

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2011/0241

BETWEEN:

**OLIVE PEGGY DEFREITAS
of Dorsetshire Hill**

CLAIMANT

-AND-

GEROLD GELLIZEAU

DEFENDANT

JUDGMENT

Appearances: Mr Joseph Delves for the Claimant, Mr Parnell R. Campbell Q.C. and Ms Mandela Campbell for the Defendant.

2015: Nov. 12
Dec. 22

BACKGROUND

[1] **Henry, J.:** The claimant Olive Peggy Defreitas¹ initiated this claim against Mr Gellizeau for recovery of possession of a dwelling house, arrears of rent, mesne profits and unpaid water and electricity bills. She claims to be agent for the premises and a beneficiary of the deceased owner's estate. She alleges that Mr Gellizeau occupies the premises as tenant, has been delinquent in paying rent and utilities and has failed to leave the premises although served with a notice to quit. Mr Gellizeau resists the claim and denies that he occupies the subject

¹ Referred to also as Olive Defreitas.

property as a tenant. He contends that he has been in continuous, public and adverse possession from 1992. He seeks a declaration that he is entitled to possession of the disputed property, an order restraining Ms Defreitas from disturbing his peaceful enjoyment, damages and costs.

[2] On the pleadings, Ms Defreitas and Mr Gellizeau agree that he commenced occupation of the disputed property on invitation from the life tenant Ms Theresa Defreitas who passed away in 1994. Ms Defreitas claims to be her daughter. There is also common ground between them that the property at all material times was and is registered in the name of Gordon Carmichael, now deceased. The parties also acknowledge that Mr Carmichael's estate has not been administered. Ms Defreitas alleges that she is his niece and a beneficiary of his estate since he died intestate. On the scheduled trial date, learned Queens Counsel Mr Campbell raised a preliminary issue regarding Ms Defreitas' legal standing to bring the claim. He submitted that she is not competent to maintain the action in her personal capacity, as beneficiary of the estate of Gordon Carmichael or as beneficiary of Theresa Defreitas' estate as she has not obtained a grant of Letters of Administration or Probate in respect of either estate.

[3] On behalf of Ms Defreitas, learned counsel Mr Delves countered that the claim is one founded in the law of landlord and tenant and a tenant is estopped from challenging the landlord's title. He submits that in the circumstances it is necessary for the court to determine whether that relationship existed or exists between the parties. He posited that Ms Defreitas' claim is not made on behalf of either Theresa Defreitas' or Gordon Carmichael's estate but in her capacity as beneficiary.

Preliminary Point

- [4] It is noted that when Olive Defreitas filed her Amended Reply and Defence to Counterclaim² the title included the addition “Olive Peggy Defreitas (Beneficiary of the Estate of Gordon Michael Carmichael, deceased)” as claimant. No application was made for addition of a new party. Accordingly, “Olive Peggy Defreitas (Beneficiary of the Estate of Gordon Carmichael, deceased)” is not a party properly before the court. All references to that person as an added claimant in the pleadings and other filings will therefore be ignored.

ISSUE

- [5] The sole issue is whether Olive Peggy Defreitas possesses the necessary *locus standi* to maintain this claim against Gerold Gellizeau.

ANALYSIS

Issue – Does Olive Peggy Defreitas possess the necessary *locus standi* to maintain this claim against Gerold Gellizeau?

- [6] Ms Defreitas’ statement of case and witness statements must be examined to ascertain whether they establish a legal basis on which she can maintain her claim as:

- a) agent for the disputed property; and/or
- b) beneficiary of Gordon Carmichael’s estate.

I shall consider firstly her assertion that she is agent.

Agency

- [7] An agency relationship is created where a person referred to as the “principal” appoints another person (“the agent”) to act on his behalf in dealings with a third party.³ The relationship may arise implicitly from the parties’ conduct;⁴ expressly

² On May 11, 2012.

