

IN THE HIGH COURT OF JUSTICE

Antigua and Barbuda

Claim No: ANUHCv 2007/0011

BETWEEN:

FISHERS ESTATE LIMITED

Claimant

and

DR PATRICK LEWIS

JOHANNA LAKE

FERDINAND GONSALVES-BARREIRO

CRAIG WALTER

As administrators of the estate of Manuel Gonsalves

Defendant

Before:

Master Jan Drysdale

Appearances:

David Joseph Q.C, Rika Bird and Hugh Marshall of counsel for the Claimant

Safiya Roberts and Kamilah Roberts of counsel for the Defendant

2018: June 22nd

July 13th

2019: June 6th

DECISION

- [1] **Drysdale, M.:** The matter for consideration is an application to strike out the claim form and statement of claim for failing to comply with a rule or practice direction. From the outset the Court wishes to apologise for the delay in delivering this judgment and are grateful to the parties for their helpful submissions.

Background

- [2] By claim form and statement of claim filed on 10th January 2007 the Claimant claimed against Dr. Patrick Lewis and Johanna Lake as administrators of the Estate of Manuel Gonsalves specific performance of a written agreement for the sale of land made in October 2005.
- [3] In pursuance of the claim Dr. Patrick Lewis was served on 10th January 2007. No service has been effected on Johanna Lake in these proceedings.
- [4] On 22nd March 2007 Dr. Patrick Lewis filed an acknowledgment of service. Counsel who signed the said acknowledgment of service signed as solicitor for the first named Defendant and indicated an intention to defend the matter. To date no defence has been filed.
- [5] It appears that shortly after the filing of the acknowledgment of service that on 3rd April 2007 proceedings in Claim No 0168/2007 were commenced by concerned legatees of the estate against the administrators. Their claim was for inter alia the removal of the administrators and also sought to challenge the sale of Fisher's Estate. An ex parte injunction was thereafter issued prohibiting the administrators from taking any steps to complete the sale of Fisher's Estate. The Claimant was thereafter served with a copy of the injunction which effectively stayed these proceedings.
- [6] In the interim and during the course of Claim No 0168/2007 the parties entered into a consent order wherein two beneficiaries in addition the current administrators were appointed to jointly represent the estate. That further the beneficiaries agreed to the suspension of the challenge to the completion of the sale. The Claimant was not part of the proceedings in Claim No 0168/2007.
- [7] After becoming aware of the consent order on 27th June 2017 the Claimant filed an application for summary judgment. The matter was thereafter listed for hearing on 24th October 2017.
- [8] Based on representations made to the Court on 24th October 2017 it was ordered inter alia that:
- '1. The 1st Defendant shall file and serve an application to substitute the Administrators of the Estate of Manuel Gonsalves appointed pursuant to the consent order in Claim No 0168 of 2007 in place of the defendants within 7 days. The affidavit shall include a chronology of events in Claim No 0168 of 2007.
 2. The legal practitioners representing the estate of Manuel Gonsalves appointed pursuant to the consent order in claim no. 0188 of 2001 shall file and serve a notice of acting within 7 days.

3. The Claimant shall serve the Claim Form and all other documents filed in these proceedings on the legal practitioners who shall file a notice of acting within 14 days of the service of the notice of acting.

4. In relation to the application for summary judgment:

(a) the administrators of the Estate of Manuel Gonsalves appointed pursuant to the consent order in claim no. 0188 of 2007 shall file and serve all affidavits and submissions in answer on which they intend to rely by 7th December 2017.

(b) the claimant shall file and serve all affidavits and submissions in reply on which it intends to rely by 5th January 201[8]

(c) The matter is adjourned to 8th February 201[8] at 11 a.m. for hearing of the application.

5. The claimant shall have carriage of this order.'

[9] The Notice of Acting for the Estate of Manuel Gonsalves was filed on 27th November 2017 and served on 28th November 2017. Two days thereafter the Claimant filed an affidavit of service evidencing that the Claim Form, Statement of Claim and all other relevant documents in these proceedings were served on the office of counsel for the Defendant in pursuance of the court order.

[10] On 7th December 2017 Dr. Lewis and Johanna Lake applied as Defendant for an extension of time to comply with the order dated 24th October 2017. The affidavit in support cites difficulties in dealing with the newly appointed administrators. Also on 7th December 2017 an application was filed to effectively add the names of Ferdinand Gonsalves-Barreiro and Craig Christopher to the named Defendants pursuant to the consent order in claim no. 0168/2007

[11] On 10th January 2018 the application to strike out the statement of claim was filed. Thereafter the Claimant filed an application to dispense with personal service pursuant to CPR7.8(b).

