

**EASTERN CARIBBEAN SUPREME COURT
COLONY OF MONTSERRAT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NUMBER: MNIHCV2016/ 0024

BETWEEN:

**MILLICENT BASS, LAWFUL ATTORNEY IN THE ESTATE OF
JOSEPH BENJAMIN DALY
(DECEASED) BY HER LAWFULLY APPOINTED AGENT JOSEPH W. BASS**
Claimant

and

JULIAN DANIEL
Defendant

Before:

Ms. Agnes Actie Master

Appearances:

Mr. Justin Simon Q. C with Mr. Jean Kelsick for the claimant
Mr. Karl Markham for the defendant

2017: May 5.

JUDGMENT

[1] **ACTIE, M:** Millicent Bass, was granted a Power of Attorney by her siblings as heirs of the late Joseph Benjamin Daly. Millicent Bass, has by Power of Attorney appointed her husband, Joseph W. Bass, to file the instant claim on behalf of the estate of the deceased, Joseph Benjamin Daly, seeking inter-alia, full accounting by the defendant, Joseph Daniel, of all monies spent and received in respect of claim number MNIHCV2007/0014.

- [2] The defendant filed an application to strike out the instant claim on the grounds that the claimant, Millicent Bass, not having obtained Letters of Administration or Probate to the estate of the late Joseph Benjamin Daly is not entitled to institute and or permit the institution of the proceedings in her capacity as lawful attorney in the estate of Joseph Benjamin Daly and (ii) the claimant is not entitled to assign or transfer power granted under a Power of Attorney to Joseph W. Bass.

Background

- [3] The defendant, Julian Daniel, by Power of Attorney granted by Millicent Bass, was appointed in a representative capacity pursuant to CPR 2000 to represent the estate of the late Joseph Benjamin Daly in previous legal proceedings in claim number MNIHCV2007/0014. Mr. Daniel was awarded compensation both at the High Court and on appeal on behalf of the Heirs of the estate of Joseph Benjamin Daly.

Law and Analysis

- [4] The starting point is that, it is a general and established principle that Letters of Administration are to be taken out prior to the issue of proceedings on behalf of deceased persons.
- [5] Counsel for the defendant cites several authorities in support of the application to strike out the claim. In **Ingall v Moran**¹, the plaintiff issued a writ of summons claiming to sue as administrator of his son's estate, but did not take out letters of administration to the estate until several weeks later. The Court of Appeal held that the action was a nullity, which was not saved when the grant was later obtained. The court citing the case of **Chetty v Chetty**², stated that the position was different where a will appointing an executor was concerned, for there the title of the executor once confirmed related back to the death, whereas the title of the administrator derived solely from the grant. This view of the general position was

¹ [1944] KB 160

² [1916] 1 AC 603

further confirmed by the decision of the Court of Appeal in **Millburn-Snell v Evans**³ by Rimer LJ with whom Lord Neuberger MR and Hooper LJ agreed.

[6] The established principle that it is essential for Letters of Administration to be obtained prior to the filing of a claim on behalf of the estate of a deceased was recently restated and applied in our jurisdiction by Smith J in **Heirs of Camselle St. Catherine v Darius St Catherine Et al**⁴.

[7] It is incontrovertible evidence that the claimant, Millicent Bass, has not obtained Letters of Administration to enable her to act as personal representative of the estate of the deceased, Joseph Benjamin Daly.

[8] Counsel Kelsick, for the claimant, urges the court to stay the proceedings pursuant to the overriding objectives of the CPR 2000 and Rule 26.9 to put matters right having regard to the sensitive nature of the matter before this court. The short answer to this proposition is that it has been established that the action brought on behalf of an estate by someone, without Letters of Administration and who is not named as an executor in the will, is a nullity. The nullity cannot be rectified or put right by any order of the court.

[9] The Court of Appeal in **The Treasure Island Company et al v Audubon Holdings Limited et al** per Saunders J.A states :

“The overriding objective does not in or of itself empower the Court to do anything or grant to the Court any discretion⁵. It is a statement of the principle to which the Court must seek to give effect when it interprets any provision or when it exercises any discretion specifically granted by the rules. Any discretion exercised by the Court must be found not in the overriding objective but in the specific provision itself. As May LJ stated in *Vinos*, “Interpretation to achieve the overriding objective does not enable the Court to say that provisions which are quite plain mean what they do not mean, nor that the plain meaning should be ignored.”

³ [2012] 1 WLR 41

⁴ SLUHCV2003/0444 delivered on 24th March 2016

⁵ Per Saunders JA

- [10] It is clear that the claim form with statement of claim filed before first obtaining Letters of Administration is incurably bad. It cannot be resurrected retrospectively even if the claimant were to obtain letters of administration subsequent to the filing of the claim. The personal representative if and when appointed, will have to initiate a new claim.
- [11] Secondly, counsel for the defendant contends that the claimant is not entitled to assign or transfer powers granted under the Power of Attorney to Joseph W. Bass. It is the evidence that Millicent Bass was granted a Power of Attorney by her siblings for purposes incidental to the administration of the estate of the late, Joseph Benjamin Daly. Millicent Bass has granted a Power of Attorney to her husband, Joseph W. Bass, who has initiated the instant claim on her behalf for the estate of the deceased.
- [12] An agent appointed under a Power of Attorney cannot delegate his/her authority and powers to someone else, unless expressly allowed under the terms of the Power of Attorney. Millicent Bass having not been appointed by Personal Representative of the deceased estate in order to maintain an action cannot delegate an authority that she does not possess. She can neither delegate her authority under the Power of Attorney granted by her siblings, unless expressly authorized by her siblings.
- [13] CPR 26.3(1)(c) empowers the court to strike out a statement of case if it is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings. The statement of case filed by the claimant before this court is patently void and unsustainable and is accordingly struck out.
- [14] The claimant is at liberty to file a new claim upon obtaining Letters of Administration. Counsel for the parties ask the court to take judicial notice of the fact that most, if not all, of the beneficiaries are elderly persons who reside overseas. The court is of the view that a period of five (5) months is reasonable in

the circumstances to obtain Letters of Administration to institute a new claim, if necessary, at which point the issue of costs will be determined.

Order

[15] In summary and for the foregoing reasons, it is ordered and directed as follows:

- (1) The claim form with statement of claim filed by the claimant is struck out pursuant to CPR 26.3.
- (2) Unless agreed otherwise, costs to the defendant shall be determined in the claim, if and when filed, within a period of five (5) months from today's date.
- (3) Liberty to apply.

Agnes Actie
Master

By the Court

Registrar