this court's view is a prohibition which will provide the claimants with the protection sought.

[20] This court also makes reference to section 123 of the TBRA which provides

"123. All orders sustaining, continuing, or removing caveats, and all other orders of the Court relating thereto, shall be presented to the Registrar of Titles by the person in whose favour they are given, or on his behalf, and shall be noted by the Registrar of Titles on the duplicate certificate of title as of the date of the presentation"

[21] Given the fact it is this court's intention to order that the Administrator comply with Part 68.4 of CPR 2000 and lodge his Letters of Administration dated the forthwith, this court is content that the Registrar of Lands will be put on notice that the Administrator is unable to take any action in this estate pending the hearing and the outcome of this matter.

[22] Further, it is not be noted that the trial of the substantive issue before the court is fixed for April 2022 which is a few weeks off from this date and therefore there will for all intents and purposes be a relatively immediate hearing of the substantive matter.

[23] As has been said to counsel in court on the hearing of this application, it would appear that the substantive issue of this matter is one of the administration of an intestate estate which will hopefully be finally dealt with at trial in order that the estate of Mr Elois Francis be settled and duly administered. Of course the court will address and attend to the substantive issues at the trial.

[24] The order of this court there is as follows:

- a. The caveat placed on property registered in Book of Titles A10 Folio 68 registered in the name of Eloi Francis is not sustained and the Registrar of Titles is hereby ordered to remove same;
- b. Paul Francis shall **forthwith** lodge with the Registrar of the Supreme court the Letters of Administration issued on the 3rd day of July 2017;
- c. The costs of this application shall be the costs in the cause; and
- d. The claimant/caveator shall have conduct of this order.

M E Birnie Stephenson
Resident Judge

BY THE COURT

REGISTRAR