[12] Notwithstanding that the application for summary judgment was filed first in time it was agreed that due to the circumstances of the case that the application to strike out would be determined ahead of that application.

[13] The premise of the application to strike out is that there has been no compliance with a rule or practice direction. In particular the Defendant avers that there has been no service on Johanna

Lake in accordance with CPR8.1. The Defendant insists that there must be personal service on both administrators and as such service on Dr. Lewis is insufficient to cure this defect. Furthermore the Defendant submits that there has been no extension of the claim and as such the same now has no validity.

[14] The Claimant opposes the submission that the failure to serve Johanna Lake is fatal to these proceedings and submitted that the Defendant is in fact the Estate of the Manuel Gonsalves and that service on one of the two representatives is sufficient.

[15] The parties submitted submissions and also made oral submissions in relation to the same. Notwithstanding the extensive arguments regarding the same the Court has distilled the relevant issues as follows:

- (i) Whether the administrators or the estate is the appropriate party?
- (ii) Whether the service of one of the administrators is fatal to the continuation of these proceedings?

The Law and Analysis

[16] The main thrust of the Defendant's argument revolve around a breach of CPR26.3(1)(a) which provides that 'the court may strike out a statement of case or part of a statement of case if it appears to the court that there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings.'

[17] As indicated above the crux of the application to strike out is premised on the failure to serve one of the two administrators within the 6 months prescribed for the validity of the claim form. This argument does not find favour with the court for the reasons enunciated hereunder.

[18] The appointment of the Patrick Lewis and Johanna Lake was done pursuant to a De Bonis Non Grant. A De Bonis Non Grant is made in circumstances where the administration of the estate is not complete. There is a common fallacy that the personal representatives are appointed to act for the former representatives or the deceased. However the court in the case of **Stanhope v. Stanhope** clarified that 'an executor does not act for a dead man, or in his name, but for the

estate of the dead man.¹ Ergo it is the Estate of Manuel Gonsalves that is the party to these proceedings and not the individual representatives.

- [19] Further an examination of the De Bonis Non Grant specifically provided that 'letters of administration of the estate which by law devolves to and vests in the personal representative of the said intestate were granted...to Johanna Lake and Patrick Lewis daughter and grandson respectively and together...'. The term 'respectively and together' is an archaic term which when distilled is akin to the term 'joint and several' which is more commonly used today. The effect of such a grant with these qualifying words is such that each administrator is seized with the ability to act independently of the other for and on behalf of the estate save where statute expressly mandates otherwise and or jointly with the other named administrator. The Court is buttressed in its thinking by the authority of **Williams, Mortimer and Sunnucks on Executors, Administrators and Probate**² which explains that:

'[C]o-executors, however numerous, are regarded in law as an individual person. The same principle applies under a joint grant of administration. Thus, as a general rule, the act of one of joint representatives is regarded as the act of all and is binding unless the case falls within one of the exceptions considered later in this section.'

- [20] The proposition that where there is a joint administration the act of one of the joint representatives is considered to be the act of all representatives and is of binding effect was also recognised in the case of **Fountain Forestry Ltd v Edwards**³ which case undertook a discourse of the development of the law in that area. Brightman J posited that 'that administrators are to be treated in the same way as executors; the act of one is the act of all and each has entire interest in the whole estate.' Further after a thorough examination of several cases concluded that it was now settled that 'an administrator has power ...to bind the intestate's estate by his own act without the concurrence of his co-administrator.'
- [21] The contextual reality of this case is not the ability of the administrators to execute the agreement for sale but rather whether the service on one administrator is sufficient to allow that administrator to file an acknowledgment of service and bind the Estate to defend these proceedings. Having regard to the previously expressed opinion that the appropriate party is the Estate and that one administrator is able to act independently of the other the Court is of the considered opinion that

¹ (1886) 11 P. D. 103, 110

² 20th edition by John Ross Martyn, Nicholas Caddick paragraphs 54-69

³ [1975] Ch 1

there being no statute, rule, practice direction or any other document mandating service on all administrators for the continuation of these proceedings that service on one administrator is sufficient to allow for the continuation of these proceedings.

ORDER

[22] Based on the foregoing I make the following order:

1. That application to strike out the statement of claim is refused.
2. The Defendant shall pay the Claimant costs in the sum of \$1,500.00.

Jan Drysdale

Master

By The Court

Registrar