³ See Halsbury’s Laws of England 4th Ed. Vol. 1, para. 701.

either by deed or oral agreement; or by ratification of the agent's acts by the principal.⁵ In the case at bar, Ms Defreitas states in her statement of case:

"The claimant is agent of the dwelling house at Level Garden...";⁶

"At at material times the Defendant occupied the subject premises with the permission of the Claimants and or their relatives.

... the Claimants repeat the assertion that the Defendant went into the disputed premises with their permission and with the permission of the beneficiaries of the estate of Gordon Carmichael and is a tenant and is in lawful occupation."⁷

These allegations taken together imply that she is agent for the beneficiaries of Gordon Carmichael's estate.

- [8] The witness statement of Olive Defreitas' proposed witness, Deborah Bacchus⁸ alludes to some relationship between Ms Defreitas and other family members in respect of the house. Clause 11 reads in part:

"I knew the Defendant but I never inquired of him about the house. We left that to Peggy."

Without more, it is impossible to ascertain who is referred to as "we" and what precisely was "left to Peggy." It would be pre-emptive and speculative for me to conclude one way or another about either. Suffice it to say that whether Ms Defreitas is agent for the beneficiaries of Gordon Carmichael's estate involves questions of fact and law. It would be imprudent for the court to attempt to make

⁴ Ibid. at paras. 715.

⁵ Ibid. at paras. 715, 756 and 759. See also **Markwick v Hardingham (1880) 15 ChD. 339** and **Danish Mercantile Co Ltd v Beaumont [1951] Ch 680 CA**.

⁶ See paragraph 1 of the Statement of Claim filed on November 9, 2015.

⁷ See paragraphs 20 and 22 of the Amended Reply and Defence to Counterclaim filed on May 11, 2012.

⁸ Both filed on May 5, 2014.

a factual determination without hearing the witnesses. I therefore refrain from so doing.

- [9] Furthermore, the court remains mindful that an intestate's estate is vested in the Honourable Chief Justice on a presumptive trust until Letters of Administration are granted.⁹ During that period, although a beneficiary's interest in the property is theoretically protected from extinguishment, he is not restricted from being proactive in taking steps to protect his rights or interests in and title to the property. In fact, it would be incumbent on him to do so if he is made aware of any challenge to such interests, rights or title. Having considered the pleadings and intended evidence, I have formed the view that Ms Defreitas has signaled her intention to pursue this claim as agent. As agent, she would possess the necessary *locus standi* to prosecute the claim. Whether she is agent is a fact to be determined after the evidence is given. I hold therefore that the pleadings¹⁰ disclose a legal basis on which Ms Defreitas can maintain this cause as agent.

Beneficiary

- [10] The law¹¹ dictates who are the beneficiaries of an intestate's estate. Mr Gellizeau submits that Ms Defreitas' claim is brought on behalf of Gordon Carmichael's estate. There is nothing in the pleadings or witness statements to suggest this. I have already addressed above the purported addition of another claimant at paragraph 4. Ms Defreitas alleges that Gordon Carmichael was never married and was survived by his sisters Theresa Defreitas, Bernice and Regina

⁹ See section 31 of the Administration of Estates Act, Cap. 486 which provides:

"31. Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Chief Justice in the same manner and to the same extent as in similar cases in England it vests in the President of the Family Division."

¹⁰ Read together with the witness statements.

¹¹ Section 62 of the Administration of Estates Act.

and four brothers.¹² She also claims to be Theresa Defreitas' daughter. No mention is made of Mr Carmichael's parents. If Mr Carmichael was predeceased by his parents and if Ms Defreitas' account is accurate, her mother's estate could have an interest in the subject property. In such case, Olive Defreitas might be a beneficiary of the subject property. In his Defence, Mr Gellizeau puts her to strict proof.¹³ Resolution of those issues turn on findings of fact which can be properly made only after a full trial.

[11] Based on the foregoing, Olive Defreitas might be a beneficiary of Gordon Carmichael's estate. As beneficiary, she would have the requisite legal standing to proceed with this claim in her personal capacity. There is no evidence before the court on which it can make a finding one way or another. Such a finding must await the unfolding of the testimony at trial. It would be contrary to the interests of justice to short-circuit this case by dismissing Ms Defreitas' claim without allowing the parties to fully ventilate those factual issues. I am satisfied that the pleadings contain factual allegations against which Ms Defreitas' claim as beneficiary can be sustained, if those assertions are proven. I therefore make no order dismissing her claim.

Statutory Trust - Representation of Beneficiaries

[12] The issues highlighted in this decision bring into sharp focus considerations of the rights, interests and title of beneficiaries to a statutory trust and specifically those of Mr Carmichael's estate. Neither party before the court represents their interests. The court cannot ignore this. The court has a duty to seek to fully and definitively resolve all issues which arise between the parties and to avoid

¹² See clauses 2 and 3 of the Amended Reply and Defence to Counterclaim filed on May 11, 2014 and paragraph 3 of Olive Peggy Defreitas' witness statement filed on May 5, 2014.

¹³ Ibid. at paragraph 2.

multiplicity of legal proceedings.¹⁴ Cognizant of this function and mindful of the overriding objective of the Civil Procedure Rules 2000 (“CPR”), this is a proper case in which it appears necessary to add a party to represent those other interests. The court may do so pursuant to the CPR to enable it to resolve all matters in dispute and to ensure that the estate is represented.¹⁵ The court may make such an order of its own volition provided that it gives any party likely to be affected a reasonable opportunity to make representations.”¹⁶

¹⁴ See section 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which provides:

“The High Court ... in the exercise of the jurisdiction vested... by this Act, shall in every cause or matter pending before the court, grant either absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided.”

¹⁵ See Rules 19.2 (3)(a), 19.3(1) and 21.7 which state respectively:

“19.2 (3) The court may add a new party to proceedings without an application if-
(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or...”

“19.3 (1) The court may add, substitute or remove a party on or without an application.”

“21.7 (1) If in any proceedings it appears that a deceased person was interested in the proceedings but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased’s estate for the purpose of the proceedings.

- (2) A person may be appointed as a representative if that person-
- (a) can fairly and competently conduct proceedings on behalf of the estate; and
 - (b) has no interest adverse to that of the estate of the deceased person.

(3) The court may make such an order on or without an application.”

¹⁶ See rule 26.2(2) and (4) of the CPR which provides:

“26.2 (2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.

(4) If the court proposes to –

- (a) make an order of its own initiative; and
 - (b) hold a hearing to decide whether to do so;
- the court office must give each party likely to be affected by the order at least 7 days’ notice of the date, time and place of the hearing.”

[13] Having regard to the nature of the claim and the issues which are likely to arise at trial, particularly as they relate to the statutory trust, I consider this a fitting case in which to invite representations from the Honourable Attorney General about adding a party to represent Gordon Carmichael's estate. Ms Defreitas and Mr Gellizeau will also be given an opportunity to make their own representations.

ORDER

[14] It is accordingly ordered that:

1. Gerold Gellizeau's application for an order dismissing Olive Defreitas' claim is dismissed.
2. The Registrar shall provide the Honourable Attorney General with a copy of this decision and a copy of the trial bundle on or before December 24, 2015.
3. The parties are to file submissions on or before January 22, 2016, regarding the desirability of adding a party to represent the interests of the deceased's estate and to serve those submissions on the Honourable Attorney General on or before January 26, 2016.
4. The Honourable Attorney General is invited to file submissions on or before February 5, 2016 regarding the desirability of adding a party to represent the interests of the deceased's estate.
5. The Registrar is to fix a hearing date and serve notice of on the parties and the Honourable Attorney General at least 7 days' in advance with proof of service.
6. Gerold Gellizeau shall pay costs of \$1500.00 to Olive Defreitas pursuant

to CPR 65.11.

[15] I wish to thank counsel for their submissions.

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Esco L. Henry
HIGH COURT JUDGE